

What did we do to enforce compliance?

Background

Prior to the setting up of the Compliance and Prosecution section QFRS officers were frustrated with non compliance as the only **enforcement** tool available at that time was a Supreme Court Injunction. **This** tool could only be used in **instances of grave** fire safety **breaches** and **in situations where a threat to life was present** . To obtain an injunction, the Commissioner would have to approve the **making of an application for** injunction. **The Crown Solicitor** would then **make the necessary application**. QFRS had the power to issue **Requisitions and** Notices however there was neither procedure governing that nor **were any** forms in place to **support an enforcement regime**.

Breaches such as **failure to produce** records of maintenance and staff training were not **sufficiently grave** to apply **an enforcement** process, therefore officers would **repeatedly** visit premises **attempting to have owners/occupiers of premises comply with their legislative obligations through consultation**. **This strategy met with quite limited success as it was generally perceived by the relevant sectors of the public receiving fire service attention in relation to matters of compliance that the fire service lacked both the means and the will to properly and effectively enforce compliance with fire safety legislation**.

In June 2000 a **person lit a** fire in a backpacker establishment in Childers. 15 backpackers lost their lives **in the resulting blaze**. **In the aftermath of this tragedy** a Building Fire Safety task force was set up and **recommended, as part of a whole raft of increased and improved fire safety measures, that Queensland Fire and Rescue Service implement a prosecution regime to enforce fire safety legislation in Queensland**.

As part of the machinery integral to that regime, the Compliance and Prosecution Section **came into being late in 2001**. , In August 2002 another fire, **apparently accidental, destroyed** a boarding house in Sandgate. 3 residents lost their **lives**.

Who's who in the Zoo

The section consists of:-

A Manager – Uniformed Officer **with the rank of Inspector**

2 full time **legal officers**

2 uniformed Station Officers

2 Administration staff.

Training

A 4 day live- in training course **has been** developed for Station Officers and above to provide them with a **grounding in the applicable legislation as well as** instruction **in interview techniques, methods of obtaining** evidence and **also in** court procedures. **Officers also receive tuition in methods of ascertaining how and when prosecutions through summons actions should be undertaken**.

Prior to attending the course officers are required to **undertake pre-course reading and also to** complete some pre - course assignments.

A one day refresher and update on changes are conducted throughout the state annually.

How did it work?

At first **QFRS adopted a somewhat tentative** approach to issuing Notices or fines as it was perceived by some **fire** officers that **the fire service was** becoming too **authoritarian. The view was held in some quarters of the fire service** that the public would see the **service** in a different light - **and not, it must be said – in a better light. Many firefighters valued the esteem in which they had been traditionally been held by the Queensland public and held serious concerns that the level of public acceptance which they had hitherto enjoyed would be rapidly and seriously eroded by what they perceived as a switch by the service from its traditional role of public protection to one of policing.**

Initially, there was some interference from some senior officers who would attempt to quash prosecution action - **apparently to avoid offending or otherwise “hurting” those being prosecuted. Unfortunately, it became necessary to** point out that **action taken to either halt or hinder a prosecution** could **and, if necessary, would,** be referred to the Crime and Misconduct Commission **as a perceived attempt** to pervert the course of justice. **This unpleasant but necessary action resulted in** an outstanding silence and the section was **subsequently** allowed to **proceed unhindered in its tasks.**

Over the last 5 years QFRS officers have realized what a valuable tool Notices etc are. It is explained during the **abovementioned** course that it is not necessary to go into a building **with** guns blazing and beat the owner or the occupier about the head. Rather, a consultative approach should be initiated in the first instance and the **relevant legislative provisions** explained to the m.e.g. if the **particular situation in question is** not life threatening it should be explained that a Notice will be issued requiring **an owner/occupier** to remedy areas of non compliance within a certain time **and that** if the work is not completed at the end of the time then a fine may be issued. Normally on the spot fines are issued as a result of non compliance with a notice. On the spot fines are issued immediately **to the operators of** licenced **premises such as** nightclubs for **breaches such** as blocked or locked exits or overcrowding.

On the spot fines are as a rule 10% of the maximum for an individual and 50% of the maximum for a Company.

Also, during the course, it is explained that times **set** for compliance must be realistic and this is achieved by negotiation with the owner or occupier.

It is becoming evident that buildings such as warehouses after **receiving building** approval are being used for high rack storage **rather than a permitted use under the**

particular approval and are not fitted with systems required by the Building Code of Australia *in respect of the illicit use*.

QFRS assesses buildings but it is normally only the shell of the building that is provided for assessment, also buildings are sold and the internal use of the building changes and not the Class.

Our Tools

Notices s104G

Notice by Commissioner under s104G – These notices list offences under the F & R Act and Building Fire Safety Regulation. Notices are issued identifying faults and requiring owners or occupiers to rectify *breaches of Part 9A of the Act or the Regulation ...* It is the officer's discretion as to what time frame for compliance is acceptable. This is usually negotiated. *Notices under section 104G are appellable through a nominated process provided under the Act.*

A list of outstanding Notices is generated each month and sent to *the various QFRS Regions responsible* to ensure that follow up occurs.

Infringements (On the spot fines).

Infringement Notices are issued for non compliance with a Notice and also can be issued on the spot for fire safety breaches, *For example*, a nightclub with a locked or blocked exit would incur an on the spot fine. The fine can either be paid or, *alternatively, the recipient of the infringement notice may* elect for a court hearing. Penalties range from \$75 to \$375 for individuals and from \$375 to \$ 3750 for a Company.

Requisitions by Commissioner - s69.

This is a powerful weapon and *is* used to *deal with breaches of fire safety legislation which cannot be dealt with through the use of a Notice under section 104G.*

QFRS use the *requisition option* to close buildings or *to force occupiers of premises* to reduce occupant numbers. *This option is also* used to *force an occupier of premises* to employ a security guard to patrol premises *where this strategy is seen as being necessary to ensure the health and safety of persons within the premises.* *Requisitions* are appellable in similar fashion to a Notice. *A Requisition, once issued, will remain in force until the tribunal hearing an appeal against the requisition reaches a decision.*

Section 104R (Supreme Court Injunctions)

This *section of the F&RS Act* provides *an avenue for the fire service to obtain an injunction from the Supreme Court of Queensland requiring an owner or occupier of premises to either take or refrain from an action seen by the fire service as posing a grave and unacceptable threat to life or premises.*

Injunctive relief of this type is seen by QFRS as very much a weapon of last resort and will only be resorted to when all other avenues have been to no avail.

The preliminary process in making an application for injunctive relief entails gathering evidence ***which is submitted in a memorandum to the Commissioner QFRS who is the officer bearing the responsibility of deciding whether seeking an injunction is warranted. Once the Commissioner is satisfied as to that, QFRS retains the Crown Solicitor to make the necessary application.***

The application is made to a Supreme Court Judge who decides if the ***situation*** warrants an Injunction. The judge, ***if satisfied that an injunction should be issued***, will normally grant ***an interim*** injunction – ***usually for seven days*** - on the premises. ***This allows the respondent owner/occupier to be heard as to the merits of the matter.***

A duty judge is available to hear any applications for injunctive relief for which it is necessary to apply outside of normal business hours.

It is usually possible to obtain an injunction quite swiftly – generally within hours of the need arising – and once issued, an injunction is effective immediately it is served upon the person/company to whom it is directed. Failure to comply with one or other of the terms of an injunction constitutes contempt of court which – in the case of an individual – is punishable by imprisonment.

Court Appearances

Uniformed officers are encouraged to attend court in uniform; this usually prompts the Judge or Magistrate to focus on fire safety issues. Even as observers in the court this shows that QFRS are interested in the case. (Blue shirt eye candy).

As at 1 July 2007 the Section has issued
3834 enforcement notices under s104G

1209 Infringement Notices

617 Requisitions

Completed 72 Prosecutions and lost 2 due to Magistrates and Judges Interpretation of Acts and Regulations, these losses once identified result in changes to definitions or wording in our legislation.

We have successfully applied for and were granted a Supreme Court Injunction, the building a two storey residential home was being used to accommodate 20 backpackers, as well as a shed that was divided in half. One half of the shed was full of combustible material such as furniture, mattresses, paint, and fuel.

The other half of the shed had beds for 6 people and was occupied by a male and female with a very young child.

A report was sent to the legal officers who then consulted the Commissioner, who gave approval to seek a Supreme Court Injunction which was granted and served on the owner within 24 hours.

The interim injunction required the owner to only occupy the premises with blood relatives or persons related by marriage.

The owner did not take up the offer to challenge the injunction and left the premises which were sold for overdue rates.

Excuses People give to escape Prosecution.

We have had a Statutory Declaration signed by a husband and wife stating that they were both deceased.

That they were unaware of the Legislation

Refusing to pick up their Registered mail (hoping it will go away)

Illness of the parties involved.

That they were squatters, even though they paid rent.

That they were all relatives or friends from different ethnic backgrounds and that QFRS were jealous because they had more friends than the inspecting officer.

