

# Fire and Emergency Services Legislation Amendment Bill 2012

## EXPLANATORY MEMORANDUM

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### OVERVIEW

The purpose of this Bill is to implement recommendations of the Keelty Review, and other legislative amendments relating to emergency management response in Western Australia. Recommendation 46 of *The Report of the Perth Hills Bushfire February 2011 Review* (the Keelty Review) recommended FESA cease to be a statutory authority and be restructured as a department of state.

- The Bill amends the *Fire and Emergency Services Authority of Western Australia Act 1998* to vest functions and powers currently residing in the Authority, in the Chief Executive Officer (Fire Services Commissioner) of the new department subject to appropriate oversight by the Minister.
  - Powers of the Authority relating to dealing in property and borrowing money have been vested in the Minister.
  - The role of volunteers in emergency management in the State is recognised by the requirement to establish volunteer advisory committees.
  - The integrity of the emergency services levy is maintained by provisions directing that funds resulting from the operation of the emergency services Acts shall be credited to the Department's operating account and applied only for the purposes of the emergency services Acts.
  - Recommendation 44 of Keelty Review recommended the *Emergency Management Act 2005* be amended so the State Emergency Coordinator could declare an emergency situation. The Bill amends section 50 to allow this to occur.
  - The *Bush Fires Act 1954* and the *Emergency Management Act 2005* have been amended so police officers may exercise powers in those Acts that relate to the movement of persons in or around an emergency incident.
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### **PART 1 - PRELIMINARY**

#### **CLAUSE 1. SHORT TITLE**

Sets out the name of the Act.

#### **CLAUSE 2. COMMENCEMENT**

Clause 2 provides for the Act to come into operation as follows:

- a) sections 1 and 2 on the day the Act receives Royal Assent.
- b) the rest of the Act on a day fixed by proclamation, and different days may be fixed for different provisions.

### **PART 2 – FIRE AND EMERGENCY SERVICES AUTHORITY OF WESTERN AUSTRALIA ACT 1998 AMENDED**

#### **CLAUSE 3. ACT AMENDED**

Sets out the name of the Act to be amended in this Part.

#### **CLAUSE 4. LONG TITLE AMENDED**

Clause 4 amends the long title of the *Fire and Emergency Services Authority of Western Australia Act 1998*.

#### **CLAUSE 5. SECTION 1 (SHORT TITLE) AMENDED**

Clause 5 amends the short title of the *Fire and Emergency Services Authority of Western Australia Act 1998*.

#### **CLAUSE 6. SECTION 3 AMENDED**

In section 3 of the *Fire and Emergency Services Authority of Western Australia Act 1998* a number of definitions are amended or deleted, and new definitions are inserted:

##### **CLAUSE 6(1)**

'Account' is deleted as the financial provisions relating to the 'Authority' will be deleted and the Department will establish operating accounts under section 16 of the *Financial Management Act 2006*.

'Authority' is deleted as the Act abolishes the Fire and Emergency Services Authority of Western Australia.

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'board' is deleted as the members of the board of management go out of office when the Authority is abolished.

'chief executive officer' is deleted as the chief executive officer of the Department is to be titled the 'Fire and Emergency Services Commissioner'.

'member' is deleted as it was the term used to refer to members of the board of management of the Authority.

'member of staff' is deleted and replaced by a new definition for this term.

### **CLAUSE 6(2)**

'Department' is inserted to define the new department that will be created to assist in the administration of the Act.

'employed in the Department' is inserted to define those persons employed or engaged under section 20(1) for the purposes of the emergency services Acts.

'FES Commissioner' is inserted to define reference to the Fire and Emergency Services Commissioner.

'Fire and Emergency Services Commissioner' is inserted to define the title of the chief executive officer of the Department.

'member of staff' is inserted to make reference to both the FES Commissioner and public service officers or persons employed in the Department.

'operating account of the Department' is inserted to define the accounts established for the Department under the *Financial Management Act 2006*.

### **CLAUSE 6(3)**

A consequential amendment is made to the definition of 'assistance operation' due to the abolition of the Authority.

### **CLAUSE 6(4)**

The definition of 'FESA activities' is amended due to the abolition of the Authority.

### **CLAUSE 6(5)**

The definition of 'FESA Unit' is amended due to the abolition of the Authority.

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### CLAUSE 7. PART 2 REPLACED

Clause 7 deletes Part 2 of the *Fire and Emergency Services Authority of Western Australia Act 1998* and inserts a new Part 2 titled *Administration*.

Division 1 sets out powers of the Minister.

Proposed section 4 defines the term FES Ministerial Body.

Proposed section 5 states the FES Ministerial Body is established as a body corporate with perpetual succession and is to be governed by the Minister. It has the status, immunities and privileges of the Crown.

Proposed section 6(1) states the purpose of the FES Ministerial Body is to provide a body corporate through which the Minister can perform any of the Minister's functions under the emergency services Acts (the *Bush Fires Act 1954*, the *Fire and Emergency Services Act 1998* and the *Fire Brigades Act 1942*).

Proposed 6(2) states the department is the accountable authority for the FES Ministerial Body for the purposes of the *Financial Management Act 2006*.

Proposed 6(3) ensures the FES Ministerial Body and ministerial officers employed to perform functions for it, are not required to have a chief executive officer which is normally a requirement for public sector organisations. This wording has been used in other statutes that have Ministerial bodies (*Transport Co-ordination Act 1966 s.6A*).

The proposed section 7 sets out that the FES Ministerial body will have a corporate seal and how documents are to be executed.

The proposed section 8 provides the Minister with powers in relation to real and personal property. The Minister may acquire, hold, manage, improve, develop dispose of, and otherwise deal in, real and personal property for the purpose of the emergency services Acts. The Minister may also develop and turn to account any technology, software or intellectual property, hold patents and copyright for the purposes of the emergency services Acts.

The proposed section 8(3) requires the proceeds of anything done by the Minister under this section to be credited to the Department's operating account. This ensures that if emergency services levy (ESL) funds have been used to purchase property or put towards developing technology etc. then the funds realised from this use of the ESL are retained by the Department.

The proposed section 9 allows the Minister to borrow money for the purposes of the emergency services Acts.

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### **CLAUSE 8. PART 3 HEADING DELETED AND PART 2 DIVISION 2 HEADING INSERTED**

#### DIVISION 2 — THE FES COMMISSIONER

### **CLAUSE 9. SECTION 11 AMENDED**

Section 11 is amended by removing reference to the functions of the Authority and inserting a provision stating the FES Commissioner, subject to the control of the Minister, is responsible for the provision and management of emergency services according to the functions that position has under the emergency services Acts.

The FES Commissioner's functions under the *Public Sector Management Act 1994* are not limited by the emergency services Acts.

### **CLAUSE 10. SECTION 12 AMENDED**

Section 12 is amended so the powers of the former Authority contained in that section are now powers of the FES Commissioner. There are consequential amendments to reference the Department or the State. The powers relating to dealing in property and developing and turning to account technology and intellectual property etc. have been deleted from this section and are now powers of the Minister in the proposed section 8.

### **CLAUSE 11. SECTION 13 AMENDED**

Section 13 is amended by removing reference to the Authority and replacing it with reference to the Department.

The operational name at section 13(2)(d) was amended to reflect the proper usage of this name.

### **CLAUSE 12. SECTION 14 DELETED**

Section 14 is deleted as the power to acquire and dispose of real property will rest with the Minister as a result of the proposed section 8 in clause 7.

### **CLAUSE 13. PART 2 DIVISION 3 HEADING INSERTED**

#### DIVISION 3 — DELEGATION

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### **CLAUSE 14. SECTION 15 AMENDED**

#### **CLAUSE 14(1)**

The proposed section 15(2A) allows functions to be delegated to the FES Commissioner that the Minister performs through the FES Ministerial Body. A similar provision is contained in section 16(2) of the *Children and Community Services Act 2004*.

#### **CLAUSE 14(2)**

The proposed section 15(2)(a) is a consequential amendment as a result of the abolition of the Authority. The FES Commissioner may delegate functions to members of staff, advisory committees or a public service officer.

#### **CLAUSE 14(4)**

Section 15(5) states the ability to act through staff and agents in the normal course of business is not limited by section 15, it is amended by deleting reference to the board.

### **CLAUSE 15. SECTION 16 AMENDED**

Deletes sections that refer to the Authority and inserts new sections that allow the Minister and the FES Commissioner to authorise the sub-delegation of their functions.

### **CLAUSE 16. SECTIONS 17 AND 18 DELETED**

These sections are deleted as they related to the Minister providing direction to the Authority and having access to information held by the Authority. These provisions are not required under the departmental model.

### **CLAUSE 17. SECTION 18B AMENDED**

Section 18B deals with functions related to the State Emergency Service. It is amended by deleting reference to the Authority. The FES Commissioner will perform these functions.

### **CLAUSE 18. SECTION 18C AMENDED**

Section 18C contains the power to approve an SES Unit. The reference to the Authority has been deleted and this function will be performed by the FES Commissioner.

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### **CLAUSE 19. SECTION 18G AMENDED**

Section 18G deals with functions related to the Volunteer Marine Rescue Services. It is amended by deleting reference to the Authority. The FES Commissioner will perform these functions.

### **CLAUSE 20. SECTION 18H AMENDED**

Section 18H contains the power to approve a VMRS Group. The reference to the Authority has been deleted and this function will be performed by the FES Commissioner.

### **CLAUSE 21. PART 3C HEADING REPLACED**

A new heading PART 3 — FES UNITS is inserted.

Consequential amendment due to the abolition of the Authority.

### **CLAUSE 22. SECTION 18L AMENDED**

Section 18L deals with functions related to FES Units. It is amended by deleting reference to the Authority. The FES Commissioner will perform these functions.

### **CLAUSE 23. SECTION 18M AMENDED**

Section 18M contains the power to approve FES Units. The reference to the Authority has been deleted and this function will be performed by the FES Commissioner.

### **CLAUSE 24. PARTS 4 AND 5 REPLACED**

#### PART 4 — STAFF

The current Part 4 of the amended Act is deleted. This contained provisions relating to the appointment of the chief executive officer of the Authority and other staff, and the use of other government staff by the Authority. A new Part 4 dealing with staff appointments has been inserted.

The proposed section 19 defines terms used in the new Part 4.

The proposed section 20 sets out the categories of staff that may be employed in the Department. These are:

1. public service officers under Part 3 of the *Public Sector Management Act 1994*;

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2. operational staff who will be engaged to perform functions under the emergency services Acts. These can include members of permanent fire brigades as defined in the *Fire Brigades Act 1942*; and
3. wages staff, which can include persons with qualifications such as mechanics and technicians.

The proposed section 20(3) ensures the provisions of the *Public Sector Management Act 1994* apply to operational staff who would be defined as members of the Senior Executive Service even though they are not employed pursuant to the *Public Sector Management Act 1994*. A similar provision was contained in section 47A of the *Fire Brigades Act 1942* and is deleted by clause 84.

The proposed section 21 sets out the terms and conditions of employment of operational and wages staff. The power to employ and manage these staff is vested in the FES Commissioner.

The proposed section 22 allows the FES Commissioner to transfer operational staff to a public service officer position, and they can revert to an operational position if required. This power cannot be exercised without the consent of the person concerned.

### PART 5 — ADVISORY COMMITTEES

The current Part 5 of the amended Act is deleted. This contained provisions relating to the establishment of Consultative Committees. A new Part 5 setting out how advisory committees may be established has been inserted.

The proposed section 23 defines terms used in this part, the new term 'prescribed association' means the association or other body of persons that is prescribed as a body that represents the volunteer brigades, units or groups established under the emergency services Acts.

The proposed section 24 sets out that the Minister may establish committees to provide advice to the Minister, the FES Commissioner, or both, on matters relating to the emergency services Acts.

At least one person on an advisory committee established by this section must be nominated by a prescribed association relevant to the purpose for which the committee was established. The Minister will set out in an instrument the terms under which the committee is established and its purpose. Unless otherwise stated a committee may establish its own procedures and are also entitled to remuneration or allowances as recommended by the Public Sector Commissioner.



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The proposed section 25 requires the Minister to establish a 'volunteer advisory committee' to represent the interests of each kind of volunteer brigade, unit and group established under the emergency services Acts.

Volunteer advisory committees are to provide advice to the Minister, the FES Commissioner, or both, on matters relevant to the operation of the kind of brigade, unit or group for which it was established to represent. The majority of members on such a committee must be appointed by the Minister from persons nominated by the relevant prescribed association.

### **CLAUSE 25. PART 6 DELETED**

Part 6 of the amended Act is deleted as it contained the financial provisions relevant to the Authority. The Department will operate under the provisions of the *Financial Management Act 2006*. The power to borrow money for the purpose of the emergency services Act has been retained, but is a power of the Minister, the proposed section 9 in clause 7 refers.

### **CLAUSE 26. SECTION 36UA INSERTED**

Part 6A of the amended Act contains provisions that deal with the emergency services levy. The proposed section 36UA is inserted into this Part to ensure any money received by the FES Commissioner as a result of the operation of this Part is credited to the Departments operating account.

### **CLAUSE 27. SECTION 36X AMENDED**

Section 36X allows interest to accrue on ESL funds not paid by local governments when due. The section is amended so reference to the Authority is deleted and the FES Commissioner may recover the unpaid amount and the interest owed.

### **CLAUSE 28. SECTION 36Z AMENDED**

Section 36Z allows the recovery of any unpaid ESL from a landowner. The section is amended so the amount owed becomes a debt due either to the local government or to the State.

### **CLAUSE 29. SECTION 36ZD AMENDED**

Section 36ZD is amended to delete reference to the Authority and provide that where the ESL is unpaid, the Minister will have an interest in the land concerned. The power to lodge a caveat on the land will be a function of the FES Commissioner.

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### **CLAUSE 30. SECTION 36ZJ AMENDED**

Section 36ZJ provides for agreements to be entered into with local governments regarding payment of the ESL. Reference to the Authority is deleted and the FES Commissioner may enter into these agreements on behalf of the State and unpaid amounts shall be a debt due to the State.

### **CLAUSE 31. SECTION 36ZL AMENDED**

Section 36ZL allows for fees and charges to be prescribed for certain services provided under the emergency services Acts. Reference to the Authority is deleted and where those fees and charges are not paid they may be recovered by the FES Commissioner as a debt due to the State.

### **CLAUSE 32. SECTION 37 AMENDED**

Section 37 provides protection from civil liability for things done in good faith or in the performance or purported performance of a function under the emergency services Acts. Reference to the Authority is deleted.

### **CLAUSE 33. SECTION 38 REPLACED**

The deleted section 38 of the amended Act provided for the execution of documents by the Authority and is no longer required due to the abolition of the Authority.

The proposed section 38 requires that any money credited to the operating account of the Department can only be used for the purposes of the emergency services Acts. As a result of the operation of sub-section (3), section 20(1) of the *Financial Management Act 2006*, which allows the Treasurer to credit excess amounts of money in special purpose accounts to the Consolidated Account, does not apply to money held in operating accounts of the Department. Section 38 ensures that money raised by the operation of the emergency services Acts (including ESL funds) must be used for the purposes of the emergency services Acts.

### **CLAUSE 34. SECTION 38A AMENDED**

Section 38A creates offences related to damaging or interfering with property. Reference to property used by the Authority in the performance of its functions is amended to become 'property of the Minister used for the performance of the FES Commissioner's functions.'

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### **CLAUSE 35. SECTION 38B AMENDED**

Section 38B requires persons to be authorised to use names and symbols related to the emergency services Acts. The section is amended so the authorisation is given by the FES Commissioner instead of the chief executive officer of the Authority and relates to the name of the Department and not the Authority.

### **CLAUSE 36. SECTION 39 AMENDED**

Section 39 of the amended Act contains provisions relating to the disclosure of information and is amended to reflect the abolition of the Authority and consultative committees, and the inclusion of new provisions pertaining to advisory committees.

### **CLAUSE 37. SECTION 41 AMENDED**

Consequential amendment to reflect that a review of the emergency services Acts must be carried out 5 years after the commencement of this Act.

### **CLAUSE 38. SECTION 42 DELETED**

Consequential amendment to remove reference to Schedule 2 which will be deleted. Schedule 2 contained the transitional provisions for the amended Act when it was originally proclaimed.

### **CLAUSE 39. PART 8 INSERTED**

The proposed Part 8 contains the savings and transitional provisions required because of the effect of this Act.

The proposed section 42 contains terms used in Part 8. These terms are self-explanatory.

The proposed section 43 provides that the Authority is abolished at the transfer time, which is when section 7 of the Act comes into operation.

The proposed section 44 allows the Minister to make a 'transfer order'. A transfer order shall specify the assets, liabilities and other matters that are to be transferred to the FES Ministerial Body. A transfer order shall be published in the *Gazette* and must contain a 'transfer time' that is not before the time of publication. More than one transfer order can be made and a transfer order may be amended before the transfer time has effect.

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The proposed section 45 provides that when a transfer time occurs the things mentioned in the transfer order shall be transferred to the FES Ministerial Body and all other assets and liabilities shall be transferred to the State. The FES Ministerial Body and the State become the successor to the Authority according to the transfer of things.

The proposed section 46 requires the transfer of funds from the Authority's account to the operating account of the Department, after this the Authority's account is closed. After the transfer time any reference to the Authority's account is to be read as a reference to the Department's operating account.

The proposed section 47 requires any reserve funds held by the Authority to be credited to the Department's operating account at the transfer time.

The proposed section 48 provides that where it was not possible for any reason to properly transfer an asset or liability to the FES Ministerial Body or the State, the Authority is still deemed to hold the asset or liability and the Minister must appoint a person to take all practicable steps to ensure the transfer of the asset or liability.

The proposed section 49 requires the Minister to deliver a copy of a transfer order to a relevant official so the appropriate records may be amended to reflect the effect of the transfer order on relevant property.

The proposed section 50 specifies that things that occur as a result of the operation of this Part are not subject to State tax.

The proposed section 51 allows that where an error is made in a transfer order the Minister may publish another order in the Gazette to correct the error and the correction may have effect from the transfer time in the original order. A correction cannot operate so as to prejudice the rights of a person (other than the State, the FES Ministerial Body or an authority of the State) that existed before the publication of the correction order.

The proposed section 52 allows the person holding the office of the chief executive officer of the Authority to be appointed as the FES Commissioner when the Authority is abolished. The person shall retain the same rights regarding pay, leave, superannuation and continuity of service that they enjoyed before the abolition of the Authority.

The proposed section 53 allows the appointment of, a Bush Fire Liaison Officer, or, a Chief Bush Fire Control Officer by the Authority, under the *Bush Fires Act 1954* to continue after the transfer time.

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The proposed section 54 allows the appointment of a person to the Fire and Emergency Services Superannuation Board by the Authority to continue to have effect after the transfer time as if the person was appointed by the FES Commissioner.

The proposed sections 55 and 56 abolish the consultative committees and require their records to be delivered to the FES Commissioner.

The new Division 5 contains the proposed sections 57, 58 and 59. These allow that anything commenced, done or omitted to be done before the transfer time may be completed, or taken to have been done or omitted to be done by the relevant successor to the Authority, and any agreement or instrument in place before the transfer time to which the Authority was a party or contains a reference to the Authority, has effect on and after the transfer time and the relevant successor shall be substituted for the Authority.

The new Division 6 contains other transitional provisions. The proposed section 60 states that despite the amendment of section 39 by this Act, persons to whom the confidentiality provisions of section 39 applied before it was amended, are still bound by the confidentiality provisions of that section.

The proposed section 61 is a grandfather clause that allows investments by the Authority to continue despite the deletion of section 31 of the amended Act. When funds cease to be invested they must be credited to the operating account of the Department.

The proposed section 62 allows for regulations to be made where there has not been sufficient provision made for the transition of a matter by the transitional provisions or in a transfer order. The regulations may have effect before the date they are published in the *Gazette* but not before the commencement of a relevant provision in this Act. A regulation cannot operate so as to prejudice the rights of a person (other than the State, the FES Ministerial Body or an authority of the State) that existed before the publication of the regulations.

The proposed section 63 allows that the operation of the transitional provisions cannot be regarded:

- as a breach of a contract or contractual provisions regarding the transfer of assets, rights or liabilities;
- as giving rise to the termination of an instrument because of the change of ownership of an asset or liability;
- as causing a contract to become void or unenforceable; or
- as releasing or allowing the release of a surety.

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### **CLAUSE 40 . SCHEDULE 1 DELETED**

Schedule 1 of the amended Act dealt with the constitution and proceedings of the Board of the Authority and is deleted.

### **CLAUSE 41 . SCHEDULE 1A AMENDED**

Schedule 1A modifies provisions of the amended Act when a local government enters into an ESL agreement under section 36ZK. The Schedule is amended to make allowance for the amendments made by this Act.

### **CLAUSE 42 . SCHEDULE 2 DELETED**

Schedule 2 contained the transitional provisions for the amended Act when it was originally proclaimed.

### **CLAUSE 43 . VARIOUS REFERENCES TO “AUTHORITY” AMENDED**

The table in clause 43 deletes the word ‘Authority’ in various provisions of the amended Act and inserts the term FES Commissioner. The second table amends the headings of the provisions listed in the table.

### **CLAUSE 44 . VARIOUS REFERENCES TO “FESA” AMENDED**

The table in clause 44 deletes the term ‘FESA’ and inserts the term ‘FES’ and the second table amends the headings of the provisions listed in the table.

### **PART 3 — *BUSH FIRES ACT 1954* AMENDED**

#### **CLAUSE 45. ACT AMENDED**

Sets out the name of the Act to be amended by this Part.

#### **CLAUSE 46. SECTION 7 AMENDED**

Section 7 is amended by deleting definitions and inserting new definitions that are self explanatory.

#### **CLAUSE 47. SECTION 10 AMENDED**

Section 10 sets out powers to be carried out under the Act. References to the Authority are deleted and the powers are to be carried out by the FES Commissioner.

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### **CLAUSE 48. SECTION 12 REPLACED**

Section 12 provided for the appointment of persons as bush fire liaison officers. The section is deleted and replaced by new provisions that allow for the same appointments. Reference to the Authority is deleted and reference to the Minister providing approval in the process is deleted as it is not considered appropriate in a departmental model. The term 'designation' replaces the term appointment to reflect that persons given the designation are already employed in the Department.

### **CLAUSE 49. SECTION 14B AMENDED**

Section 14B is amended so that during an 'authorised period' police officers may exercise the powers already contained in the section regarding the movement of persons and vehicles, the evacuation of persons and the closure of roads, in or around the affected area. These powers can only be exercised when the FES Commissioner has given a person an authorisation to take control of all operations in relation to a bush fire. The intent of this amendment is to improve the ability of police officers to assist at a bush fire by allowing them to exercise these powers independently.

### **CLAUSE 50. SECTION 14 AMENDED**

Section 14 allows person to be authorised to enter any land or building to conduct examinations, inspections or investigations regarding fire breaks, fire hazards and other matters relating to fire safety. The FES Commissioner will be able to authorise persons to carry out these powers.

### **CLAUSE 51. SECTION 17 AMENDED**

Section 17 relates to the declaration of prohibited burning times by the Minister. Section 17(4) allows a prohibited burning time to be suspended to carry out burning. This is amended so the FES Commissioner will be able to authorise a suspension and reference to the Authority is deleted.

### **CLAUSE 52. SECTION 22C AMENDED**

Section 22C allows the Minister to exempt a person from the provisions of a total fire ban after receiving advice. The section is amended so the FES Commissioner will be able to provide the advice to the Minister.

### **CLAUSE 53. SECTION 24B AMENDED**

Section 24B allows specified officers to request the production of a permit under the Act from a person who has set fire to bush during the prohibited or

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restricted burning times. The section is amended so the FES Commissioner may authorise persons employed in the Department to carry out this function.

### **CLAUSE 54. SECTION 24E AMENDED**

Section 24E allows the Minister upon a recommendation, to permit the burning of garden refuse at a rubbish tip during the prohibited or restricted burning times. The section is amended so the FES Commissioner may provide the recommendation to the Minister.

### **CLAUSE 55. SECTION 24G AMENDED**

Section 24G allows the Minister upon a recommendation, to publish a notice in the Gazette prohibiting or imposing conditions on the burning of garden refuse otherwise permitted by section 24F. The section is amended so the FES Commissioner may provide the recommendation to the Minister.

### **CLAUSE 56. SECTION 25A AMENDED**

Section 25A allows the Minister after receiving advice, to exempt a person from the provisions of section 25 regarding the lighting or use of a fire in the open air during the prohibited and restricted burning times. The section is amended so the FES Commissioner may provide the advice to the Minister.

### **CLAUSE 57. SECTION 27B AMENDED**

Section 27B concerns persons giving a false alarm of fire to a specified officer. The section is amended so it refers to persons employed in the Department, or who are an agent of the FES Commissioner.

### **CLAUSE 58. SECTION 28 AMENDED**

Section 28 concerns persons taking measures to extinguish a fire that is not being carried out in accordance with provisions of the Act, on land they occupy during the prohibited and restricted burning times. Where a person does not comply with the section and costs are incurred by the State, they may be recovered. The section is amended so the FES Commissioner may recover the costs in a court of competent jurisdiction.

### **CLAUSE 59. SECTION 35 AMENDED**

Section 35 sets out the procedures that are to occur if a local government fails to give a firebreak notice to landowners after being requested to do so by the Minister, or the local government fails to enforce the notice if served. The section is amended so the FES Commissioner may have the work undertaken



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by persons employed in the Department, or an agent, and may recover the cost of carrying out the work.

### **CLAUSE 60. SECTION 38 AMENDED**

Section 38 allows local governments to appoint persons as bush fire control officers. If there is a vacancy in the office of the Chief or Deputy Chief Bush Fire Control Officer the local government can be directed to fill that vacancy. If the local government fails to do so, the FES Commissioner may appoint a person who is not employed in the Department to fill the vacancy.

### **CLAUSE 61. SECTION 38A AMENDED**

Section 38A allowed a local government to request the Authority to appoint a member of staff to be the Chief Bush Fire Control officer for that local government area. The power to appoint a member of staff as the Chief Bush Fire Control Officer will now be carried out by the FES Commissioner.

### **CLAUSE 62. SECTION 39 AMENDED**

Section 39 sets out the powers of a bush fire control officer. These powers included those of the Director of Operations under the *Fire Brigades Act 1942*. That position has been deleted and the powers are now those of the FES Commissioner.

### **CLAUSE 63. SECTION 51 AMENDED**

Reference to the FESA Act is amended to be reference to the FES Act.

### **CLAUSE 64. SECTION 55 DELETED**

Section 55 required that penalties for offences were to go to either the Authority or a local government. The provision is deleted as under section 60 of the *Sentencing Act 1995* fines from prosecutions either go to the Consolidated Account, or to a local government if they initiated the prosecution.

### **CLAUSE 65. SECTION 56 AMENDED**

Section 56 concerns the duties of specified officers who find persons committing offences against the Act. It is amended to refer to persons employed in the Department for the purposes of the Act.

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### **CLAUSE 66. SECTION 57 AMENDED**

Section 57 creates the offences of obstructing, hindering or resisting specified persons carrying out a function under the Act. It is amended to refer to persons employed in the Department for the purposes of the Act.

### **CLAUSE 67. SECTION 59 AMENDED**

Section 59 specifies who may institute proceedings against a person for an offence against the Act. It is amended to refer to a person employed in the Department for the purposes of the Act

### **CLAUSE 68. SECTION 65 AMENDED**

Section 65 states no proof is required for certain matters in a prosecution. References to the Authority and chief executive officer are deleted, and references to the designation or appointment of a person employed in the Department and the FES Commissioner are inserted.

### **CLAUSE 69. VARIOUS REFERENCES TO “AUTHORITY” AMENDED**

The table in clause 69 deletes the word ‘Authority’ in various provisions of the amended Act and inserts the term FES Commissioner. The heading of section 18 of the amended Act is amended.

## **PART 4 — *FIRE BRIGADES ACT 1942* AMENDED**

### **CLAUSE 70. ACT AMENDED**

Sets out the name of the Act to be amended by this Part.

### **CLAUSE 71. SECTION 4 AMENDED**

Section 4 is amended by deleting definitions and inserting new definitions that are self-explanatory.

### **CLAUSE 72. PART VI HEADING AMENDED**

This is a consequential amendment due to the abolition of the Authority.

### **CLAUSE 73. SECTION 24 AMENDED**

This section contains the power to purchase property, apparatus, plant and buildings for the purposes of the amended Act. The section is amended so the Minister has the power to do this under the proposed section 8 of the FES Act. There are consequential amendments to remove reference to the Authority and

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insert reference to the Department. Section 24(3) states that where real property is acquired from a local government at no cost, it is to be returned to the local government if no longer required, subject to payment for any improvements made after acquisition from the local government. The amendments in sub-clauses (3) & (4) ensure this section of the amended Act applies to real property acquired by the former Authority.

### **CLAUSE 74. SECTION 25 AMENDED**

Section 25 sets out functions regarding preventing and extinguishing fires, protecting life and property from fire, hazardous material incidents and rescue operations, having general control of fire brigades and fire brigade premises and other duties as are entrusted by the Minister. These functions will be undertaken by the FES Commissioner.

### **CLAUSE 75. SECTION 26A AMENDED**

Section 26A sets out things that may be done for the purposes of carrying out functions under the amended Act, these include providing training to persons not employed in the Department, providing a maintenance and inspection service for fire and hazardous material detection and prevention systems and creating and distributing educational materials. These will be undertaken by the FES Commissioner.

The heading to section 26A is amended to reflect this change.

### **CLAUSE 76. PART VII HEADING AMENDED**

The heading to this Part is amended to reflect that persons other than brigade members may be authorised to carry out the functions contained within it.

### **CLAUSE 77. SECTION 29 DELETED**

Section 29 contained the power to appoint persons to be officers and members of permanent brigades. This function is now contained in the proposed section 20(2) of the FES Act. This ensures the power to employ persons in the Department is contained in one provision.

### **CLAUSE 78. SECTION 31 REPLACED**

The deleted section 31 referred to the Director of Operations as having the immediate order and control of all brigades and officers and members. This position has been abolished and the FES Commissioner will now have the control of all brigades, officers and members. This ensures there is a single position responsible for brigades and officers and members, previously the chief executive officer of the Authority had powers, duties and functions in

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relation to brigades and officers and members in addition to the Director of Operations.

### **CLAUSE 79. SECTION 33 AMENDED**

Section 33 contains powers related to the inspection and training of brigades, and the inspection of premises for fire and hazardous material dangers. These powers are to be undertaken by the FES Commissioner or a person authorised by the FES Commissioner.

### **CLAUSE 80. SECTION 33A AMENDED**

Section 33A concerns the power to ensure exits and escapes in public buildings are clear. If an escape or exit cannot be cleared an order can be made to close the premises to rectify the issue. This power will be undertaken by the FES Commissioner or a person employed in the Department who is authorised by the FES Commissioner.

### **CLAUSE 81. SECTION 34 AMENDED**

Section 34 contains the powers that may be used at a fire scene, hazardous material incident or rescue operation. This section is amended so the powers can be undertaken by the FES Commissioner or a person employed in the Department who is authorised by the FES Commissioner, in addition to officers and members of brigades.

### **CLAUSE 82. SECTION 34A AMENDED**

Section 34A concerns the powers that may be used when a person has been exposed to a hazardous material. This section is amended so the FES Commissioner or an authorised officer may use these powers.

### **CLAUSE 83. SECTION 35 AMENDED**

Section 35 contains the power to make regulations and sets out the things for which regulations may be made. It is amended to reflect the new provisions in the FES Act, under which persons can be employed to carry out functions under the Act amended by this Part.

### **CLAUSE 84. SECTION 47A DELETED**

Section 47A stipulated that the *Public Sector Management Act 1994* prevailed over the amended Act in the event the chief executive officer or an officer or member of a permanent brigade was a member of the Senior Executive Service. This has been deleted and a similar provision is included in the proposed section 20(3) of the FES Act (clause 24).

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### **CLAUSE 85. SECTION 49 AMENDED**

Section 49 provides for the inspection of volunteer and private fire brigades. It is amended so they may be inspected by a person employed in the Department who is authorised by the FES Commissioner for this purpose.

### **CLAUSE 86. SECTION 51 AMENDED**

Section 51 allows brigades or members to be paid a bonus or reward for efficient and valuable service. This function may be carried out by the FES Commissioner.

### **CLAUSE 87. SECTION 52 AMENDED**

Section 52 allows an authorised person to collect contributions or subscriptions for any brigade. This authorisation may be given or cancelled by the FES Commissioner.

### **CLAUSE 88. SECTION 54 AMENDED**

Section 54 concerns the provision of fire hydrants in fire districts. It is amended so the FES Commissioner is responsible for this function and the property in fire hydrants vests in the Minister.

### **CLAUSE 89. SECTION 58 AMENDED**

Section 58 is amended to delete reference to the Director of Operations, and will set out that Police officers and others are required to recognise the Authority of the FES Commissioner. The heading of the section is amended to reflect this.

### **CLAUSE 90. SECTION 59 AMENDED**

Section 59 creates offences including interfering with members of brigades and property. It is amended to reflect that the property concerned belongs to the Department.

### **CLAUSE 91. SECTION 66 AMENDED**

Section 66 concerns former employees continuing to occupy premises they had as a result of their employment. The section is amended so the premises referred to is now property of the Department instead of the Authority.

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### **CLAUSE 92. SECTION 67 AMENDED**

Section 67 is amended to allow the FES Commissioner, or a person employed in the Department who is authorised by the FES Commissioner, to enter premises and remove any property of the Department that is being detained contrary to an order of the FES Commissioner.

### **CLAUSE 93. SECTION 73 DELETED**

Section 73 concerned the recovery of penalties for offences against the amended Act. It is deleted as the recovery of penalties incurred under the amended Act can be enforced under the *Fine, Penalties and Infringement Notices Enforcement Act 1994*.

### **CLAUSE 94. VARIOUS REFERENCES TO “AUTHORITY” AMENDED**

The table in clause 94 deletes the word ‘Authority’ in various provisions of the amended Act and inserts the term FES Commissioner. The second table amends the headings of the provisions listed in the table.

### **PART 5 — FIRE AND EMERGENCY SERVICES SUPERANNUATION ACT 1985 AMENDED**

#### **CLAUSE 95. ACT AMENDED**

Sets out the name of the Act to be amended.

#### **CLAUSE 96. LONG TITLE AMENDED**

The long title is amended to reflect that the Authority has been abolished and the amended Act will apply to former certain employees of the Authority so that current entitlements are not lost.

#### **CLAUSE 97. SECTION 3 AMENDED**

Definitions in this section are either deleted or added to reflect the abolition of the Authority and the establishment of the Department and the classes of employees created by these changes.

#### **CLAUSE 98. SECTION 4 AMENDED**

Section 4 concerns the establishment and constitution of the Superannuation Board. The FES Commissioner replaces the Authority in appointing 3 persons to the Superannuation Board.

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### **CLAUSE 99. SECTION 5 AMENDED**

Section 5 sets out things that the Superannuation fund shall consist of such as the contributions and property, the things it may make payments for, and the people who may be members of the Superannuation Fund. It is amended so contributions can be paid by the FES Commissioner and to allow for new classes of persons who may be members of the fund.

### **CLAUSE 100. SECTION 6 AMENDED**

Section 6 sets out the functions and general powers of the Superannuation Board. Reference to persons being provided to assist the Superannuation Board under section 31, is amended to refer to the FES Commissioner providing such persons for this purpose.

### **CLAUSE 101. SECTION 17 AMENDED**

Section 17 requires an actuarial review to be undertaken at 3 yearly intervals. This section is amended so a copy of the report provided by the Actuary to the Superannuation Board, shall be provided to the FES Commissioner.

### **CLAUSE 102. SECTION 27 AMENDED**

Section 27 relates to an employer's powers and liabilities in respect of the termination of an employee's employment. The section is amended to refer to the FES Commissioner.

### **CLAUSE 103. SECTION 28 AMENDED**

Section 28 states that the amended Act does not affect the right of a member of the superannuation fund in relation to a claim for damages or compensation arising out of their employment. It is amended to refer to the FES Commissioner.

### **CLAUSE 104. SECTION 31 AMENDED**

Section 31 sets out that assistance regarding staff, facilities and services may be provided to the Superannuation Board. It is amended to refer to the FES Commissioner providing such assistance.

### **CLAUSE 105. SECTION 32 AMENDED**

Section 32 contains the power to make regulations under the amended Act. Reference to who may make contributions to the superannuation fund is amended to refer to the FES Commissioner.

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### **CLAUSE 106. SCHEDULE 2 AMENDED**

Schedule 2 contains provisions concerning how the Superannuation Board shall operate, including elections, terms of office, vacancies regarding members of the Board and the conduct of meetings. It is amended to refer to the FES Commissioner where required.

### **PART 6 — *EMERGENCY MANAGEMENT ACT 2005* AMENDED**

#### **CLAUSE 107. ACT AMENDED**

Sets out the name of the Act to be amended.

#### **CLAUSE 108. SECTION 50 AMENDED**

Section 50 of the amended Act contains the power for a Hazard Management Agency (HMA) to make an emergency situation declaration for an area of the State when it is satisfied an emergency has occurred, is occurring, or is imminent in that area, and there is a need to exercise the powers contained in Part 6 to prevent or minimise, loss of life, harm to persons or damage to property or the environment. The section is amended so the State Emergency Coordinator (SEC) may declare an emergency situation.

If the SEC declares an emergency situation the HMA responsible for the hazard for which the emergency situation was declared must be notified, and it will then act as if it had made the declaration for the hazard.

#### **CLAUSE 109. SECTION 71 AMENDED**

Section 71 of the amended Act currently allows only the most senior police officer present inside the area for which an emergency situation or state of emergency is declared to exercise powers relating to the movement of people and the closure of certain premises to the public. This section is amended so any police officer may for the purpose of responding to an emergency, exercise the powers contained in this section.

The intent of the change is to ensure police officers are not hampered in their ability to respond to an emergency, particularly in remote areas where currently the most senior officer inside the declared area may not be available in a town to exercise the required powers, or the incident command post set up to respond to the emergency may be outside the emergency area.



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### **PART 7 — OTHER ACTS AMENDED**

#### **DIVISION 1 — CONSTITUTION ACTS AMENDMENT ACT 1899 AMENDED**

##### **CLAUSE 110. ACT AMENDED**

Sets out the name of the Act to be amended.

##### **CLAUSE 111. SCHEDULE V AMENDED**

This clause amends the Act by removing reference to the Authority.

#### **DIVISION 2 — COUNTRY AREAS WATER SUPPLY ACT 1947 AMENDED**

##### **CLAUSE 112. ACT AMENDED**

Sets out the name of the Act to be amended.

##### **CLAUSE 113. SECTION 37 AMENDED**

Section 37 of the amended Act deals with fire hydrants in fire districts and includes provisions regarding their installation and abolition. This clause removes references to the Authority and replaces them with reference to the Minister or the FES Commissioner. The property in hydrants vests in the Minister.

#### **DIVISION 3 — THE CRIMINAL CODE AMENDED**

##### **CLAUSE 114. ACT AMENDED**

Sets out the name of the Act to be amended.

##### **CLAUSE 115. SECTION 297 AMENDED**

This clause amends reference to the *Fire and Emergency Services Authority of Western Australia Act 1998* by removing the words *Authority of Western Australia*.

##### **CLAUSE 116. SECTION 318 AMENDED**

This clause amends reference to the *Fire and Emergency Services Authority of Western Australia Act 1998* by removing the words *Authority of Western Australia*.

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### **DIVISION 4 — *DANGEROUS GOODS SAFETY ACT 2004* AMENDED**

#### **CLAUSE 117. ACT AMENDED**

Sets out the name of the Act to be amended.

#### **CLAUSE 118. SECTION 40 AMENDED**

Section 40 of the amended Act restricts access to sites of dangerous goods incidents apart from certain classes of persons. This clause amends the Act so an employee of the Department is not considered an unauthorised person for the purpose of accessing a dangerous goods site.

### **DIVISION 5 — *EMERGENCY SERVICES LEVY ACT 2002* AMENDED**

#### **CLAUSE 119. ACT AMENDED**

Sets out the name of the Act to be amended.

#### **CLAUSE 120. LONG TITLE AMENDED**

This clause amends reference to the *Fire and Emergency Services Authority of Western Australia Act 1998* by removing the words *Authority of Western Australia*.

#### **CLAUSE 121. SECTION 3 AMENDED**

This clause amends reference to the *Fire and Emergency Services Authority of Western Australia Act 1998* by removing the words *Authority of Western Australia*.

### **DIVISION 6 — *ENVIRONMENTAL PROTECTION ACT 1986* AMENDED**

#### **CLAUSE 122. ACT AMENDED**

Sets out the name of the Act to be amended.

#### **CLAUSE 123. SCHEDULE 6 AMENDED**

Schedule 6 of the amended Act sets out matters that do not require a permit to conduct clearing. Item 12 is amended so that clearing on Crown land by the FES Commissioner for fire prevention, control purposes or other fire management works does not require a permit.

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### **DIVISION 7 — *FINANCIAL MANAGEMENT ACT 2006* AMENDED**

#### **CLAUSE 124. ACT AMENDED**

Sets out the name of the Act to be amended.

#### **CLAUSE 125. SCHEDULE 1 AMENDED**

This clause amends the Act by removing reference to the Authority.

### **DIVISION 8 — *LITTER ACT 1979* AMENDED**

#### **CLAUSE 126. ACT AMENDED**

Sets out the name of the Act to be amended.

#### **CLAUSE 127. THIRD SCHEDULE AMENDED**

The Third Schedule of the amended Act sets out the Public Authorities that may undertake proceedings for offences against the amended Act. It is amended to make reference to the FES Commissioner

### **DIVISION 9 — *METROPOLITAN WATER SUPPLY, SEWERAGE, AND DRAINAGE ACT 1909* AMENDED**

#### **CLAUSE 128. ACT AMENDED**

Sets out the name of the Act to be amended.

#### **CLAUSE 129. SECTION 45 AMENDED**

Section 45 of the amended Act deals with fire hydrants in fire districts and includes provisions regarding their installation and abolition. This clause removes references to the Authority and replaces them with reference to the Minister or the FES Commissioner. The property in hydrants vests in the Minister.

### **DIVISION 10 — *PAY-ROLL TAX ASSESSMENT ACT 2002* AMENDED**

#### **CLAUSE 130. ACT AMENDED**

Sets out the name of the Act to be amended.

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### **CLAUSE 131. SECTION 40 AMENDED**

Section 40 of the amended Act sets out the circumstances in which wages are exempt from pay-roll tax. This includes wages paid to a person by their employer when the employee is performing functions as a volunteer member of a group, brigade or unit established under the emergency services Acts. The section is amended by deleting reference to the Authority.

### **DIVISION 11 — *PUBLIC SECTOR MANAGEMENT ACT 1994* AMENDED**

#### **CLAUSE 132. ACT AMENDED**

Sets out the name of the Act to be amended.

#### **CLAUSE 133. SCHEDULE 2 AMENDED**

This clause amends the Act by deleting reference to the Authority from the Schedule that sets out the SES organisations under the amended Act.

### **DIVISION 12 — *RATES AND CHARGES (REBATES AND DEFERMENTS) ACT 1992* AMENDED**

#### **CLAUSE 134. ACT AMENDED**

Sets out the name of the Act to be amended.

#### **CLAUSE 135. SECTION 3 AMENDED**

This clause amends reference to the *Fire and Emergency Services Authority of Western Australia Act 1998* by removing the words *Authority of Western Australia* as required.

#### **CLAUSE 136. SECTION 17 AMENDED**

Section 17 relates to reimbursements under the amended Act and is amended to refer to the FES Commissioner when the reimbursement relates to the ESL.

### **DIVISION 13 — *ROAD TRAFFIC ACT 1974* AMENDED**

#### **CLAUSE 137. ACT AMENDED**

Sets out the name of the Act to be amended.

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### **CLAUSE 138. SECTION 64A AMENDED**

This clause amends reference to the *Fire and Emergency Services Authority of Western Australia Act 1998* by removing the words *Authority of Western Australia*.

### **CLAUSE 139. SECTION 64AAA AMENDED**

This clause amends reference to the *Fire and Emergency Services Authority of Western Australia Act 1998* by removing the words *Authority of Western Australia*.

### **DIVISION 14 — SENTENCING ACT 1995 AMENDED**

#### **CLAUSE 140. ACT AMENDED**

Sets out the name of the Act to be amended.

#### **CLAUSE 141. SCHEDULE 1 AMENDED**

Schedule 1 sets out the Acts under which fines are not to be paid to the Consolidated Account. The reference to the *Bush Fires Act 1954* is deleted as the Authority is abolished and fines shall go to the Consolidated Account as is normal practice for Departments (Refer clauses 64 and 93).

### **DIVISION 15 — SWAN AND CANNING RIVERS MANAGEMENT ACT 2006 AMENDED**

#### **CLAUSE 142. ACT AMENDED**

Sets out the name of the Act to be amended.

#### **CLAUSE 143. SCHEDULE 5 AMENDED**

Schedule 5 lists the Authorities that must have due regard to the principles and objectives of the amended Act when carrying out their duties. If there is a dispute between the Swan River Trust and a Schedule 5 Authority then there is a mechanism set out as to how a dispute may be settled.

Reference to the Authority is abolished, and reference to the *Fire and Emergency Services Authority of Western Australia Act 1998* is amended by removing the words *Authority of Western Australia*.

The FES Commissioner will be a Schedule 5 Authority as the chief executive officer of the Department principally assisting in the administration of the FES Act.

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### **DIVISION 16 — VOLUNTEERS AND FOOD AND OTHER DONORS (PROTECTION FROM LIABILITY) ACT 2002 AMENDED**

#### **CLAUSE 144. ACT AMENDED**

Sets out the name of the Act to be amended.

#### **CLAUSE 145. SECTION 4 AMENDED**

This clause amends reference to the *Fire and Emergency Services Authority of Western Australia Act 1998* by removing the words *Authority of Western Australia*.

### **DIVISION 17 — WATER BOARDS ACT 1904 AMENDED**

#### **CLAUSE 146. ACT AMENDED**

Sets out the name of the Act to be amended.

#### **CLAUSE 147. SECTION 63 AMENDED**

Section 63 of the amended Act deals with fire hydrants in fire districts and includes provisions regarding their installation and abolition. This clause removes references to the Authority and replaces them with reference to the Minister or the FES Commissioner. The property in hydrants vests in the Minister.