



New South Wales

Emergency Services Legislation Amendment Bill 2018

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are as follows:

- (a) to protect employees who take part in emergency operations from victimisation,
- (b) to expand the class of persons who can give directions to take safety measures,
- (c) to abolish the State Disasters Council and transfer its functions to the State Emergency Management Committee and to incorporate the State Rescue Board,
- (d) to update the membership of the State Emergency Management Committee,
- (e) to provide for the publishing of “state of emergency” orders on the internet,
- (f) to protect from personal liability certain persons executing the *State Emergency and Rescue Management Act 1989*,
- (g) to update requirements concerning the accreditation and reporting of rescue units,
- (h) to broaden the emergencies and emergency services organisations to which the *State Emergency and Rescue Management Act 1989* applies,
- (i) to update the functions of the NSW Rural Fire Service and the Commissioner of Fire and Rescue NSW to recognise their role in respect of emergencies other than fires,
- (j) to update a provision relating to the imposition of total fire bans to permit a ban to apply to part of a local government area and to provide a discretion as to how notice of a ban is to occur in order to take account of new forms of communication (including social media),
- (k) to provide a similar discretion in relation to notices that amend, cancel or suspend bush fire danger periods or fire permits,

- (l) to permit the Commissioner of the NSW Rural Fire Service to appoint the officers of rural fire brigades in certain circumstances,
- (m) to require bush fires to be reported to 000 rather than to local fire brigades,
- (n) to permit the taking of water without charge from any water source for certain purposes including fighting fires,
- (o) to permit the Commissioner of Fire and Rescue NSW to determine fees for the provision of non-core services where those fees are not otherwise prescribed,
- (p) to make further provision for the delegation of functions,
- (q) to update terminology, including renaming volunteer fire brigades as retained fire brigades and renaming controllers as commanders,
- (r) to rename the *Fire Brigades Act 1989* as the *Fire and Rescue NSW Act 1989*,
- (s) to make a number of minor statute law amendments.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act other than Schedule 1, which commences on 7 December 2018.

Schedule 1 Amendment of State Emergency and Rescue Management Act 1989 No 165

Schedule 1 [1] provides for the application of the *State Emergency and Rescue Management Act 1989* to additional agencies (including Surf Life Saving New South Wales) by including them within the Act's definition of *emergency services organisation*. **Schedule 1 [15]** exempts Surf Life Saving New South Wales from a requirement to notify the NSW Police Force of surf life-saving rescue incidents.

Schedule 1 [4] expands the definition of *emergency* to include an emergency arising from an occurrence that causes a failure of, or significant disruption to, an essential service or infrastructure.

Schedule 1 [7] and [45] abolish the State Disasters Council. **Schedule 1 [2], [5], [6], [31], [32] and [42]–[44]** make consequential amendments. **Schedule 1 [9]** confers functions (that were previously exercised by the State Disasters Council) on the State Emergency Management Committee.

Schedule 1 [8] includes the heads of certain emergency services organisations as members of the State Emergency Management Committee.

Schedule 1 [11] permits the Premier to publish on the internet an order declaring a state of emergency.

Schedule 1 [13] and [45] decorporatise the State Rescue Board.

Schedule 1 [16] and [17] require rescue units of the NSW Rural Fire Service, and rescue units principally concerned in the salvage of vessels, to be accredited by the Minister. **Schedule 1 [19]** requires the personnel register of a rescue unit to be provided to the State Rescue Board on request (rather than every 6 months).

Schedule 1 [21] applies provisions that protect employees who take part in emergency operations from victimisation to emergency operations carried out in a declared state of emergency unless the Premier orders that the provisions should not apply. **Schedule 1 [22]** makes a consequential amendment.

Schedule 1 [23]–[28] permit an authorised officer to give an order directing that Part 3A (Employment protection for volunteer emergency workers) of the *State Emergency and Rescue*

Management Act 1989 applies to emergency operations carried out in connection with a specified emergency. The order can remain in force for no more than 48 hours. An authorised officer is a Commissioner or Deputy Commissioner of the NSW Rural Fire Service or the State Emergency Service or the State Emergency Operations Controller or Deputy State Emergency Operations Controller. The Premier can revoke or revoke and replace the order at any time (an order of the Premier may remain in force for longer than 48 hours).

Schedule 1 [29] and [30] provide that the Minister for Emergency Services (the *Minister*), the State Emergency Operations Controller, senior police officers and police officers of a prescribed class (rather than only senior police officers) may direct the taking of safety measures in circumstances other than a declared state of emergency. **Schedule 1 [37]** provides that persons other than police officers may be so directed, and may enter premises in order to comply with such a direction. **Schedule 1 [12], [33]–[36] and [38]–[40]** make consequential amendments.

Schedule 1 [41] protects government sector employees and members (and members of staff) of emergency services organisations from personal liability for executing the *State Emergency and Rescue Management Act 1989*.

Schedule 1 [3] corrects a reference to an emergency services organisation.

Schedule 1 [10] updates a reference to an office consequential on the change of the name of that office by Schedule 4.

Schedule 1 [14] revises the titles of certain members of the State Rescue Board.

Schedule 1 [18] updates a cross-reference.

Schedule 1 [20] standardises terminology.

Schedule 2 Amendment of Rural Fires Act 1997 No 65

Schedule 2 [1] updates a note consequential on changes to definitions made by Schedule 1.

Schedule 2 [2] updates the functions of the NSW Rural Fire Service to recognise its role in respect of emergencies other than fires.

Schedule 2 [5] permits the Commissioner of the NSW Rural Fire Service (the *Commissioner*) to appoint officers for a rural fire brigade if the body or person that forms the brigade fails to do so.

Schedule 2 [7] provides for the delegation and subdelegation of the Commissioner's functions in relation to co-ordinating bush fire fighting. **Schedule 2 [6]** makes a consequential amendment.

Schedule 2 [8] provides that an occupier of land on which a fire is burning during the bush fire danger period must (if the occupier is unable to extinguish the fire) ensure that the fire is reported immediately to the 000 emergency telephone number. **Schedule 2 [9]** makes a consequential amendment.

Schedule 2 [10] provides that the Commissioner may modify the general bush fire danger period in respect of a local government area by order published in the Gazette. The order may also be published in any other manner approved in writing by the Minister for Emergency Services.

Schedule 2 [13] provides that notice of the cancellation of a fire permit by the Commissioner or the Commissioner of Fire and Rescue NSW (in circumstances where a notice cannot be given in writing directly to the permit holder because of weather conditions conducive to the outbreak and spread of bush fire) can be given in any manner that the relevant Commissioner considers appropriate.

Schedule 2 [14] substitutes a provision that authorised the making of a total fire ban order. The provision as amended clarifies that a total fire ban order may be subject to exemptions. It also permits a total fire ban order to apply in respect of part of a local government area and removes a requirement that notice of an order be published in a newspaper. The Commissioner will be able

to delegate the making of a total fire ban order to a senior executive officer of the NSW Rural Fire Service. **Schedule 2 [11]** makes a consequential amendment.

Schedule 2 [3], [4], [17] and [19] update cross references that are consequential on amendments (including renumbering) made to the *Environmental Planning and Assessment Act 1979*.

Schedule 2 [12] corrects typographical errors.

Schedule 2 [15], [16], [18], [20] and [21] make amendments consequential on the repeal and replacement of certain Acts and instruments.

Schedule 2 [22] and [23] repeal spent provisions.

Schedule 3 Amendment of Fire Brigades Act 1989 No 192

Schedule 3 [1], [3], [4] and [7] rename volunteer fire brigades as retained fire brigades.

Schedule 3 [2] changes the name of the *Fire Brigades Act 1989* to *Fire and Rescue NSW Act 1989*.

Schedule 3 [5] sets out the functions of the Commissioner of Fire and Rescue NSW. These consolidate existing functions and add functions that recognise the Commissioner's role in respect of emergencies other than fires and hazardous material incidents. **Schedule 3 [6] and [8]** make consequential amendments.

Schedule 3 [9] makes it clear that the officer in charge at a fire or hazardous material incident may without payment take and use any water from any source on any land for the purpose of dealing with that fire or incident.

Schedule 3 [10] permits the Commissioner of Fire and Rescue NSW to take and use water from any source on any land for the purpose of training or demonstration by a fire brigade, but only if the Commissioner does so by arrangement with the owner, occupier or person having control or management of the land.

Schedule 3 [11] provides that if the regulations do not prescribe a fee in respect of certain non-core services provided by the Commissioner of Fire and Rescue NSW, the fee for the service is to be determined by the Commissioner.

Schedule 4 Amendment of State Emergency Service Act 1989 No 164

Schedule 4 replaces the terms region, unit controller, local controller and region controller with the terms zone, unit commander, local commander and zone commander.

Schedule 5 Consequential amendment of other Acts and instruments

Schedule 5 amends a number of Acts and instruments consequential on certain amendments made in Schedules 3 and 4.



New South Wales

Emergency Services Legislation Amendment Bill 2018

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New South Wales

Emergency Services Legislation Amendment Bill 2018

No. , 2018

A Bill for

An Act to make miscellaneous amendments to various Acts that relate to emergency services and associated matters.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Emergency Services Legislation Amendment Act 2018*.

2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by subsection (2).
- (2) Schedule 1 commences on 7 December 2018.

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Schedule 1	Amendment of State Emergency and Rescue Management Act 1989 No 165	1
		2
[1] Section 3 Definitions		3
	Omit the definition of <i>emergency services organisation</i> from section 3 (1).	4
	Insert in alphabetical order:	5
	<i>emergency services organisation</i> means the following:	6
	(a) Ambulance Service of NSW,	7
	(b) Fire and Rescue NSW,	8
	(c) a fire brigade within the meaning of the <i>Fire and Rescue NSW Act 1989</i> ,	9
	(d) NSW Police Force,	10
	(e) NSW Rural Fire Service,	11
	(f) State Emergency Service,	12
	(g) Surf Life Saving New South Wales,	13
	(h) New South Wales Volunteer Rescue Association Inc,	14
	(i) Volunteer Marine Rescue NSW,	15
	(j) an agency that manages or controls an accredited rescue unit,	16
	(k) a non-government agency that is prescribed by the regulations for the purposes of this definition.	17
	<i>New South Wales Volunteer Rescue Association Inc</i> means NSW Volunteer Rescue Association Inc (ABN 68 767 393 968).	19
	<i>Surf Life Saving New South Wales</i> means Surf Life Saving New South Wales (ACN 138 025 573).	21
	<i>Volunteer Marine Rescue NSW</i> means Volunteer Marine Rescue NSW (ABN 98 138 078 092).	23
		24
[2] Section 3 (1), definition of “State Disasters Council”		25
	Omit the definition.	26
[3] Section 3 (1), definition of “State Emergency Service”		27
	Insert “NSW” after “means the”.	28
[4] Section 4 Definition of “emergency”		29
	Insert at the end of paragraph (b) of the definition of <i>emergency</i> in section 4 (1):	30
	or	31
	(c) causes a failure of, or a significant disruption to, an essential service or infrastructure,	32
		33
[5] Part 2, Division 1, Subdivision 1, heading		34
	Omit “and the State Disasters Council”.	35
[6] Section 10 Minister		36
	Omit section 10 (2).	37
[7] Section 11 State Disasters Council		38
	Omit the section.	39

[8] Section 14 State Emergency Management Committee	1
Insert after section 14 (2) (a1):	2
(a2) the chief executive of the Ambulance Service of NSW, and	3
(a3) the Commissioner of Fire and Rescue NSW, and	4
(a4) the Commissioner of Police, and	5
(a5) the Commissioner of the NSW Rural Fire Service, and	6
(a6) the Commissioner of the State Emergency Service, and	7
[9] Section 15 Functions of State Emergency Management Committee	8
Insert before section 15 (a):	9
(a1) to advise the Minister on all matters relating to the prevention of, preparation for, response to and recovery from emergencies (including the co-ordination of the activities of government and non-government agencies in connection with those matters),	10 11 12 13
[10] Section 32A Definitions	14
Omit “unit controller” from paragraph (c) of the definition of <i>emergency services officer</i> .	15
Insert instead “unit commander”.	16
[11] Section 34 Publication of declaration	17
Insert at the end of the section:	18
(2) The Premier may cause a copy of the relevant order to be published on the internet or any other electronic communications service.	19 20
[12] Section 37F Authority to enter premises	21
Omit section 37F (3). Insert instead:	22
(3) However, a police officer exercising a power to enter premises, or to take action on premises, must produce his or her warrant card if required to do so by the owner or occupier of the premises in lieu of an authority (unless the police officer is in uniform).	23 24 25 26
[13] Section 42 State Rescue Board	27
Omit section 42 (1). Insert instead:	28
(1) There is established by this Act a State Rescue Board of New South Wales.	29
[14] Section 43 Composition of Board	30
Omit section 43 (1) (f)–(g1). Insert instead:	31
(f) the chief executive of the Ambulance Service of NSW,	32
(g) the Commissioner of the New South Wales Volunteer Rescue Association Inc,	33 34
(g1) the Commissioner of Volunteer Marine Rescue NSW,	35
[15] Section 51 Emergency services organisations to notify police of rescue incidents	36
Omit section 51 (2). Insert instead:	37
(2) This section does not apply:	38
(a) if the organisation is aware that the incident has already been notified to a member of the NSW Police Force, or	39 40

	(b) to Surf Life Saving New South Wales in relation to an incident that only requires, or is likely to only require, surf life-saving.	1 2
[16]	Section 53 Offence to operate rescue unit or rescue vehicle without accreditation Insert “, the NSW Rural Fire Service” after “State Emergency Service” in section 53 (2) (a).	3 4
[17]	Section 53 (3) (b) Omit the paragraph.	5 6
[18]	Section 53 (3) (c) Omit “ <i>Mines Rescue Act 1994</i> ”. Insert instead “ <i>Coal Industry Act 2001</i> ”.	7 8
[19]	Section 57 Register of personnel of rescue units Omit “every 6 months thereafter” from section 57 (2). Insert instead “when requested to do so by the State Rescue Board”.	9 10 11
[20]	Section 60A Interpretation Omit “engaged in” from the definition of <i>emergency operations</i> in section 60A (1). Insert instead “carried out”.	12 13 14
[21]	Section 60AA Insert after section 60A:	15 16
	60AA Emergency operations to which this Part applies	17
	This Part applies to the following emergency operations:	18
	(a) emergency operations carried out in a part of the State in which a state of emergency exists until:	19 20
	(i) the end of that state of emergency, or	21
	(ii) the Premier, by order published in the Gazette or on the NSW legislation website, declares that this Part no longer applies,	22 23
	(b) emergency operations to which this Part applies because of an order in force under section 60D.	24 25
[22]	Section 60B Employees taking part in emergency operations protected from victimisation Omit “in emergency operations as a member of an emergency services organisation and the absence occurred while this Part applied to the operations (pursuant to an order of the Premier under this Part)”. Insert instead “, as a member of an emergency services organisation, in emergency operations to which this Part applies”.	26 27 28 29 30 31 32
[23]	Section 60D Order of Premier or authorised officer applying Part to emergency operations Insert “or an authorised officer” after “The Premier” in section 60D (1).	33 34 35
[24]	Section 60D (2) Insert “or authorised officer” after “the Premier”.	36 37

[25] Section 60D (3)	1
Omit “The Premier’s order”. Insert instead “An order”.	2
[26] Section 60D (4)	3
Omit “The Premier’s order”. Insert instead “An order made by the Premier”.	4
[27] Section 60D (4A)	5
Insert after section 60D (4):	6
(4A) An order made by an authorised officer remains in force for the period, not exceeding 48 hours, specified in the order (unless revoked earlier). Revocation is to be by a further order of the authorised officer or the Premier published in the Gazette or on the NSW legislation website.	7 8 9 10
[28] Section 60D (6)	11
Insert after section 60D (5):	12
(6) In this section:	13
<i>authorised officer</i> means any of the following:	14
(a) the Commissioner or a Deputy Commissioner of the NSW Rural Fire Service or the State Emergency Service,	15 16
(b) the State Emergency Operations Controller or Deputy State Emergency Operations Controller referred to in section 18.	17 18
[29] Sections 60KA (definition of “danger area”), 60L (1) and (1A), 61 (1), 61B (1) (c), 61D (1)–(3) and 62A (1) (b) and (c) (ii)	19 20
Omit “senior police officer” wherever occurring. Insert instead “directing officer”.	21
[30] Section 60KA Definitions	22
Insert in alphabetical order:	23
<i>directing officer</i> means:	24
(a) the Minister, or	25
(b) the State Emergency Operations Controller, or	26
(c) a police officer of or above the rank of sergeant, or	27
(d) a police officer of a class prescribed by the regulations for the purposes of this definition.	28 29
[31] Section 60KA, definition of “emergency or rescue management organisation”	30
Omit paragraph (a).	31
[32] Section 60KA, definition of “emergency or rescue management organisation”	32
Omit “paragraphs (a)–(e)” from paragraph (f). Insert instead “paragraphs (b)–(e)”.	33
[33] Section 60KA, definition of “senior police officer”	34
Omit the definition.	35
[34] Sections 60L (1) and (1A), 61 (1) and 62A (1) (b) and (c) (ii)	36
Omit “another police officer” wherever occurring. Insert instead “a police officer”.	37

[35] Section 61 Power to take other safety measures	1
Omit “a senior police officer” from section 61 (3).	2
Insert instead “the directing officer or a police officer”.	3
[36] Section 61 (5)	4
Omit “senior police officer”. Insert instead “directing officer or police officer”.	5
[37] Sections 61A, 61B (1) and 61C	6
Omit “A police officer” and “a police officer” wherever occurring.	7
Insert instead “A person” and “a person”, respectively.	8
[38] Section 61B (2)	9
Omit “the police officer”. Insert instead “the person”.	10
[39] Section 61D Use of force by police officers	11
Insert “by a police officer” after “Reasonable force may be used” in section 61D (1).	12
[40] Section 61E	13
Omit the section. Insert instead:	14
61E Authority to enter premises	15
(1) A power conferred to enter premises, or to take action on premises, may not be exercised unless the person proposing to exercise the power is in possession of an authority and produces the authority if required to do so by the owner or occupier of the premises.	16 17 18 19
(2) The authority must be a written authority that:	20
(a) states that it is issued under this Act, and	21
(b) gives the name of the person to whom it is issued, and	22
(c) describes the nature of the powers conferred and the source of the powers, and	23 24
(d) states the date (if any) on which it expires, and	25
(e) describes the kind of premises to which the power extends, and	26
(f) bears the signature of the directing officer or the police officer who issued the direction under section 61.	27 28
(3) However, a police officer exercising a power to enter premises, or to take action on premises, must produce his or her warrant card if required to do so by the owner or occupier of the premises in lieu of an authority (unless the police officer is in uniform).	29 30 31 32
[41] Section 62 Personal liability	33
Insert at the end of the section:	34
(2) A matter or thing done by a government sector employee, or by a member (or member of staff) of an emergency services organisation, does not, if the matter or thing was done in good faith for the purposes of executing this Act, subject the employee or member to any action, liability, claim or demand.	35 36 37 38

(3)	In this section:	1
	<i>government sector employee</i> means a person employed in a government sector agency (within the meaning of the <i>Government Sector Employment Act 2013</i>).	2 3 4
[42]	Section 63A Staff	5
	Omit section 63A (2) (a).	6
[43]	Schedule 2 Provisions relating to members and procedure of emergency management organisations	7 8
	Omit “(Sections 11 (5), 14 (5), 22 (5) and 28 (7))”.	9
	Insert instead “(Sections 14 (5), 22 (5) and 28 (7))”.	10
[44]	Schedule 2, clause 1, definition of “relevant organisation”	11
	Omit paragraph (a).	12
[45]	Schedule 4 Savings, transitional and other provisions	13
	Insert at the end of the Schedule, with appropriate Part and clause numbering:	14
Part	Provisions consequent on Emergency Services Legislation Amendment Act 2018	15 16
	Definition	17
	In this Part, <i>amending Act</i> means the <i>Emergency Services Legislation Amendment Act 2018</i> .	18 19
	Abolition of State Disasters Council	20
(1)	On the repeal of section 11 by the amending Act, the State Disasters Council is abolished.	21 22
(2)	The persons who were members of the State Disasters Council cease, on that abolition, to hold office as members and are not entitled to any remuneration or compensation because of the loss of that office.	23 24 25
	Decorporatisation of State Rescue Board	26
(1)	On the substitution of section 42 (1) by the amending Act, the State Rescue Board ceases to be a corporation constituted by this Act.	27 28
(2)	The assets, rights and liabilities of the State Rescue Board become, on that cessation, the assets, rights and liabilities of the Crown.	29 30
(3)	The persons who were members of the State Rescue Board become, on that cessation, members of the State Rescue Board established by this Act as amended by the amending Act.	31 32 33
(4)	In this clause:	34
	<i>assets</i> means any legal or equitable estate or interest (whether present or future, whether vested or contingent and whether personal or assignable) in real or personal property of any description (including money), and includes securities, choses in action and documents.	35 36 37 38
	<i>liabilities</i> means any liabilities, debts or obligations (whether present or future, whether vested or contingent and whether personal or assignable).	39 40

rights means any rights, powers, privileges or immunities (whether present or future, whether vested or contingent and whether personal or assignable).

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Schedule 2 Amendment of Rural Fires Act 1997 No 65

[1] Section 4 Definitions

Omit the definitions of *emergency* and *emergency services organisation* from the note to the section.

Insert instead:

emergency means an emergency due to an actual or imminent occurrence (such as fire, flood, storm, earthquake, explosion, terrorist act, accident, epidemic or warlike action) which:

- (a) endangers, or threatens to endanger, the safety or health of persons or animals in the State, or
- (b) destroys or damages, or threatens to destroy or damage, property in the State, or
- (c) causes a failure of, or a significant disruption to, an essential service or infrastructure,

being an emergency which requires a significant and co-ordinated response.

emergency services organisation means the following:

- (a) Ambulance Service of NSW,
- (b) Fire and Rescue NSW,
- (c) a fire brigade within the meaning of the *Fire and Rescue NSW Act 1989*,
- (d) NSW Police Force,
- (e) NSW Rural Fire Service,
- (f) State Emergency Service,
- (g) Surf Life Saving New South Wales,
- (h) New South Wales Volunteer Rescue Association Inc,
- (i) Volunteer Marine Rescue NSW,
- (j) an agency that manages or controls an accredited rescue unit,
- (k) a non-government agency that is prescribed by the regulations for the purposes of this definition.

[2] Section 9 Functions of Service

Omit section 9 (1). Insert instead:

- (1) The NSW Rural Fire Service has the following functions:
 - (a) to provide rural fire services for New South Wales,
 - (b) to issue public warnings about bush fires and bush fire threats in the State for the purpose of protecting life and property,
 - (c) to provide advisory services (whether within or outside the State) relating to fire fighting and other matters with respect to which it has expertise,
 - (d) as directed by the State Emergency Operations Controller, to deal with an emergency where no other agency has lawful authority to assume command of the emergency operation,
 - (e) to carry out, by accredited brigades, rescue operations allocated by the State Rescue Board,
 - (f) to assist the State Emergency Operations Controller to carry out emergency management functions relating to the prevention of,

preparation for and response to, and to assist the State Emergency Recovery Controller to carry out emergency management functions relating to the recovery from, emergencies in accordance with the <i>State Emergency and Rescue Management Act 1989</i> ,	1 2 3 4
(g) to assist, at their request, members of the NSW Police Force, Fire and Rescue NSW, the State Emergency Service or the Ambulance Service of NSW in dealing with any incident or emergency,	5 6 7
(h) to maintain effective liaison with all emergency services organisations,	8
(i) to carry out such other functions as may be assigned to it by or under this or any other Act, or by the State Emergency Operations Controller or the Minister,	9 10 11
(j) to do anything necessary for, or incidental to, the exercise of its functions.	12 13
[3] Section 14 Delegation by Commissioner	14
Omit “section 79BA” from section 14 (2) (c). Insert instead “section 4.14”.	15
[4] Section 14 (2) (d)	16
Omit “section 146”. Insert instead “section 10.3”.	17
[5] Section 18 Area of operations and officers of rural fire brigades	18
Insert at the end of the section:	19
(2) The Commissioner may appoint officers for the rural fire brigade if the body or person that forms the brigade fails to do so within the period prescribed by the regulations after being requested to do so by the Commissioner.	20 21 22
[6] Section 44 Commissioner’s responsibility	23
Omit section 44 (2).	24
[7] Section 45A	25
Insert after section 45:	26
45A Delegation of functions under Division	27
(1) The Commissioner may delegate the Commissioner’s functions under this Division (other than this power of delegation) to any person including an officer or member of a rural fire brigade, a person employed in Fire and Rescue NSW, a person employed in the Department of Industry or a person employed in the Office of Environment and Heritage.	28 29 30 31 32
(2) A delegate may subdelegate any function delegated to the delegate by the Commissioner, if authorised to do so by the Commissioner, by instrument in writing.	33 34 35
(3) A delegate cannot subdelegate a function to a person if the Commissioner does not have the power to delegate that function to the person.	36 37
(4) If the Commissioner delegates functions subject to conditions or limitations, any subdelegation by the delegate is taken to be subject to the same conditions and limitations, and any further conditions or limitations imposed by the delegate.	38 39 40 41

[8] Section 64 Occupiers to extinguish fires or notify fire fighting authorities	1
Omit section 64 (1) (b). Insert instead:	2
(b) if the occupier is unable without assistance to extinguish the fire and any practicable means of communication are available, ensure that the fire is reported immediately to the 000 emergency telephone number.	3 4 5
[9] Section 64 (2)	6
Omit the subsection.	7
[10] Section 82	8
Omit the section. Insert instead:	9
82 Local bush fire danger period	10
(1) The Commissioner may modify, in respect of all or part of a local government area, the bush fire danger period set out in section 81 by order published in the Gazette declaring:	11 12 13
(a) that there is no bush fire danger period in the area or part, or	14
(b) that a different period is the bush fire danger period for the area or part.	15
(2) An order may also be published in any other manner approved in writing by the Minister.	16 17
(3) An order may be made on the Commissioner's own initiative or on the recommendation of a Bush Fire Management Committee for the area.	18 19
(4) An order remains in force until whichever of the following occurs first:	20
(a) the end of the period specified in the order as the period for which it is in force,	21 22
(b) the revocation of the order by the Commissioner.	23
[11] Section 90 Duration of permits	24
Omit "direction prohibiting the lighting of fires" from section 90 (2).	25
Insert instead "total fire ban order".	26
[12] Section 91 Cancellation or suspension of permits	27
Omit "bushfires" wherever occurring in section 91 (2). Insert instead "bush fires".	28
[13] Section 91 (3)	29
Omit "(including, if no other means are practicable, by broadcast by a television or radio station transmitting to the area in which the land to which the permit relates is situated)".	30 31
[14] Section 99	32
Omit the section. Insert instead:	33
99 Total fire ban orders	34
(1) The Minister may, if the Minister is of the opinion that it is necessary or expedient in the interests of public safety to do so, by written order (a <i>total fire ban order</i>):	35 36 37
(a) prohibit the lighting, maintenance or use of any fire or class of fire in the open air for the period or periods specified in the order, and	38 39

- (b) require persons or classes of persons to take action specified in the order for the purposes of preventing the outbreak or the spread of any bush fire or for controlling or suppressing any bush fire. 1
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- (2) A total fire ban order is to identify the part or parts of the State to which the order applies (the *total fire ban area*) and, without limiting the manner in which the total fire ban area may be identified, the area may be identified by reference to a zone defined by the regulations. 4
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- (3) The Minister may grant exemptions from the requirements of a total fire ban order by: 8
9
- (a) setting out the exemptions in the order, or 10
- (b) by reference (in the order) to one or more standard exemptions that the Minister has caused to be published in the Gazette. 11
12
- (4) The Commissioner may also grant a person an exemption from the requirements of a total fire ban order by written notice to the person. 13
14
- (5) An exemption by the Commissioner may be granted in relation to a specified total fire ban order or to all total fire ban orders having effect during a specified period. 15
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- (6) The Commissioner may modify, suspend or revoke an exemption granted by the Commissioner at any time: 18
19
- (a) by written notice to the person, or 20
- (b) if the Commissioner is of the opinion that the weather conditions are conducive to the outbreak or spread of bush fires or that conditions conducive to the outbreak or spread of bush fires are imminent—orally or in such other manner as the Commissioner considers appropriate. 21
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- (7) An exemption under this section may be granted unconditionally or subject to conditions. 25
26
- (8) As soon as practicable after making a total fire ban order, the Minister is: 27
- (a) to cause notice of the order to be broadcast by a television or radio station transmitting to the total fire ban area, and 28
29
- (b) to cause a copy of the order to be published in the Gazette. 30
- (9) The Minister may cause notice of the order to be published in any other manner approved by the Minister. 31
32
- (10) The Minister may delegate any of the Minister’s functions under this section, other than this power of delegation, to: 33
34
- (a) the Commissioner, or 35
- (b) a senior executive officer of the NSW Rural Fire Service. 36
- (11) A person who fails to comply with a total fire ban order is guilty of an offence. Maximum penalty: imprisonment for 12 months or 50 penalty units (or both). 37
38
- (12) The provisions of this section have effect despite any other provision of this Act or any other Act or law. 39
40

[15] Section 100A Definitions	1
Omit the definition of <i>excluded land</i> from section 100A (1). Insert instead:	2
<i>excluded land</i> means the following:	3
(a) land in the coastal wetlands and littoral rainforests area within the meaning of <i>State Environmental Planning Policy (Coastal Management) 2018</i> ,	4
(b) any other land prescribed by the regulations.	5
[16] Section 100C Carrying out bush fire hazard reduction work	6
Omit “an approval, consent or other authorisation for the work made by the <i>Native Vegetation Act 2003</i> , the <i>Threatened Species Conservation Act 1995</i> ” from section 100C (4).	7
Insert instead “a licence, approval, consent or other authorisation for the work made by the <i>Biodiversity Conservation Act 2016</i> ”.	8
[17] Section 100J Commissioner may prepare draft codes	9
Omit “section 111” from section 100J (3) (b). Insert instead “section 5.5”.	10
[18] Section 100R Carrying out vegetation clearing work	11
Omit “an approval, consent or other authorisation for the work made by the <i>Native Vegetation Act 2003</i> ” from section 100R (3).	12
Insert instead “a licence, approval, consent or other authorisation for the work made by the <i>Biodiversity Conservation Act 2016</i> ”.	13
[19] Section 124A Application of Environmental Planning and Assessment Act 1979	14
Omit “An order under Division 2A or 3 of Part 6 of” from section 124A (3).	15
Insert instead “A development control order within the meaning of”.	16
[20] Section 124B Application of National Parks and Wildlife Act 1974	17
Omit section 124B (3).	18
[21] Section 124D Application of Biodiversity Conservation Act 2016 and Part 5A of Local Land Services Act 2013	19
Insert after section 124D (1):	20
(1A) Division 2 (Stop work orders) of Part 11 of the <i>Biodiversity Conservation Act 2016</i> does not apply to, or in respect of, the doing of any emergency fire fighting act.	21
[22] Section 136 Repeal of Bush Fires Act 1949	22
Omit the section.	23
[23] Section 139 Review of Act	24
Omit the section.	25

Schedule 3	Amendment of Fire Brigades Act 1989 No 192	1
[1] Long title		2
	Omit “volunteer fire brigades”. Insert instead “retained fire brigades”.	3
[2] Section 1 Name of Act		4
	Omit “ <i>Fire Brigades</i> ”. Insert instead “ <i>Fire and Rescue NSW</i> ”.	5
[3] Section 3 Definitions		6
	Omit the definition of <i>volunteer fire brigade</i> from section 3 (1). Insert in alphabetical order:	7
	<i>retained fire brigade</i> means an association of persons for which an approval as a retained fire brigade is in force under section 9, but does not include a rural fire brigade.	8 9 10
[4] Sections 3 (1) (definitions of “fire brigade” and “officer in charge”), 9, 10, 31 (1) (a) and (1A) (a), 71 (2) and 72 (2)		11 12
	Omit “volunteer fire brigade” wherever occurring. Insert instead “retained fire brigade”.	13
[5] Section 5A		14
	Insert after section 5:	15
5A General functions of Commissioner		16
(1)	It is the duty of the Commissioner to take all practicable measures for preventing and extinguishing fires and protecting and saving life and property in case of fire in any fire district.	17 18 19
(2)	It is the duty of the Commissioner to take all practicable measures:	20
(a)	for protecting and saving life and property endangered by hazardous material incidents, and	21 22
(b)	for confining or ending such an incident, and	23
(c)	for rendering the site of such an incident safe.	24
(3)	The Commissioner is authorised to take measures anywhere in the State for protecting persons from injury or death and property from damage, whether or not fire or a hazardous material incident is involved and, in the case of a fire, it does not matter whether or not the persons are, or the property is, within a fire district.	25 26 27 28 29
(4)	The Commissioner is also authorised to:	30
(a)	as directed by the State Emergency Operations Controller, deal with an emergency where no other agency has lawful authority to assume command of the emergency operation, and	31 32 33
(b)	carry out, by accredited brigades, rescue operations allocated by the State Rescue Board, and	34 35
(c)	assist the State Emergency Operations Controller to carry out emergency management functions relating to the prevention of, preparation for and response to, and to assist the State Emergency Recovery Controller to carry out emergency management functions relating to the recovery from, emergencies, in accordance with the <i>State Emergency and Rescue Management Act 1989</i> , and	36 37 38 39 40 41
(d)	assist, at their request, members of the NSW Police Force, the NSW Rural Fire Service, the NSW State Emergency Service or the	42 43

	Ambulance Service of NSW in dealing with any incident or emergency, and	1 2
	(e) maintain effective liaison with all emergency services organisations, and	3 4
	(f) carry out such other functions as may be assigned to the Commissioner by or under this or any other Act, or by the State Emergency Operations Controller or the Minister.	5 6 7
[6]	Sections 6 and 7	8
	Omit the sections.	9
[7]	Sections 8 (a), (b) and (d), 70 (1) and (2) (a), 71 (1) (b), 72 (1), 74 (1) and 85 (2) (d)	10
	Omit “volunteer fire brigades” wherever occurring. Insert instead “retained fire brigades”.	11
[8]	Sections 9 (1) (a) and 31 (1A)	12
	Omit “section 6 (2)” wherever occurring. Insert instead “section 5A (2)”.	13
[9]	Section 15 Use of water etc	14
	Omit section 15 (a). Insert instead:	15
	(a) take and use any water from any source on any land, and	16
[10]	Section 39	17
	Omit the section. Insert instead:	18
	39 Use of water for training and demonstration	19
	The Commissioner may, by arrangement with the owner or occupier or other person having control or management of land containing a water source, take and use, free of charge, water from that source for the purpose of training or demonstration by a fire brigade.	20 21 22 23
[11]	Section 42 Charges for other services	24
	Insert “or, if no amount is so prescribed, of such amount as the Commissioner thinks fit” after “in respect of the service performed” in section 42 (1).	25 26

Schedule 4 Amendment of State Emergency Service Act 1989 No 164

- [1] **Section 3 Definitions** 3
Omit the definitions of *local controller*, *region*, *region controller* and *unit controller* from section 3 (1). 4
Insert in alphabetical order: 5
local commander means a commander of SES units in a local government area appointed under section 17. 6
unit commander means a commander of an SES unit appointed under section 17A. 7
zone means a zone established under section 14. 8
zone commander means the commander appointed under section 16 for SES units in a zone. 9
- [2] **Section 14 Service zones** 10
Omit “regions”. Insert instead “zones”. 11
- [3] **Sections 16, 17 (3), 17A (2), 17C (1)–(3), 17D (2) and (3), 18AA (1) (b) and (4) (b), 21 (1) and 24ZA (1) (d)** 12
Omit “region controller” wherever occurring. Insert instead “zone commander”. 13
- [4] **Sections 16 (1) and 17D (1)** 14
Omit “for a region” wherever occurring. Insert instead “for a zone”. 15
- [5] **Sections 16 (2) and 17C (1) and (2)** 16
Omit “relevant region” wherever occurring. Insert instead “relevant zone”. 17
- [6] **Sections 17 (1) and (3)–(5), 17A (2) and (3), 17B, 17C (1) and (4), 18AA (1) (b) and (4) (b), 21 (1) and 24ZA (1) (d)** 18
Omit “local controller” wherever occurring. Insert instead “local commander”. 19
- [7] **Sections 17A, 17B, 17C (2) and (4), 18AA (1) (b) and (4) (b), 18A (definition of “senior emergency officer”), 24ZA (1) (d) and 28A (1)** 20
Omit “unit controller” wherever occurring. Insert instead “unit commander”. 21
- [8] **Section 17D Zone headquarters unit** 22
Omit “a *region headquarters unit*” from section 17D (2). 23
Insert instead “a *zone headquarters unit*”. 24
- [9] **Section 17D (2) (a)** 25
Omit “for the region”. Insert instead “for the zone”. 26
- [10] **Section 17D (3)** 27
Omit “a region headquarters unit”. Insert instead “a zone headquarters unit”. 28

Schedule 5 Consequential amendment of other Acts and instruments

5.1 Amendments to update references to Fire Brigades Act 1989

References to Fire Brigades Act 1989

Omit “*Fire Brigades Act 1989*” wherever occurring in any provision of an Act or instrument set out in the table to this Subschedule.

Insert instead “*Fire and Rescue NSW Act 1989*”.

Act or instrument	Provision
<i>Building Products (Safety) Act 2017</i> No 69	section 75 (1) (e)
<i>Coroners Act 2009</i> No 41	section 32 (8), definition of authorised public official
<i>Crimes Act 1900</i> No 40	section 203D, definition of firefighter
<i>Emergency Services Levy Act 2017</i> No 32	sections 3 (1), definition of former emergency services funding scheme and 23 (a)
<i>Emergency Services Levy Insurance Monitor Act 2016</i> No 23	sections 3 (1), definitions of emergency services funding scheme and emergency services levy winding up arrangements , 31C (4) (a) and 71 (1)
<i>Environmental Planning and Assessment Act 1979</i> No 203	section 9.35 (1) (d)
<i>Environmentally Hazardous Chemicals Act 1985</i> No 14	clause 2 (g) of Schedule 1
<i>Fire and Emergency Services Levy Act 2017</i> No 9	section 37 (b)
<i>Fire Brigades Regulation 2014</i>	clause 3 (1), definition of the Act
<i>Fire Services Joint Standing Committee Act 1998</i> No 18	section 5 (2), definition of fire district
<i>First State Superannuation Act 1992</i> No 100	section 14 (5), definition of firefighter
<i>Government Sector Employment Act 2013</i> No 40	Part 2 of Schedule 1
<i>Heavy Vehicle (Adoption of National Law) Act 2013</i> No 42	section 203A (2) (b) in Schedule 1.2 [4] and section 265 (2) (b) in Schedule 1.2 [8]
<i>Law Enforcement (Powers and Responsibilities) Act 2002</i> No 103	Schedule 2
<i>Local Government Act 1993</i> No 30	note to section 22
<i>National Parks and Wildlife Act 1974</i> No 80	section 139 (1)
<i>Rural Fires Act 1997</i> No 65	notes to Part 1 and section 6 (2), sections 33D (3) and 66 (6) (a) and the definitions of fire brigade and fire district in the Dictionary
<i>State Authorities Non-contributory Superannuation Act 1987</i> No 212	section 27AE, definition of firefighter
<i>State Authorities Superannuation Act 1987</i> No 211	section 46AF, definition of firefighter
<i>Taxation Administration Act 1996</i> No 97	note to section 4

Act or instrument	Provision	
<i>Valuation of Land Act 1916</i> No 2	section 67	
<i>Water Management Act 2000</i> No 92	section 392 (4) (a)	
<i>Work Health and Safety Regulation 2017</i>	clause 702 (j)	
<i>Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987</i> No 83	section 18 (1), definition of fire district	
<i>Workplace Injury Management and Workers Compensation Act 1998</i> No 86	clause 13 (1) (a) of Schedule 1	
<hr/>		
5.2 First State Superannuation Act 1992 No 100		1
Section 14 Trust deed to continue previous firefighter disability arrangements		2
Omit “volunteer fire brigade” from paragraph (b) of the definition of firefighter in section 14 (5).		3
Insert instead “retained fire brigade”.		4
		5
5.3 Heavy Vehicle (Adoption of National Law) Act 2013 No 42		6
[1] Schedule 1.2 [4]		7
Omit “volunteer fire brigade” from section 203A (2) (b).		8
Insert instead “retained fire brigade”.		9
[2] Schedule 1.2 [8]		10
Omit “volunteer fire brigade” from section 265 (2) (b).		11
Insert instead “retained fire brigade”.		12
5.4 Local Government Act 1993 No 30		13
Section 22 Other functions		14
Omit “local controller” from the note. Insert instead “local commander”.		15
5.5 State Authorities Non-contributory Superannuation Act 1987 No 212		16
Section 27AE Definitions		17
Omit “volunteer fire brigade” from paragraph (b) of the definition of firefighter .		18
Insert instead “retained fire brigade”.		19
5.6 State Authorities Superannuation Act 1987 No 211		20
Section 46AF Definitions		21
Omit “volunteer fire brigade” from paragraph (b) of the definition of firefighter .		22
Insert instead “retained fire brigade”.		23

5.7 Workplace Injury Management and Workers Compensation Act 1998	1
No 86	2
Schedule 1 Deemed employment of workers	3
Omit “volunteer fire brigade” from clause 13 (1) (a) (i).	4
Insert instead “retained fire brigade”.	5