



Emergency Legislation Amendment Bill 2012

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Bill introduced, and read a first time and ordered to be printed on motion by the Hon. Michael Gallacher.

Second Reading

The Hon. MICHAEL GALLACHER (Minister for Police and Emergency Services, Minister for the Hunter, and Vice-President of the Executive Council) [3.39 p.m.]: I move:

That this bill be now read a second time.

The Emergency Legislation Amendment Bill 2012 seeks to amend the Fire Brigades Act 1989, the Rural Fires Act 1997, the State Emergency and Rescue Management Act 1989 and the State Emergency Service Act 1989, so as to enhance and strengthen the operation of this legislation. The key provisions of the bill seek to amend the Rural Fires Act 1997 to give police officers the same powers as NSW Rural Fire Service or Fire and Rescue NSW personnel to enter land for the purpose of investigating the cause or origin of a bushfire, and to amend the Rural Fires Act 1997 to provide for a power for authorised officers to request a person's full name and address in the context of issuing a penalty notice for an offence against the Act or Regulation. The Emergency Legislation Amendment Bill 2012 also seeks to amend the definition of "employee" in the State Emergency and Rescue Management Act 1989 to ensure volunteers working for emergency service organisations employed within the private sector are covered by existing anti-discrimination protections provided in that Act and to clarify the roles and responsibilities of each level of the emergency management committee in preparing for and responding to emergencies across the State.

I will now outline the provisions of the bill in greater detail. Most importantly, the Emergency Legislation Amendment Bill 2012 inserts a provision into the Rural Fires Act 1997 that will ensure that cause or origin investigations of fires can be lawfully conducted by police officers as well as fire investigators. Cause or origin investigations take place within the first 24 hours following the extinguishment of a fire for the purpose of preventing future fires and determining whether an indictable offence has been committed. However, where fires occur on land used only for residential purposes, lawful entry will require either the consent of the owner or occupier or the appropriate warrant.

The proposed amendment also reflects the objects of the Fire Scene Investigation Protocol signed in 2001 by the NSW Police Force, Fire and Rescue NSW—then the NSW Fire Brigades—and the NSW Rural Fire Service. This document sets out the operational responsibilities of the three agencies for extinguishing and investigating fires. The protocol notes that the NSW Police Force has responsibility for investigating the cause or origin of some fires by virtue of its obligations to investigate certain offences under the Crimes Act and by virtue of its obligation to conduct inquests and inquiries pursuant to the Coroners Act. The protocol states that personnel from the three agencies will work together or independently, as the nature or circumstances of the fire requires, for the purpose of investigating and determining the cause of the fire insofar as this is possible.

The Emergency Legislation Amendment Bill 2012 places New South Wales police officers on the same legal footing as Rural Fire Service personnel with regards to their right to enter fire-affected property without a warrant for 24 hours to undertake inspections and assist the Rural Fire Service on related safety matters. This power will enable police officers to ascertain whether there is any need to commence an investigation into an indictable offence. If so, the appropriate warrant will be sought under the provisions of the Law Enforcement (Powers and Responsibilities) Act 2002. Through the bill, a power will be included in the Fire Brigades Act 1989 to ensure that the Commissioners of Fire and Rescue NSW or the NSW Rural Fire Service may apply to an authorised officer for a search warrant in cases where the commissioner has reasonable belief that entry onto certain land is necessary for a cause or origin investigation.

Importantly, the bill also serves to rectify an issue identified by emergency services and local authorities relating

to the operation of the Rural Fires Act 1997, that even though a power existed under the Act to issue penalty notices for offences, no accompanying power existed to require persons to state their full name and residential address. The bill provides this power and an offence for non-compliance. It also provides that an authorised officer or police officer may request a person, in the context of issuing a penalty notice, to provide evidence of the correctness of name and address if the officer reasonably suspects the stated name or address is false. This amendment will help to ensure that penalty notices issued under the Rural Fires Act 1997 are correctly issued and can be properly enforced if they are not complied with.

The Emergency Legislation Amendment Bill 2012 also serves to make a number of amendments to the State Emergency and Rescue Management Act 1989. The majority of these amendments are minor. For example, through the bill the State Disaster Plan, or Displan as it is known, will be re-named the State Emergency Management Plan. As members may be aware, the object of Displan is to ensure the coordinated response to emergencies by all agencies that hold responsibilities and functions in emergencies. Changing the name of the plan will help reflect the current broadening of its role, as embodied by this bill. The bill will also serve to update other agency names and position titles. For example, references to "Fire Brigades" will be changed to "Fire and Rescue NSW".

From 1 March 2011 the former 18 emergency management districts were amalgamated into 11. The districts were renamed "regions" so as to reflect these amalgamations and ensure alignment with the regional boundaries of both the Department of Premier and Cabinet and the NSW Police Force. Also in 2011 the Public Sector Employment and Management (Departments) Order 2011 provided that all functions previously carried out by NSW Emergency Services would from then on be the role of the Ministry for Police and Emergency Services. Consequently, the Chief Executive Officer of the Ministry for Police and Emergency Services has assumed the role of State Emergency Recovery Controller.

The Ministry for Police and Emergency Services provides several operational capabilities, both to Government—through the NSW State Crisis Centre and State Emergency Operations Centre—and the community, through the facilities of the NSW Disaster Recovery. The Ministry's Chief Executive Officer, as the State Emergency Recovery Controller, is empowered to take over a recovery operation where the recovery need is sufficiently large and/or complex, as was the case with the floods New South Wales experienced earlier this year. The bill will ensure these changes are reflected in legislation. Other amendments seek to ensure that current emergency management structures and processes are accurately reflected in legislation. For example "functional area" is currently defined in the Act as "a category of services involved in the preparations for an emergency". "Functional areas" include agricultural and animal services, health services, public information services, transport services, and welfare services. The bill proposes to amend this definition to ensure it reflects that functional areas, in practice, are involved in not only preparations for an emergency but also prevention of, responses to, or recovery from, an emergency.

Through the Emergency Legislation Amendment Bill 2012, the energy and utility services functional area is also recognised in legislation for the first time. A key task of the State Emergency and Rescue Management Act 1989 is to clearly outline the membership and roles of and relationship between the three different levels of emergency management committees. Following a strategic review of this legislation, a number of changes to the functions of emergency management committees were recommended. The review determined that the committee functions currently provided for in legislation do not necessarily reflect the contemporary role of those committees in coordinating and facilitating emergency management activities in their respective jurisdictions. The bill seeks to rectify this and ensure that the nature of the work undertaken by emergency management committees and the relationships between each level of committee are appropriately reflected in the legislation.

For employees employed under Commonwealth legislation, the Fair Work Act 2009 provides an entitlement to be absent from employment for engaging in eligible community service activity including, under sections 108 and 109, an activity that involves dealing with an emergency or natural disaster. For abundant caution, to ensure that workers can undertake emergency service work without fearing victimisation from their employer the bill makes an amendment to the definition of "employee" in the State Emergency and Rescue Management Act 1989 to ensure volunteers working for emergency service organisations employed within the private sector are covered by existing anti-discrimination protections provided in that Act.

In response to an inquiry from Mr David Shoebridge, I can assure him and the House that the Parliamentary Counsel has confirmed the appropriateness of the ability of the Parliament to legislate in the way proposed by the bill. The membership of each level of emergency management committee will also be clarified through the bill. Consequential amendments to reflect changes in titles and agency names will also be made to the State Emergency Service Act 1989. The changes proposed through this bill are designed to ensure that emergency services legislation provides all agencies charged with responding to and investigating emergencies with the most effective support possible to carry out their key functions. I commend the bill to the House.