

NORTHERN TERRITORY OF AUSTRALIA

FIRE AND EMERGENCY ACT

As in force at 1 November 2016

Table of provisions

Part 1	Preliminary matters	
1	Short title	1
2	Commencement	1
3	Interpretation	1
4	Emergency response areas.....	4
Part 2	Northern Territory Fire and Rescue Service	
Division 1	Establishment of Northern Territory Fire and Rescue Service	
5	Northern Territory Fire and Rescue Service	5
6	Role of Fire and Rescue Service	5
7	Director and Chief Fire Officer	6
8	Powers and functions of Director.....	6
8A	Approved forms	7
9	Powers and functions of Chief Fire Officer	7
10	Delegation	7
Division 2	Establishment of fire and emergency response groups	
11	Establishment of fire and emergency response groups.....	8
12	Operation of fire and emergency response group	8
Division 3	Auxiliary members and volunteer members	
13	Auxiliary members	8
14	Volunteer members	9
15	Protection of employment rights	9
Division 4	Operation of Northern Territory Fire and Rescue Service	
16	Powers and functions of members	9
17	General orders.....	9

Part 3	Fires and other emergencies	
Division 1	Dealing with fires and other emergencies	
18	Members to attend all incidents	10
19	Incident commander	10
20	Powers of incident commander	11
21	Authority of incident commander to be recognised.....	14
Division 2	Investigations of fires and other emergencies	
22	Fire investigators	14
23	Powers of fire investigators.....	15
24	Fire investigations.....	15
Division 3	Prevention of fires and other emergencies	
24A	Definition.....	16
25	Hazard reduction powers of entry and inspection.....	16
26	Review of requirement.....	18
27	Liability where notice not complied with.....	19
27A	Certain buildings to be inspected regularly	20
27B	Certain buildings may be treated as within different prescribed class	20
Part 4	Restrictions on lighting fires	
Division 1	Fires in open air	
28	General prohibition against lighting fires in open air	21
29	Lawful fires	21
30	Granting of permits	21
Division 2	Fire ban days	
31	Declaration of fire ban days.....	22
32	Fires prohibited on fire ban days	23
Part 5	Responsibilities of occupiers of land in relation to fires	
33	Occupier to extinguish fire	23
34	Power of occupier to enter land etc.	23
Part 6	Offences	
Division 1	Offences relating to fires	
35	General offences	24

36	Fires to be extinguished	25
----	--------------------------------	----

Division 2 Offences in relation to Fire and Rescue Service

37	Delivery of property	26
38	Communication of information	26
39	Personation	26
40	Offering bribe.....	26

Part 7 Miscellaneous matters

41	Restrictions on sale of notified articles	27
42	Damage within insurance policy	27
43	Fees and charges.....	27
44	Commissioned ranks	28
45	<i>Fire and Rescue Service Gazette</i>	29
47	Protection of members	29
48	Liability of person for fire lit by agent or employee.....	29
49	Criminal liability of executive officer of body corporate	29
50	Evidence in proceedings	31
51	Commencement of prosecutions	31
52	General penalty	31
53	Continuing offence.....	31
54	Regulations.....	31

Part 8 Transitional matters for Statute Law Amendment (Directors' Liability) Act 2015

55	Offences – before and after commencement.....	33
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ENDNOTES

NORTHERN TERRITORY OF AUSTRALIA

As in force at 1 November 2016

FIRE AND EMERGENCY ACT

An Act to provide for the establishment of the northern territory fire and rescue service, the operational and emergency response activities of the service, the protection of life, property and the environment against fires and other emergencies and for related purposes

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Fire and Emergency Act*.

2 Commencement

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3 Interpretation

(1) In this Act:

approved form means a form approved under section 8A.

authorised means authorised, in writing, by the Director.

auxiliary member means a person appointed under section 13 to be an auxiliary member of the Fire and Rescue Service.

Chief Executive Officer means the Chief Executive Officer, within the meaning of the *Public Sector Employment and Management Act*, of the Fire and Rescue Service.

Chief Fire Officer means the Chief Fire Officer of the Fire and Rescue Service referred to in section 7.

Director means the Director of the Fire and Rescue Service referred to in section 7.

emergency means an occurrence, where effective response is within the capacity and resources of the Fire and Rescue Service as determined by the Chief Executive Officer, that:

- (a) causes or threatens to cause:
 - (i) loss of life or property; or
 - (ii) injury to persons or property or distress to persons; or
- (b) in any way endangers the safety of the public of the Territory; or
- (c) in any way causes or threatens to cause damage to the environment of the Territory.

emergency response area means an area declared under section 4 to be an emergency response area.

fire and emergency response group means a fire and emergency response group established under section 11.

Fire and Rescue Service means the Northern Territory Fire and Rescue Service established by section 5.

fire ban day means a day declared a fire ban day under section 31.

fire investigator means a person appointed as a fire investigator under section 22.

flammable or combustible material includes:

- (a) a substance capable of ignition or combustion:
 - (i) by the application of heat; or
 - (ii) by means of a spark or flame; or
 - (iii) by spontaneous causes; and
- (b) a substance prescribed to be flammable or combustible material.

hazard reduction means taking precautionary action and conducting inspections, other than as part of the response to an existing incident, to eliminate or reduce danger by fire or other emergency to life or property.

hazardous material means any of the following:

- (a) dangerous goods as defined in the *Dangerous Goods Act*;
- (b) a hazardous chemical as defined in the *Work Health and Safety (National Uniform Legislation) Regulations*;
- (c) a product or substance that has the potential to harm life, health, property or the environment.

incident means a fire or other emergency.

incident commander means the member or person who, in accordance with section 19, is in command of a fire or other emergency, or the member to whom the powers and functions of the incident commander are transferred under that section.

in the open air means any place other than in a permanent structure.

member means:

- (a) an employee, within the meaning of the *Public Sector Employment and Management Act*, employed in the Fire and Rescue Service; or
- (b) an auxiliary member; or
- (c) a volunteer member.

occupier, in relation to land, includes:

- (a) a person having, or being entitled to, the use or management of land; and
- (b) where land is let in separate parts, a person receiving or entitled to receive the rent payable in respect of those separate parts, either on his or her own account or as agent for another person,

and includes a person in occupation of land belonging to the Territory, the Commonwealth or a State or another Territory of the Commonwealth, notwithstanding any want or defect of title to occupy the land.

owner, in relation to land, means the person in actual receipt of, or entitled to receive, the rents and profits of the land or who, if the land was let, would be entitled to receive the rents and profits whether as beneficiary, owner, trustee, executor or mortgagee in possession or as agent or attorney for another person.

permanent structure means a structure of a permanent kind consisting of a roof and fully or partly enclosed sides and includes a caravan but does not include a tent.

permit means a permit granted under section 30.

vehicle includes:

- (a) any means of conveyance that runs on wheels; and
- (b) a train or part of a train; and
- (c) an aircraft.

vessel means a ship, barge, boat or other vessel designed to float on water and includes:

- (a) an air-cushioned craft capable of being used as a means of transportation on water; and
- (b) a structure that floats or is designed to be floatable so as to allow the structure to be towed to a location offshore for oil or gas exploration or production or another industrial application.

volunteer member means a person appointed under section 14 to be a volunteer member of the Fire and Rescue Service.

- (2) For the purposes of this Act, a person is taken to light a fire if the person:
 - (a) lights, maintains or uses the fire; or
 - (b) aids, procures or counsels another to light, maintain or use the fire; or
 - (c) being the owner or occupier of the land on which the fire is lit, permits another to light, maintain or use the fire.

4 Emergency response areas

- (1) The Minister may, for the purposes of this Act, by *Gazette* notice, declare an area to be an emergency response area.
- (2) The declaration of an area as an emergency response area does not affect any contractual arrangements under which fire and rescue services are provided for the area, whether the contractual arrangements are entered into before or after the declaration.

Part 2 Northern Territory Fire and Rescue Service

Division 1 Establishment of Northern Territory Fire and Rescue Service

5 Northern Territory Fire and Rescue Service

- (1) There is established by this Act the Northern Territory Fire and Rescue Service.
- (2) For the *Public Sector Employment and Management Act*:
 - (a) the Fire and Rescue Service is an Agency; and
 - (b) the Commissioner of Police is the Chief Executive Officer of the Fire and Rescue Service.

6 Role of Fire and Rescue Service

The role of the Fire and Rescue Service is, subject to any other Act:

- (a) to respond to all incidents in an emergency response area; and
- (b) to respond to all hazardous material incidents and transport accident rescues, wherever occurring, in the Territory; and
- (c) to respond to incidents (other than those referred to in paragraph (b) outside an emergency response area when requested by a police officer or a member of an organisation having responsibilities to respond to such incidents and where:
 - (i) sufficient resources of the Fire and Rescue Service remain available to respond to incidents referred to in paragraph (a); and
 - (ii) a response is within the resources and capabilities of the Fire and Rescue Service; and
 - (iii) a response will materially contribute to extinguishing or controlling the fire or dealing with the emergency; and
- (ca) to investigate the cause of a fire anywhere in the Territory; and
- (cb) to undertake hazard reduction:
 - (i) to eliminate or reduce danger to life or property by fires (other than bushfires) and other emergencies anywhere in the Territory; and

- (ii) to eliminate or reduce danger to life or property by bushfires in an emergency response area; and
- (cc) to conduct training courses (with or without charge) in relation to any aspect of fire safety; and
- (d) to conduct community education and awareness programs relating to fires and other emergencies and, in particular, relating to fire safety and prevention; and
- (e) to develop and administer programs designed to promote safety in building structures; and
- (f) to exercise those powers and perform those functions that are imposed on it or a member by any other law in force in the Territory.

7 Director and Chief Fire Officer

- (1) There is a Director and a Chief Fire Officer of the Fire and Rescue Service.
- (2) The Chief Fire Officer must be a person with substantial experience in the emergency response activities of a fire and rescue service.

8 Powers and functions of Director

- (1) Subject to the directions of the Chief Executive Officer, the Director has general control and overall responsibility for the management of the Fire and Rescue Service.
- (2) Without limiting subsection (1), the functions of the Director are to:
 - (a) make provision in every emergency response area, so far as the capacity and resources of the Fire and Rescue Service permits, for the effective response to all incidents, including preventing, suppressing and extinguishing fires or dealing with emergencies and for the safety of people and property endangered by fire or other emergencies; and
 - (b) ensure that the Fire and Rescue Service is maintained in accordance with this Act and in a state of operational readiness; and
 - (c) review the efficiency and effectiveness of the Fire and Rescue Service; and

- (d) make provision for effective co-operation between the Fire and Rescue Service, the Bushfires Council established under the *Bushfires Management Act* and the Northern Territory Emergency Service as defined in section 8 of the *Emergency Management Act*; and
 - (e) enter into agreements and protocol arrangements with organisations, either within or outside the Territory, that can assist the Fire and Rescue Service in the performance of its role under this Act; and
 - (f) enter into contractual arrangements for the provision of fire and rescue services, whether within an emergency response area or not; and
 - (g) enter into contractual arrangements for the provision of services ancillary to fire and rescue services, including (but not limited to) the supply, installation and monitoring of fire alarm systems; and
 - (h) enter into contractual arrangements for the provision (with or without charge) of training programs and public awareness programs.
- (3) The Director has power to do all things that are necessary or convenient to be done for or in connection with or incidental to the performance of his or her functions and the exercise of his or her powers.

8A Approved forms

The Director may approve forms for this Act.

9 Powers and functions of Chief Fire Officer

- (1) Subject to the directions of the Director, the Chief Fire Officer has operational responsibility for the Fire and Rescue Service.
- (2) The Chief Fire Officer has power to do all things that are necessary or convenient to be done for or in connection with or incidental to the performance of his or her functions and the exercise of his or her powers.

10 Delegation

- (1) The Minister or Director may, in writing, delegate to a person any of his or her powers and functions under the Act.
- (2) The Chief Executive Officer may exercise the powers and perform the functions of the Director without delegation.

Division 2 Establishment of fire and emergency response groups

11 Establishment of fire and emergency response groups

- (1) The Minister may, for the purposes of this Act, establish fire and emergency response groups.
- (2) Where the Minister establishes a fire and emergency response group under subsection (1), the Minister must determine:
 - (a) the name of the fire and emergency response group; and
 - (b) the area in which the fire and emergency response group will operate.

12 Operation of fire and emergency response group

- (1) In respect of each fire and emergency response group, the Director must determine:
 - (a) the core functions of the fire and emergency response group; and
 - (b) the constitution under which the fire and emergency response group will operate; and
 - (c) the relationship of the fire and emergency response group with other fire and emergency response groups and its obligations to other fire and emergency response groups.
- (2) The constitution of a fire and emergency response group may be amended, with the approval of the Director, in the manner set out in the constitution.
- (3) A fire and emergency response group shall consist of the members who, in accordance with the constitution, are the members of the group.

Division 3 Auxiliary members and volunteer members

13 Auxiliary members

- (1) The Director may appoint a person to be an auxiliary member of the Fire and Rescue Service.
- (2) An auxiliary member must be paid for his or her services in accordance with a scale of fees determined by the Minister.

- (3) Subject to subsection (2), an auxiliary member must be employed on such terms and conditions as are determined, from time to time, by the Director.

14 Volunteer members

- (1) The Director may appoint a person to be a volunteer member of the Fire and Rescue Service.
- (2) A volunteer member must not be paid for his or her services.

15 Protection of employment rights

An auxiliary member or volunteer member who, during or immediately after a fire or other emergency, is absent from his or her usual employment or duties in connection with the fire or emergency, is not liable for dismissal, loss of long service leave, sick leave, recreation leave or other benefits to which he or she may be entitled under the industrial award or agreement applicable to his or her usual employment, by reason only of his or her absence on those duties, whether or not his or her usual employer has consented to the absence.

Division 4 Operation of Northern Territory Fire and Rescue Service

16 Powers and functions of members

- (1) A member may exercise such powers and perform such functions as are conferred or imposed on the member by or under this Act or any other law in force in the Territory.
- (2) A member must promptly obey all lawful instructions given to the member by a member of a higher rank, or a member of the same rank, under whose control, direction or supervision the member is performing his or her duties.

17 General orders

- (1) The Director may, from time to time, in writing, issue such general orders and instructions as are necessary to ensure the effective and efficient operation of the Fire and Rescue Service.
- (2) Without limiting the generality of subsection (1), the general orders and instructions may make provision for and in relation to:
 - (a) the ranks in, and the command structure of, the Fire and Rescue Service; and
 - (b) methods of training of members; and

- (c) the times and manner in which members are to undergo medical examinations; and
- (d) the preparation, maintenance and availability of service records of members; and
- (e) the response by members to incidents outside an emergency response area.

Part 3 Fires and other emergencies

Division 1 Dealing with fires and other emergencies

18 Members to attend all incidents

When a call to an incident is received, whether orally, by automatic alarm or by other means, those members as are determined by the Director must proceed promptly to the place where a fire or other emergency is, or is thought to be, with such equipment as is available to those members for the purpose of extinguishing or controlling the fire or dealing with the emergency, if any.

19 Incident commander

- (1) At an incident, the incident commander:
 - (a) has responsibility for extinguishing or controlling the fire or dealing with the emergency; and
 - (b) has command of the members at the fire or other emergency and the equipment available to those members; and
 - (c) has the powers and functions that are conferred or imposed on an incident commander by or under this Act.
- (2) At an incident there must be one incident commander who is, subject to subsection (3):
 - (a) the member of the highest rank or designation within the command structure of the Fire and Rescue Service who first attends at a fire or other emergency; or
 - (b) a member of a higher rank or designation who subsequently attends the fire or emergency and assumes command at the fire or emergency; or
 - (c) a member to whom the powers and functions of the incident commander are transferred.

- (3) The Director may appoint a person, including a person exercising powers or performing functions under a law of a State relating to dealing with fires or other emergencies in that State, to be an incident commander.
- (4) An appointment under subsection (3) may be made for any one or more of the following:
 - (a) for a particular fire or other emergency;
 - (b) for a class of fires or other emergencies;
 - (c) for all fires or other emergencies in a specified area;
 - (d) for a specified period.
- (5) An appointment under subsection (3) may be subject to such conditions, if any, as the Director thinks fit.
- (6) A person appointed under subsection (3) is, subject to his or her appointment, the incident commander in relation to a fire or other emergency to which his or her appointment relates, but nothing in this subsection prevents the Director from appointing another person in place of the incident commander at a fire or other emergency.
- (7) Nothing:
 - (a) in subsection (2)(b) prevents a second or subsequent member assuming command at a fire or other emergency in accordance with that paragraph; or
 - (b) in subsection (2)(c) prevents a member to whom the powers and functions of the incident commander are transferred, transferring those powers and functions to another member.

20 Powers of incident commander

- (1) The incident commander at a fire or other emergency must:
 - (a) try, by such practicable means as he or she thinks fit, to control and extinguish the fire or deal with the emergency and to protect and save life and property; and
 - (b) control and direct those members who are at the fire or other emergency and any person who voluntarily places his or her services at the incident commander's disposal.

- (2) Without limiting the generality of subsection (1), the incident commander, at or immediately after a fire or other emergency, may exercise any of the following powers:
- (a) enter, or cause to be entered, and, if necessary, force open, or cause to be forced open, any land, building, vehicle or vessel on fire or which he or she considers may be on fire, menaced by fire, or in the vicinity of the fire or other emergency;
 - (b) cause land, a building, vehicle or vessel to be taken possession of, pulled down, sunk, damaged, destroyed or removed;
 - (c) take, or cause to be taken, equipment (including a vehicle) into, through, over or on land, a building, vehicle or vessel which he or she considers provides convenient access to the fire or other emergency;
 - (d) take possession of, remove and keep in safe custody any property on land or in a building, vehicle or vessel on fire or in the vicinity of the fire or other emergency;
 - (e) cause a street or thoroughfare in the vicinity of the fire or other emergency to be closed to traffic during the continuance of the fire or emergency;
 - (f) order a person to vacate land, a building, vehicle or vessel on fire or in the vicinity of the fire or other emergency;
 - (g) remove, or order a member to remove, a person, vehicle, vessel or thing the presence of whom or which at or near the fire or other emergency might, in the incident commander's opinion, interfere with the work of the members, or create a danger;
 - (h) pull down, destroy or shore up, or cause to be pulled down, destroyed or shored up, a wall or building which, in the incident commander's opinion, has, as a result of the fire or emergency, become damaged, insecure or dangerous to life or property;
 - (j) use, without being liable to pay for it, any convenient supply of water to extinguish the fire;
 - (k) cause water to be shut off from a main or pipe, or to be redirected, to obtain a greater pressure or supply of water;

- (m) cause the supply of electricity, gas or other fuel to land or a building:
 - (i) on fire;
 - (ii) adjacent to land or a building on fire; or
 - (iii) in the vicinity of the fire or other emergency,
to be shut off or disconnected;
 - (ma) cause a fire or fires to be lit as a precautionary measure to prevent the spread of a larger fire;
 - (n) administer, or cause to be administered, first aid and basic life support to persons injured by the fire or other emergency;
 - (o) require any potentially contaminated person to undergo decontamination procedures if the nature of the fire or emergency gives rise to concern that a biological or chemical hazard exists;
 - (p) direct or authorise the doing by a member or by a person who voluntarily places his or her services at the disposal of the incident commander, of an act or thing which the incident commander is, under this section, empowered to do.
- (3) Subject to subsection (4), where at or immediately after a fire or other emergency, a member or a police officer is of the opinion that, for the purpose of protecting life or property or controlling or extinguishing the fire or dealing with the emergency, it is necessary or desirable to do an act or thing which the incident commander is empowered to do under subsection (2), not being an act or thing specified in paragraph (h) or (p) of that subsection, the member or police officer may, without the authority of the incident commander, do that act or thing.
- (4) A member or a police officer may only do an act or thing referred to in subsection (3) without the authority of the incident commander where it is not practicable for the authority for the doing of that act or thing to be obtained from the incident commander.
- (5) A person supplying water or electricity is not liable to a penalty or damages as a result of an interruption of supply caused by the exercise of a power specified in subsection (2)(k) or (m).
- (6) The expense of pulling down, destroying or shoring up a wall or building in the exercise of the power specified in subsection (2)(h) must be borne by the owner of the wall or building and is a debt due and payable to the Territory.

- (7) The exercise of a power or the performance of a function under this section by a person is conclusive evidence of his or her authority to do so, and no person shall be concerned to inquire whether the occasion requiring the person to do so had arisen or has ceased.

21 Authority of incident commander to be recognised

- (1) A person must obey an instruction or order given, in accordance with a duty imposed or a power conferred by this Act or the Regulations, by any of the following:
- (a) the Director or the incident commander;
 - (b) a member acting under the orders of the Director or the incident commander;
 - (c) a member or a police officer acting in accordance with section 20.
- (2) A police officer must give such assistance as is reasonably required to enable an incident commander to exercise his or her authority or enforce obedience to an instruction or order given by the incident commander or a member in the performance of a duty imposed or the exercise of a power conferred by this Act or the Regulations.

Division 2 Investigations of fires and other emergencies

22 Fire investigators

- (1) The Director may appoint a person to be a fire investigator for the purpose of investigating fires and other emergencies.
- (2) A fire investigator may exercise such powers and perform such functions as are given by or under this or any other Act.
- (3) The Director must issue to a fire investigator an identity card containing a photograph and the signature of the fire investigator verified by the signature of the Director.
- (4) A fire investigator whose appointment is terminated must surrender to the Director the identity card issued to the person under subsection (3).
- (5) A fire investigator must, when exercising or performing any of his or her powers or functions, produce the identity card issued to the fire investigator under subsection (3) to a person who questions the authority of the fire investigator to exercise the power or perform the function.

- (6) The production by a fire investigator of an identity card issued under subsection (3) is, until the contrary is proved, sufficient authority for the fire investigator to do any thing which the fire investigator is permitted to do by or under this Act.

23 Powers of fire investigators

- (1) A fire investigator may request a person to provide his or her name and address to the fire investigator where the fire investigator believes, on reasonable grounds, that the person may be able to assist the fire investigator in connection with the investigation of a fire or other emergency.
- (2) A person to whom a request is made under subsection (1) must not:
- (a) refuse or fail to comply with the request; or
 - (b) provide a name that is false in a material particular; or
 - (c) provide an address other than the full and correct address of his or her ordinary place of residence.
- (3) In addition to section 24, where a fire investigator suspects, on reasonable grounds, that an offence has been committed in relation to a fire or other emergency, the fire investigator may, for the purposes of investigating the offence, exercise any of the following powers:
- (a) enter any land, building, vehicle or vessel; and
 - (b) carry out a search of the land, building, vehicle or vessel; and
 - (c) seize anything found on the land, building, vehicle or vessel that the fire investigator believes, on reasonable grounds, is connected with the commission of the offence.

24 Fire investigations

- (1) The Director, a fire investigator, a member or an authorised person may exercise any of the following powers:
- (a) cause the debris of a fire and land or a building, vehicle or vessel where a fire has occurred to be searched;
 - (b) remove and keep possession of any material which, in his or her opinion, may tend to prove the origin of the fire.

- (2) For the purposes of subsection (1), the Director, a fire investigator, a member or an authorised person may exercise any of the following powers:
- (a) enter land, a building, vehicle or vessel and take possession of the land, building, vehicle or vessel or anything on the land or in the building, vehicle or vessel, where a fire or other emergency has occurred;
 - (b) retain possession of the land, building, vehicle or vessel and of anything in or on it:
 - (i) until an inquest under the *Coroners Act* into the fire or other emergency has been held; or
 - (ii) if no inquest is held, for a reasonable time;
 - (c) prevent a person from entering the land, building, vehicle or vessel;
 - (d) remove a person from the land, building, vehicle or vessel;
 - (e) prevent a person from removing anything from the land, building, vehicle or vessel.

Division 3 Prevention of fires and other emergencies

24A Definition

In this Division:

place means land, a building, a vehicle or a vessel.

25 Hazard reduction powers of entry and inspection

- (1) For the purpose of hazard reduction, the Director or an authorised person may enter a place as follows:
- (a) at any time to determine if a law for the prevention of fire or the protection of life or property from danger arising from fire is being complied with;
 - (b) if the place is in an emergency response area and the Director or authorised person reasonably believes that a hazard in relation to a fire exists in relation to the place – at any time to conduct a strategic burn-off to eliminate or reduce the hazard;

- (c) if the Director or authorised person knows or reasonably suspects that explosive, flammable or combustible material is being kept at the place – at any time to determine if a law relating to the keeping of the material is being complied with;
 - (d) if the Director or authorised person reasonably believes that a hazard exists in relation to the place – at a reasonable time to inspect the place, and the arrangement and condition of anything at the place, to determine if the hazard exists.
- (2) If the Director or an authorised person reasonably believes that a hazard exists in relation to a place, the Director or authorised person may serve a notice on one of the following persons requiring the person to take action to eliminate or reduce the hazard:
- (a) the owner of the place if, in the opinion of the Director or authorised person, the hazard arises from the state of repair of the place;
 - (b) the owner or occupier of the place if, in the opinion of the Director or authorised person, the hazard arises from:
 - (i) the arrangement and condition of anything at the place; or
 - (ii) the storage of explosive, flammable or combustible material at the place; or
 - (iii) a failure, in relation to the place, to comply with a law for the prevention of fire or the protection of the public from danger arising from fire.
- (3) The notice must specify:
- (a) the action the person must take to eliminate or reduce the hazard; and
 - (b) the time within which the person must take the action; and
 - (c) that failure to comply with the notice is an offence.
- (4) The person must comply with the notice.
- (5) If the person does not comply with the notice the Director or authorised person may:
- (a) take the action; and
 - (b) for taking the action, enter, by reasonable force if necessary, the place with the necessary workers and equipment.

- (6) In addition to a penalty for which the person may be liable for failing to comply with the notice, the cost of taking an action under subsection (5):
- (a) is a debt due and payable to the Territory by the person; and
 - (b) if the action taken relates to land or a building on land – is a statutory charge, as defined in section 4 of the *Land Title Act*, on the land.

- (7) In this section:

hazard means a direct or indirect danger by fire or other emergency to life or property.

strategic burn-off means the lighting of a fire as a hazard reduction measure.

26 **Review of requirement**

- (1) A person who is served with a notice under section 25(2) may apply to the Chief Executive Officer for review of a requirement specified in the notice.
- (2) The application must:
- (a) be in writing; and
 - (b) state in detail the grounds on which the application is based and the particulars that support those grounds; and
 - (c) be lodged with the Chief Executive Officer within the shorter of the following:
 - (i) the period ending 3 days after the person is served with the notice;
 - (ii) the period for compliance with the notice specified in the notice.
- (3) The Chief Executive Officer must, as soon as practicable after the application is made, decide to:
- (a) confirm that the requirement must be complied with and substitute a further period for compliance with the notice; or
 - (b) amend the notice; or
 - (c) cancel the notice.

- (4) The operation of the notice is suspended until the Chief Executive Officer decides the application.
- (5) However, if, in the opinion of the Chief Executive Officer, the danger to life or property in relation to which the notice was issued is imminent:
 - (a) the Chief Executive Officer may refuse to consider the application; and
 - (b) subsection (4) does not apply.
- (6) The decision of the Chief Executive Officer under subsection (3) is final.

27 Liability where notice not complied with

- (1) Where:
 - (a) a person has failed to comply with the requirements of a notice under section 25(2); and
 - (b) a fire or other emergency occurs at the place to which the notice relates or to property adjacent to the place;the person is, subject to subsection (2), liable to pay, in addition to any penalty provided by this Act:
 - (c) the expense incurred in extinguishing or attempting to extinguish the fire or in dealing with or attempting to deal with the emergency; and
 - (d) the amount of the damage done to any property by the fire or other emergency.
- (2) A person referred to in subsection (1) is not liable for the expense or damages referred to in that subsection if the person proves that the fire was not a result of his or her failure to comply with the notice.
- (3) Subsection (1) applies whether or not a request has been lodged under section 26.

27A Certain buildings to be inspected regularly

(1) The Regulations may prescribe a class or classes of buildings that, because of the nature of their use or intended use, are to be inspected regularly by the Director or an authorised person to ensure that:

- (a) the requirements of any law in force in the Territory; and
- (b) the standards imposed by any Australian Standard as in force from time to time;

in relation to fire safety are met and continue to be met and that persons who work in any such building are trained in essential fire safety.

(2) The Regulations may provide for obligations of the owner or occupier of a building or a class of building prescribed under subsection (1) in relation to safety in a fire or other emergency.

(3) It is an offence for the owner or occupier (as the case may be) of a building prescribed under subsection (1) to fail to comply with a direction given by the Director or an authorised person to the owner or occupier to take specified action in order to reduce the danger by fire or other emergency to life or property in relation to the building.

27B Certain buildings may be treated as within different prescribed class

(1) The Director may give notice in writing to the owner or occupier of a particular building that the building will be treated as being within a specified class of buildings prescribed under section 27A(1) that is different from the class of buildings to which the building would otherwise be considered to belong.

(2) The notice may be given if, because of the nature of the use of the building or for other reasons, the Director considers it is necessary to reduce the danger from fire or other emergency to life or property.

(3) Section 27A and the Regulations apply in relation to the particular building as if it were within the specified class of buildings.

(4) An owner or occupier of a building who is aggrieved by a notice under subsection (1) may request the Chief Executive Officer to review the notice, or a requirement arising as a result of the issue of the notice, and section 26(2), (3), (4) and (5) applies (with the necessary changes) as if the notice were a notice issued under section 26(1).

Part 4 Restrictions on lighting fires

Division 1 Fires in open air

28 General prohibition against lighting fires in open air

A person must not, in an emergency response area, light a fire, or cause a fire to be lit, in the open air unless permitted by or under this Act.

29 Lawful fires

Section 28 does not apply to a person who lights a fire:

- (a) in accordance with a permit; or
- (b) for the purpose of meal preparation or personal comfort in accordance with the requirement specified in the Regulations; or
- (c) for a prescribed purpose in accordance with the requirements specified in the Regulations.

30 Granting of permits

- (1) A person requiring a permit to light a fire in the open air in an emergency response area must apply, either orally or in writing, to the Director for the permit.
- (2) The Director, on receiving an application under subsection (1), may grant or refuse to grant the permit.
- (3) Subject to subsection (4), the Director must not grant a permit unless satisfied that:
 - (a) reasonable steps have been taken to notify the owner or occupier of adjoining land of the making of the application; and
 - (b) a reasonable opportunity has been given to the owner or occupier to object, either orally or in writing, to the granting of the permit.
- (4) The Director may grant a permit without complying with subsection (3) if satisfied that extraordinary circumstances exist for so doing.
- (5) A permit must be in the approved form and may be subject to such conditions, if any, as the Director thinks fit and specifies in the permit.

- (6) A person must not:
- (a) contravene a permit or a condition to which a permit is subject;
 - (b) provide false or misleading information in respect of an application for a permit; or
 - (c) except with the consent of the Director, alter a particular or condition shown on a permit.

- (7) In this section:

adjoining land means land that:

- (a) touches some part of the land in question; or
- (b) would touch some part of that land but for the existence of a watercourse, road or firebreak, that is 10 metres or less in width.

Division 2 Fire ban days

31 Declaration of fire ban days

- (1) The Director may, by written notice, declare a day in respect of an emergency response area specified in the notice to be a fire ban day.
- (2) A declaration under subsection (1) may provide as follows:
 - (a) specify fires that are not subject to the ban;
 - (b) prohibit or restrict the use of specified machines or apparatus in the open air on the fire ban day.
- (3) With the view of ensuring general public knowledge of a declaration under subsection (1), the Director must cause the declaration to be published in such a manner as he or she thinks fit, and without limiting the generality of this subsection, the Director may cause an announcement of the declaration to be:
 - (a) transmitted by a radio or television station; or
 - (b) published in a newspaper circulating in the Territory.

32 Fires prohibited on fire ban days

Notwithstanding section 29 but subject to section 31, a person must not light a fire in the open air or allow a fire in the open air to remain alight in an emergency response area on a day declared to be a fire ban day in that emergency response area.

Part 5 Responsibilities of occupiers of land in relation to fires**33 Occupier to extinguish fire**

Where a fire is burning on land in an emergency response area and the lighting of the fire is not permitted by or under this or any other Act, the occupier of the land must:

- (a) immediately on becoming aware of the fire, take all reasonable steps to extinguish or control the fire (regardless of who lit it); and
- (b) if the fire is not extinguished – report the existence and location of the fire to a member or a police officer as soon as practicable.

34 Power of occupier to enter land etc.

- (1) Subject to subsections (2) and (3), an occupier of land in an emergency response area who believes on reasonable grounds that a grass or bush fire which is burning on land within 1 kilometre of his or her land constitutes a fire risk to his or her land may, together with persons acting on his or her direction, exercise any of the following powers:
 - (a) enter the land on which the fire is burning and any other land in order to gain access to the land in which the fire is burning;
 - (b) take on to any of the land referred to in paragraph (a) a vehicle or equipment for extinguishing or controlling the fire;
 - (c) take all reasonable measures to extinguish or control the fire.
- (2) An occupier of land must not do or direct the doing of an act referred to in subsection (1) if notice, either orally or written, of the intention to light the fire has been given to the occupier by the person lighting it or by a member or a police officer unless the occupier believes on reasonable grounds that the fire has been unlawfully lit or is out of control.

- (3) If it is practicable to contact a member or a police officer, an occupier of land:
 - (a) must not do or direct the doing of any act referred to in subsection (1) unless a member or a police officer has been notified of the situation; and
 - (b) must comply with any direction given by the member or the police officer in respect of the doing of any act.

Part 6 Offences

Division 1 Offences relating to fires

35 General offences

- (1) A person who:
 - (a) except in accordance with a permit, drops, discards, throws down or otherwise disposes of any burning article or substance (or anything otherwise capable of causing fire):
 - (i) thereby causing a fire; or
 - (ii) in such circumstances as to be likely to cause a fire; or
 - (b) destroys, damages, removes, covers or otherwise interferes with a notice relating to the lighting of fires displayed by the Director or by a member for the purposes of this Act; or
 - (c) obstructs or interferes with a member acting in the performance of a duty or the exercise of a power under this Act; or
 - (d) drives a vehicle over a fire hose; or
 - (e) drives a vehicle so near a fire or other emergency or equipment in use at a fire or other emergency as to interfere with the operation of a member, or the equipment; or
 - (f) destroys, damages or interferes with:
 - (i) equipment used by a member to extinguish a fire or deal with an emergency; or
 - (ii) a building used by a fire and emergency response group, being the property of the Territory; or

- (g) covers up, damages, encloses, conceals or interferes with a fire hydrant, fire extinguisher, hose reel or other fire fighting equipment; or
- (h) covers up, damages, conceals, obliterates or removes a mark, sign or letter indicating the position of or distinguishing a fire hydrant; or
- (j) tampers with a fire alarm or signalling apparatus for giving notice of fire; or
- (k) gives a false alarm of a fire or other emergency;

is guilty of an offence.

- (2) A person who stores or deposits flammable or combustible material of such a nature and in such a manner, position or quantity that it is or may become a direct or an indirect danger to life or property is guilty of an offence.

36 Fires to be extinguished

- (1) A person must not leave a fire in the open air in an emergency response area which he or she has lit or used unless it has been thoroughly extinguished.
- (2) It is a defence to a prosecution for an offence against subsection (1) that the person had, before leaving the fire, arranged with a responsible person who also used the fire to remain at the place where the fire is and not leave it unless that person has:
 - (a) thoroughly extinguished the fire; or
 - (b) made a similar arrangement with another responsible person who used the fire.
- (3) A person who, before the commencement of a fire ban day, lit or used a fire in the emergency response area in respect of which the fire ban day is declared must :
 - (a) thoroughly extinguish the fire; or
 - (b) if the person is unable to thoroughly extinguish the fire, without delay notify a member of that fact.
- (4) A member who is notified of a fire under subsection (3) may give to the person such directions, for the purpose of controlling the fire, as the member thinks fit.

- (5) A person to whom a direction is given under subsection (4) must comply with and not contravene the direction.

Division 2 Offences in relation to Fire and Rescue Service

37 Delivery of property

A person, on ceasing to be a member, must return to the Director, or to such person, and at such time and place, as the Director directs, all property which has been supplied to the person for the execution of the person's duty or which is in the person's custody by virtue of having been a member.

38 Communication of information

- (1) A member must not, without reasonable cause, publish or communicate a fact or document to any other person which comes to the knowledge or into the possession of the member in the course of his or her duties as a member and which the member has not been authorised to disclose.
- (2) A person, after ceasing to be a member, must not publish or communicate a fact or document which, if the person had still been a member, the person would not have been entitled to disclose.

39 Personation

A person must not, without lawful excuse, personate a member.

40 Offering bribe

A person must not directly or indirectly:

- (a) offer or give a bribe or reward to; or
- (b) enter into an agreement with; or
- (c) seek an undertaking from;

a member for the purpose of that member performing his or her duties as a member in a particular manner or forgoing any of his or her duty as a member.

Part 7 Miscellaneous matters

41 Restrictions on sale of notified articles

- (1) The Minister may, by *Gazette* notice, prohibit or regulate the sale, use or possession of an article or substance that the Director considers may constitute a risk of fire.
- (2) A person who sells, uses or possesses an article or substance in contravention of a notice under subsection (1) is guilty of an offence.
- (3) Where the Director or an authorised person suspects that an article or substance the sale, use or possession of which is prohibited or regulated by a notice under subsection (1) is being sold, used or possessed in contravention of the notice, the Director or authorised person may seize the article or substance and, for that purpose, may enter any land, building, vehicle, vessel or other place in or on which the article or substance is, or is thought to be, situated.

42 Damage within insurance policy

Where, as a consequence of the Director, a member or a police officer exercising powers or performing functions under this Act at a fire or other emergency, damage is caused to property which, if caused by the fire or emergency, would be covered by a policy of insurance held by the owner of the property, the damage is deemed to be damage covered by the policy, notwithstanding a clause or condition to the contrary in the policy.

43 Fees and charges

- (1) If a member, with or without equipment, attends a fire or other emergency as required under this Act, the fees or charges prescribed by regulation are:
 - (a) payable in accordance with this section; and
 - (b) recoverable from the persons liable as a debt due to the Territory.
- (2) Subject to subsections (4) to (6), the persons liable for the fees or charges are:
 - (a) for a fire or other emergency affecting land or buildings – the owners and occupiers of the land or buildings affected, or of any land, building or part of a building forming part of the land or buildings affected; or

- (b) otherwise – the owner or owners of, and any other person or persons having an interest in, the property, or any part of the property, which was affected by the fire or emergency or to which the emergency related.
- (3) If 2 or more persons are liable for the fees or charges, the liability is joint and several.
- (4) The owners of land or a building on the land are liable for the fees or charges if:
 - (a) a member, with or without equipment, attends the land or building in response to an alarm installed for the protection of the land or building; and
 - (b) there is in fact no fire or other emergency.
- (5) However, if the Director has entered into an agreement with the occupier of the land or building to monitor the alarm, the fees or charges are payable by the occupier.
- (6) The person who makes a call to the Fire and Rescue Service for attendance at a fire or other emergency at a place is liable for the fees or charges if:
 - (a) a member, with or without equipment, attends at the place in response to the call; and
 - (b) there is in fact no fire or other emergency at the place.
- (7) A regulation may prescribe other fees or charges payable under this Act, including fees and charges for performing a function under another Act.
- (8) Fees or charges payable in relation to land or a building on land is a statutory charge, as defined in section 4 of the *Land Title Act*, on the land.

44 Commissioned ranks

The Administrator may issue his or her commission to a member appointed or promoted to a prescribed rank or a rank above a prescribed rank, whether the appointment or promotion was made before or after the commencement of this Act.

45 *Fire and Rescue Service Gazette*

The Director may authorise the publication of a document to be known as the *Fire and Rescue Service Gazette* containing such orders, instructions, determinations, directions, notices and other things as the Director thinks fit.

47 **Protection of members**

An action or proceeding cannot be brought against a member to recover damages in respect of damage to property or injury to a person arising out of anything done or omitted to be done by the member in good faith in the exercise of a power or the performance of a function under this Act or the Regulations or done or omitted by the member in good faith in the purported exercise of a power or the performance of a function under this Act or the Regulations.

48 **Liability of person for fire lit by agent or employee**

Where a person commits an offence against this Act in respect of the lighting of a fire as an agent or employee of another person, that other person may be prosecuted and found guilty of the offence unless it is proved that the agent or employee was acting contrary to instructions and the other person could not have prevented the commission of the offence by exercising reasonable supervision.

49 **Criminal liability of executive officer of body corporate**

- (1) An executive officer of a body corporate commits an offence if the body corporate commits an offence by contravening a declared provision (a **relevant offence**).

Maximum penalty: The maximum penalty that may be imposed on an individual for the relevant offence.

- (2) An offence against subsection (1) is a regulatory offence.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant:
- (a) was not in a position to influence the conduct of the body corporate in relation to the contravention; or
 - (b) took reasonable steps to prevent the contravention; or
 - (c) did not know, and could not reasonably have been expected to know, that the contravention would happen.

- (4) In deciding whether the defendant took (or failed to take) reasonable steps to prevent the contravention, a court must consider the following:
- (a) any action the defendant took directed towards ensuring the following (to the extent the action is relevant to the contravention):
 - (i) the body corporate arranged regular professional assessments of the body corporate's compliance with the declared provision;
 - (ii) the body corporate implemented any appropriate recommendation arising from an assessment under subparagraph (i);
 - (iii) the body corporate's employees, agents and contractors had a reasonable knowledge and understanding of the requirement to comply with the declared provision;
 - (b) any action the defendant took when the defendant became aware that the contravention was, or could be, about to happen.
- (5) Subsection (4) does not limit the matters the court may consider.
- (6) This section does not affect the liability of the body corporate.
- (7) This section applies whether or not the body corporate is prosecuted for, or found guilty of, the relevant offence.
- (8) This section does not apply if the body corporate would have a defence to a prosecution for the relevant offence.
- (9) In this section:

declared provision means:

- (a) section 25(4), 27A(3) or 30(6); or
- (b) a provision of the Regulations prescribed by regulation.

executive officer, of a body corporate, means a director or other person who is concerned with, or takes part in, the management of the body corporate.

50 Evidence in proceedings

In proceedings in respect of an offence against this Act, a certificate purporting to be signed by the Director to the effect that, on a date specified in the certificate:

- (a) a permit was or was not in force; or
- (b) a fire ban day was or was not in force in respect of an emergency response area; or
- (c) a notice required to be served under this Act was or was not served; or
- (d) a place specified in the certificate was or was not in an emergency response area; or
- (e) a person was or was not a member;

is, in the absence of proof to the contrary, evidence of the matter stated in the certificate.

51 Commencement of prosecutions

- (1) A prosecution for an offence against this Act must not be commenced except by the Director or an authorised person.
- (2) An averment in a complaint that a person is an authorised person is evidence that the person is an authorised person for the purposes of subsection (1).

52 General penalty

A person who contravenes a provision of this Act for which no penalty is provided other than by this section, is guilty of an offence.

Maximum penalty: 100 penalty units or imprisonment for 2 years.

53 Continuing offence

- (1) This section applies if a court has found a person guilty of an offence against this Act.
- (2) The court may, in addition to any penalty imposed for the offence, impose a penalty not exceeding 5 penalty units for each day during which the offence continues after the day the offence is committed.

54 Regulations

- (1) The Administrator may make regulations under this Act.

- (2) The regulations may provide for the following:
- (a) matters relevant or incidental to fire safety and prevention on land, buildings, vehicles, or vessels, and appropriate to the training or education of persons and the community;
 - (b) measures necessary for ensuring effective fire safety in building structures;
 - (c) measures for minimising the danger of fires and other emergencies;
 - (d) measures for the protection of land, buildings, vehicles, vessels and persons from fires and other emergencies;
 - (e) measures for handling flammable or combustible material and the manner of stacking, storing and keeping it;
 - (f) matters incidental to administration and control of fire and emergency response groups;
 - (g) the payment of a prescribed amount in lieu of a penalty which may otherwise be imposed for an offence against this Act or the Regulations;
 - (h) the service of notices on persons alleged to have infringed this Act and particulars to be included in such notices;
 - (i) the withdrawal of a notice referred to in paragraph (h), whether or not a prescribed amount has been paid under the notice, for the purpose of prosecuting a person for the alleged offence; or
 - (j) apply, adopt or incorporate (with or without changes) the whole or part of a document as in force or existing at a particular time or from time to time;
 - (k) an offence against a regulation to be a regulatory offence.

Part 8 Transitional matters for Statute Law Amendment (Directors' Liability) Act 2015

55 Offences – before and after commencement

- (1) Section 49, as inserted by the *Statute Law Amendment (Directors' Liability) Act 2015*, (the **new section**) applies in relation to a relevant offence committed by a body corporate after the commencement of Part 2, Division 10 of that Act (the **commencement**) only if:
 - (a) all the conduct constituting the relevant offence occurred after the commencement; and
 - (b) all the conduct of the executive officer constituting the offence against the new section occurred after the commencement.
- (2) Section 49, as in force before the commencement:
 - (a) continues to apply in relation to offences committed by a corporation before the commencement; and
 - (b) applies in relation to relevant offences committed by a body corporate after the commencement to which, as a result of subsection (1), the new section does not apply.

ENDNOTES
1**KEY**

Key to abbreviations

amd = amended	od = order
app = appendix	om = omitted
bl = by-law	pt = Part
ch = Chapter	r = regulation/rule
cl = clause	rem = remainder
div = Division	renum = renumbered
exp = expires/expired	rep = repealed
f = forms	s = section
Gaz = Gazette	sch = Schedule
hdg = heading	sdiv = Subdivision
ins = inserted	SL = Subordinate Legislation
lt = long title	sub = substituted
nc = not commenced	

2**LIST OF LEGISLATION*****Fire and Emergency Act 1996 (Act No. 14, 1996)***

Assent date	19 April 1996
Commenced	1 May 1996 (Gaz S10, 1 May 1996)

Land Title (Consequential Amendments) Act 2000 (Act No. 45, 2000)

Assent date	12 September 2000
Commenced	1 December 2000 (s 2, s 2 <i>Land Title Act 2000</i> (Act No. 2, 2000) and Gaz G38, 27 September 2000, p 2)

Corporations Reform (Consequential Amendments NT) Act 2001 (Act No. 17, 2001)

Assent date	29 June 2001
Commenced	15 July 2001 (s 2, s 2 <i>Corporations Act 2001</i> (Cth Act No. 50, 2001) and Cth Gaz S285, 13 July 2001)

Fire and Emergency Amendment Act 2004 (Act No. 22, 2004)

Assent date	28 April 2004
Commenced	28 July 2004 (Gaz G30, 28 July 2004, p 2)

Statute Law Revision Act 2005 (Act No. 44, 2005)

Assent date	14 December 2005
Commenced	14 December 2005

Statute Law Revision Act 2007 (Act No. 4, 2007)

Assent date	8 March 2007
Commenced	8 March 2007

Fire and Emergency Legislation Amendment Act 2009 (Act No. 39, 2009)

Assent date	15 December 2009
Commenced	24 February 2010 (Gaz G8, 24 February 2010, p 11)

Fire and Emergency Amendment Act 2010 (Act No. 49, 2010)

Assent date	13 December 2010
Commenced	1 July 2011 (Gaz G26, 29 June 2011, p 8)

Work Health and Safety (National Uniform Legislation) Implementation Act 2011 (Act No. 38, 2011)

Assent date 14 December 2011
Commenced 1 January 2012 (*Gaz S78*, 30 December 2011)

Emergency Management Act 2013 (Act No. 27, 2013)

Assent date 8 November 2013
Commenced 27 November 2013 (*Gaz S63*, 27 November 2013)

Statute Law Amendment (Directors' Liability) Act 2015 (Act No. 26, 2015)

Assent date 18 September 2015
Commenced 14 October 2015 (*Gaz G41*, 14 October 2015, p 3)

Bushfires Management Act 2016 (Act No. 14, 2016)

Assent date 7 June 2016
Commenced 1 November 2016 (*Gaz S111*, 27 October 2016)

3 LIST OF AMENDMENTS

pt 1 hdg	amd No. 49, 2010, s 17
s 3	amd No. 22, 2004, s 4; No. 39, 2009, s 4; No. 49, 2010, ss 4 and 17; No. 38, 2011, s 31
s 4	amd No. 22, 2004, s 5; No. 49, 2010, s 17
s 5	amd No. 49, 2010, s 5
s 6	amd No. 22, 2004, s 6; No. 39, 2009, s 5
s 7	amd No. 49, 2010, s 17
s 8	amd No. 22, 2004, s 7; No. 49, 2010, s 17; No. 27, 2013, s 128; No. 14, 2016, s 120
s 8A	ins No. 49, 2010, s 6
s 10	sub No. 49, 2010, s 7
s 11	amd No. 49, 2010, s 17
s 12	amd No. 22, 2004, s 8; No. 49, 2010, s 17
ss 13 – 18	amd No. 49, 2010, s 17
s 19	amd No. 49, 2010, ss 8 and 17
s 20	amd No. 22, 2004, s 9; No. 49, 2010, s 17
s 21	amd No. 44, 2005, s 35; No. 49, 2010, s 17
ss 22 – 24	amd No. 49, 2010, s 17
s 24A	ins No. 39, 2009, s 6
s 25	amd No. 45, 2000, s 11; No. 22, 2004, s 13 sub No. 39, 2009, s 6 amd No. 49, 2010, s 9
s 26	sub No. 39, 2009, s 6
s 27	amd No. 39, 2009, s 7; No. 49, 2010, s 17
s 27A	ins No. 22, 2004, s 10 amd No. 39, 2009, s 8; No. 49, 2010, s 17
s 27B	ins No. 22, 2004, s 10
ss 28 – 29	amd No. 49, 2010, s 17
s 30	amd No. 49, 2010, ss 10 and 17
ss 31 – 32	amd No. 49, 2010, s 17
s 33	amd No. 22, 2004, s 11
s 34	amd No. 22, 2004, s 13; No. 49, 2010, s 17
ss 35 – 40	amd No. 49, 2010, s 17
pt 7 hdg	amd No. 49, 2010, s 17
ss 41 – 42	amd No. 22, 2004, s 13; No. 49, 2010, s 17
s 43	amd No. 45, 2000, s 11; No. 22, 2004, s 13 sub No. 49, 2010, s 11

ENDNOTES

s 46	amd No. 17, 2001, s 21 rep No. 49, 2010, s 12
s 47	amd No. 49, 2010, s 17
s 49	amd No. 49, 2010, s 17 sub No. 26, 2015, s 30
ss 50 – 51	amd No. 49, 2010, s 17
s 52	amd No. 22, 2004, s 13; No. 49, 2010, ss 13 and 17
s 53	amd No. 22, 2004, s 13; No. 49, 2010, s 14
s 54	amd No. 22, 2004, s 12; No. 49, 2010, s 15
pt 8 hdg	ins No. 26, 2015, s 31
s 55	rep No. 49, 2010, s 16 ins No. 26, 2015, s 31
s 56	amd No. 4, 2007, s 7 rep No. 49, 2010, s 16