

[AS REPORTED FROM THE LOCAL BILLS COMMITTEE]

House of Representatives, 23 September 1969.

Words struck out by the Committee are shown with black rule at beginning and after last line.

*Hon. Mr Seath*

## FIRE SERVICES AMENDMENT

### ANALYSIS

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## A BILL INTITULED

## An Act to amend the Fire Services Act 1949

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

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**1. Short Title**—This Act may be cited as the Fire Services Amendment Act 1969, and shall be read together with and deemed part of the Fire Services Act 1949\* (hereinafter referred to as the principal Act).

## PART I

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## FIRE SERVICE APPEALS

**2. Interpretation**—In this Part of this Act, unless the context otherwise requires,—

“Award” means an award made by the Court of Arbitration under the Industrial Conciliation and Arbitration Act 1954; and includes any industrial agreement made under that Act and any agreement made under the Labour Disputes Investigation Act 1913: 15

“Equipment” means any appliance or other equipment belonging to or bailed to an Urban Fire Authority; and includes any personal equipment or clothing provided by any such authority for the use of any member of a fire brigade under its jurisdiction: 20

“Fireman” includes an officer and a probationary fireman; but does not include a Chief Fire Officer or Deputy Chief Fire Officer or a volunteer officer or fireman: 25

“Superior officer” includes the Chief Fire Service Officer.

*Breaches of Good Conduct and Termination of Services*

**3. Code of good conduct**—(1) Every Chief Fire Officer, Deputy Chief Fire Officer, and fireman commits a breach of good conduct who— 30

(a) Without reasonable justification, disobeys any lawful order given to him in the course of his duties by or on behalf of a superior officer; or 35

(b) Is insubordinate towards any superior officer; or

\*1957 Reprint, Vol. 5, p. 169

Amendments: 1958, No. 67; 1959, No. 28; 1961, No. 81; 1962, No. 67; 1963, No. 11; 1965, No. 83; 1966, No. 61; 1967, No. 157; 1968, No. 82

- (c) Abuses any authority conferred on him, whether by means of oppressive conduct or otherwise; or
- (d) Is negligent in the discharge of his duties; or
- 35 (e) Without reasonable excuse, fails to attend to or carry out his duty promptly and diligently; or
- (f) Without the permission of his superior officer or, in the absence of any such permission, without reasonable excuse, leaves his station or place of duty; or
- 40 (g) Without reasonable excuse,—
  - (i) Is absent from duty; or
  - (ii) Is late for any parade, drill, or other attendance that he has been ordered to attend by a superior officer; or
- 15 (h) Without reasonable excuse, fails to report any matter which it is his duty to report; or
- 31 (i) Without reasonable excuse, fails to make an entry (being an entry which it is his duty to make) in any official book or document; or
- 20 (j) Without colour of right, destroys, mutilates, or removes from the place where it is normally kept any official book or document or alters or erases any entry made in any such book or document; or
- 37 (k) Without reasonable excuse, divulges any information which it is his duty not to divulge; or
- 25 (l) Improperly uses his position as a fireman for his own advantage or profit, or, without reasonable excuse, fails to account for any money or property which comes into his possession during the course of his duties; or
- 30 (m) Wilfully or negligently causes damage to any article of equipment with which he has been provided for the purposes of his employment; or
- 35 (n) Improperly uses property, stores, or equipment for the time being in his official custody or under his control or, without reasonable excuse, fails to take reasonable care of any such property, stores, or equipment, or to report any damage to or loss of any such property, stores, or equipment however caused; or
- 40 (o) During the course of duty, is under the influence of intoxicating liquor or any narcotic within the meaning of the Narcotics Act 1965 to such an extent as to be unable to perform his duties; or
- 45 (p) Knowingly acts in a disorderly manner while on duty or in a manner which prejudices the good conduct of the fire brigade of which he is a member; or

- (q) While on duty, or while off duty in his uniform in a public place, is, without reasonable excuse, dirty or untidy in his person or personal equipment to such an extent as to bring the fire brigade of which he is a member into disrepute; or 5
- (r) Knowingly acts in a manner which brings or is likely to bring the fire brigade of which he is a member into disrepute.
- (2) A fireman who is alleged to have committed a breach of good conduct shall be dealt with in accordance with section 4 of this Act. A Chief Fire Officer or Deputy Chief Fire Officer who is alleged to have committed a breach of good conduct shall be dealt with in accordance with section 9 of this Act. 10

**4. Action to be taken where firemen alleged to be in breach of good conduct—**(1) If at any time it is alleged that any fireman has committed a breach of good conduct, the Chief Fire Officer of the Urban Fire Authority employing the fireman shall, unless he is satisfied without further inquiry that there is no foundation for the allegations, serve on the fireman within 3 days of the alleged breach a notice in writing setting out the full details of the allegations made against him and requiring him to state whether he admits or denies the allegations and inviting him to give an explanation in respect of the allegations. 15 20

(2) Within 48 hours after the receipt of the notice referred to in subsection (1) of this section, or within such extended period as the Chief Fire Officer may allow, the fireman concerned may, in writing, inform the Chief Fire Officer whether he admits or denies the allegations and give any explanation he may wish to make in respect of the allegations. 25 30

(3) If the fireman denies the allegations or fails to state in writing whether he admits or denies the allegations, or if the Chief Fire Officer is not satisfied with the explanation (if any) given by the fireman, the Chief Fire Officer shall, as soon as practicable after the expiration of the period specified in subsection (2) of this section, fix a time and a date when and a place where the allegations will be inquired into, and shall notify the fireman accordingly. The date fixed for the inquiry shall be not later than 14 days from the date on which the notice referred to in subsection (1) of this section was served on the fireman concerned. 35 40

(4) If the fireman, or the counsel or agent of the fireman, attends at the time and place fixed under subsection (3) of this section, he shall be entitled to be heard. If both the fireman and his counsel or agent (if any) fail to attend at the time and place so fixed, the Chief Fire Officer may nevertheless proceed to determine the allegations made against the fireman.

(5) At the inquiry, the Chief Fire Officer shall comply with the rules of natural justice. After hearing the allegations and any evidence given or representations made in support of the allegations and after giving the fireman or his counsel or agent an opportunity to cross-examine the persons giving any such evidence or making any such representations the Chief Fire Officer shall hear all evidence given and representations made by or on behalf of the fireman. The Chief Fire Officer may receive in evidence at the inquiry any statement, document, information, or matter that he considers will assist him to determine whether or not the allegations are true, notwithstanding that the statement, document, information, or matter would not be admissible in a court of law.

(6) If a fireman has admitted that any allegations made against him under this section are true, or, in any case where allegations have been made against a fireman and he has not admitted that they are true, if the Chief Fire Officer, after holding an inquiry into the allegations, finds the allegations to be well founded, then subject to the rights of appeal conferred on firemen by this Part of this Act, the Chief Fire Officer may—

- (a) Peremptorily dismiss the fireman from the service of the Urban Fire Authority employing him or require him to resign within such time as the Chief Fire Officer may specify (in which case the fireman shall be deemed to be dismissed unless he so resigns); or
- (b) Reduce his rank (in which case his pay shall be correspondingly reduced) by not more than one grade for a period not exceeding 6 months; or
- (c) Severely reprimand him; or
- (d) Reprimand him; or
- (e) Caution him.

(7) As soon as practicable after the conclusion of any inquiry under this section, the Chief Fire Officer shall notify the fireman concerned of the Chief Fire Officer's findings (including the grounds on which they are based) and of the penalty (if any) imposed by him. If a Chief Fire Officer imposes on the fireman one of the penalties referred to in paragraphs (a) to (d) of subsection (6) of this section, the fireman shall be entitled to written notification of the Chief Fire Officer's findings and of the penalty so imposed. 5

(8) An inquiry under this section shall not be held in public. 10

(9) The Chief Fire Officer may, pending determination of the allegations, suspend the employment of the fireman concerned. During the period of any such suspension the fireman shall not be entitled to any remuneration or other emolument; but if the Chief Fire Officer finds that the allegations are not well founded, or, if he finds that the allegations are well founded and his decision is subsequently reversed on appeal under section 8 or section 12 of this Act, the fireman shall be entitled to be paid the remuneration and other emoluments to which he would have been entitled had his employment not been suspended. 15 20

(10) Subject to this section and to any regulations made under this Part of this Act, the Chief Fire Officer may regulate the procedure at any such inquiry in such manner as he thinks fit. 25

**5. Exercise of powers of Chief Fire Officer by Deputy Chief Fire Officer**—During the absence from duty of the Chief Fire Officer of any brigade, the Deputy Chief Fire Officer (if any), and during the absence from duty of both the Chief Fire Officer and Deputy Chief Fire Officer, any other officer in charge of the brigade, shall have all the powers conferred and duties imposed on the Chief Fire Officer by this Part of this Act; and every reference in this Part of this Act to a Chief Fire Officer, so far as it relates to the exercise of the powers conferred and duties imposed on a Chief Fire Officer in dealing with a fireman alleged to have committed a breach of good conduct, shall be construed as a reference to a Deputy Chief Fire Officer or other officer in charge of the brigade acting in the absence of the Chief Fire Officer. 30 35 40

**6. Chief Fire Officer may terminate services of firemen in certain circumstances—**

(1) Without limiting the powers conferred on Chief Fire Officers under section 4 of this Act, the Chief Fire Officer of any brigade may direct that the services of any fireman who is a member of that brigade shall be terminated at the expiration of such period of notice as may be prescribed in respect of the termination of services of firemen by the award governing the fireman's conditions of employment.

(2) Where a Chief Fire Officer has given a direction under subsection (1) of this section, he shall forthwith give notice in writing of his direction to the fireman concerned, together with a statement of the grounds on which it was based; and subject to the rights of appeal conferred on firemen by this Part of this Act, on the expiration of the period of notice specified in the direction, the services of the fireman shall thereupon be terminated.

(3) Notwithstanding the provisions of subsections (1) and (2) of this section, the Chief Fire Officer of any brigade may, subject to the rights of appeal conferred on firemen by this Part of this Act, terminate forthwith the services of any fireman who is a member of that brigade by serving on him a notice in writing in that behalf, together with a statement of the grounds on which the decision was based; but in that event the fireman shall be paid the remuneration and other emoluments to which he would have been entitled had his services been terminated in accordance with the said subsections (1) and (2).

**7. Effect of decision of Chief Fire Officer—**

Every decision made by a Chief Fire Officer under section 4 or section 6 of this Act shall take effect according to its tenor from the time at which it is notified to the fireman affected by it or from such later time as the Chief Fire Officer may specify; but, in the case of a penalty imposed on a fireman under paragraph (a) or paragraph (b) of subsection (6) of the said section 4, or in the event of the services of a fireman being terminated under the said section 6, the fireman shall, if the decision of the Chief Fire Officer is reversed on appeal under section 8 or section 12 of this Act, be entitled to be re-engaged on terms and conditions not less favourable than

those subsisting immediately before the allegations against him were made and, in addition, he shall be entitled to be paid the remuneration and other emoluments to which he would have been entitled had the decision imposing the penalty or terminating his services not been made.

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**8. Appeals by firemen to Urban Fire Authorities—**

(1) Where any penalty (other than a caution) has been imposed on any fireman under section 4 of this Act, or the services of any fireman have been terminated under section 6 of this Act, and the fireman is dissatisfied with the decision, he may, within 7 days of being notified of the decision under subsection (7) of the said section 4 or under subsection (2) or subsection (3) of the said section 6, as the case may be, appeal to the Urban Fire Authority employing him by giving notice in writing to that effect to the Chief Fire Officer, who shall forthwith refer the notice to the authority:

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Provided that no fireman shall have any right of appeal in respect of any decision terminating his services on the grounds that he—

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(a) Has been certified by a medical practitioner to be mentally or physically unfit to perform his duties; or

(b) Has been sentenced to a term of imprisonment in respect of an offence punishable by imprisonment; or

(c) Has attained the age prescribed for the retirement of firemen by regulations made under this Part of this Act.

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(2) The Chairman of the Urban Fire Authority shall fix a time and date when and a place where the appeal shall be heard and shall cause the fireman and Chief Fire Officer to be notified accordingly. The date fixed for the hearing of the appeal shall not be later than 21 days from the date on which the fireman concerned gave notice of his appeal.

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(3) Every appeal under this section shall be by way of rehearing. At the hearing of any such appeal, the rules of natural justice shall be complied with and the authority shall hear all relevant evidence given and all relevant representations made by or on behalf of the fireman concerned and the Chief Fire Officer.

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(4) Subject to the provisions of this section, the hearing of any such appeal shall be in accordance with such procedure as may be prescribed by regulations made under this Part of this Act, or, in the event of there being no such regulations, 5 in accordance with such rules as the authority hearing the appeal determines.

(5) An appeal under this section shall not be heard in public, unless the authority makes a direction to the contrary. Such a direction may be made only with the consent of the 10 fireman concerned.

(6) At any appeal held under this section, the fireman concerned shall be entitled to be represented by counsel or agent.

(7) If the appellant fireman, or his counsel or agent, without reasonable justification fails to attend the hearing of the 15 appeal at the appointed time and place, the authority may proceed to determine the appeal in his absence.

(8) After the completion of the hearing of an appeal against any penalty imposed under section 4 of this Act or against the findings on which it was based, the authority shall 20 consider all the evidence given and representations made at the hearing and shall then either—

(a) Reverse the finding of the Chief Fire Officer in which case the penalty shall be quashed; or  
(b) Confirm or vary the finding of the Chief Fire Officer in 25 which case the authority may—

(i) Confirm the penalty imposed on the appellant fireman; or

(ii) In the case of an appeal against dismissal, subject to there being a suitable vacancy, appoint 30 the appellant to another position in its service to which the same salary or wage or a lower salary or wage is attached, or reprimand or severely reprimand him; or

(iii) In the case of an appeal against any other 35 penalty imposed under section 4 of this Act, impose on the appellant a penalty (being one of the penalties referred to in subsection (6) of the said section 4) less severe than that imposed on him by the Chief Fire Officer as aforesaid.

(9) After the completion of the hearing of an appeal 40 against the decision of a Chief Fire Officer under section 6 of this Act terminating the services of the appellant, the authority shall consider all the evidence given and representations made at the hearing and may then either confirm or

reverse the decision of the Chief Fire Officer or vary his decision by appointing the appellant to another position in its service to which the same salary or wage or a lower salary or wage is attached, subject to there being a suitable vacancy.

(10) The decision of a majority of the members of the authority present at any appeal under this section shall be the decision of the authority. 5

(11) As soon as practicable after reaching the decision referred to in subsection (8) or subsection (9) of this section, the authority shall, by notice in writing, inform the appellant fireman and the Chief Fire Officer of its decision and of the grounds on which it was based. 10

**9. Action to be taken where Chief Fire Officer or Deputy Chief Fire Officer alleged to be in breach of good conduct—**

(1) If at any time it is alleged that any Chief Fire Officer or Deputy Chief Fire Officer has committed a breach of good conduct, the Urban Fire Authority employing the officer shall, unless it is satisfied without further inquiry that there is no foundation for the allegations, serve on the officer within 3 days of the alleged breach a notice in writing setting out full details of the allegations made against him and requiring him to state whether he admits or denies the allegations and inviting him to give an explanation in respect of the allegations. 15 20

(2) Within 48 hours after the receipt of the notice referred to in subsection (1) of this section, or within such extended period as the authority may allow, the officer concerned may in writing inform the authority employing him whether he admits or denies the allegations and give any explanation he may wish to make in respect of the allegations. 25 30

(3) If the officer denies the allegations or fails to state in writing whether or not he admits or denies the allegations, or if the authority is not satisfied with the explanation (if any) given by him, the Chairman of the authority shall, as soon as practicable after the expiration of the period specified in subsection (2) of this section, fix a time and a date when and a place where the allegations will be inquired into, and shall cause the officer to be notified accordingly. The date fixed for the inquiry shall be not later than 14 days from the date on which the notice referred to in subsection (1) of this section was served on the officer concerned. 35 40

(4) If the officer, or the counsel or agent of the officer, attends at the time and place fixed under subsection (3) of this section, he shall be entitled to be heard. If both the officer and his counsel or agent (if any) fail to attend at the time and place so fixed, the authority may nevertheless proceed to determine the allegations made against the fireman.

(5) At the inquiry, the authority shall comply with the rules of natural justice. After hearing the allegations and any evidence given or representations made in support of the allegations and after giving the officer or his counsel or agent an opportunity to cross-examine the persons giving any such evidence or making any such representations the authority shall hear all evidence given and representations made by or on behalf of the officer. The authority may receive evidence at the inquiry any statement, document, information, or matter that it considers will assist it to determine whether or not the allegations are true, notwithstanding that the statement, document, information, or matter would not be admissible in a court of law.

(6) If a Chief Fire Officer or Deputy Chief Fire Officer has admitted that any allegations made against him under this section are true, or, in any case where allegations have been made against such an officer and he has not admitted that they are true, if the authority employing him, after holding an inquiry into the allegations, finds the allegations to be well founded, then subject to the rights of appeal conferred on Chief Fire Officers and Deputy Chief Fire Officers by this Part of this Act, the authority may—

(a) Peremptorily dismiss the officer from its service or require him to resign within such time as it may specify (in which case the officer shall be deemed to be dismissed unless he so resigns); or

(b) Reduce his rank (in which case his pay shall be correspondingly reduced) by not more than one grade for a period not exceeding 6 months; or

(c) Severely reprimand him; or

(d) Reprimand him; or

(e) Caution him.

(7) As soon as practicable after the conclusion of any inquiry under this section, the authority shall notify the officer concerned of its findings (including the grounds on which they are based) and of the penalty (if any) imposed

on him. If the authority imposes one of the penalties referred to in paragraphs (a) to (d) of subsection (6) of this section, the officer shall be entitled to written notification of the authority's findings and of the penalty so imposed.

(8) An inquiry under this section shall not be held in public, unless the authority makes a direction to the contrary. Such a direction may be made only with the consent of the Chief Fire Officer or Deputy Chief Fire Officer concerned. 5

(9) The authority may, pending determination of the allegations, suspend the employment of the officer against whom the allegations have been made. During the period of any such suspension the officer shall not be entitled to any remuneration or other emolument; but if the authority finds that the allegations are not well founded, or, if it finds that the allegations are well founded and its decision is subsequently reversed on appeal under section 12 of this Act, the officer shall be entitled to be paid the remuneration and other emoluments to which he would have been entitled had his employment not been suspended. 10 15

(10) The decision of a majority of the members of the authority present at any inquiry under this section shall be the decision of the authority. 20

(11) Subject to this section and to any regulations made under this Part of this Act, the authority may regulate its procedure at any such inquiry in such manner as it thinks fit. 25

**10. Effect of decision of Urban Fire Authority**—Every decision made by an authority under section 9 or section 11 of this Act shall take effect according to its tenor from the time at which it is notified to the officer affected by it or from such later time as the authority may specify; but, in the case of a penalty imposed on a Chief Fire Officer or Deputy Chief Fire Officer under paragraph (a) or paragraph (b) of subsection (6) of the said section 9, or if the services of such an officer are terminated under the said section 11, the officer shall, if the decision of the authority is reversed on appeal made under section 12 of this Act, be entitled to be re-engaged on the same or similar terms and conditions as those subsisting immediately before the allegations against him were made, and, in addition, he shall be entitled to be paid the remuneration and other emoluments to which he would have been entitled had the decision imposing the penalty not been made. 30 35 40

**11. Urban Fire Authority may terminate services of Chief Fire Officer etc. in certain cases—**(1) Without limiting the powers conferred on Urban Fire Authorities under section 9 of this Act, an Urban Fire Authority may direct that the services of the Chief Fire Officer or Deputy Chief Fire Officer shall be terminated at the expiration of such period of notice as may be prescribed in respect of the termination of services of Chief Fire Officers and Deputy Chief Fire Officers by the award governing the officer's conditions of employment.

(2) Where an authority has given a direction under subsection (1) of this section, it shall forthwith give notice in writing of its direction to the officer concerned, together with a statement of the grounds on which it was based; and subject to the rights of appeal conferred on Chief Fire Officers and Deputy Chief Fire Officers by this Part of this Act, on the expiration of the period of notice specified in the direction, the services of the officer shall thereupon be terminated.

(3) Notwithstanding the provisions of subsections (1) and (2) of this section, an Urban Fire Authority may, subject to the rights of appeal conferred on Chief Fire Officers and Deputy Chief Fire Officers by this Part of this Act, terminate forthwith the services of its Chief Fire Officer or Deputy Chief Fire Officer by serving on him a notice in writing in that behalf, together with a statement of the grounds on which the decision was based; but in that event he shall be paid the remuneration and other emoluments to which he would have been entitled had his services been terminated in accordance with the said subsections (1) and (2).

*Appeals from Decisions of Urban Fire Authorities*

**12. Right of appeal from decision of Urban Fire Authority—**(1) A fireman shall have a right of appeal in accordance with this section against—

(a) Any decision of an Urban Fire Authority under paragraph (b) of subsection (8) of section 8 of this Act confirming the decision of its Chief Fire Officer dismissing the fireman or reducing his rank or varying the decision of its Chief Fire Officer dismissing the fireman by appointing him to another position in its service to which the same salary or wage or a lower salary or wage is attached:

- (b) Any decision of an Urban Fire Authority under subsection (9) of the said section 8 confirming the decision of its Chief Fire Officer terminating the services of the fireman or varying the decision of its Chief Fire Officer as aforesaid by appointing the fireman to another position in its service to which the same salary or wage or a lower salary or wage is attached: 5
- (c) The appointment of any fireman, or any other person who is not a fireman, to any position (other than the position of Chief Fire Officer or Deputy Chief Fire Officer) on the permanent staff of an Urban Fire Authority, if the appointment of the appellant to that position would have resulted in his being promoted. 10 15
- (2) Notwithstanding the provisions of paragraph (c) of subsection (1) of this section,—
- (a) No fireman shall have any right of appeal against an appointment unless he was an applicant for the position filled by the appointment: 20
- (b) Any appeal under the said paragraph (c) shall be deemed to have lapsed if, before the appeal is determined, the appellant is promoted to an equivalent grade, or the appointment that is the subject of the appeal is cancelled, or if the fireman or other person appointed dies, or vacates or renounces or becomes incapable of taking up the position: 25
- (c) Any such appeal shall be deemed to have lapsed if, before the appeal is determined, the appellant resigns or retires or his employment as a fireman is terminated in any other manner: 30
- (d) In the case of any appointment to the position of Third Officer or Fourth Officer, no applicant for that position shall have any right of appeal against the appointment unless he was on the short list (if any) of applicants approved by the Fire Service Council. 35

(3) Every Chief Fire Officer or Deputy Chief Fire Officer shall have a right of appeal in accordance with this section against—

5 (a) Any penalty (not being a severe reprimand, a reprimand, or a caution) imposed on him under section 9 of this Act and against the findings on which the penalty was based:

(b) Any decision under section 11 of this Act terminating his services:

10 Provided that no such officer shall have any right of appeal in respect of any decision terminating his services on the grounds that he—

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15 (i) Has been certified by a medical practitioner to be mentally or physically unfit to perform his duties; or

(ii) Has been sentenced to a term of imprisonment in respect of an offence punishable by imprisonment; or

20 (iii) Has attained the age prescribed for the retirement of Chief Fire Officers or Deputy Chief Fire Officers by regulations made under this Part of this Act.

(4) If—

25 (a) Any fireman who has a right of appeal under subsection (1) of this section against the decision of an Urban Fire Authority: or

30 (b) Any Chief Fire Officer or Deputy Chief Fire Officer who has a right of appeal under subsection (3) of this section against the decision of an Urban Fire Authority—

35 is dissatisfied with that decision, he may, within 28 days after the date on which he was notified of the decision, appeal against it by giving notice in writing setting out the grounds of his dissatisfaction to the secretary of the authority.

(5) Where any such notice is given, the authority shall be the respondent to the appeal.

40 (6) The appellant shall serve a copy of the notice of appeal on the trade union of which he is a member or entitled to be a member not later than 48 hours after serving the original notice on the secretary of the authority employing him.

(7) Any notice of appeal given under this section may be withdrawn at any time before the hearing of the appeal.

45 (8) Nothing in any award shall prevent any appeal under this section.

**13. Constitution of appeal tribunal—**(1) On receipt of a notice of appeal given under section 12 of this Act, the secretary of the respondent authority shall immediately inform the Minister of Justice, who shall, subject to subsection (2) of this section, thereupon appoint an appeal tribunal consisting of three persons of whom— 5

- (a) One shall be a Magistrate exercising jurisdiction in or near the area controlled by the Urban Fire Authority;
- (b) One shall be a person nominated by the respondent authority; 10
- (c) In the case of an appeal by a fireman, one shall be a person nominated by the trade union of which the appellant is a member or entitled to be a member;
- (d) In the case of an appeal by a Chief Fire Officer or Deputy Chief Fire Officer, one shall be nominated by the New Zealand Executive Fire Officers' Society (Incorporated). 15

(2) No person who is a member of a respondent authority or of the fire brigade responsible to that authority may be appointed as a member of any such appeal tribunal. 20

(3) The Magistrate appointed under subsection (1) of this section shall be the chairman of the appeal tribunal.

**14. Magistrate to convene hearing of appeal—**As soon as practicable after the appeal tribunal has been constituted, the Magistrate shall fix a date and time when and a place where the appeal shall be heard, and shall cause the appellant and the authority to be given reasonable notice of the date, time, and place so fixed. 25

**15. Hearing of appeals by appeal tribunal—**(1) At the hearing of any appeal by the appeal tribunal, the quorum shall be two, of whom the Magistrate shall be one. If any nominated member of the tribunal fails to attend any such hearing the appeal shall be heard and determined in his absence. 30 35

(2) The appeal tribunal may adjourn the hearing of an appeal from time to time and from place to place.

(3) The appeal shall not be heard in public, unless the authority makes a direction to the contrary. Such a direction may be made only with the consent of the appellant. 40



(4) At any such appeal the appellant may himself appear and conduct his appeal in person, or may be represented by his counsel or agent; and the authority, as respondent, shall be represented by its Chairman or by counsel or some other person appointed by it for the purpose.

(5) If the appellant or his representative fails to appear at the hearing, the appeal tribunal may proceed with the hearing in his absence.

(6) At the hearing of any such appeal, the appeal tribunal shall hear all evidence tendered and representations made by or on behalf of the appellant and the respondent authority, which the tribunal considers relevant to the subject-matter of the appeal. After the presentation of the evidence and representations of the appellant, the respondent authority may give to the tribunal reasons for the decision appealed against. The tribunal may receive evidence notwithstanding that it would not be admissible in a court of law.

(7) Subject to the provisions of this Part of this Act, an appeal tribunal may regulate its procedure in hearing any appeal under this section in such manner as it thinks fit.

**16. Provisions of Commissions of Inquiry Act 1908 to apply to appeal tribunal**—On any appeal tribunal being constituted under section 12 of this Act, all the provisions of the Commissions of Inquiry Act 1908, except sections 2 and 4A, shall, so far as they are applicable and with the necessary modifications, apply to the tribunal as if it were a commission of inquiry appointed under that Act.

**17. Decisions of appeal tribunal**—(1) The decision of a majority of the members of an appeal tribunal (including the Magistrate) shall be the decision of the tribunal, but the Magistrate's decision shall be the decision of the tribunal in the event of the other members disagreeing with him.

(2) In deciding an appeal against any decision made by an Urban Fire Authority under section 9 or subsection (8) of section 8 of this Act, the appeal tribunal may either—

(a) Reverse the findings of the authority in which case any penalty imposed on the appellant shall be quashed;  
or

(b) Confirm or vary the findings of the authority, in which case the tribunal may—

(i) Confirm the penalty imposed on the appellant;  
or

(ii) In the case of an appeal against dismissal, subject to there being a suitable vacancy, order the respondent authority to appoint the appellant to another position in its service to which the same or a lower salary is attached, or severely reprimand or reprimand him; or 5

(iii) In the case of an appeal against any penalty other than dismissal, impose on the appellant a penalty (being one of the penalties referred to in subsection (6) of section 4 of this Act or subsection (6) of the said section 9) less severe than that imposed on him by the authority. 10

(3) In deciding an appeal against a decision made by an Urban Fire Authority under section 11 or subsection (9) of section 8 of this Act, the appeal tribunal may either confirm or reverse the decision appealed against or may vary the decision by ordering the authority, subject to there being a suitable vacancy, to appoint the appellant to another position in its service to which the same salary or wage or to which a lower salary or wage is attached. 15 20

(4) In deciding any appeal against an appointment by an Urban Fire Authority, the appeal tribunal may either—

(a) Disallow the appeal; or

(b) Allow the appeal, in which case the tribunal shall forthwith appoint the successful appellant to the position. 25

(5) Every decision of a tribunal under this section shall be in writing, signed by the Magistrate, and shall include a statement of the grounds on which it is based. The appellant and the respondent authority shall be entitled to a copy of the decision. 30

(6) The decision of a tribunal shall be binding on the appellant and on the respondent authority.

#### *Miscellaneous Provisions*

**18. Regulations for the purposes of this Part**—The Governor-General may from time to time by Order in Council make regulations, not inconsistent with this Part of this Act, for all or any of the following purposes: 35

(a) Prescribing the procedure to be followed in respect of any inquiry held under section 4 or section 9 of this Act: 40

(b) Prescribing the procedure to be followed in respect of any appeal held under section 8 of this Act:

- (c) Providing for the calling of witnesses and the taking of evidence at any such inquiry or hearing:
- (d) Prescribing the terms of service of Chief Fire Officers, Deputy Chief Fire Officers, and firemen that are not determined in any award governing their conditions of employment:
- (e) Prescribing the retiring ages of Chief Fire Officers, Deputy Chief Fire Officers, and firemen:
- (f) Providing for such matters as are contemplated by or necessary for giving full effect to this Part of this Act and for its due administration.

19. **Consequential amendment to principal Act**—Section 40 of the principal Act is hereby consequentially amended by inserting in subsection (2), before the words “Every Urban Fire Authority”, the words “Subject to the provisions of Part I of the Fire Services Amendment Act 1969”.

## PART II

### MISCELLANEOUS AMENDMENTS TO PRINCIPAL ACT

20. **Members of Urban Fire Authorities**—Section 23 of the principal Act (as amended by section 4 of the Fire Services Amendment Act 1967) is hereby further amended by omitting from the proviso to paragraph (b) of subsection (1) the word “six”, and substituting the word “five”.

25. **Increased honoraria for Chairmen of certain Urban Fire Authorities**—Section 47 of the principal Act is hereby amended by repealing subsection (5), and substituting the following subsection:

30 “(5) An Urban Fire Authority whose district includes the City of Auckland, Wellington, Christchurch, or Dunedin may include in any estimate such amount, not exceeding \$600, as may from time to time be approved by the Minister of Finance as an honorarium to be paid to the Chairman of the authority; and on the amount of an honorarium being approved by the Minister of Finance as aforesaid, the authority may forthwith  
35 pay the approved amount to its Chairman.”

**22. Regulations providing for the safety of persons in certain buildings**—(1) Section 84 of the principal Act (as amended by section 11 of the Fire Services Amendment Act 1967) is hereby further amended by omitting from paragraph (a) of subsection (2A) the words “wholly or principally for office, factory, hotel, or shop purposes, or for such other purposes as may be prescribed (being purposes which involve the presence of substantial numbers of persons)”, and substituting the words “for such purposes as may be prescribed in the regulations”. 5 10

(2) The said section 84 is hereby further amended by omitting from subsection (2B) (which subsection was inserted by section 11 of the Fire Services Amendment Act 1967) the words “or other disaster”.

**23. Service of notices**—The principal Act is hereby amended by inserting, after section 85, the following section: 15

“85A. Any notice to be given or served on any person for the purposes of this Act may be given or served—

“(a) By causing it to be delivered to that person personally; or 20

“(b) By causing it to be left at his usual or last known place of residence or business; or

“(c) By causing it to be sent by registered letter addressed to him at that place of residence or business.

“(2) Where any notice is sent to any person by registered letter as aforesaid, the notice shall be deemed to be given or served at the time when the letter would have been delivered in the ordinary course of post.” 25