

# ESSENTIAL SERVICES ACT 1988 No. 41

NEW SOUTH WALES



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**ESSENTIAL SERVICES ACT 1988 No. 41**

NEW SOUTH WALES



**Act No. 41, 1988**

An Act to protect the community from disruption to essential services; and for related purposes. [Assented to 9 August 1988]

**The Legislature of New South Wales enacts:****PART 1—PRELIMINARY****Short title**

1. This Act may be cited as the Essential Services Act 1988.

**Commencement**

2. This Act commences on the date of assent.

**Definitions**

3. (1) In this Act—

“award” has the same meaning as in the Industrial Arbitration Act 1940;  
“essential service” means a service that is an essential service by virtue of section 4;

“industrial agreement” has the same meaning as in the Industrial Arbitration Act 1940;

“industrial matter” has the same meaning as in the Industrial Arbitration Act 1940;

“industrial registrar” means the industrial registrar appointed under the Industrial Arbitration Act 1940;

“place” includes land, road, building, structure, work, mine, vehicle and vessel;

“property” includes undertaking, equipment, goods, vehicles, vessels, articles and things of any kind;

“union” means an industrial union registered as an industrial union under the Industrial Arbitration Act 1940.

(2) In this Act, a reference to the provision of an essential service includes a reference to the conduct, performance, maintenance, supply and distribution of an essential service.

(3) In this Act, a reference to the community includes a reference to any part of the community.

- (4) In this Act—

(a) a reference to a function includes a reference to a power, authority and duty; and

(b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

**Essential services**

4. (1) For the purposes of this Act, a service is an essential service if it consists of any of the following:



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- (a) the production, supply or distribution of any form of energy, power or fuel or of energy, power or fuel resources;
- (b) the public transportation of persons or freight;
- (c) the provision of fire-fighting services;
- (d) the provision of public health services (including hospital or medical services);
- (e) the provision of ambulance services;
- (f) the production, supply or distribution of pharmaceutical products;
- (g) the provision of garbage, sanitary cleaning or sewerage services;
- (h) the supply or distribution of water;
- (i) the conduct of a welfare institution;
- (j) the conduct of a prison;
- (k) a service declared to be an essential service under subsection (2);
- (l) a service comprising the supply of goods or services necessary for providing any service referred to in paragraphs (a)–(k).

(2) The Governor may, by order published in the Gazette, declare any service to be an essential service for the purposes of this Act.

(3) Such an order may not be made unless the Minister has certified to the Governor that the service is essential in the public interest.

(4) Any such order takes effect on the day on which it is published in the Gazette.

**Relationship to other Acts etc.**

5. This Act has effect despite anything expressed or implied in—

- (a) any other Act, including—
  - (i) section 8A or 8B of the Industrial Arbitration Act 1940; or
  - (ii) the State Emergency Services and Civil Defence Act 1972; or
  - (iii) Part 6 of the Energy Administration Act 1987; or
- (b) any judgment or order; or
- (c) any award or industrial agreement; or
- (d) any contract or agreement, whether oral or in writing; or
- (e) any deed, security, document or writing.

**Powers under this Act in aid of other powers**

6. The powers conferred by or under this Act or the regulations are in addition to and not in derogation from any other powers exercisable apart from this Act.

**Act binds Crown**

7. This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

**PART 2—DISRUPTION TO ESSENTIAL SERVICE****Proclamation concerning an essential service**

8. (1) Whenever it appears to the Governor that from any cause the provision of an essential service is, or is likely, for any period—

- (a) to cease; or
- (b) to be interrupted or reduced; or
- (c) to be provided in a manner that does not or is not likely to meet the reasonable requirements of the community; or
- (d) otherwise to be rendered insufficient for the reasonable requirements of the community,

the Governor may, by proclamation published in the Gazette, declare that the essential service is one in respect of which regulations may be made under section 9.

(2) Any such proclamation may be made whether or not it appears to the Governor that an emergency situation exists, or is likely to exist, in relation to the essential service.

(3) Any such proclamation shall specify the Minister who is to have the responsibility for recommending the making, and for the administration and enforcement, of any regulation made under section 9 in relation to the essential service the subject of the proclamation.

(4) Any such proclamation takes effect on the day on which it is published in the Gazette or, if a later day is specified in the proclamation for that purpose, on the later day so specified.

(5) Any such proclamation continues in force for such period not exceeding 30 days from the day on which it takes effect as is specified in the proclamation.

(6) Any such proclamation may be amended, varied or revoked by a later proclamation.

**Regulations operative during currency of proclamation**

9. (1) At the same time as a proclamation is made under section 8 in relation to an essential service, or after the making of such a proclamation, the Governor may make a regulation with respect to any one or more of the following matters:

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- (a) regulating, controlling, directing, restricting or prohibiting the provision of the essential service and the activities of any person involved in the provision of the essential service;
  - (b) authorising any person to exercise such functions as appear to the Governor to be necessary or expedient to ensure or facilitate the proper provision of the essential service, including the making or giving of any order or direction, and in particular (but without limiting paragraph (a) or this paragraph) authorising any person—
    - (i) to regulate, control, direct, restrict and prohibit the provision of the essential service, whether generally or for any purpose or purposes specified in the regulation; and
    - (ii) to direct a person who provides or is engaged in the provision of the essential service to provide it to a person specified in the regulation; and
    - (iii) to specify the terms and conditions on which the essential service shall be provided; and
    - (iv) to direct that a person to whom an essential service is provided accept the provision of the essential service; and
    - (v) to make such orders, take such measures, give such directions and do such things as are in the opinion of the person necessary or expedient to carry into effect the purposes of this Act or the regulation;
  - (c) generally prescribing all such matters or things as the Governor considers necessary or expedient to be prescribed for the carrying into effect of the purposes of this Act or the regulation.
- (2) Any such regulation—
- (a) may be made before the proclamation under the authority of which it is made takes effect; but
  - (b) shall not take effect before that proclamation takes effect.
- (3) Any such regulation and any order or direction made or given under the authority of the regulation—
- (a) may be made or given so as to apply to or have operation throughout the whole or any specified part of the State; and
  - (b) may be made or given so as to operate for any period or periods or for any time or times or for any occasion or occasions specified in it; and
  - (c) may be of general operation or of specially limited operation according to any specified times, places, circumstances, conditions or restrictions; and
  - (d) may authorise a person specified in the regulation, order or direction—
    - (i) to enter any place; and



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(ii) to take possession or control of, or use, any property, used for or in connection with the essential service.

(4) Any order or direction referred to in subsection (3)—

(a) shall if published in the Gazette be taken to have been sufficiently served on or brought to the notice of all persons concerned or affected by it; and

(b) may be made or given so as to apply to any particular person and may be served on the person by delivering a copy of it to the person by hand, or by sending the copy to the person by post,

or in the case of a direction may be given orally or by telegram.

(5) Any such regulation shall, unless it sooner expires or is revoked, continue in force until the proclamation under the authority of which it was made is revoked or ceases to be in force.

(6) Any such regulation may provide that a person who contravenes a provision of the regulation is guilty of an offence against the regulation, and, in particular, may provide that a person who refuses or fails to comply with an order or direction made or given under the regulation is guilty of such an offence.

(7) An order or direction referred to in subsection (3) shall, unless it sooner expires or is revoked, continue in force until the regulation under the authority of which it was made or given is revoked.

**State of emergency concerning an essential service**

10. (1) Whenever it appears to the Governor that—

(a) from any cause the provision of an essential service is, or is likely, for any period—

(i) to cease; or

(ii) to be interrupted or reduced; or

(iii) to be provided in a manner that does not or is not likely to meet the reasonable requirements of the community; or

(iv) otherwise to be rendered insufficient for the reasonable requirements of the community; and

(b) an emergency situation exists, or is likely to exist, in relation to the essential service,

the Governor may, by order in writing, declare that a state of emergency exists in relation to the essential service.

(2) Any such order—

(a) may apply to or have operation throughout the whole or any specified part of the State; and

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- (b) shall specify the Minister who may give directions under section 11 in relation to the essential service concerned.
- (3) Any such order takes effect from its making or, if a later day is specified in the order for that purpose, on the later day so specified.
- (4) Any such order (unless sooner revoked) continues in force for such period not exceeding 30 days as is specified in the order.
- (5) More than one order may be made under this section in respect of an emergency.
- (6) An order under this section shall be published in the Gazette as soon as practicable after it is made.

**Minister's powers in respect of state of emergency**

**11. (1)** If an order is in force under section 10 in respect of an essential service, the Minister specified in the order may, by notice in writing—

- (a) give such directions as are necessary to regulate, control, direct, restrict or prohibit the provision of the essential service and the activities of any person involved in the provision of the essential service; and
  - (b) direct a person who provides or is engaged in the provision of the essential service to provide it to a person specified in the direction; and
  - (c) direct a person to comply with such terms and conditions as the Minister determines relating to the provision of the essential service; and
  - (d) direct a person to whom an essential service is provided to accept the provision of the essential service; and
  - (e) direct any person to exercise such functions as appear to the Minister to be necessary or expedient to ensure or facilitate the proper provision of the essential service, including the making or giving of any order or direction.
- (2)** Any such direction of the Minister—
- (a) may apply to or have operation throughout the whole or any specified part of the State; and
  - (b) may, while an order referred to in section 10 is in force, operate for any period or periods or for any time or times or for any occasion or occasions specified in the direction; and
  - (c) may be of general operation or of specially limited operation according to any times, places, circumstances, conditions or restrictions specified in the direction; and
  - (d) may authorise a person specified in the direction—
    - (i) to enter any place; and

(ii) to take possession or control of, or use, any property, used for or in connection with the essential service.

**(3) Any such notice—**

- (a) may be published in the Gazette and when so published any direction contained in the notice shall be taken to have been sufficiently served on or brought to the notice of all persons concerned or affected by it; and
- (b) may, without affecting the provisions of paragraph (a), where it applies to any particular person, be served on the person by delivering a copy of it to the person by hand, or by sending a copy to the person by post or telegram.

### **PART 3—ENTRY AND INSPECTION**

#### **Appointment of inspectors**

**12. (1)** The Minister or a Minister specified in a proclamation under section 8 or an order under section 10 may authorise a person to carry out inspections for the purposes of this Act.

**(2)** The Minister granting the authorisation shall provide an inspector with a certificate of the inspector's authority in the prescribed form.

**(3)** An inspector, in exercising in any place any function conferred or imposed under this Act, shall, if so required by a person apparently in charge of that place, produce the certificate of authority to that person.

#### **Functions of inspectors**

**13. (1)** The functions conferred under this section on an inspector shall not be exercised except—

- (a) where a proclamation has been made by the Governor under section 8—
    - (i) during the period for which the proclamation remains in force; and
    - (ii) in relation to the essential service specified in the proclamation; or
  - (b) where the Governor has by order under section 10 declared that a state of emergency exists—
    - (i) during the period for which the order remains in force; and
    - (ii) in relation to the essential service specified in the order.
- (2)** An inspector may, without any authority other than this section—
- (a) enter and inspect any place used, or which may reasonably be believed by the inspector to be used, for or in connection with the provision of an essential service; and



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- (b) inspect and test any plant or equipment on or in any such place, being plant or equipment which is or may reasonably be believed by the inspector to be used for or in connection with the provision of an essential service; and
- (c) require any person on any such place to produce any accounts, records, books or other documents relating to the provision of an essential service; and
- (d) take copies of, or extracts or notes from, any such accounts, records, books or other documents; and
- (e) require any person on any such place to answer questions or otherwise furnish information relating to the provision of an essential service on, in or from the place; and
- (f) require the owner or occupier of any such place to provide the inspector with such assistance and facilities as are reasonably necessary to enable the inspector to exercise the inspector's functions under this section.

(3) The functions conferred under this section are in addition to and not in derogation from any other functions exercisable apart from this section.

**Obstruction etc. of inspectors**

**14. (1)** A person shall not—

- (a) prevent an inspector from exercising any function conferred on the inspector under section 13; or
- (b) hinder or obstruct an inspector in the exercise of any such functions; or
- (c) refuse or fail to comply with any reasonable requirement or answer any question of an inspector; or
- (d) furnish an inspector with information knowing that it is false or misleading in a material particular; or
- (e) impersonate an inspector.

Maximum penalty: 10 penalty units.

(2) It is a sufficient defence to a prosecution for an offence under subsection (1) (c) by reason of the failure of the defendant to answer a question of an inspector under section 13 if the defendant proves that the defendant did not know, and could not with reasonable diligence ascertain, the answer to the question.

(3) A person is not excused from answering any question of an inspector under section 13 on the ground that the answer might tend to incriminate the person or make the person liable to a penalty, but the information furnished by the person is not admissible against the person in any proceedings, civil or criminal, except for an offence under subsection (1).

**(4) If—**

- (a) an answer to a question of an inspector under section 13; or
- (b) any information whatever,

is given to an inspector by an officer of a corporation within the meaning of the Companies (New South Wales) Code, the answer and information are, for the purposes of any proceedings against the corporation under this Act, binding on and admissible in evidence against the corporation.

(5) Subsection (4) does not apply if it is proved that the answer or information was given in relation to a matter in respect of which the officer had no authority to bind the corporation.

## **PART 4—INDUSTRIAL ACTION**

### **Reference of industrial matter to the Industrial Commission**

15. (1) Whenever a proclamation under section 8 or an order under section 10 is in force in relation to an essential service which is being disrupted by any question, dispute or difficulty of the nature referred to in section 25 (1) (a), (b) or (c) of the Industrial Arbitration Act 1940, the Minister shall refer any industrial matter relating to the question, dispute or difficulty to the Industrial Commission.

(2) The Industrial Commission shall hear and determine any industrial matter referred to it under this section as if the industrial matter were referred to it under the Industrial Arbitration Act 1940.

(3) The Industrial Commission may hear and determine the industrial matter even though the proclamation under section 8 or order under section 10 has ceased to be in force.

### **Stand down of employees**

16. (1) At any time while a proclamation under section 8 or an order under section 10 is in force in relation to an essential service which is being disrupted by any question, dispute or difficulty of the nature referred to in section 25 (1) (a), (b) or (c) of the Industrial Arbitration Act 1940, an employer who is adversely affected by the disruption to the essential service has the right to stand down any employee from duty for any period (including a day or part of a day).

(2) The right conferred by this section may only be exercised in respect of an employee who has not been able to be usefully employed for at least 5 consecutive normal working days.

(3) An employer who exercises the right conferred by this section shall give notice to each employee stood down.

(4) Notice shall be taken to have been sufficiently given to an employee if—



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- (a) notice in writing has been given to the employee personally or by post or telegram; or
- (b) notice has been published on the date of commencement of the period of stand down in a daily newspaper circulating in the area in which the employer's business is conducted.

(5) An employee who is stood down under this section is not entitled to any salary, wages or other remuneration or allowance for the period of stand down.

(6) Any period of stand down under this section forms part of an employee's period of employment—

- (a) for the purposes of calculating the employee's entitlement to annual leave, sick leave, maternity leave and long service leave; and
- (b) for the purposes of any superannuation or similar scheme which applies to the employee,

but does not form part of the employee's period of employment for any other purpose.

(7) A period of stand down under this section ceases—

- (a) when terminated by the employer; or
- (b) when the relevant proclamation under section 8 or order under section 10 ceases to be in force,

whichever occurs first.

(8) The Minister or a union which represents employees stood down under this section may apply to the Industrial Commission for an order restraining the stand down.

(9) The Industrial Commission shall hear and determine any application under this section as if the application had been made under the Industrial Arbitration Act 1940.

(10) On the hearing of an application by the Minister or a union, the Minister or union has the onus of proving that the employees concerned should not be stood down.

### **Suspension and cancellation of registration of industrial union**

17. (1) At any time while a proclamation under section 8 or an order under section 10 is in force in relation to an essential service, the Minister may certify to the Governor that a union whose members are engaged in providing the essential service has, by its executive, members or otherwise, engaged in activities which are contrary to the public interest.

(2) The Minister shall not so certify until after—

- (a) the Minister has consulted with the President of the Industrial Commission as to the state of any industrial dispute or industrial matter involving the union of which the President is aware; and

- (b) the Minister is satisfied that any order of the Commission made in relation to any such industrial dispute or industrial matter has not been complied with.
- (3) Where the Minister so certifies, the Governor may declare that this section applies to and in respect of the union.
- (4) On such a declaration being made concerning a union—
  - (a) the registration of the union under the Industrial Arbitration Act 1940 is, by operation of this section, suspended; and
  - (b) the registration of the union under that Act shall, by operation of this section, be cancelled 7 days after the making of the declaration unless the Minister certifies to the Governor within the 7-day period that the union has ceased to engage in activities which are contrary to the public interest.
- (5) A certification of the Minister under subsection (1) or (4) and a declaration of the Governor shall be published in the Gazette as soon as practicable after it is given or made.
- (6) Despite any provision of the Industrial Arbitration Act 1940, if the registration under that Act of a union as an industrial union is cancelled by operation of this section, the industrial registrar shall refuse any application made within 3 years after the cancellation for registration of a trade union under that Act which, in the opinion of the industrial registrar, is (by reason of its membership, executive or otherwise) the same, or substantially the same, as the union.

**Amendment of union rules as alternative to cancellation etc. of registration**

18. (1) Where the Minister certifies to the Governor in respect of a union as referred to in section 17 (1), the Governor may, if satisfied that the activities the subject of the Minister's certification are those, or mainly those, of a particular group or description of members of the union, instead of declaring that section 17 applies to and in respect of the union, order that the rules of the union be amended as specified in the order so as to terminate the membership of, and to exclude from eligibility for membership of the union, persons belonging to that group or of that description.

(2) Any such order takes effect from its making or, if a later day is specified in the order for that purpose, on the later day so specified.

(3) An order under this section shall be published in the Gazette as soon as practicable after it is made.

(4) On the day on which an order under this section takes effect, the rules of the union shall be taken to be amended in the manner specified in the order.



(5) An amendment under this section to the rules of a union may be further amended or revoked pursuant to this Act or any other law providing for the amendment or revocation of those rules.

#### **Amendment of union rules following cancellation of registration**

19. (1) If the registration of a union is cancelled by operation of section 17, the Industrial Commission, on application by the Minister or of its own motion, may order that the rules of another union be amended so as to make eligible for membership of that other union persons who were members of the union the registration of which was cancelled.

(2) If the rules of a union are amended under section 18 so as to terminate the membership of certain persons and to exclude those persons from eligibility for membership of the union, the Industrial Commission, on application by the Minister or of its own motion, may order that the rules of another union be amended so as to make those persons eligible for membership of that other union.

(3) The rules of the union shall be taken to be amended—

- (a) on the date of the order or, if a later date is specified in the order for that purpose, on the later date so specified; and
- (b) in the manner specified in the order.

(4) An amendment under this section to the rules of a union may be further amended or revoked pursuant to this Act or any other law providing for the amendment or revocation of those rules.

#### **Giving of effect to amendment of union rules**

20. (1) The industrial registrar may do all such things as are necessary to give effect to an order under section 18 or 19 in respect of a union, including the alteration of the copy of the union's rules held by the industrial registrar.

(2) The copy of a union's rules altered under this section by the industrial registrar shall, to the extent of the alteration, be taken to be the official rules of the union.

#### **Restrictions on appeals**

21. (1) A certificate given, or declaration made, under section 17 or an order made under section 18 shall not be challenged, appealed against, quashed or called into question by any court, except as provided by sections 22, 23 and 24.

(2) An order made under section 19 shall not be challenged, appealed against, quashed or called into question by any court except in accordance with section 14 (8) of the Industrial Arbitration Act 1940.

(3) Except as provided by subsection (2), no proceedings, whether for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief, shall lie in respect of—

- (a) a certificate given, or declaration made, under section 17 or an order made under section 18 or 19; or
- (b) any decision, proceeding, step or other matter involved in the giving or making of any such certificate, declaration or order.

#### **Appeals against cancellation of registration**

22. (1) A union may apply to the Industrial Commission in court session for leave to appeal to the Industrial Commission in court session against the cancellation of the union's registration under section 17.

(2) The Industrial Commission shall not grant leave to appeal unless it is satisfied that, within the 7-day period referred to in section 17 (4) (b)—

- (a) the executive of the union has, at a meeting of its members or of those members (in this subsection called the relevant members) whose actions have caused the disruption of the provisions of the essential service, or by means of an announcement made in a newspaper circulating throughout New South Wales or made by radio or television or by any other means that the Industrial Commission considers reasonable, directed the relevant members not to take part in or continue to take part in or to aid or abet the disruption of the provision of the essential service; and
- (b) the executive of the union has not, in any manner, aided, abetted or encouraged the relevant members to take part in or continue to take part in or to aid or abet the disruption of the provision of the essential service; and
- (c) the executive of the union has, by enforcement of the union's rules and by any other means reasonable in the circumstances, endeavoured to prevent the relevant members from taking part in or continuing to take part in or aiding or abetting the disruption of the provision of the essential service; and
- (d) the members of the union recommenced work under normal working conditions within the essential service concerned and that at all times after that period they have continued to work under normal working conditions.

(3) On an appeal made pursuant to leave granted under subsection (2), the Industrial Commission shall not restore the registration of the union unless it is satisfied that it is in the public interest to do so.

(4) For the purposes only of an application for leave to appeal and the making of an appeal, a union shall be taken not to have had its registration cancelled.



**Appeals against amendment of union rules under sec. 18**

23. (1) A union affected by an order under section 18 may apply to the Industrial Commission in court session for leave to appeal to the Industrial Commission in court session against the order.

(2) The Industrial Commission shall not grant leave to appeal unless it is satisfied that the persons whose membership of the union has been terminated by the order did not, at the time at which the Minister's certificate was given under section 17 (1), engage in activities which were contrary to the public interest.

(3) On an appeal made pursuant to leave granted under this section, the Industrial Commission shall not revoke the order unless it is satisfied that it is in the public interest to do so.

(4) Section 20 applies in relation to an order made by the Industrial Commission on an appeal under this section in the same way as it applies in relation to an order under section 18.

**Provisions relating to appeals**

24. The Industrial Commission shall hear and determine any application for leave to appeal, or any appeal, under section 22 or 23 as if the application or appeal had been made under the Industrial Arbitration Act 1940, and, without affecting the generality of the foregoing, section 78 of that Act applies in relation to the proceedings concerned.

**Obligations of union etc. not affected by cancellation of registration or amendment of rules**

25. The cancellation of the registration of a union by operation of section 17 does not relieve the union or any member of the union from the obligation of any award or industrial agreement, or order of the Industrial Commission, a conciliation commissioner or a committee within the meaning of the Industrial Arbitration Act 1940, or from any penalty or liability incurred prior to the cancellation.

**Recovery of penalty by appointment of receiver**

26. (1) If a union, a member of the executive of a union or a member of a union fails to pay a penalty imposed by or under this Act within such time as is determined by the person or court which imposed the penalty, the penalty becomes a charge on the assets of the union.

(2) Any such penalty imposed on a member of the executive of a union or a member of a union does not become a charge on the assets of the union if the member acted in the matter concerned against the express resolutions or directions of either the union or the executive of the union.

(3) Despite the Justices Act 1902, if a member of the executive of a union or a member of a union is, by any conviction or order, adjudged to pay such a penalty—

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- (a) the member is not liable to imprisonment in default of payment of the penalty; and
  - (b) the amount of the penalty (or any part of it) may be recovered as a debt due to the Crown in a court of competent jurisdiction.
- (4) The Industrial Commission, on the application of the Minister, may appoint a receiver for the purpose of entering into possession or assuming control of the property of the union in order to enforce the charge.
- (5) The terms of appointment of a receiver shall be as determined by the Industrial Commission.
- (6) A receiver appointed under this section—
- (a) has such functions as may be conferred on the receiver by order of the Industrial Commission; and
  - (b) is entitled to recover the costs and expenses of the receivership from the assets of the union.
- (7) The jurisdiction under this section of the Industrial Commission shall be exercised by a judicial member of the Commission.
- (8) In this section, a reference to a penalty includes a reference to any costs and expenses imposed in relation to the penalty.

## **PART 5—MISCELLANEOUS**

### **Liability of persons acting under this Act**

27. No action, claim or demand shall lie or be made or allowed by or in favour of any person against the Crown, a Minister or any person acting in the execution of this Act or any proclamation, regulation, notice, order or direction made or given under this Act for or in respect of any damage, loss or injury sustained or alleged to be sustained by reason of the enactment of this Act or of its operation or of anything done or purporting to be done under this Act or under any such proclamation, regulation, notice, order or direction.

### **Disclosure of information**

28. A person shall not disclose any information obtained in connection with the administration or execution of this Act or the regulations unless that disclosure is made—

- (a) with the consent of the person from whom the information was obtained; or
- (b) in connection with the administration or execution of this Act or the regulations or the Industrial Arbitration Act 1940; or



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- (c) for the purposes of any legal proceedings arising out of this Act or the regulations or the Industrial Arbitration Act 1940; or
- (d) in accordance with a requirement of the Ombudsman Act 1974; or
- (e) with other lawful excuse.

Maximum penalty: 10 penalty units.

**Offence and penalty**

**29. (1)** A person who commits an offence against a regulation made under section 9 is liable to a penalty not exceeding 10 penalty units.

**(2)** A person shall not refuse or fail to comply with—

- (a) a direction given under section 11; or
- (b) an order or direction made or given under section 30.

Maximum penalty: 10 penalty units.

**Denial of use of essential service**

**30. (1)** If a person is convicted of an offence against a regulation made under section 9, a person authorised in the regulation or in any order or direction made or given under the authority of the regulation may make such orders or give such directions in respect of the availability or use of the essential service concerned to the firstmentioned person during such period as the authorised person thinks fit.

**(2)** If a person is convicted of failing to comply with a direction given by a Minister under section 11, that Minister may make such orders or give such directions in respect of the availability or use of the essential service concerned to the person during such period as that Minister thinks fit.

**(3)** An order made or direction given under this section has no further force or effect if the regulation, order or direction referred to in subsection (1) or (2) is no longer in force.

**Proceedings for offences**

**31.** Proceedings for an offence against this Act or the regulations shall be dealt with summarily before an industrial magistrate or a Local Court constituted by a Magistrate sitting alone.

**Regulations**

32. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

## ESSENTIAL SERVICES BILL

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*Schedule of the amendments referred to in the Legislative Council's  
Message of 9 June 1988.*

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- No. 1.—Page 3, clause 4, lines 13–15. *Omit* all words on those lines, *insert* instead:
- (k) a service declared to be an essential service under subsection (2);
  - (l) a service comprising the supply of goods or services necessary for providing any service referred to in paragraphs (a)–(k).
- No. 2.—Page 3, clause 4. After line 17, *insert*:
- (3) Such an order may not be made unless the Minister has certified to the Governor that the service is essential in the public interest.
- No. 3.—Page 5, clause 9, lines 16 and 17. *Omit* “or incidental to”.
- No. 4.—Page 9, clause 14, line 18. Before “requirement”, *insert* “reasonable”.
- No. 5.—Page 10, clause 15, lines 7 and 8. *Omit* “, the Minister may refer any industrial matter relating to the essential service the subject of the proclamation or order”, *insert* instead “in relation to an essential service which is being disrupted by any question, dispute or difficulty of the nature referred to in section 25 (1) (a), (b) or (c) of the Industrial Arbitration Act 1940, the Minister shall refer any industrial matter relating to the question, dispute or difficulty”.
- No. 6.—Page 11, clause 16, line 2. After “sick leave”, *insert* “, maternity leave”.
- No. 7.—Page 13, clause 21, line 25. After “court”, *insert* “, except as provided by sections 22, 23 and 24”.
- No. 8.—Page 13, clauses 22–24. After line 35, *insert*:
- Appeals against cancellation of registration**
- 22 (1) A union may apply to the Industrial Commission in court session for leave to appeal to the Industrial Commission in court session against the cancellation of the union's registration under section 17.
- (2) The Industrial Commission shall not grant leave to appeal unless it is satisfied that, within the 7-day period referred to in section 17 (4) (b)—
- (a) the executive of the union has, at a meeting of its members or of those members (in this subsection called the relevant members) whose actions have caused the disruption of the provision of the essential service, or by means of an announcement made in a newspaper circulating throughout New South Wales or made by radio or television or by any other means that the Industrial Commission considers reasonable, directed the relevant members not to take part in or continue to take part in or to aid or abet the disruption of the provision of the essential service; and
  - (b) the executive of the union has not, in any manner, aided, abetted or encouraged the relevant members to take part in or continue to take part in or to aid or abet the disruption of the provision of the essential service; and



- (c) the executive of the union has, by enforcement of the union's rules and by any other means reasonable in the circumstances, endeavoured to prevent the relevant members from taking part in or continuing to take part in or aiding or abetting the disruption of the provision of the essential service; and
  - (d) the members of the union recommenced work under normal working conditions within the essential service concerned and that at all times after that period they have continued to work under normal working conditions.
- (3) On an appeal made pursuant to leave granted under subsection (2), the Industrial Commission shall not restore the registration of the union unless it is satisfied that it is in the public interest to do so.
- (4) For the purposes only of an application for leave to appeal and the making of an appeal, a union shall be taken not to have had its registration cancelled.

**Appeals against amendment of union rules under sec. 18**

(23) (1) A union affected by an order under section 18 may apply to the Industrial Commission in court session for leave to appeal to the Industrial Commission in court session against the order.

(2) The Industrial Commission shall not grant leave to appeal unless it is satisfied that the persons whose membership of the union has been terminated by the order did not, at the time at which the Minister's certificate was given under section 17 (1), engage in activities which were contrary to the public interest.

(3) On an appeal made pursuant to leave granted under this section, the Industrial Commission shall not revoke the order unless it is satisfied that it is in the public interest to do so.

(4) Section 20 applies in relation to an order made by the Industrial Commission on an appeal under this section in the same way as it applies in relation to an order under section 18.

**Provisions relating to appeals**

24. The Industrial Commission shall hear and determine any application for leave to appeal, or any appeal, under section 22 or 23 as if the application or appeal had been made under the Industrial Arbitration Act 1940, and, without affecting the generality of the foregoing, section 78 of that Act applies in relation to the proceedings concerned.

No. 9.—Page 14, clause 23. After line 13, *insert*:

(2) Any such penalty imposed on a member of the executive of a union or a member of a union does not become a charge on the assets of the union if the member acted in the matter concerned against the express resolutions or directions of either the union or the executive of the union.

(3) Despite the Justices Act 1902, if a member of the executive of a union or a member of a union is, by any conviction or order, adjudged to pay such a penalty—

- (a) the member is not liable to imprisonment in default of payment of the penalty; and
- (b) the amount of the penalty (or any part of it) may be recovered as a debt due to the Crown in a court of competent jurisdiction.



## ESSENTIAL SERVICES BILL 1988

NEW SOUTH WALES



### EXPLANATORY NOTE

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The object of this Bill is to enable the government to take expeditious and appropriate measures to protect the community from disruption in the provision of essential services, whether the disruption arises from industrial action or otherwise.

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### PART 1—PRELIMINARY

**Clause 1** specifies the short title of the proposed Act.

**Clause 2** provides that the proposed Act is to commence on the date of assent.

**Clause 3** defines certain expressions for the purposes of the proposed Act.

**Clause 4** specifies those services which are essential services. For the purposes of the proposed Act, a service is an essential service if it consists of any of the following:

- (a) the production, supply or distribution of any form of energy, power or fuel or of energy, power or fuel resources;
- (b) the public transportation of persons or freight;
- (c) the provision of fire-fighting services;
- (d) the provision of public health services (including hospital or medical services);
- (e) the provision of ambulance services;
- (f) the production, supply or distribution of pharmaceutical products;
- (g) the provision of garbage, sanitary cleaning or sewerage services;
- (h) the supply or distribution of water;
- (i) the conduct of a welfare institution;
- (j) the conduct of a prison;
- (k) the provision of any service necessary for a service referred to in paragraphs (a)–(j).

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As well as specifying particular services, the clause empowers the Governor, by order published in the Gazette, to declare any service to be an essential service for the purposes of the proposed Act.

**Clause 5** provides that the proposed Act is to have effect despite the provisions of any other Act, any judgment or order or any other instrument or agreement.

**Clause 6** provides that the powers conferred by or under the proposed Act are to be in addition to and not in derogation from any other powers exercisable apart from the proposed Act.

**Clause 7** provides that the proposed Act is to bind the Crown.

**PART 2—DISRUPTION TO ESSENTIAL SERVICE**

**Clause 8** enables the Governor-in-Council, if the provision of an essential service is, or is likely to be, disrupted or reduced to an inadequate extent, to declare by proclamation that the essential service is one in respect of which regulations may be made under clause 9. Such a proclamation may be made whether or not an emergency situation exists, or is likely to exist, in relation to the essential service. Such a proclamation is to specify the Minister of the Crown who is to be responsible for a regulation made under clause 9 in relation to the essential service. Such a proclamation may continue in force for a maximum of 30 days.

**Clause 9** enables the Governor-in-Council to make a regulation in accordance with the regulation-making powers conferred by the clause to ensure the proper provision of an essential service during the period for which a proclamation continues in force under clause 8.

**Clause 10** enables the Governor-in-Council, if the provision of an essential service is, or is likely to be, disrupted or reduced to an inadequate extent and if an emergency situation exists, or is likely to exist, in relation to the essential service, to declare by order in writing that a state of emergency exists in relation to the essential service. Such an order is to specify the Minister of the Crown who may give directions under clause 11 in relation to the essential service. Such an order may continue in force for a maximum of 30 days.

**Clause 11** enables the Minister of the Crown specified in an order declaring the existence of a state of emergency in relation to an essential service to give directions by notice in writing, in accordance with the powers conferred by the clause, to ensure the proper provision of the essential service during the period for which the order continues in force under clause 10. A direction may be brought to the attention of a person affected by it either by publishing the direction in the Gazette or by service of a copy personally or by post or telegram.

**PART 3—ENTRY AND INSPECTION**

**Clause 12** enables the Minister administering the proposed Act or a Minister specified in a proclamation under clause 8 or an order under clause 10 to appoint inspectors for the purposes of the proposed Act.

**Clause 13** specifies the powers of entry, inspection and investigation which may be exercised by inspectors. The powers may only be exercised in relation to an essential service the subject of a proclamation under clause 8 or an order under clause 10 while the proclamation or order is in force.

**Clause 14** makes it an offence to obstruct an inspector, to wilfully furnish false information to an inspector and to impersonate an inspector.



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**PART 4—INDUSTRIAL ACTION**

**Clause 15** enables the Minister of the Crown who has the responsibility for administering the proposed Act, while a proclamation under clause 8 or an order under clause 10 is in force in relation to an essential service, to refer any industrial matter relating to the essential service to the Industrial Commission for determination.

**Clause 16** confers on an employer who is adversely affected by the disruption to an essential service the right to stand down an employee from duty if the employee has not been able to be usefully employed for at least 5 days. Notice of the stand down is required to be given to each employee. Leave and superannuation entitlements of an employee stood down under the clause are preserved but all other rights and entitlements of the employee are foregone during the period of stand down. The clause enables the Minister or a union which represents employees stood down to apply to the Industrial Commission for an order restraining the stand down. On the hearing of an application by the Minister or a union, the Minister or union has the onus of proving that the employees concerned should not be stood down.

**Clause 17** enables the registration of a union engaged in providing an essential service and which, while a proclamation under clause 8 or an order under clause 10 is in force, engages in activities which are contrary to the public interest, to be suspended and cancelled. If registration is cancelled, the industrial registrar is prohibited from accepting, within 3 years after the date of deregistration, any application for registration of a trade union which is the same, or substantially the same, as the union whose registration has been cancelled.

**Clause 18** provides, as an alternative to the sanction of deregistration contained in clause 17, for the rules of the union concerned to be amended so as to exclude from membership particular members who engage in activities which are contrary to the public interest.

**Clause 19** provides that if the registration of a union is cancelled by operation of clause 17 or if the rules of a union are amended under clause 18 so as to exclude certain members from membership, the Industrial Commission may amend the rules of another union to enable members of the deregistered union or the excluded members to become members of that other union.

**Clause 20** enables the industrial registrar, as a consequential matter, to amend the rules of a union following the making of an order under clause 18 or 19.

**Clause 21** prevents the making of appeals against decisions relating to the deregistration of unions and the amendment of union rules.

**Clause 22** preserves the obligations, penalties and liabilities of a union and union members despite the cancellation of the union's registration under clause 17.

**Clause 23** enables the Industrial Commission to appoint a receiver of the property of a union in order to recover a penalty imposed under the proposed Act on a union or union member and which is unpaid.

**PART 5—MISCELLANEOUS**

**Clause 24** exempts persons acting under the authority of the proposed Act from liability for their actions.

**Clause 25** requires information obtained in connection with the administration or execution of the proposed Act to be kept confidential, except where it may be disclosed with lawful excuse.

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**Clause 26** provides that a person who commits an offence against a regulation made under clause 9 is liable to a penalty not exceeding 10 penalty units (\$1,000). The clause also provides the same penalty for the offence of refusing or failing to comply with a direction given under clause 11 or an order or direction made or given under clause 27.

**Clause 27** enables directions to be given to a person convicted of an offence against a regulation made under clause 9 or convicted of failing to comply with a direction under clause 11 so as to deny the person access to the essential service concerned during the period for which the regulation made under clause 9 or direction under clause 11 remains in force.

**Clause 28** enables proceedings for an offence against the proposed Act or regulations to be dealt with summarily before an industrial magistrate or a Local Court.

**Clause 29** enables the making of regulations for the general purposes of the proposed Act.

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# ESSENTIAL SERVICES BILL 1988

## NEW SOUTH WALES



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# ESSENTIAL SERVICES BILL 1988

NEW SOUTH WALES



No. , 1988

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## A BILL FOR

An Act to protect the community from disruption to essential services; and for related purposes.

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**The Legislature of New South Wales enacts:****PART 1—PRELIMINARY****Short title**

1. This Act may be cited as the Essential Services Act 1988.

**5 Commencement**

2. This Act commences on the date of assent.

**Definitions**

3. (1) In this Act—

“award” has the same meaning as in the Industrial Arbitration Act 1940;

- 10 “essential service” means a service that is an essential service by virtue of section 4;

“industrial agreement” has the same meaning as in the Industrial Arbitration Act 1940;

- 15 “industrial matter” has the same meaning as in the Industrial Arbitration Act 1940;

“industrial registrar” means the industrial registrar appointed under the Industrial Arbitration Act 1940;

“place” includes land, road, building, structure, work, mine, vehicle and vessel;

- 20 “property” includes undertaking, equipment, goods, vehicles, vessels, articles and things of any kind;

“union” means an industrial union registered as an industrial union under the Industrial Arbitration Act 1940.

- 25 (2) In this Act, a reference to the provision of an essential service includes a reference to the conduct, performance, maintenance, supply and distribution of an essential service.

(3) In this Act, a reference to the community includes a reference to any part of the community.

- (4) In this Act—

- 30 (a) a reference to a function includes a reference to a power, authority and duty; and

- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

**Essential services**

- 35 4. (1) For the purposes of this Act, a service is an essential service if it consists of any of the following:

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- (a) the production, supply or distribution of any form of energy, power or fuel or of energy, power or fuel resources;
- (b) the public transportation of persons or freight;
- (c) the provision of fire-fighting services;
- 5 (d) the provision of public health services (including hospital or medical services);
- (e) the provision of ambulance services;
- (f) the production, supply or distribution of pharmaceutical products;
- (g) the provision of garbage, sanitary cleaning or sewerage services;
- 10 (h) the supply or distribution of water;
- (i) the conduct of a welfare institution;
- (j) the conduct of a prison;
- (k) the provision of any service necessary for a service referred to in paragraphs (a)–(j);
- 15 (l) a service declared to be an essential service under subsection (2).

(2) The Governor may, by order published in the Gazette, declare any service to be an essential service for the purposes of this Act.

(3) Any such order takes effect on the day on which it is published in the Gazette.

**20 Relationship to other Acts etc.**

**5.** This Act has effect despite anything expressed or implied in—

- (a) any other Act, including—
  - (i) section 8A or 8B of the Industrial Arbitration Act 1940; or
  - (ii) the State Emergency Services and Civil Defence Act 1972; or
  - 25 (iii) Part 6 of the Energy Administration Act 1987; or
- (b) any judgment or order; or
- (c) any award or industrial agreement; or
- (d) any contract or agreement, whether oral or in writing; or
- (e) any deed, security, document or writing.

**30 Powers under this Act in aid of other powers**

**6.** The powers conferred by or under this Act or the regulations are in addition to and not in derogation from any other powers exercisable apart from this Act.

**Act binds Crown**

- 35 **7.** This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.



**PART 2—DISRUPTION TO ESSENTIAL SERVICE****Proclamation concerning an essential service**

8. (1) Whenever it appears to the Governor that from any cause the provision of an essential service is, or is likely, for any period—

- (a) to cease; or
- (b) to be interrupted or reduced; or
- (c) to be provided in a manner that does not or is not likely to meet the reasonable requirements of the community; or
- (d) otherwise to be rendered insufficient for the reasonable requirements of the community,

the Governor may, by proclamation published in the Gazette, declare that the essential service is one in respect of which regulations may be made under section 9.

(2) Any such proclamation may be made whether or not it appears to the Governor that an emergency situation exists, or is likely to exist, in relation to the essential service.

(3) Any such proclamation shall specify the Minister who is to have the responsibility for recommending the making, and for the administration and enforcement, of any regulation made under section 9 in relation to the essential service the subject of the proclamation.

(4) Any such proclamation takes effect on the day on which it is published in the Gazette or, if a later day is specified in the proclamation for that purpose, on the later day so specified.

(5) Any such proclamation continues in force for such period not exceeding 30 days from the day on which it takes effect as is specified in the proclamation.

(6) Any such proclamation may be amended, varied or revoked by a later proclamation.

**Regulations operative during currency of proclamation**

9. (1) At the same time as a proclamation is made under section 8 in relation to an essential service, or after the making of such a proclamation, the Governor may make a regulation with respect to any one or more of the following matters:

- (a) regulating, controlling, directing, restricting or prohibiting the provision of the essential service and the activities of any person involved in the provision of the essential service;
- (b) authorising any person to exercise such functions as appear to the Governor to be necessary or expedient to ensure or facilitate the proper provision of the essential service, including the making or giving of any order or direction, and in particular (but without limiting paragraph (a) or this paragraph) authorising any person—

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- (i) to regulate, control, direct, restrict and prohibit the provision of the essential service, whether generally or for any purpose or purposes specified in the regulation; and
- 5 (ii) to direct a person who provides or is engaged in the provision of the essential service to provide it to a person specified in the regulation; and
- (iii) to specify the terms and conditions on which the essential service shall be provided; and
- 10 (iv) to direct that a person to whom an essential service is provided accept the provision of the essential service; and
- (v) to make such orders, take such measures, give such directions and do such things as are in the opinion of the person necessary or expedient to carry into effect the purposes of this Act or the regulation;
- 15 (c) generally prescribing all such matters or things as the Governor considers necessary or expedient to be prescribed for or incidental to the carrying into effect of the purposes of this Act or the regulation.
- (2) Any such regulation—
- 20 (a) may be made before the proclamation under the authority of which it is made takes effect; but
- (b) shall not take effect before that proclamation takes effect.
- (3) Any such regulation and any order or direction made or given under the authority of the regulation—
- 25 (a) may be made or given so as to apply to or have operation throughout the whole or any specified part of the State; and
- (b) may be made or given so as to operate for any period or periods or for any time or times or for any occasion or occasions specified in it; and
- 30 (c) may be of general operation or of specially limited operation according to any specified times, places, circumstances, conditions or restrictions; and
- (d) may authorise a person specified in the regulation, order or direction—
- 35 (i) to enter any place; and
- (ii) to take possession or control of, or use, any property, used for or in connection with the essential service.
- (4) Any order or direction referred to in subsection (3)—
- 40 (a) shall if published in the Gazette be taken to have been sufficiently served on or brought to the notice of all persons concerned or affected by it; and



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- (b) may be made or given so as to apply to any particular person and may be served on the person by delivering a copy of it to the person by hand, or by sending the copy to the person by post,

or in the case of a direction may be given orally or by telegram.

- 5 (5) Any such regulation shall, unless it sooner expires or is revoked, continue in force until the proclamation under the authority of which it was made is revoked or ceases to be in force.

- (6) Any such regulation may provide that a person who contravenes a provision of the regulation is guilty of an offence against the regulation, and,  
10 in particular, may provide that a person who refuses or fails to comply with an order or direction made or given under the regulation is guilty of such an offence.

- (7) An order or direction referred to in subsection (3) shall, unless it  
15 sooner expires or is revoked, continue in force until the regulation under the authority of which it was made or given is revoked.

**State of emergency concerning an essential service**

10. (1) Whenever it appears to the Governor that—

- (a) from any cause the provision of an essential service is, or is likely, for any period—

- 20 (i) to cease; or  
(ii) to be interrupted or reduced; or  
(iii) to be provided in a manner that does not or is not likely to meet the reasonable requirements of the community; or  
25 (iv) otherwise to be rendered insufficient for the reasonable requirements of the community; and

- (b) an emergency situation exists, or is likely to exist, in relation to the essential service,

the Governor may, by order in writing, declare that a state of emergency exists in relation to the essential service.

- 30 (2) Any such order—

- (a) may apply to or have operation throughout the whole or any specified part of the State; and  
(b) shall specify the Minister who may give directions under section 11 in relation to the essential service concerned.

- 35 (3) Any such order takes effect from its making or, if a later day is specified in the order for that purpose, on the later day so specified.

- (4) Any such order (unless sooner revoked) continues in force for such period not exceeding 30 days as is specified in the order.



(5) More than one order may be made under this section in respect of an emergency.

(6) An order under this section shall be published in the Gazette as soon as practicable after it is made.

**5 Minister's powers in respect of state of emergency**

**11. (1)** If an order is in force under section 10 in respect of an essential service, the Minister specified in the order may, by notice in writing—

- 10 (a) give such directions as are necessary to regulate, control, direct, restrict or prohibit the provision of the essential service and the activities of any person involved in the provision of the essential service; and
- (b) direct a person who provides or is engaged in the provision of the essential service to provide it to a person specified in the direction; and
- 15 (c) direct a person to comply with such terms and conditions as the Minister determines relating to the provision of the essential service; and
- (d) direct a person to whom an essential service is provided to accept the provision of the essential service; and
- 20 (e) direct any person to exercise such functions as appear to the Minister to be necessary or expedient to ensure or facilitate the proper provision of the essential service, including the making or giving of any order or direction.

**(2) Any such direction of the Minister—**

- 25 (a) may apply to or have operation throughout the whole or any specified part of the State; and
- (b) may, while an order referred to in section 10 is in force, operate for any period or periods or for any time or times or for any occasion or occasions specified in the direction; and
- 30 (c) may be of general operation or of specially limited operation according to any times, places, circumstances, conditions or restrictions specified in the direction; and
- (d) may authorise a person specified in the direction—
  - (i) to enter any place; and
  - 35 (ii) to take possession or control of, or use, any property, used for or in connection with the essential service.

**(3) Any such notice—**

- 40 (a) may be published in the Gazette and when so published any direction contained in the notice shall be taken to have been sufficiently served on or brought to the notice of all persons concerned or affected by it; and

- (b) may, without affecting the provisions of paragraph (a), where it applies to any particular person, be served on the person by delivering a copy of it to the person by hand, or by sending a copy to the person by post or telegram.

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### **PART 3—ENTRY AND INSPECTION**

#### **Appointment of inspectors**

12. (1) The Minister or a Minister specified in a proclamation under section 8 or an order under section 10 may authorise a person to carry out inspections for the purposes of this Act.

- 10 (2) The Minister granting the authorisation shall provide an inspector with a certificate of the inspector's authority in the prescribed form.

(3) An inspector, in exercising in any place any function conferred or imposed under this Act, shall, if so required by a person apparently in charge of that place, produce the certificate of authority to that person.

#### **15 Functions of inspectors**

13. (1) The functions conferred under this section on an inspector shall not be exercised except—

- (a) where a proclamation has been made by the Governor under section 8—
- 20 (i) during the period for which the proclamation remains in force; and
- (ii) in relation to the essential service specified in the proclamation; or
- (b) where the Governor has by order under section 10 declared that a
- 25 state of emergency exists—
- (i) during the period for which the order remains in force; and
- (ii) in relation to the essential service specified in the order.

(2) An inspector may, without any authority other than this section—

- 30 (a) enter and inspect any place used, or which may reasonably be believed by the inspector to be used, for or in connection with the provision of an essential service; and
- (b) inspect and test any plant or equipment on or in any such place, being plant or equipment which is or may reasonably be believed by the inspector to be used for or in connection with the provision of
- 35 an essential service; and
- (c) require any person on any such place to produce any accounts, records, books or other documents relating to the provision of an essential service; and



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- (d) take copies of, or extracts or notes from, any such accounts, records, books or other documents; and
  - (e) require any person on any such place to answer questions or otherwise furnish information relating to the provision of an essential service on, in or from the place; and
  - (f) require the owner or occupier of any such place to provide the inspector with such assistance and facilities as are reasonably necessary to enable the inspector to exercise the inspector's functions under this section.
- (3) The functions conferred under this section are in addition to and not in derogation from any other functions exercisable apart from this section.

**Obstruction etc. of inspectors**

14. (1) A person shall not—
- (a) prevent an inspector from exercising any function conferred on the inspector under section 13; or
  - (b) hinder or obstruct an inspector in the exercise of any such functions; or
  - (c) refuse or fail to comply with any requirement or answer any question of an inspector; or
  - (d) furnish an inspector with information knowing that it is false or misleading in a material particular; or
  - (e) impersonate an inspector.

Maximum penalty: 10 penalty units.

- (2) It is a sufficient defence to a prosecution for an offence under subsection (1) (c) by reason of the failure of the defendant to answer a question of an inspector under section 13 if the defendant proves that the defendant did not know, and could not with reasonable diligence ascertain, the answer to the question.

- (3) A person is not excused from answering any question of an inspector under section 13 on the ground that the answer might tend to incriminate the person or make the person liable to a penalty, but the information furnished by the person is not admissible against the person in any proceedings, civil or criminal, except for an offence under subsection (1).

- (4) If—
- (a) an answer to a question of an inspector under section 13; or
  - (b) any information whatever,

is given to an inspector by an officer of a corporation within the meaning of the Companies (New South Wales) Code, the answer and information are, for the purposes of any proceedings against the corporation under this Act, binding on and admissible in evidence against the corporation.



(5) Subsection (4) does not apply if it is proved that the answer or information was given in relation to a matter in respect of which the officer had no authority to bind the corporation.

#### **PART 4—INDUSTRIAL ACTION**

##### **5 Reference of industrial matter to the Industrial Commission**

15. (1) Whenever a proclamation under section 8 or an order under section 10 is in force, the Minister may refer any industrial matter relating to the essential service the subject of the proclamation or order to the Industrial Commission.

10 (2) The Industrial Commission shall hear and determine any industrial matter referred to it under this section as if the industrial matter were referred to it under the Industrial Arbitration Act 1940.

(3) The Industrial Commission may hear and determine the industrial matter even though the proclamation under section 8 or order under section 15 10 has ceased to be in force.

##### **Stand down of employees**

16. (1) At any time while a proclamation under section 8 or an order under section 10 is in force in relation to an essential service which is being disrupted by any question, dispute or difficulty of the nature referred to in 20 section 25 (1) (a), (b) or (c) of the Industrial Arbitration Act 1940, an employer who is adversely affected by the disruption to the essential service has the right to stand down any employee from duty for any period (including a day or part of a day).

(2) The right conferred by this section may only be exercised in respect 25 of an employee who has not been able to be usefully employed for at least 5 consecutive normal working days.

(3) An employer who exercises the right conferred by this section shall give notice to each employee stood down.

(4) Notice shall be taken to have been sufficiently given to an employee 30 if—

(a) notice in writing has been given to the employee personally or by post or telegram; or

(b) notice has been published on the date of commencement of the 35 period of stand down in a daily newspaper circulating in the area in which the employer's business is conducted.

(5) An employee who is stood down under this section is not entitled to any salary, wages or other remuneration or allowance for the period of stand down.

(6) Any period of stand down under this section forms part of an 40 employee's period of employment—

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- (a) for the purposes of calculating the employee's entitlement to annual leave, sick leave and long service leave; and
  - (b) for the purposes of any superannuation or similar scheme which applies to the employee,
- 5 but does not form part of the employee's period of employment for any other purpose.
- (7) A period of stand down under this section ceases—
- (a) when terminated by the employer; or
  - (b) when the relevant proclamation under section 8 or order under
- 10 section 10 ceases to be in force,
- whichever occurs first.
- (8) The Minister or a union which represents employees stood down under this section may apply to the Industrial Commission for an order restraining the stand down.
- 15 (9) The Industrial Commission shall hear and determine any application under this section as if the application had been made under the Industrial Arbitration Act 1940.
- (10) On the hearing of an application by the Minister or a union, the Minister or union has the onus of proving that the employees concerned
- 20 should not be stood down.

**Suspension and cancellation of registration of industrial union**

17. (1) At any time while a proclamation under section 8 or an order under section 10 is in force in relation to an essential service, the Minister may certify to the Governor that a union whose members are engaged in
- 25 providing the essential service has, by its executive, members or otherwise, engaged in activities which are contrary to the public interest.
- (2) The Minister shall not so certify until after—
- (a) the Minister has consulted with the President of the Industrial Commission as to the state of any industrial dispute or industrial
- 30 matter involving the union of which the President is aware; and
- (b) the Minister is satisfied that any order of the Commission made in relation to any such industrial dispute or industrial matter has not been complied with.
- (3) Where the Minister so certifies, the Governor may declare that this
- 35 section applies to and in respect of the union.
- (4) On such a declaration being made concerning a union—
- (a) the registration of the union under the Industrial Arbitration Act 1940 is, by operation of this section, suspended; and



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- (b) the registration of the union under that Act shall, by operation of this section, be cancelled 7 days after the making of the declaration unless the Minister certifies to the Governor within the 7-day period that the union has ceased to engage in activities which are contrary to the public interest.

(5) A certification of the Minister under subsection (1) or (4) and a declaration of the Governor shall be published in the Gazette as soon as practicable after it is given or made.

- (6) Despite any provision of the Industrial Arbitration Act 1940, if the registration under that Act of a union as an industrial union is cancelled by operation of this section, the industrial registrar shall refuse any application made within 3 years after the cancellation for registration of a trade union under that Act which, in the opinion of the industrial registrar, is (by reason of its membership, executive or otherwise) the same, or substantially the same, as the union.

**Amendment of union rules as alternative to cancellation etc. of registration**

18. (1) Where the Minister certifies to the Governor in respect of a union as referred to in section 17 (1), the Governor may, if satisfied that the activities the subject of the Minister's certification are those, or mainly those, of a particular group or description of members of the union, instead of declaring that section 17 applies to and in respect of the union, order that the rules of the union be amended as specified in the order so as to terminate the membership of, and, to exclude from eligibility for membership of the union, persons belonging to that group or of that description.

(2) Any such order takes effect from its making or, if a later day is specified in the order for that purpose, on the later day so specified.

(3) An order under this section shall be published in the Gazette as soon as practicable after it is made.

- (4) On the day on which an order under this section takes effect, the rules of the union shall be taken to be amended in the manner specified in the order.

- (5) An amendment under this section to the rules of a union may be further amended or revoked pursuant to this Act or any other law providing for the amendment or revocation of those rules.

**Amendment of union rules following cancellation of registration**

19. (1) If the registration of a union is cancelled by operation of section 17, the Industrial Commission, on application by the Minister or of its own motion, may order that the rules of another union be amended so as to make eligible for membership of that other union persons who were members of the union the registration of which was cancelled.



(2) If the rules of a union are amended under section 18 so as to terminate the membership of certain persons and to exclude those persons from eligibility for membership of the union, the Industrial Commission, on application by the Minister or of its own motion, may order that the  
 5 rules of another union be amended so as to make those persons eligible for membership of that other union.

(3) The rules of the union shall be taken to be amended—

- (a) on the date of the order or, if a later date is specified in the order for that purpose, on the later date so specified; and
- 10 (b) in the manner specified in the order.

(4) An amendment under this section to the rules of a union may be further amended or revoked pursuant to this Act or any other law providing for the amendment or revocation of those rules.

#### **Giving of effect to amendment of union rules**

15 20. (1) The industrial registrar may do all such things as are necessary to give effect to an order under section 18 or 19 in respect of a union, including the alteration of the copy of the union's rules held by the industrial registrar.

20 (2) The copy of a union's rules altered under this section by the industrial registrar shall, to the extent of the alteration, be taken to be the official rules of the union.

#### **Restrictions on appeals**

21. (1) A certificate given, or declaration made, under section 17 or an order made under section 18 shall not be challenged, appealed against,  
 25 quashed or called into question by any court.

(2) An order made under section 19 shall not be challenged, appealed against, quashed or called into question by any court except in accordance with section 14 (8) of the Industrial Arbitration Act 1940.

30 (3) Except as provided by subsection (2), no proceedings, whether for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief, shall lie in respect of—

- (a) a certificate given, or declaration made, under section 17 or an order made under section 18 or 19; or
- 35 (b) any decision, proceeding, step or other matter involved in the giving or making of any such certificate, declaration or order.

**Obligations of union etc. not affected by cancellation of registration or amendment of rules**

22. The cancellation of the registration of a union by operation of section 17 does not relieve the union or any member of the union from the obligation of any award or industrial agreement, or order of the Industrial Commission, a conciliation commissioner or a committee within the meaning of the Industrial Arbitration Act 1940, or from any penalty or liability incurred prior to the cancellation.

**Recovery of penalty by appointment of receiver**

23. (1) If a union, a member of the executive of a union or a member of a union fails to pay a penalty imposed by or under this Act within such time as is determined by the person or court which imposed the penalty, the penalty becomes a charge on the assets of the union.

- (2) The Industrial Commission, on the application of the Minister, may appoint a receiver for the purpose of entering into possession or assuming control of the property of the union in order to enforce the charge.

(3) The terms of appointment of a receiver shall be as determined by the Industrial Commission.

(4) A receiver appointed under this section—

- (a) has such functions as may be conferred on the receiver by order of the Industrial Commission; and  
(b) is entitled to recover the costs and expenses of the receivership from the assets of the union.

- (5) The jurisdiction under this section of the Industrial Commission shall be exercised by a judicial member of the Commission.

(6) In this section, a reference to a penalty includes a reference to any costs and expenses imposed in relation to the penalty.

**PART 5—MISCELLANEOUS****Liability of persons acting under this Act**

24. No action, claim or demand shall lie or be made or allowed by or in favour of any person against the Crown, a Minister or any person acting in the execution of this Act or any proclamation, regulation, notice, order or direction made or given under this Act for or in respect of any damage, loss or injury sustained or alleged to be sustained by reason of the enactment of this Act or of its operation or of anything done or purporting to be done under this Act or under any such proclamation, regulation, notice, order or direction.



**Disclosure of information**

25. A person shall not disclose any information obtained in connection with the administration or execution of this Act or the regulations unless that disclosure is made—

- 5 (a) with the consent of the person from whom the information was obtained; or
- (b) in connection with the administration or execution of this Act or the regulations or the Industrial Arbitration Act 1940; or
- 10 (c) for the purposes of any legal proceedings arising out of this Act or the regulations or the Industrial Arbitration Act 1940; or
- (d) in accordance with a requirement of the Ombudsman Act 1974; or
- (e) with other lawful excuse.

Maximum penalty: 10 penalty units.

**Offence and penalty**

- 15 26. (1) A person who commits an offence against a regulation made under section 9 is liable to a penalty not exceeding 10 penalty units.

(2) A person shall not refuse or fail to comply with—

- (a) a direction given under section 11; or
- (b) an order or direction made or given under section 27.

- 20 Maximum penalty: 10 penalty units.

**Denial of use of essential service**

27. (1) If a person is convicted of an offence against a regulation made under section 9, a person authorised in the regulation or in any order or direction made or given under the authority of the regulation may make  
25 such orders or give such directions in respect of the availability or use of the essential service concerned to the firstmentioned person during such period as the authorised person thinks fit.

- (2) If a person is convicted of failing to comply with a direction given by a Minister under section 11, that Minister may make such orders or give  
30 such directions in respect of the availability or use of the essential service concerned to the person during such period as that Minister thinks fit.

(3) An order made or direction given under this section has no further force or effect if the regulation, order or direction referred to in subsection (1) or (2) is no longer in force.

35 **Proceedings for offences**

28. Proceedings for an offence against this Act or the regulations shall be dealt with summarily before an industrial magistrate or a Local Court constituted by a Magistrate sitting alone.



**Regulations**

29. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be  
5 prescribed for carrying out or giving effect to this Act.

(2) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.



