

SAMOA
FIRE AND EMERGENCY SERVICE ACT 2007

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2007, No. 10

AN ACT to restructure the Fire Service and provide for the prevention, suppression and control of fires and other emergencies and establish the Samoa Fire and Emergency Service Authority.

[15th February 2007]

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

**PART 1
PRELIMINARY**

1. Short title and commencement-(1) This Act may be cited as the Fire and Emergency Service Act 2007.

(2) This Act shall come into force on the date of assent of the Head of State.

(3) Notice of commencement of this Act shall be published in Samoan and English in the Savali and one other newspaper circulating in Samoa.

2. Interpretation -In this Act, unless the contrary intention appears:

"alarm" means any call for assistance at a fire, accident, explosion or other emergency;

"Authority" means the Samoan Fire and Emergency Service Authority established under section 3;

"Board" means the Board of directors of the Authority;

"brigade" means a brigade established under section 17;

"career" member means a member of a Brigade who is employed by the Samoan Fire and Emergency Service Authority and registered by the Commissioner for Fire and Emergency Service under section 18;

"Commissioner for Fire and Emergency Service" means the Commissioner for Fire and Emergency Service appointed under section 16;

"dangerous goods" means explosives, combustible liquids having a flashpoint below 61° Celsius, or a substance or article prescribed as dangerous goods by the regulations;

"emergency" means an actual or imminent occurrence of an event which in any way endangers or threatens to endanger the safety or health of any person, which destroys or damages, or threatens to destroy or damage any property or endangers or threatens to endanger the environment or any element of the environment and, without limiting the generality of the foregoing, includes:

(a) a cyclone, tsunami, flood, wind storm, earthquake or other natural event;

(b) a fire;

(c) an explosion;

(d) a road, industrial or other accident;

(e) hazardous material incident where there is a major threat of life safety, explosion or fire;

(f) an urban search and rescue;

"industrial training" means the training required to be provided to businesses under section 33;

"insurance company" means a person, including a body corporate, a partnership or an underwriter who issues or undertakes liability under policies of insurance against fire in respect of property in Samoa;

"member" means a career or volunteer member;

"Minister" means the Minister responsible for Fire and Emergency Services;

"officer" means a member exercising the authority of the Commissioner for Fire and Emergency Service in accordance with the standing orders;

"owner" means the person for the time being in receipt of or entitled to receive the rents and profits from land or buildings who, if such property were let to a tenant would be entitled to receive the rents and profits, whether as beneficial owner, trustee, administrator, mortgagee in possession, or as agent or attorney for any other person;

"prescribed industrial training notice" means a notice under section 33;

"public purpose" includes utilisation of a building, venue, structure or land for any community, commercial, amusement or public event, or purpose including, but not limited to the use of buildings or structures for restaurants, cafes, theatres, cinemas, halls, hotels, bars, sporting facilities, shops, hospitals, schools, universities, supermarkets or Boarding houses;

"risk abatement notice" means a notice under section 31;

"senior member of the operational staff" means the person determined in accordance with the standing orders to be the senior member of the operational staff;

"standing orders" means the standing orders made by the Commissioner for Fire and Emergency Service under section 20;

"this Act" includes regulations made under the Act;

"volunteer member" means a member of a brigade who is registered under section 19.

PART 2

SAMOAN FIRE AND EMERGENCY SERVICES AUTHORITY

3. Samoan Fire and Emergency Services Authority –There shall be a Samoan Fire and Emergency Services Authority which:

- (a) is a body corporate with perpetual succession;
- (b) shall have a common seal;
- (c) may sue and be sued in its corporate name;
- (d) may acquire, hold and dispose of real and personal property for the purposes of performing its functions; and
- (e) may do and suffer all acts and things that bodies corporate may by law do and suffer and that are necessary or instrumental to the performance of its functions.

4. Functions of the Authority – The functions of the Authority are:

- (a) to provide fire suppression and fire prevention services throughout Samoa; and
- (b) to provide emergency prevention and emergency response services throughout Samoa; and
- (c) to carry out any other function conferred on the Authority by or under this Act or any other Act or as directed by the Minister.

5. Board of the Authority-(1) The Authority shall have a Board comprised of 7 directors, consisting of:

- (a) the Minister who shall also be the Chairperson;
- (b) the Commissioner of Police and Prison Service;
- (c) the Chief Executive Officer of the Electric Power Corporation;
- (d) the Chief Executive Officer of the Samoa Water Authority;
- (e) 3 directors appointed by Cabinet upon the recommendation of the Minister to represent the interests of the Samoan community and any of the following industries –
 - (i) insurance;
 - (ii) trade and commerce;
 - (iii) tourism and hotelier; or

(iv) manufacturing.

(2) No person, by reason solely of being a director, shall be deemed to be employed in the Public Service of Samoa within the meaning of that term in article 83 of the Constitution.

(3) The Secretary for the Board shall be the Commissioner of Fire and Emergency Service.

6. Term of Appointment of directors-(1) Except as otherwise provided by this Act, the Chairperson and the other directors of the Authority shall be appointed for a term of 3 years, but may be reappointed.

(2) Notwithstanding anything in this Act, where a director's term of appointment has expired, such director shall continue in office until a successor is appointed.

(3) Any director may be removed from office by the Head of State acting on the advice of Cabinet, or may resign from office by written notice addressed to the Minister.

(4) The power of the Authority shall not be affected by the fact that at any time there may be less than 7 directors in office.

(5) The office of a director becomes vacant if the director:

(a) without approval of the Board, fails to attend 3 consecutive meetings of the Board;

(b) becomes bankrupt; or

(c) is convicted of a criminal offence attracting a penalty of imprisonment and for which the director is subsequently imprisoned.

7. Meetings of the Board-(1) Subject to subsection (2), every meeting of the Board shall be presided over by the Chairperson.

(2) Where the Chairperson is absent for any reason, the directors present at the meeting shall appoint one of their number to be the Chairperson of that meeting.

(3) Subject to subsection (4), the first meeting of the Board shall be held on a day to be nominated by the Chairperson and subsequent meetings shall be held on such dates and at such times as the Board determines but not less than four times annually.

(4) Notwithstanding anything in this Act, the Chairperson may at any time convene a special meeting of the Board.

(5) The quorum for any meeting of the Board shall be three directors.

(6) The Board shall determine questions before it by a majority of votes of directors present.

(7) The Chairperson at any meeting shall have a deliberative vote and in the case of an equality of votes, shall also have a casting vote.

(8) Subject to the provisions of the Act, the Authority may regulate its own proceedings in such manner as it thinks fit.

(9) An act or decision of the Board shall not be invalid because of a:

(a) defect or irregularity in the appointment of a member; or

(b) a vacancy in its membership.

8. Minutes of Meetings-(1) The Board shall cause minutes to be kept of all resolutions passed at its meetings.

(2) The minutes shall be approved by the Board and signed by the Chairperson at the next and subsequent meeting to the passing of the minutes.

(3) A copy of the minutes of each meeting shall be provided to every director.

9. Remuneration of Directors- Remuneration and travelling expenses of directors are to be determined by Cabinet and paid out of the funds of the Authority.

10. Disclosure of Conflicts of Interest-(1) A director who otherwise than as a director is directly or indirectly interested in any arrangement or agreement entered into, or proposed to be entered into, by the Authority shall as soon as is practicable after the relevant facts have come to the director's notice, disclose the nature of that interest at a meeting of the Board.

(2) A disclosure under this section shall be recorded in the minutes of the meeting and the director shall not take part after the disclosure in any deliberations or decisions relating to the arrangement or agreement, but shall be counted as present for the purposes of forming a quorum of the Board for any such deliberations or decisions.

11. Original Assets of the Authority-(1) The original assets of the Authority consist of:

(a) all land, buildings, installations and improvements including fixtures located on or adjacent to or in the vicinity of the land which is being used by the Apia Fire Service constituted under the Fire Service Act 1994 for the maintenance and operation of the Apia Fire Service or in connection with the operation of the Apia Fire Service throughout Samoa; and

(b) all vehicles, marine craft, plant, machinery, equipment, stores, furniture and apparatus which are or were used by the Apia Fire Service on the date this Act comes into force for the maintenance and operation of the Apia Fire Service or in connection with the operation of a fire and emergency service.

(2) The assets referred to in subsection (1) vest in the Authority.

(3) The Government shall cause the land required to be transferred to the Authority under this Act to be transferred to the Authority immediately on this Act coming into force.

(4) If any question arises about whether any asset currently under the management and control of the Ministry of Police, Prisons and Fire Services has become or is the property or responsibility of the Authority, that question shall be decided by Cabinet.

12. Powers of the Authority-(1) Subject to this Act, the Authority has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

(2) Without limiting the generality of subsection (1), the Authority has the following powers:

(a) to purchase or lease any building, land, equipment, plant or other property as the Board thinks necessary to carry out the Authority's functions under this Act;

(b) to sell, exchange or let any property acquired by or which vests in the Authority for the performance of the Authority's functions under this Act;

(c) enter into any agreement or arrangement with any person or body for the provision of goods or services; and

(d) to borrow from the Government or any bank or any lending institution, whether local or overseas.

(3) In exercising its powers under subsection (2), the Authority shall consult with the Minister and comply with any directions provided by the Minister.

13. Delegation-(1) The Authority may delegate to any person including an employee or class of employees of the Authority any responsibility, power, authority, duty or function of the Authority under this Act, other than this power of delegation.

(2) Any delegation made under this Act shall be made in writing under the common seal of the Board.

(3) The delegation of a power or function made under this Act shall not prevent the exercise of the power or function by the Commissioner for Fire and Emergency Service or the Board.

(4) Every person purporting to act under a delegation under this Act shall be presumed to be acting in accordance with the terms of the delegation in the absence of proof to the contrary.

(5) Where a delegate is an employee of the Authority, the delegation ceases to be in force where the employee ceases to be employed by the Authority.

14. Employees of the Authority-(1) The Authority may employ any person on such terms and conditions as it considers necessary to assist the Authority in carrying out its functions under this Act or any other Act and transfer, promote, suspend or remove any such employee.

(2) The Board may designate ranks and titles for members.

15. Liability of Directors and Employees -Any director, officer or employee of the Authority shall not be personally liable for any act done or omitted to be done in good faith in the exercise or performance of the functions, powers or duties of the Authority or for any debt or any other liability lawfully incurred by the Authority.

PART 3 COMMISSIONER FOR FIRE AND EMERGENCY SERVICE

16. Commissioner for Fire and Emergency Service -(1) The Board shall recommend for appointment by Cabinet a person who has proven expertise and qualifications in fire fighting and emergency response as the Commissioner for Fire and Emergency Service for a period not exceeding 5 years but the person may be re-appointed.

(2) The Commissioner for Fire and Emergency Service is responsible to the Board for carrying out the Board's functions under this and any other Act, and shall comply with any directions of the Board.

(3) The Board shall appoint a person to be acting Commissioner for Fire and Emergency Service:

(a) where the office of Commissioner for Fire and Emergency Service is vacant and is awaiting the appointment of a new Commissioner for Fire and Emergency Service; or

(b) during any period when the Commissioner for Fire and Emergency Service is unable by reason of illness or temporary absence to perform the functions of that office.

(4) The Acting Commissioner for Fire and Emergency Service shall have all the powers necessary to perform the duties and functions of the Commissioner for Fire and Emergency Service when acting as the Commissioner for Fire and Emergency Service.

(5) The Commissioner for Fire and Emergency Service may delegate in writing to any person approved by the Board any power, authority, duty or function of the Commissioner for Fire and Emergency Service established under this or any other Act, except this power of delegation.

(6) The Commissioner for Fire and Emergency Service shall, subject to the provisions of this Act, be in a position of control over all employees of the Authority, all volunteer and career members and all brigades established under the provisions of this Act.

17. Formation of brigades-(1) The Commissioner for Fire and Emergency Service may establish brigades for the purpose of carrying out the functions of the Authority established under the provisions of this Act.

(2) A brigade may consist of:

- (a) career members registered under section 18;
- (b) volunteer members registered under section 19;
- (c) persons engaged under contract or arrangement entered into by the Authority.

(3) The Board may appoint a deputy or deputies to assist the Commissioner for Fire and Emergency Service and the deputies may exercise such powers, duties and functions as are conferred or imposed on the Commissioner for Fire and Emergency Service.

18. Career members-(1) The Commissioner for Fire and Emergency Service may appoint career members who shall be registered in accordance with this section.

(2) The Commissioner for Fire and Emergency Service shall determine in the standing orders the training and qualifications required to be undertaken by a career member before registration.

(3) A career member is required to complete such training or have such qualifications or competencies as may be prescribed.

(4) Career members are on probation until they are registered under this section.

19. Volunteer members-(1) The Commissioner for Fire and Emergency Service may register volunteer members in accordance with this section.

(2) The Commissioner for Fire and Emergency Service shall prescribe in the standing orders:

- (a) the training and qualifications required to be undertaken by a volunteer member; and
- (b) any probationary period to be served by volunteer members, before registration is effected.

(3) Each volunteer member shall be attached to a brigade established by the Commissioner for Fire and Emergency Service under section 17.

(4) Volunteer members may be paid such allowances on such conditions as the Board may determine.

(5) It is an offence for any association of persons to operate as a brigade unless the association is duly established as a brigade under section 17 and its members are duly registered.

(6) It is an offence for a person to operate as a volunteer member unless the person is duly registered under this section, and any such person shall not have any of the powers or privileges or the benefit of any immunity conferred by this Act.

20. Commissioner for Fire and Emergency Service's standing orders-(1) The Commissioner for Fire and Emergency Service may issue written standing orders to provide for:

- (a) training and qualifications;
- (b) authorising activities on an alarm;
- (c) the proper conduct or good order of members or brigades; or
- (d) any other purpose under this Act including prescribing by rank, or otherwise, senior members of the operational staff.

(2) The Commissioner for Fire and Emergency Service shall specify in standing orders:

- (a) the senior members of the operational staff and other members of staff; and
- (b) the equipment and vehicles to be utilised on an alarm.

(3) The Commissioner for Fire and Emergency Service may vary any standing orders on an alarm as appropriate.

21. Actions on Alarm -On an alarm being received by a brigade, the members of the brigade shall, with the equipment specified by the Commissioner for Fire and Emergency Service in the standing orders or otherwise, proceed with all practical speed to the scene of the alarm or emergency and use all reasonable means to save life and to suppress, reduce or minimise the effects of the fire or any other emergency.

22. Powers of Commissioner for Fire and Emergency Service on an alarm-(1) At the scene of an alarm or an emergency, the Commissioner for Fire and Emergency Service or the senior member of the operational staff may exercise any of the following powers:

- (a) control and direct all persons present at the fire or emergency who place their services at the senior operational staff member's disposal;
- (b) enter on land and, where it is reasonably necessary to do so, break into any building or premises to extinguish a fire or limit the effect of a fire or an emergency;
- (c) remove any flammable, explosive, or dangerous material found in such building or premises;
- (d) for the purpose of extinguishing or preventing the spread of any fire or the effects of any emergency, cause any building or structure to be wholly or partially pulled down provided that such action will only be taken where it is reasonably necessary to do so in the circumstances;

(e) cause water to be shut off from any main or other pipe in order to obtain a greater pressure and supply of water for the purpose of attending to an emergency;

(f) cause any street, private road, right of way, or thoroughfare in the vicinity of any emergency to be closed to traffic for the duration of any emergency;

(g) issue orders to any appropriate person to disconnect the supply of electricity, gas, oil or other substance to any building, structure or plant which is on fire or subject to an emergency or which is in the vicinity of any building which is on fire or subject to an emergency;

(h) remove by reasonable force, if necessary, any person who, in the opinion of the Commissioner for Fire and Emergency Service or senior member of staff, as the case may be, is an interference with the operations of a Brigade;

(i) do all other things which are reasonably necessary for the prevention or suppression of fire or to limit the effects of any emergency or as appears necessary to preserve life or property.

(2) Every person who, without lawful or reasonable excuse, obstructs or hinders the Commissioner for Fire and Emergency Service or any officer acting with the Commissioner for Fire and Emergency Service's authority in the performance of any of the powers under this section commits an offence against this Act.

(3) A person acting under the instruction of the Commissioner for Fire and Emergency Service or senior member of staff shall not be personally liable to any penalty or claim by reason of any of the actions referred to in this section.

23. Destruction of buildings and other property by the Commissioner for Fire and

Emergency Service-(1) If a building or structure is damaged by fire or other emergency, the Commissioner for Fire and Emergency Service may:

(a) shore up, demolish, destroy or remove the building or structure; or

(b) cause the building or structure to be shored up,

demolished, destroyed or removed, and do all things necessary to prevent risk to people or property if the Commissioner for Fire and Emergency Service reasonably believes that the building or structure is, or may become, dangerous to people or property.

(2) The Authority may sell or dispose of any salvaged material from damage done arising from a fire or other emergency.

(3) The proceeds of sale from a disposal under subsection (2) shall be applied towards any reasonable expense incurred by the Authority in exercising its powers under subsection (1).

(4) Where any action is required to be taken by the Commissioner for Fire and Emergency Service under subsection (1), the owner of the building or structure affected is required to pay for the cost of that action where the proceeds of a sale under subsection (3) are insufficient for the purpose of recovering the costs of undertaking that action.

(5) For the avoidance of doubt, where there has been no sale or disposal under this section, the whole of the expense incurred by the Authority shall be paid to the Authority by the owner of the building or structure.

24. Liability for damage excluded-(1) The Authority, Commissioner for Fire and Emergency Service and any officer or member is not liable for damages for anything done or omitted to be done in good faith:

(a) in the exercise of a power or the discharge of a duty under this Act; or

(b) in the reasonable belief that the act or omission was in the discharge of a duty under this Act.

(2) For the purposes of this section damage includes loss of or injury to property, personal injury or death.

(3) Nothing in this section affects the entitlement of any person to compensation under the Accident Compensation Act 1989.

25. Policies of insurance against fire -Where damage is caused to property, either directly or indirectly, by the exercise of a power or the performance of a function under this Act by the Commissioner for Fire and Emergency Service or an officer or member, the damage shall, for the purposes of any policy of insurance against fire covering the property damaged, be deemed to be damage by fire notwithstanding a provision to the contrary in the policy.

PART 4 FIRE AND EMERGENCY ABATEMENT AND PREVENTION

26. Offence to give a false alarm-(1) Any person who interferes with a fire alarm without lawful justification or wilfully gives or causes to be given, or attempts to give or cause to be given a false alarm of fire, commits an offence and is liable to a term of imprisonment not exceeding 3 months or to a fine not exceeding 30 penalty units or both.

(2) The Authority may offer a reward not exceeding an amount specified by the Minister for information leading to the conviction of any person who commits an offence under subsection (1).

27. Damaging or concealing fireplug or hydrant - A person who:

(a) wilfully damages a fireplug or fire hydrant; or

(b) covers up, encloses, hides or conceals any fireplug or fire hydrant rendering its position difficult to ascertain; or

(c) obliterates or removes any marks, sign or letter used for the purposes of indicating the position of any fireplug or hydrant, commits an offence against this Act.

28. Passages and exits in buildings used for public purposes-(1) The owner and occupier of a building or structure used for a public purpose must ensure that all passages into and exits from such building or structure are free of obstruction.

(2) The Commissioner for Fire and Emergency Service or senior operational staff may remove or direct the removal of any obstruction to a passage into and exit from a building or structure used for public purposes.

(3) A person who, without lawful cause, fails to comply with a direction under subsection (2) or obstructs an officer from carrying out the officer's duties under subsection (2) commits an offence under this Act.

29. Powers of inspection-(1) The Commissioner for Fire and Emergency Service or any person authorised in writing for this purpose by the Commissioner for Fire and Emergency Service must be given reasonable access to any land, building, premises or any other place for the purpose of ascertaining whether this Act or any other law relating to:

(a) the storage of explosives; or

(b) the storage of flammable liquids, toxic or dangerous goods or substances; or

(c) the prevention of fire or the protection of life or property in the case of fire, including the maintenance of fire detection and suppression systems or other equipment;

are being complied with.

(2) A person who, without lawful cause, fails to provide reasonable access to land, building, premises or any other place under subsection (1) or obstructs an officer from carrying out the officer's duties under subsection (1) commits an offence under this Act.

30. Authority may carry out fire prevention work-(1) The Authority at the request of the owner or occupier of land, including a Minister or Government department, may remove or abate fire hazards on that land.

(2) Any work carried out under this section shall be paid for by the owner, occupier, Minister or Government department requesting the work.

(3) Any work carried out under this section shall be performed at the rates prescribed by Regulations.

31. Risk abatement notices-(1) The Commissioner for Fire and Emergency Service may serve a risk abatement notice on an owner or occupier of land in respect of anything on the land (including a building) which by its nature, composition or location constitutes or may constitute a danger to life or property from the threat of fire or other emergency.

(2) A risk abatement notice may be served only if the Commissioner for Fire and Emergency Service forms the opinion that action specified in the notice is necessary or may become necessary to protect life or property from the threat of fire or other emergency.

(3) A risk abatement notice:

(a) must be in the prescribed form;

(b) must specify what steps the owner or occupier must take to remove or minimise the threat of fire or other emergency; and

(c) must specify the time (not less than 7 days) within which the owner or occupier must comply with the notice.

(4) A risk abatement notice must be served on the owner or occupier:

(a) by giving it personally on the owner or occupier; or

(b) by leaving it at the usual or last known residential or business address of the owner or occupier with a person on the premises who appears to be at least 16 years old and apparently is residing or employed there; or

(c) in a manner prescribed by any other Act or law for service on a person or class or persons of the same type as the owner or occupier.

(5) If the Commissioner for Fire and Emergency Service:

(a) does not know who the owner or occupier of the land is; or

(b) does not know the residential or business address of the owner or occupier; or

(c) believes that the owner or occupier is absent from Samoa and has no agent known to the Commissioner for Fire and Emergency Service, the risk abatement notice may be served in accordance with subsection (6).

(6) If subsection (5) applies, the risk abatement notice may be served:

(a) by displaying it on the land; and

(b) by publishing a notice in the prescribed form and containing the prescribed particulars in a newspaper circulating generally throughout Samoa.

(7) A notice served in accordance with subsection (6) is sufficient notice to the owner or occupier from the day of display or publication, whichever is earlier.

(8) Subject to this section and section 32, a person on whom a risk abatement notice has been served must comply with the notice within the time specified.

(9) A person who fails to comply with a risk abatement notice commits an offence and is liable to a term of imprisonment not exceeding 3 months or a fine not exceeding 100 penalty units, or both.

(10) Unless the risk abatement notice is withdrawn or cancelled, the reasonable costs of serving the notice (including reasonable administrative labour and overhead costs and expenses incurred) may be recovered from the person on whom it was served.

(11) Where a person fails to comply with a risk abatement notice within a reasonable time after the notice has been served and the person has not objected to that notice and the Commissioner for Fire and Emergency Service is of the opinion that the risk poses a threat to the safety of the public, the Commissioner for Fire and Emergency Service may remove or abate the fire hazards on that land that are the subject of the notice.

(12) Any reasonable action undertaken by the Commissioner for Fire and Emergency Service under subsection (11) shall be paid for by the person who fails to comply with the notice and may be recovered as a debt owing to the Authority.

(13) For the purposes of this section, a risk abatement notice includes a risk abatement notice as confirmed or varied in accordance with this section or section 32.

32. Appeal against risk abatement notice-(1) A person on whom a risk abatement notice has been served may lodge an objection with the Commissioner for Fire and Emergency Service within 7 days of service of the notice stating the grounds of objection.

(2) Within 14 days of the lodgement of an objection, the Commissioner for Fire and Emergency Service must:

(a) confirm the notice; or

(b) vary the notice if satisfied that the variation will appropriately address the threat of fire or other emergency; or

(c) withdraw the notice if satisfied that there is no longer any cause for the notice to be served.

(3) Where the Commissioner for Fire and Emergency Service confirms or varies the notice, the Commissioner for Fire and Emergency Service must specify a new time within which the person must comply with the notice.

(4) If a person has lodged an objection under subsection (1); and

(a) the Commissioner for Fire and Emergency Service has failed to confirm, vary or withdraw the notice within 14 days; or

(b) the person is not satisfied with the confirmation or variation of the notice, the person may appeal to the Supreme Court within 7 days of the end of the 14 day period or the date of confirmation or variation under subsection (2).

(5) When considering the appeal, the Supreme Court must take into account all relevant circumstances including alternative means of addressing the threat of fire or other emergency.

(6) After considering the appeal, the Supreme Court must:

(a) confirm the notice; or

(b) vary the notice in any way it thinks fit; or

(c) cancel the notice.

(7) If the Supreme Court confirms or varies the notice, it must specify a new time within which the person must comply with the notice.

(8) Where a person fails to comply with a risk abatement notice within a reasonable time after the notice has been confirmed by the Supreme Court, and the Commissioner for Fire and Emergency Service is of the opinion that the risk poses a threat to the safety of the public, the Commissioner for Fire and Emergency Service may remove or abate the fire hazards on that land that are the subject of the notice.

(9) Any reasonable action undertaken by the Commissioner for Fire and Emergency Service under subsection (8) shall be paid for by the person who fails to comply with the notice and may be recovered as a debt owing to the Authority.

33. Prescribed Industrial Training notice-(1) Subject to this section, the Authority may determine by notice businesses whose employees are required to undertake mandatory training in fire prevention and suppression and emergency response and management.

(2) After receiving the approval of the Minister the Authority shall determine by notice the costs associated with the training of the specified employees under subsection (1).

(3) Notwithstanding anything in this section, the Commissioner for Fire and Emergency Service or a senior member of the operational staff may serve a prescribed industry training notice on any business where the Commissioner for Fire and Emergency Service has formed the opinion that:

(a) there is a threat of fire or other emergency; and

(b) due to the nature of the business and its geographical location, the Authority cannot provide a satisfactory emergency response in the circumstances.

(4) A prescribed industrial training notice must:

(a) be in the prescribed form;

(b) specify the number or proportion of staff employed within the business who must train or must have received training for this purpose;

(c) set out the details of the training required and its duration and frequency;

(d) prescribe the qualifications to be obtained by the staff of the business.

(5) A prescribed industrial training notice must be served on the owner of the business:

(a) by giving it personally to the owner; or

(b) by leaving it at the usual last known residential or business address of the owner with a person on the premises who appears to be over 16 years old and who is apparently residing at the premises or employed by the owner; or

(c) in any manner prescribed by any other Act for lawful service on a person or class of persons of the same type as the owner.

(6) Subject to this section and section 34, a person on whom a prescribed industrial training notice has been served must comply with the notice within the time specified.

(7) A person who fails to comply with a prescribed industrial training notice commits an offence and is liable to a fine not exceeding 100 penalty units

(8) For the purposes of this section, a prescribed industrial training notice includes a prescribed industrial training notice confirmed or varied in accordance with section 34.

34. Appeal against prescribed industrial training notice-(1) A person on whom a prescribed industrial training notice has been served may lodge an objection with the Commissioner for Fire and Emergency Service within 7 days of service of the notice stating the grounds of objection.

(2) Within 14 days of lodging the objection, the Commissioner for Fire and Emergency Service must:

(a) confirm the notice; or

(b) vary the notice where the Commissioner for Fire and Emergency Service is satisfied that a variation shall appropriately address the prevention or mitigation of a fire or other emergency; or

(c) withdraw the notice where the Commissioner for Fire and Emergency Service is satisfied the proposed prescribed training is unnecessary.

(3) If:

(a) a person has lodged an objection under this section and the Commissioner for Fire and Emergency Service has failed to confirm, vary or withdraw the notice within 14 days of receipt of the objection; or

(b) the person is not satisfied with the confirmation or variation of the notice, the person may appeal to the Supreme Court within 7 days of the end of the 14 day period or the date of confirmation of the variation under subsection (2).

(4) When considering an appeal under this section, the Supreme Court must vary the notice under this section where:

(a) the risk posed by fire or other emergency within the business does not warrant the training prescribed;

(b) the business does not have the required number of staff to be trained to provide the prescribed services; or

(c) the number of staff to be trained and the training prescribed is in the circumstances unwarranted.

(5) After considering the appeal, the Supreme Court must:

(a) confirm the notice; or

(b) vary the notice in any way it thinks fit; or

(c) cancel the notice.

(6) If the Supreme Court confirms or varies the notice it must specify a new time within which the business owner must comply with the prescribed industrial training notice.

35. Owner to give information about insurance-(1) The owner of premises where a fire occurs shall, on request by the Commissioner for Fire and Emergency Service, inform the Commissioner for Fire and Emergency Service whether the premises are insured and furnish full particulars of the insurance, if any, including the names of the companies with which the insurance is effected and the amount of insurance.

(2) The owner of personal property where a fire occurs shall, on request by the Commissioner for Fire and Emergency Service, inform the Commissioner for Fire and Emergency Service whether the property is insured and furnish full particulars of the insurance, if any, including the names of the companies with which the insurance is effected and the amount of insurance.

(3) Any person who refuses to comply with any request by the Commissioner for Fire and Emergency Service under this section commits an offence under this Act.

(4) Any person who wilfully gives false information or incorrect particulars with regard to such insurance commits an offence and is liable to a term of imprisonment not exceeding 2 years or a fine not exceeding 20 penalty units, or both.

36. Maintenance of fire equipment and detection or suppression systems in buildings - If the Commissioner for Fire and Emergency Service, when undertaking an inspection under section 29, determines that:

(a) the requirements of a building permit are not or have not been complied with; or

(b) fire detection or suppression and maintenance equipment is not functional and places the lives of building occupants or property at risk; or

(c) a building or structure owner or third party has interfered with such equipment in a manner which undermines its proper performance, the Commissioner for Fire and Emergency Service may specify in a risk abatement notice issued under section 31 what works need to be performed to rectify the equipment.

PART 5 MISCELLANEOUS

37. Accounts and annual report of the Authority-(1) The Authority shall keep proper accounts and other records and shall prepare in respect of each financial year a statement of accounts.

(2) The Authority shall, as soon as possible after the 30th day of June in each year cause to be prepared, a balance sheet together with statements of income and expenditure.

(3) The Authority shall submit the accounts of the authority for audit by the Controller and Chief Auditor referred to in article 97 of the Constitution and shall send a copy of the accounts and the annual report to the Minister as soon as practicable after the accounts have been audited.

(4) A copy of the Authority's annual report, accounts and the Audit Office's report relating to the Authority's account in each year shall be laid before Parliament as soon as practicable after their receipt by the Minister.

38. Offences relating to impersonation -Any person who:

(a) uses any name, title or description to imply an association with the Authority, without the written authority of the Authority; or

(b) represents that the person is associated with the Authority unless such an association exists; or

(c) impersonates an officer of the Authority or a member of the Authority; or

(d) use any insignia described or set out in the regulations in any manner contrary to the manner set out in the regulations without the written authority of the Authority,

commits an offence under this Act and is liable to a fine not exceeding 50 penalty units

39. Recovery of costs-(1) The owner of any property for which an alarm is caused by fire or other emergency may be liable to pay the Authority the reasonable costs and expenses incurred by the Authority in providing fire services to that person in relation to that property.

(2) The amount payable under subsection (1) shall be determined by the Board.

(3) Notice of the amount determined under subsection (2) must be delivered either in person or by post to the owner concerned.

(4) The amount specified in the notice is payable to the Board by the owner within 28 days after receipt of the notice.

(5) Where an owner is insured, the Authority may put the relevant insurance company on notice of the amount payable under this section.

(6) Before disbursing the proceeds of any policy of insurance, the insurance company shall pay the specified amount as determined by the Board under subsection (2) to the Authority and any policy of insurance shall be deemed to be so varied.

(7) An owner who receives a notice under this section may apply to the Supreme Court for a review of the decision of the Authority in determining the amount payable by the owner.

40. Disciplinary procedures for volunteers and career fire fighters-(1) A member who is:

(a) in breach of the regulations;

(b) involved in any misconduct including but not limited to a breach of the standing orders;

(c) careless or reckless in the discharge of their duties; or

(d) behaves in a manner which is disgraceful or improper and which is likely to incite public disapproval of the Authority,

is guilty of a disciplinary offence under this section.

(2) A senior member of the operational staff after an investigation into the matter may lay a charge for an offence under this section.

(3) The Commissioner for Fire and Emergency Service may suspend a career member from duty without pay where the career member has been charged with an offence under subsection (1) for such time as may be necessary in order for the charge to be dealt with in accordance with this section.

(4) The Commissioner for Fire and Emergency Service may suspend a volunteer member from duty who has been charged under subsection (1) for such time as may be necessary in order for the charge to be dealt with in accordance with this section.

(5) The Commissioner for Fire and Emergency Service shall hear any charge laid under this section.

(6) When hearing the charge, the Commissioner for Fire and Emergency Service is not bound by the rules of evidence but may inform himself in such manner as he thinks fit.

(7) After hearing the charge, the Commissioner for Fire and Emergency Service shall do any one of the following:

(a) dismiss the charge; or

(b) find the charge proven and:

(i) reprimand the member; or

(ii) discharge the member from the brigade and remove their name from the register of members; or

(iii) place the member on a period of probation subject to such terms and conditions as the Commissioner for Fire and Emergency Service deems appropriate.

(8) Where a career member has their name removed from the Register, the member shall be dismissed from the employment of the Authority and shall lose any rights, benefits or privileges which have accrued as a result of the career member's employment.

(9) If a member is aggrieved by a decision of the Commissioner for Fire and Emergency Service the member may appeal to an appeals commission constituted by the Chairperson of the Board and 2 other directors of the Board.

(10) When hearing an appeal, the appeals commission shall not be bound by the rules of evidence and shall either:

- (a) uphold the decision of the Commissioner for Fire and Emergency Service;
- (b) dismiss the decision of the Commissioner for Fire and Emergency Service and dismiss the charge; or
- (c) impose some other penalty as prescribed in subsection (7).

(11) At a hearing before the appeals commission, a member may be represented by a legal practitioner admitted to appear before the Supreme Court of Samoa.

41. Regulations-(1) The Head of State acting on the advice of Cabinet may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting subsection (1), regulations may be made for, or in relation to, any of the following:

- (a) to impose a levy on fire insurance to be collected by insurance companies on behalf of the Authority;
- (b) to require the Accident Compensation Corporation established under the Accident and Compensation Act 1989 to make a financial contribution to the Authority;
- (c) to govern fundraising activities by members and brigades for the subscription and raising of funds collected from the public;
- (d) to prescribe the form and content of risk abatement notices including the things or classes of things in respect of which a notice may be served;
- (e) to prescribe the form and content of prescribed industrial training notices and to manage, provide for and regulate industry training;
- (f) the registration of brigades;
- (g) the registration of members and probationary members and the cancellation of such registration;
- (h) to require members to undertake medical or other work related tests;

- (i) for the provision of training and training facilities and the issue of certificates or qualifications after the completion of any such course of training;
- (j) for the establishment or management of brigades;
- (k) for prescribing the insignia and uniform to be worn by members or classes of members;
- (l) for the discipline and good conduct of members and probationary members;
- (m) to prescribe the fees and charges to be paid to the Authority for services provided under this Act, including preparation of reports for the Ministry of Works in building and related matters, or other services relating to any other emergency;
- (n) for the declaration of, transportation, location, storage, packaging, inspection and disposal of dangerous goods: or
- (o) for fire prevention, emergency and abatement measures to be installed or located in a complex for the storage of dangerous goods.

(3) Without limiting subsection (1), the regulations may provide for conferring power on the Authority to:

- (a) remove or suspend registered members and probationary members where not otherwise provided in this Act;
- (b) enforce penalties by the Authority;
- (c) empower brigades and senior operational members to lay charges against registered members and probationary members; or
- (d) provide rights of any registered member or probationary member to appeal to the appeals commission referred to in section 40.

42. General penalty -A person who commits an offence against this Act for which no specific penalty is provided is liable on conviction to a fine not exceeding 40 penalty units and if the offence is a continuing one then to a fine not exceeding 1 penalty unit for every day during which the offence continues.

43. Recovery of debts-(1) Any sum payable to the Authority under this Act or any other Act may be recovered by the Authority in a court of competent jurisdiction as a debt due to the Authority.

(2) The Authority, on application of any person who is liable in respect of any amount for any services or sums payable to the Authority may:

- (a) remit or excuse the payment of the amount or any part of the amount; or
- (b) defer the payment of the amount or any part of the amount to such time as the Authority thinks fit.

44. Current employees and officers - Pending the appointment of the Commissioner for Fire and Emergency Service, all employees and officers employed in the Fire Division of the Ministry of Police, Prisons and Fire Service shall continue to act in their positions.

PART 6 REPEAL AND CONSEQUENTIAL AMENDMENTS

45. Repeal -The Fire Services Act 1994 is repealed.

46. Consequential amendments of the Ministry of Works Act 2002 -The Ministry of Works Act 2002 is amended by:

- (a) inserting after subsection 32(2) the following subsection:

"(2A) The Director General of Works must impose requirements in respect of a building or structure that are in addition to any requirement of the Regulations or the Building Code if the Commissioner for Fire and Emergency Service has made such a recommendation in a report under section 32A."; and

- (b) inserting after section 32 the following section:

"32A. Building permits-(1) The consent of the Commissioner for Fire and Emergency Service is required for any application for a building permit for a residential building over two storeys in height.

(2) In determining whether to provide consent, the Commissioner for Fire and Emergency Service must assess whether the building has in place adequate fire prevention and suppression measures based on the ability of the Samoan Fire and Emergency Service Authority to respond and protect life and property in the building.

(3) The Commissioner for Fire and Emergency Service may report on any additional works, measures or services to be installed or provided in the building to the Chief Executive Officer of Works and the reason for those measures.

(4) The Chief Executive Officer of Works must consider a report made under subsection (3) before issuing a building permit."

47. Transitional-(1) Nothing in this Act affects the validity of any contract made by the Commissioner of Police, the Commissioner for Fire and Emergency Service or the authorised representative of Apia Fire Brigade or the Fire Service established under the Fire Service Act 1994.

(2) All permits, authorisation and approvals given under the Fire Service Act 1994 continue to have full force and effect and where appropriate, shall be deemed to have been given under the corresponding provision of this Act.

(3) All legal proceedings or rights to bring legal proceedings, either criminal or civil, commenced or to be commenced under the Fire Service Act 1994 continue as if the Fire Service Act 1994 had not been repealed or may be deemed by a court to have been taken under a corresponding provision of this Act.

**The Fire and Emergency Service Act 2007 is administered by the Samoa Fire and
Emergency Service Authority.**