



New South Wales

NSW Reconstruction Authority Bill 2022

Explanatory note

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

Overview of Bill

The object of this Bill is to establish the NSW Reconstruction Authority to facilitate prevention, preparedness, recovery, reconstruction and adaptation for the impact of disasters in NSW, to improve resilience for potential disasters and to provide for the Authority's functions and powers.

Outline of provisions

Part 1 Preliminary

Division 1 sets out the name, also called the short title, of the proposed Act and provides for the commencement of the proposed Act. The proposed Division provides that the primary object of the proposed Act is to promote the resilience of the community to the impact of disasters in New South Wales. The proposed Act achieves the primary object by establishing the NSW Reconstruction Authority (the *Authority*).

Division 2 provides for the Dictionary in the proposed Act, Schedule 4 to define certain words and expressions used in the proposed Act. Proposed section 6 defines *disaster* for the proposed Act.

Part 2 NSW Reconstruction Authority

Division 1 establishes the NSW Reconstruction Authority as a corporation and a NSW Government agency subject to the control and direction of the Minister.

Division 2 provides for the functions and powers of the Authority. The functions of the Authority include disaster prevention and preparedness, and reconstruction and recovery following

disasters. The powers of the Authority include the power to carry out development on certain land in particular circumstances and the power to direct a government agency, a State owned corporation, a local council or a person prescribed by the regulations (a *relevant entity*) to take particular actions in certain circumstances, with a maximum penalty of 200 penalty units for failing to comply with a direction. The Authority may work in cooperation with other government agencies and other persons and bodies if the Authority thinks it appropriate and may delegate the exercise of a function of the Authority to certain persons.

Division 3 provides for the staff of the Authority, which includes a chief executive officer. **Division 4** provides the particulars of the role, functions and delegation powers of the chief executive officer of the Authority.

Division 5 provides that the staff of the Authority are to be employed in the Public Service under the *Government Sector Employment Act 2013* to enable the Authority to exercise its functions.

Division 6 provides the chief executive officer may arrange for alternative staffing, facilities and other resources from a Public Service agency or a public or local authority.

Division 7 establishes in the Special Deposits Account a NSW Reconstruction Authority Fund (the *Fund*) to be administered by the Authority and sets out the particulars of amounts that must be paid into and from the Fund. The Treasurer, with the concurrence of the Minister, may authorise additional payments to be made to the Authority from the Consolidated Fund under the *Constitution Act 1902*, section 39 in certain circumstances to meet any exigencies of the Authority.

Part 3 NSW Reconstruction Authority Advisory Board

Division 1 establishes the NSW Reconstruction Authority Advisory Board (the *Advisory Board*) and provides the functions of the Advisory Board, including to provide advice and make recommendations to the chief executive officer of the Authority.

Divisions 2 and 3 provide for the membership of the Advisory Board, including the Chairperson of the Advisory Board, and the conditions of appointment of a member of the Advisory Board.

Division 4 requires the Chairperson of the Advisory Board to give the Minister a report each quarter about the exercise of the Authority's functions.

Part 4 State disaster mitigation plan and disaster adaptation plans

Division 1 requires the Authority to have a disaster mitigation plan (a *State disaster mitigation plan*) that is approved by the Minister to provide guidance about the mitigation of disasters across the State. The proposed Division sets out the purpose of a State disaster mitigation plan and matters the plan must include. The Authority must review and update a State disaster mitigation plan at least once every 5 years or as otherwise directed by the Minister. The Authority is required to prepare a report about the implementation of a State disaster mitigation plan within 5 years of the commencement of the proposed Division.

Division 2 provides that the Authority may prepare a disaster adaptation plan or require a relevant entity to prepare a disaster adaptation plan, provides for the content of a disaster adaptation plan, including mandatory particulars, and provides that the Authority may issue guidelines about disaster adaptation plans and sets out matters the guidelines may provide for.

Division 3 requires certain entities to have regard to a State disaster mitigation plan and any relevant disaster adaptation plan in exercising certain functions.

Part 5 Declaration of declared projects, reconstruction areas and disaster prevention areas

Part 5 provides that the Minister may declare the following by notice published in the Gazette—

- (a) a project for proposed development to be a declared project,

- (b) a part of the State to be a reconstruction area,
- (c) a part of the State to be a disaster prevention area.

The proposed Part also sets out the matters to be established before the Minister makes a declaration under the proposed Part, and provides that the notice for the declaration may specify that an Act or statutory instrument does not apply in relation to the declared project, reconstruction area or disaster prevention area.

Part 6 Declared projects, reconstruction areas and disaster prevention areas

Division 1 provides that proposed Part 6 applies if the Minister makes a declaration under proposed Part 5 and that proposed Part 6 applies despite any other Act or law. Certain terms are also defined for the proposed Part.

Division 2 provides for the functions of the Authority in relation to declared projects, reconstruction areas and disaster prevention areas. The power of the Authority to acquire land in relation to a declared project, reconstruction area and disaster prevention area is established. The proposed Division provides discretionary functions the Authority has in relation to land vested in the Authority, land within a reconstruction area or disaster prevention area or land with the consent of the person in whom it is vested. The Authority may sell, lease, exchange or otherwise deal with, dispose of or grant easements or rights-of-way for land vested in the Authority with the approval of and subject to terms and conditions decided by the Minister. The Authority may, with the concurrence of the Minister administering the *Crown Land Management Act 2016*, surrender land vested in the Authority to the Crown by notice published in the Gazette. For the *Public Works and Procurement Act 1912*, the Authority is taken to be the Constructing Authority and the acquisition of land under proposed section 45(a) is to be taken to be for an authorised work.

Division 3 provides that the Authority may give a decision-maker, as defined by the proposed Part, a notice to decide that requires the decision-maker to make a particular decision within a certain period, and sets out the mandatory particulars of the notice.

Division 4 provides that the Authority may give a decision-maker, as defined by the proposed Part, a progression notice that requires the decision-maker to undertake administrative processes required to complete certain processes within a certain period, and sets out the mandatory particulars of the notice.

Division 5 provides that the Authority may, with the approval of the Minister, give a decision-maker, as defined by the proposed Part, and particular applicants a step-in notice. The step-in notice advises the decision-maker and applicants that the Authority is to make an assessment and decision about certain decisions or processes under the proposed Division. The proposed Division sets out procedural aspects for the giving of the notice, including the matters the Minister must be satisfied of before giving the notice, the particulars of the notice and when the notice may be given. The decision-maker must give the Authority all reasonable assistance or materials the Authority requires to act under the proposed Division. The Authority, after making an assessment about the decision or process the subject of the notice, may make the decision or undertake the process, send back the decision or process, with or without conditions, to the decision-maker, or decide aspects of the decision and send back undecided aspects of the decision, with or without conditions, to the decision-maker.

Division 6 provides that the Authority is not required to consult with anyone before giving a progression notice or a notice to decide.

Part 7 Additional step-in functions and powers of Authority

Division 1 provides that the Minister may make an order (a *project authorisation order*) to—

- (a) grant certain step-in functions to the Authority, or
- (b) authorise the Authority to carry out a project specified in the order, or

- (c) declare the Authority is responsible for a project that is carried out by another government agency, or
- (d) transfer to the Authority certain assets, rights and liabilities of another government agency in relation to a declaration under paragraph (c), in relation to proposed section 66(1)(a).

The Minister may make an order published in the Gazette to transfer certain assets, rights or liabilities from the Authority, that the Authority was transferred by an earlier order under the proposed Division, to another government agency in certain circumstances. Certain terms are also defined for the proposed Part.

Division 2 provides that the Minister may authorise the undertaking of development if the chief executive officer requests the authorisation be given in certain circumstances and the authorisation is given during a state of emergency under the *State Emergency and Rescue Management Act 1989* or in relation to a declared project, reconstruction area or disaster prevention area. Ministerial authorisation may only be given if the Minister is satisfied the giving of the authorisation is necessary to protect the safety and welfare of members of the public in certain circumstances. The proposed Division provides that a Ministerial authorisation under the proposed Division has effect despite certain other Acts or statutory instruments and that the authorisation remains in force for the period specified in the authorisation, unless earlier revoked.

Part 8 Investigation and related powers

Part 8 provides for the following matters—

- (a) that the chief executive officer may appoint persons as authorised officers,
- (b) the purposes for which powers of an authorised officer may be exercised,
- (c) the functions of an authorised officer after entering land,
- (d) a requirement for an authorised officer to do as little damage as possible in the exercise of a function under the Part.

Part 8 also provides, in proposed section 76, that an authorised officer may, by written notice, require a relevant entity or other person to give certain information to the Authority, with a maximum penalty of 200 penalty units for failing to comply with the notice.

Part 9 Offences and legal proceedings

Part 9 makes the following an offence —

- (a) disclosing information obtained in the administration of the proposed Act except in certain circumstances, with a maximum penalty of 20 penalty units for an individual or, otherwise, 100 penalty units,
- (b) through association with the Authority—
 - (i) using certain information obtained that is not generally known to gain advantage in dealings involving land, with a maximum penalty of 40 penalty units for an individual or, otherwise, 200 penalty units, or
 - (ii) influencing proposals made or to be made by the Authority for the purpose of gaining advantage for the person or another person, with a maximum penalty for an individual of 40 penalty units, or, otherwise, 200 penalty units,
- (c) stating false or misleading information for the purpose of the proposed Act, with a maximum penalty of 40 penalty units for an individual, or, otherwise, 200 penalty units,
- (d) giving the Authority false or misleading documents for the purpose of the proposed Act, with a maximum penalty of 40 penalty units for an individual, or, otherwise, 200 penalty units,
- (e) hindering, resisting, or attempting to hinder or resist, or threatening a person exercising functions under the proposed Act, with a maximum penalty of 20 penalty units for an individual, or, otherwise, 100 penalty units.

Proceedings for an offence under the proposed Act or the regulations may be dealt with summarily by the Local Court and must commence within 2 years after the commission of the offence.

Part 10 Miscellaneous

Part 10 contains various provisions relating to the general operation of the proposed Act, including provisions relating to the following—

- (a) fees payable for certain actions performed by the Minister, the Authority or the chief executive officer or for a service or action prescribed by the regulations,
- (b) the protection of the following from liability when exercising a function under the proposed Act in good faith—
 - (i) the chief executive officer,
 - (ii) a member of the Advisory Board,
 - (iii) a member of the Authority's staff,
 - (iv) a person acting under the direction of a person referred to in paragraphs (i)–(iii),
- (c) requirements of the Authority to provide information and documents to the Minister,
- (d) the power of the Minister to delegate a function of the Minister under the proposed Act,
- (e) the requirement of relevant entities to comply with the Minister's directions,
- (f) the clarification that a decision made by the Minister under the proposed Act is not an administratively reviewable decision for the *Administrative Decisions Review Act 1997*,
- (g) the power to make regulations.

Schedule 1 Constitution and procedure of Advisory Board

Schedule 1 provides for the membership and procedure of the Advisory Board established under the proposed Act, Part 3. The procedures of the Board include procedures requiring the disclosure of a member's direct or indirect pecuniary interest in a matter considered by the Board that appears to raise a conflict of interest.

Schedule 2 Transfer of assets, rights and liabilities

Schedule 2 makes provision for the transfer of assets, right and liabilities for a project authorisation order or a project divesting order.

Schedule 3 Savings, transitional and other provisions

Schedule 3 contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

Schedule 4 Dictionary

Schedule 4 defines certain words and expressions used in the proposed Act.

Schedule 5 Amendment of Acts

Schedule 5.1[1] provides that the relevant strategic planning authority under the *Environmental Planning and Assessment Act 1979*, section 3.1(1) is to have regard to the State disaster mitigation plan when preparing a draft regional strategic plan.

Schedule 5.1[2] provides that the relevant strategic planning authority under the *Environmental Planning and Assessment Act 1979*, section 3.1(1) is to have regard to the State disaster mitigation plan when preparing a draft district strategic plan.

Schedule 5.1[3] amends the *Environmental Planning and Assessment Act 1979* to provide that an amending environmental planning instrument may be made without compliance relating to the conditions precedent to the making of the instrument if the instrument deals with matters the Minister considers necessary to give effect to the proposed Act. **Schedule 5.1[4]** makes a consequential amendment.

Schedule 5.2 inserts the NSW Reconstruction Authority into the *Government Sector Employment Act 2013* as a separate public service agency and provides that the chief executive officer of the Authority is the head of the Authority.

Schedule 5.3[1] amends the *State Emergency and Rescue Management Act 1989* to provide for the chief executive officer of the NSW Reconstruction Authority to be the State Emergency Recovery Controller, unless a senior executive of the Authority or a NSW Police Force senior executive is designated. The amendment also provides that an employee of the NSW Reconstruction Authority is to be the Deputy State Emergency Recovery Controller

Schedule 5.3[2] inserts definitions of the *NSW Reconstruction Authority* and the *chief executive officer*, of the NSW Reconstruction Authority, in the *State Emergency and Rescue Management Act 1989*, sections 20A and 20B.

Schedule 5.3[3] amends the *State Emergency and Rescue Management Act 1989* to provide that to the extent of any inconsistency between a direction given by the State Emergency Recovery Controller exercising functions under that Act and a direction given by the NSW Reconstruction Authority or the chief executive of the NSW Reconstruction Authority, the direction given by the State Emergency Recovery Controller prevails.