

FIRST PRINT

**FIRE BRIGADES (HAZARDOUS MATERIALS) AMENDMENT
BILL 1993**

NEW SOUTH WALES



EXPLANATORY NOTE

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

The object of this Bill is to confer on New South Wales Fire Brigades the same kinds of powers and duties under the Fire Brigades Act 1989 in dealing anywhere in the State with land-based hazardous material incidents as they already have in dealing with fires that occur within fire districts.

The proposed Act also applies in respect of such incidents various other provisions of that Act which apply in respect of fires.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be proclaimed.

Clause 3 gives effect to the amendments to the Fire Brigades Act 1989 set out in Schedule 1.

SCHEDULE 1—AMENDMENTS

Consequential change to long title

Schedule 1 (1) amends the long title of the Principal Act to reflect the extension of provisions of the Act to hazardous material incidents.

Definitions

Schedule 1 (2) amends section 3 to provide definitions of “hazardous material” and “hazardous material incident”. Any substance that escapes and causes or threatens to cause injury or death or damage to property may be the subject of a hazardous material incident, even though it may not be an inherently dangerous substance.

Fire Brigades (Hazardous Materials) Amendment 1993

Application of amendments

Schedule 1 (3) amends section 4 to make it clear that provisions of the Act relating to hazardous material incidents apply throughout the State, but do not apply to incidents occurring on waters which are subject to the controls of the Marine Pollution Act 1987.

Duty and general authority of head of New South Wales Fire Brigades

Schedule 1 (4) adds section 6 (2) to impose a duty on the Director-General of New South Wales Fire Brigades, as Department Head, to take all reasonably practicable measures for protecting and saving life and property endangered by hazardous material incidents, for confining or ending such incidents and for rendering the sites of such incidents safe.

Schedule 1 (5) substitutes section 7 to confirm that the Director-General's wide authority to take measures to protect persons and property applies throughout the State, even though a fire or hazardous material may not be involved and (in the case of fire) even though the persons or property concerned may not be within a fire district.

Additional requirement in forming volunteer fire brigades

Schedule 1 (6) amends section 9 to require that an association will be approved as a volunteer fire brigade only if it is formed for the purpose of dealing with hazardous material incidents (as well as fire-fighting). The additional requirement is made because such a fire brigade will be under a duty to deal with such incidents.

Extension of duties and powers of fire brigades

Schedule 1 (7) amends headings to Part 3 and Division 1 of that Part of the Act to reflect that the Part is to deal with hazardous material incidents as well as fires.

Schedule 1 (8) amends section 11 to impose a duty on fire brigades to take prompt action to respond to reports of such incidents and to deal with them.

Schedule 1 (9) amends section 12 to provide the officer in charge of a fire brigade (and its members) a power of entry to any place for the purpose of investigating whether any hazardous material the subject of such a report is present.

Schedule 1 (10) amends section 13 to confer general authority on the officer in charge of a fire brigade to control the operations of any fire brigade at the site of an incident.

Schedule 1 (11) amends section 14 to empower the officer in charge at an incident to close streets or public places in the vicinity of an incident to traffic.

Schedule 1 (12) amends section 15 to allow the officer in charge at an incident to take water, free of charge, for the purpose of dealing with an incident or rendering the site of the incident safe.

Schedule 1 (13) amends section 16 to allow the officer in charge to take possession of buildings, vehicles, vessels or other property and to move vehicles, vessels or other property (providing it is kept in safe custody) for that purpose.

Schedule 1 (14) amends section 17 to permit the officer in charge to shore up buildings or walls affected by hazardous material incidents.

Fire Brigades (Hazardous Materials) Amendment 1993

Schedule 1 (15) amends section 18 to authorise the officer in charge to cut off the gas or electricity supply to premises near the site of such an incident.

Schedule 1 (16) amends section 19 to empower the officer in charge to remove any person, vehicle, vessel or thing interfering with the officer's dealing with the incident.

Power to take possession after incident

Schedule 1 (17) amends section 22 to authorise the Director-General or an agent of the Director-General to enter and retain possession of any land, vehicle or vessel that was involved in a hazardous material incident for a reasonable time or until an inquest or inquiry has been held.

Delegation of functions

Schedule 1 (18) amends section 24 to allow the functions of an officer in charge relating to such incidents to be delegated by the officer to members of a fire brigade.

Recognition of fire brigade authority

Schedule 1 (19) amends section 25 to require members of the Police Service and others to recognise the authority of fire brigade officers and members and to support that authority when dealing with such an incident that threatens life or property.

Co-operation of interstate fire brigades

Schedule 1 (20) amends section 26 to require the co-operation of members of interstate fire brigades at the scene of such an incident and to remove the penalties aimed at enforcing that co-operation at fires.

Information about insurance

Schedule 1 (21) amends section 30 to allow information to be obtained about the insurance of any premises or property (including any hazardous material) that has been damaged or destroyed or otherwise involved in a hazardous material incident.

Setting up of bodies to deal with hazardous material incidents

Schedule 1 (22) amends section 31 to limit the formation of bodies to deal with such incidents to:

- fire brigades constituted under the Act; or
- bodies operating only on land owned or used by them or at which they are employed; or
- bodies formed by the owners of hazardous materials or of vehicles or other means of transport involved in such incidents; or
- bodies formed with the approval of the Director-General of New South Wales Fire Brigades.

Representation at inquests or inquiries

Schedule 1 (23) amends section 36 to provide that the Director-General may be represented at inquests or inquiries arising out of such incidents.

Fire Brigades (Hazardous Materials) Amendment 1993

Extension of insurance for fire

Schedule 1 (24) amends section 38 to include certain damage caused by a fire brigade in dealing with such a hazardous material incident as if it were damage caused by fire for the purposes of any policy of insurance against fire covering the damaged property.

Charges for attending hazardous material incidents

Schedule 1 (25) amends section 40 to allow the Director-General to recover charges, not exceeding charges set by Regulations made under the Act, for services provided by fire brigades in dealing with such an incident in certain circumstances.

Schedule 1 (26) amends section 41 to require the apportionment of any such charge in accordance with any Regulation made for the purpose.

Savings and transitional

Schedule 1 (27) amends Schedule 4 to apply amendments made by the proposed Act to hazardous material incidents that start before the amendments commence, but not so as to impose any retrospective duty.

Approvals of volunteer fire brigades which would otherwise have to be granted again (because of the amendment made by Schedule 1 (6)) are also saved.

Amendments that expand the cover provided by a fire insurance policy to certain property damage caused by members of fire brigades when dealing with a hazardous material incident are extended to insurance policies effected before and in force when the amendments commence, but will apply only to damage caused after the amendments commence.

The upper limits set by Regulations on charges that may be recovered under section 40 for services rendered by members of fire brigades outside fire districts are extended to services rendered by those members in dealing anywhere in the State with hazardous material incidents to the extent that they do not involve fires, but may be varied by further Regulations.

FIRST PRINT

**FIRE BRIGADES (HAZARDOUS MATERIALS) AMENDMENT
BILL 1993**

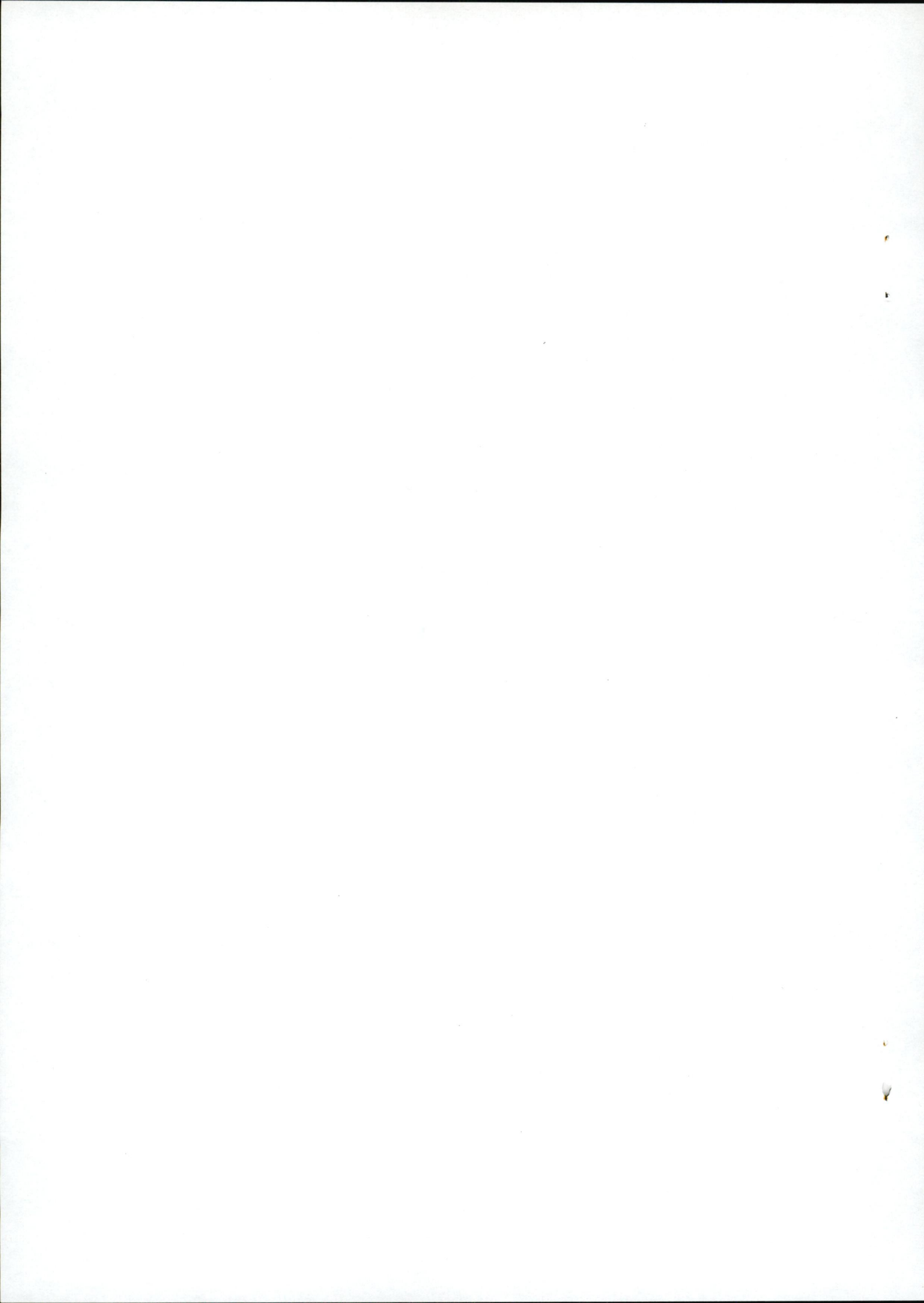
NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Fire Brigades Act 1989 No. 192

SCHEDULE 1—AMENDMENTS



**FIRE BRIGADES (HAZARDOUS MATERIALS) AMENDMENT
BILL 1993**

NEW SOUTH WALES



No. , 1993

A BILL FOR

An Act to amend the Fire Brigades Act 1989 so as to confer on New South Wales Fire Brigades certain powers and duties in respect of hazardous material incidents; and for other purposes.

Fire Brigades (Hazardous Materials) Amendment 1993

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Fire Brigades (Hazardous Materials) Amendment Act 1993.

5 **Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Fire Brigades Act 1989 No. 192

3. The Fire Brigades Act 1989 is amended as set out in Schedule 1.

10

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Long title:

After "fire" where firstly occurring, insert "and from hazardous material incidents,".

15

(2) Section 3 (**Definitions**):

In section 3 (1), insert in alphabetical order:

20

"**hazardous material**" means anything that, when produced, stored, moved, used or otherwise dealt with without adequate safeguards to prevent it from escaping, may cause injury or death or damage to property;

"**hazardous material incident**" means an actual or impending land-based spillage or other escape of hazardous material that causes or threatens to cause injury or death or damage to property;

25

(3) Section 4 (**Application of Act**):

At the end of section 4, insert:

30

(2) This Act applies to land-based hazardous material incidents (and to any fires that may result from them) that occur anywhere in the State except on State waters, as defined in the Marine Pollution Act 1987.

(3) A hazardous material incident that occurs in or on a building, bridge or other structure or on any body of water (not being part of State waters) is taken to be land-based.

Fire Brigades (Hazardous Materials) Amendment 1993

SCHEDULE 1—AMENDMENTS—*continued*

- (4) **Section 6 (Duty to deal with fires and hazardous material incidents):**
- At the end of section 6, insert:
- (2) It is the duty of the Director-General to take all practicable measures: 5
- (a) for protecting and saving life and property endangered by hazardous material incidents; and
- (b) for confining or ending such an incident; and
- (c) for rendering the site of such an incident safe. 10
- (5) **Section 7:**
- Omit the section, insert instead:
- General authority to protect persons and property**
7. (1) The Director-General is authorised to take measures anywhere in the State for protecting persons from injury or death and property from damage, whether or not fire or a hazardous material incident is involved. 15
- (2) In the case of fire, it does not matter whether or not the persons are, or the property is, within a fire district.
- (6) **Section 9 (Volunteer fire brigades):** 20
- Omit section 9 (1) (a), insert instead:
- (a) the association is formed for the purpose of extinguishing fires and of taking measures referred to in section 6 (2) in relation to hazardous material incidents; and 25
- (7) **Part 3 and Division 1 of Part 3, headings:**
- Omit the headings, insert instead:
- PART 3—FIGHTING AND PREVENTING FIRES
AND DEALING WITH HAZARDOUS MATERIAL
INCIDENTS** 30
- Division 1—Powers at fires and hazardous material
incidents**
- (8) **Section 11 (Brigades to proceed with speed to suspected fires or hazardous material incidents):**
- At the end of section 11, insert: 35

Fire Brigades (Hazardous Materials) Amendment 1993

SCHEDULE 1—AMENDMENTS—*continued*

(2) When there is a report of a hazardous material incident, a fire brigade must, despite anything to the contrary in any Act:

- 5
- (a) proceed with all speed to the site of the incident; and
 - (b) try by all possible means to render the site of the incident safe and save any lives and property that are in danger.

10 (9) Section 12 (**Investigation of reported fires and hazardous material incidents**):

Omit section 12 (1), insert instead:

(1) The officer in charge may, with or without members of a fire brigade, enter any place:

- 15
- (a) in respect of which an alarm of fire is raised to ascertain whether there is a fire at the place; or
 - (b) in respect of which a report of a hazardous material incident has been made to ascertain whether there is any hazardous material at the place that is, or is about to be, the subject of a hazardous material incident.

20 (10) Section 13 (**General powers of officers at fires and hazardous material incidents**):

After section 13 (1), insert:

(1A) At the site of a hazardous material incident, the officer in charge:

- 25
- (a) may take such measures as the officer thinks proper for the protection and saving of life and property, for confining and ending the incident and for rendering the site safe; and
 - (b) is to control and direct the operations of any fire
- 30 brigade.

The site is taken to be such area in the vicinity of the incident as is for the time being determined by the officer in charge.

Fire Brigades (Hazardous Materials) Amendment 1993

SCHEDULE 1—AMENDMENTS—*continued*

- (11) Section 14 (**Closure of streets and public places**):
- At the end of section 14, insert:
- (2) The officer in charge at a hazardous material incident may cause any street or public place in the vicinity of the site of the incident to be closed to traffic until the site has been rendered safe. 5
- (12) Section 15 (**Use of water etc.**):
- Omit “may, for the purpose of extinguishing or controlling a fire”, insert instead “or hazardous material incident may, for the purpose of extinguishing or controlling a fire or confining or ending the incident or rendering the site of the incident safe”. 10
- (13) Section 16 (**Taking possession etc. of buildings and vessels during fires or hazardous material incidents**): 15
- After section 16 (2), insert:
- (2A) For the purpose of confining or ending a hazardous material incident or rendering the site of such an incident safe, the officer in charge may:
- (a) take possession of any building, vehicle or vessel in the vicinity of that site and any property (whether or not the property consists of a hazardous material) in it or on it; and 20
- (b) cause such a vehicle or vessel to be removed or remove any such property and keep it in safe custody. 25
- (14) Section 17 (**Making walls and buildings safe**):
- After section 17 (1), insert:
- (1A) The officer in charge at a hazardous material incident may, during the incident or immediately after it, pull down, destroy or shore up any wall or building damaged or rendered insecure by the incident or which, in the officer’s opinion, may be dangerous to life or property. 30

Fire Brigades (Hazardous Materials) Amendment 1993

SCHEDULE 1—AMENDMENTS—*continued*

- (15) Section 18 (**Disconnection etc. of gas and electricity**):
After section 18 (1), insert:
5 (1A) The officer in charge at a hazardous material incident may cause the supply of gas or electricity to any premises in the vicinity of the site of the incident to be shut off or disconnected.
- (16) Section 19 (**General power to remove persons or obstacles**):
After “fire” where firstly and secondly occurring, insert “or hazardous material incident”.
10
- (17) Section 22 (**Authority to enter land and buildings**):
(a) After “fire” where firstly occurring, insert “or hazardous material incident”.
(b) After “fire” where secondly occurring, insert “or incident”.
- 15 (18) Section 24 (**Officer in charge may authorise others to exercise functions**):
In section 24 (1), after “at a fire”, insert “or hazardous material incident”.
- (19) Section 25 (**Duty to recognise authority of officers**):
20 (a) From section 25, omit “Police Force” wherever occurring, insert instead “Police Service”.
(b) In section 25 (3), after “fire”, insert “or a hazardous material incident”.
- (20) Section 26 (**Interstate assistance**):
25 (a) From section 26 (1), omit “Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.”.
(b) After section 26 (1), insert:
30 (1A) A person who is a member of an interstate fire brigade and present at a hazardous material incident in the State for the purpose of trying to confine or end the incident, to render the site of the incident safe or to save any lives or property in danger there must:
(a) obey any orders given to the person by the officer in charge at the incident; and

Fire Brigades (Hazardous Materials) Amendment 1993

SCHEDULE 1—AMENDMENTS—*continued*

- (b) place any gear or equipment in the person's charge at the disposal of the officer in charge at the incident.
- (c) In section 26 (2), after "the fire" wherever occurring, insert "or incident". 5
- (21) Section 30 (**Information may be requested from owner**):
Omit section 30 (2), insert instead:
- (2) On request made by a person authorised by this section, the owner of premises where a fire or hazardous material incident occurs, the owner or driver of a vehicle conveying personal property and involved in a hazardous material incident, or the owner of any personal property on any such premises or vehicle or which has been destroyed or damaged by fire or such an incident, must: 10
- (a) inform the authorised person whether the premises or property were or was insured at the time or during the period specified by the person; and 15
- (b) give the authorised person full particulars of any such insurance, including the name of the insurer and the amount of the insurance. 20
- Personal property includes any hazardous material.
- (22) Section 31 (**Fire brigade not to be constituted unless authorised**):
- After section 31 (1), insert: 25
- (1A) It is unlawful for any persons to constitute or maintain any body for the purpose of taking measures referred to in section 6 (2) in relation to hazardous material incidents except: 25
- (a) as a permanent or volunteer fire brigade under the authority of this Act; or 30
- (b) on premises or land owned or used by the persons or at which they are employed; or
- (c) where the body consists of employees of the persons and the body is constituted to deal with incidents involving hazardous materials owned by or transported by vehicles or other means of transport owned by the persons; or 35
- (d) with the approval of the Director-General.

Fire Brigades (Hazardous Materials) Amendment 1993

SCHEDULE 1—AMENDMENTS—*continued*

- (23) Section 36 (**Director-General may be represented at inquiry**):
In section 36 (1), after “fire”, insert “or hazardous material incident”.
- 5 (24) Section 38 (**Certain damage to be covered by insurance**):
- (a) In section 38 (1), after “at a fire”, insert “or a hazardous material incident”.
- (b) In section 38 (2), after “fire”, insert “or endangered by the escape or likely escape of hazardous material”.
- 10 (25) Section 40 (**Charges for attending fires or hazardous material incidents**):
- (a) From section 40 (2), omit “an area”, insert instead “a fire district”.
- (b) After section 40 (4), insert:
- 15 (4A) If a hazardous material incident occurs anywhere in the State, the Director-General is entitled to recover charges, not exceeding the prescribed charges, for services rendered by any members of a fire brigade in endeavouring:
- 20 (a) to confine or end the incident, or to render the site of the incident safe; or
- (b) to save any lives or property in danger.
- (4B) Those charges may be recovered from:
- (a) the owner of, or the person having charge of, the hazardous material involved; or
- 25 (b) the owner or occupier of the premises on which, or the owner or person in charge of the vehicle or vessel on or in which, or arising out of the use of which, the incident occurred.
- (4C) This section does not allow recovery of charges for a fire within a fire district even though the fire arose from a hazardous material incident.
- 30

Fire Brigades (Hazardous Materials) Amendment 1993

SCHEDULE 1—AMENDMENTS—*continued*

- (26) Section 41 (**Apportionment of charges**):
- (a) In section 41 (1), after “section 40”, insert “in respect of a fire”.
- (b) After section 41 (3), insert: 5
- (4) The charges payable under section 40 otherwise than in respect of a fire are to be ratably apportioned in accordance with the regulations, if the regulations so provide.
- (27) Schedule 4 (**Savings and transitional provisions**):
- (a) Omit the heading to Part 4, insert instead: 10
- Part 4—Miscellaneous provisions relating to the commencement of this Act**
- (b) At the end of Part 4, insert:
- Part 5—Miscellaneous provisions relating to the Fire Brigades (Hazardous Materials) Amendment Act 1993** 15
- Transitional and saving provisions**
22. (1) An amendment made by the Fire Brigades (Hazardous Materials) Amendment Act 1993 (**the 1993 Act**):
- (a) applies to a hazardous material incident whether the spillage or other escape of the material concerned occurred before or occurs after the amendment commences; but 20
- (b) does not so apply as to impose any duty on a person retrospectively.
- (2) An approval of an association as a volunteer fire brigade that was in force under section 9 immediately before the amendment of that section by the 1993 Act is taken to have been granted under that section as so amended. 25
- (3) The amendments made to section 38 by the 1993 Act apply only in respect of a hazardous material incident that occurs after those amendments commence and affect a policy of insurance in force when such an incident occurs whether the policy was effected before or is effected after that commencement. 30

Fire Brigades (Hazardous Materials) Amendment 1993

SCHEDULE 1—AMENDMENTS—*continued*

- 5 (4) Any maximum charges prescribed for the purposes of section 40 (2) when section 40 (4A) commences are, subject to the regulations, taken to be prescribed as maximum charges for the purposes of section 40 (4A) also.
-

FIRE BRIGADES (HAZARDOUS MATERIALS)

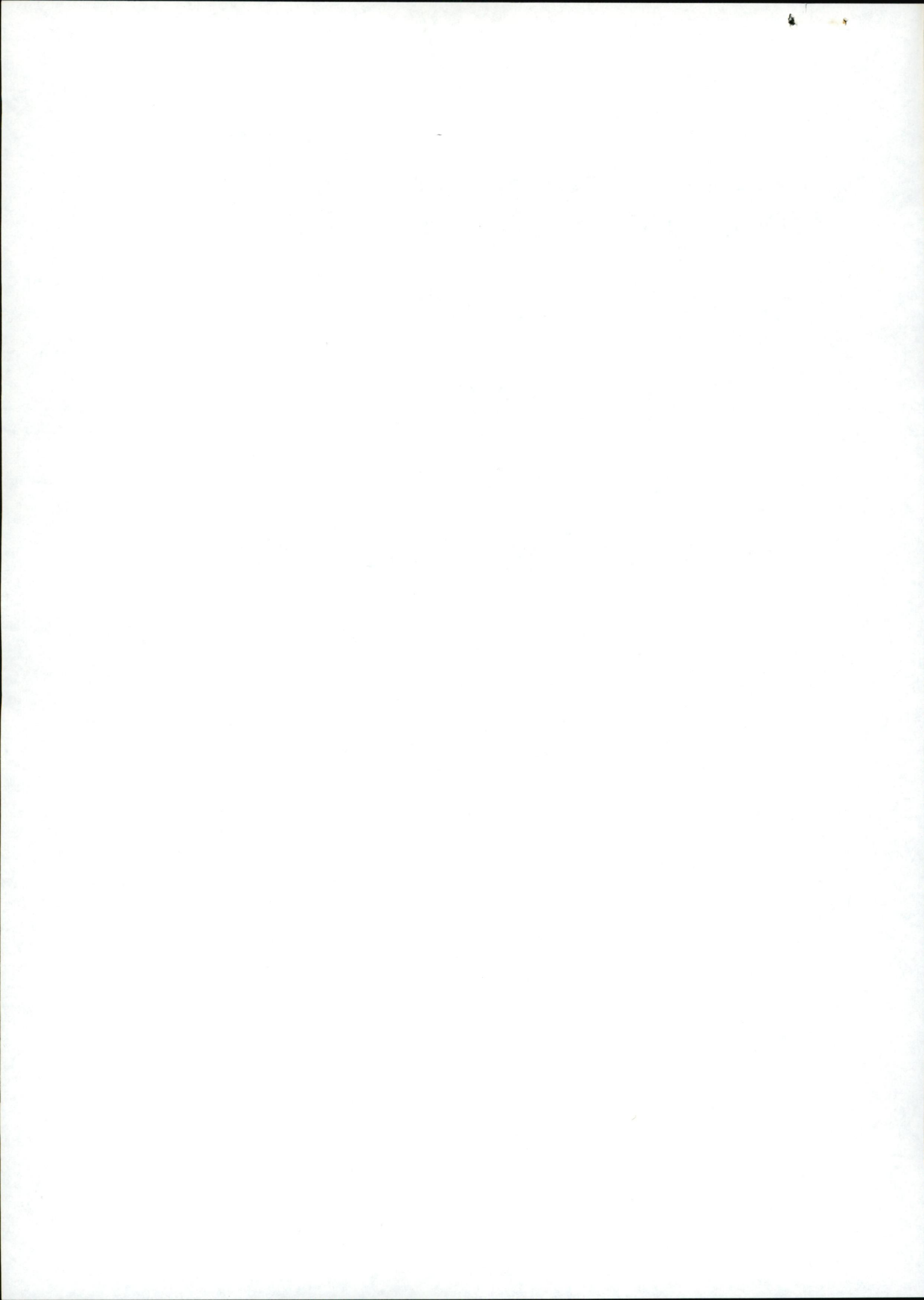
AMENDMENT BILL 1993

In recent years there has been growing concern about the adequacy of regulation of the manufacture, use, transport, storage and disposal of chemicals.

This concern was highlighted by the serious incidents that occurred at the Diversey industrial chemical plant in

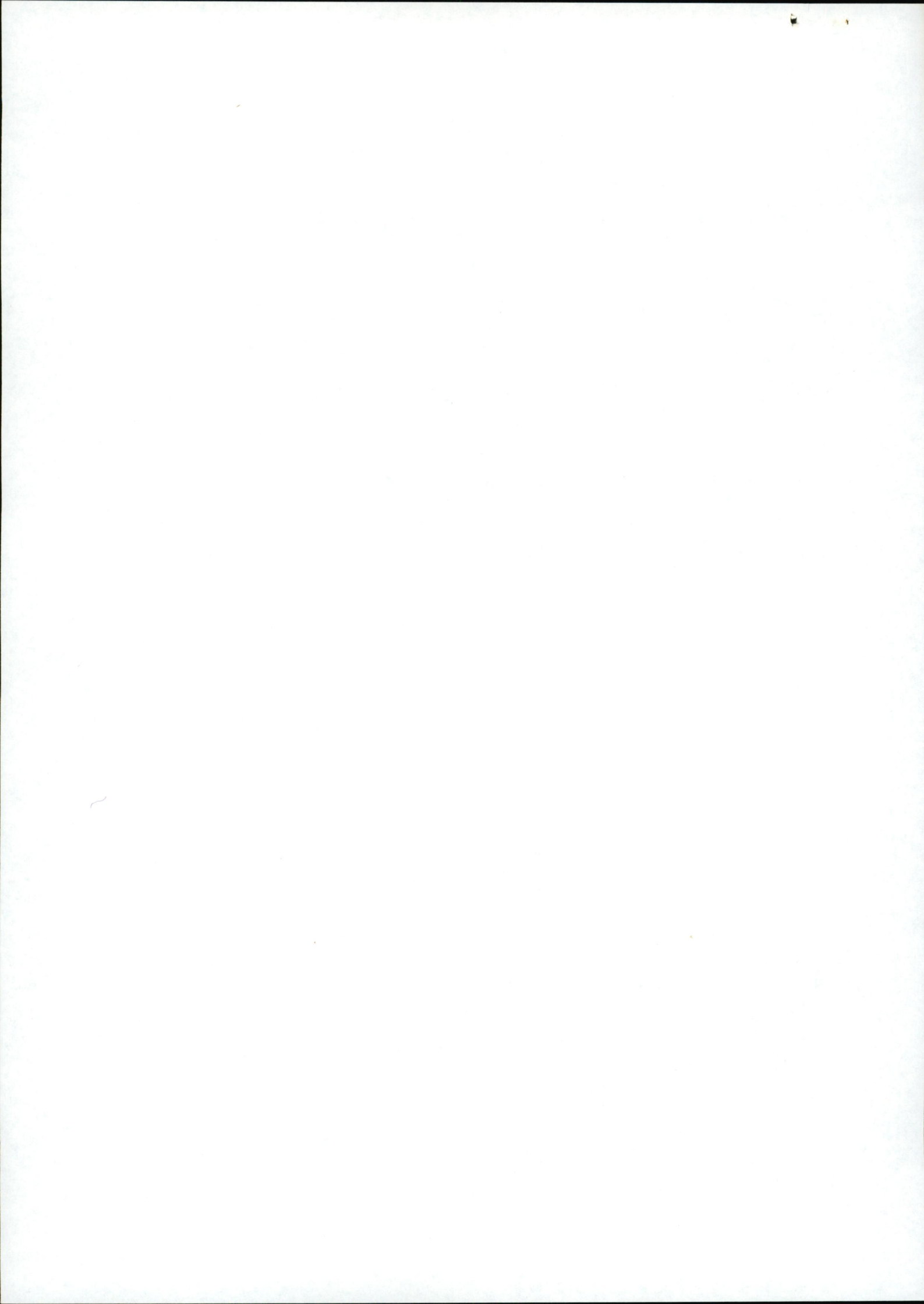
December 1989 and the Boral liquefied petroleum gas storage site in April 1990.

In response to these incidents, the Government established a wide-ranging inquiry into the storage, transportation, manufacture, use and disposal of chemicals in this State.



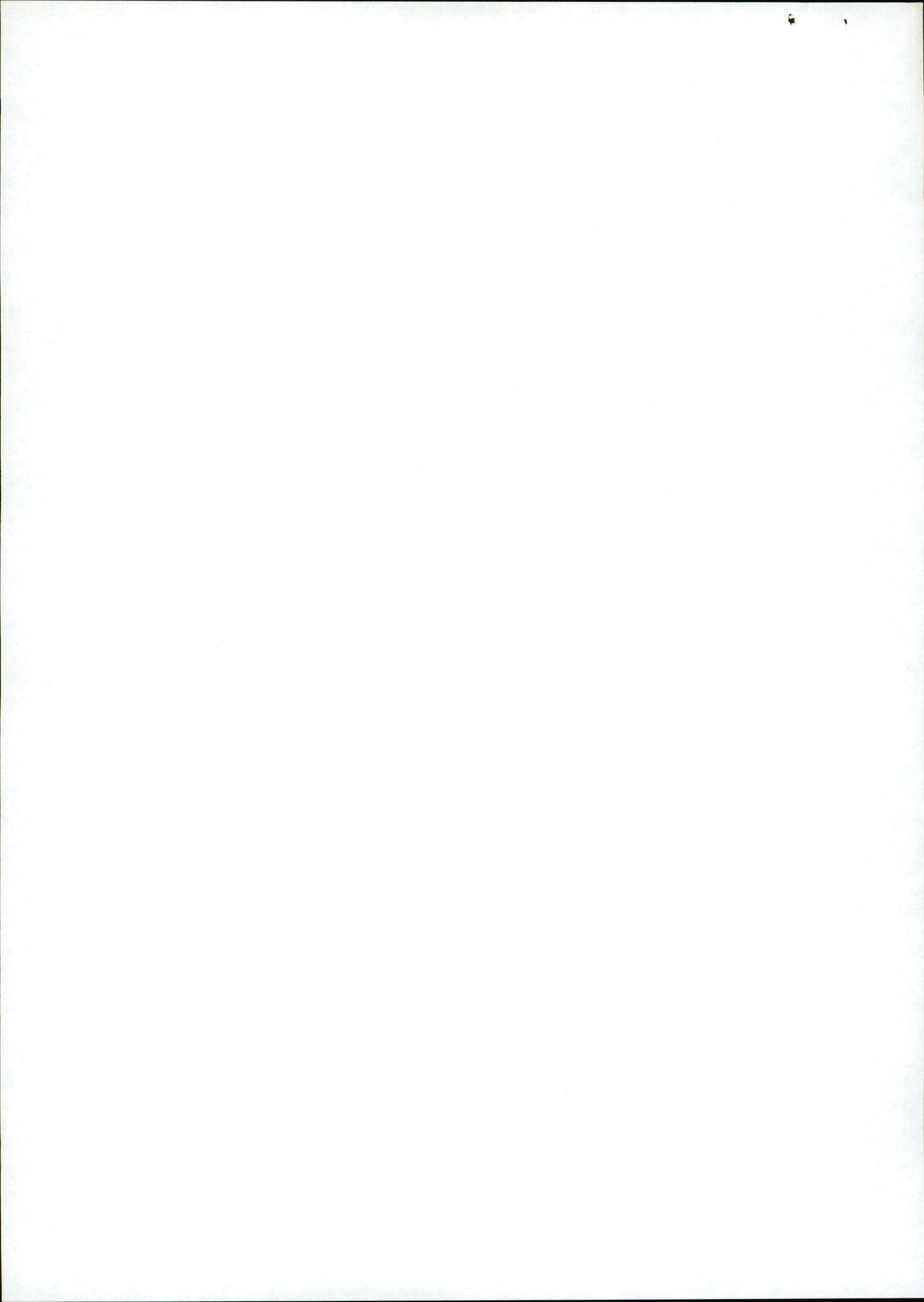
One of the recommendations arising out of the Chemical Inquiry was that the Fire Brigades Act be amended to identify the Fire Brigades as the 'combat agency' for incidents involving hazardous materials.

The Inquiry also recommended that the NSW Fire Brigades continue to upgrade its



capacity, particularly in country areas, to ensure appropriate responses to hazardous material incidents, and in particular incidents involved with the transport of hazardous materials.

The recommendations of the Chemical Inquiry, Mr President, acknowledged and endorsed a long standing role



of the Fire Brigades (both in Australia and overseas) in dealing with hazardous material incidents.

Mr President, the New South Wales Fire Brigades maintains a condition of readiness for immediate emergency response from 325 fire stations throughout the State.

While fire response is their major activity, the Fire Brigades 24 hour availability has been recognised by the other emergency services and has led to its acceptance as the combat agency to carry out hazardous materials abatement.

As an indication of its existing level of commitment the Fire Brigades attended 5,400

hazardous spills or incidents in 1992. This represent almost 8 percent of the Fire Brigades total calls and reflects the steadily increasing use of chemicals and other dangerous goods in our society.

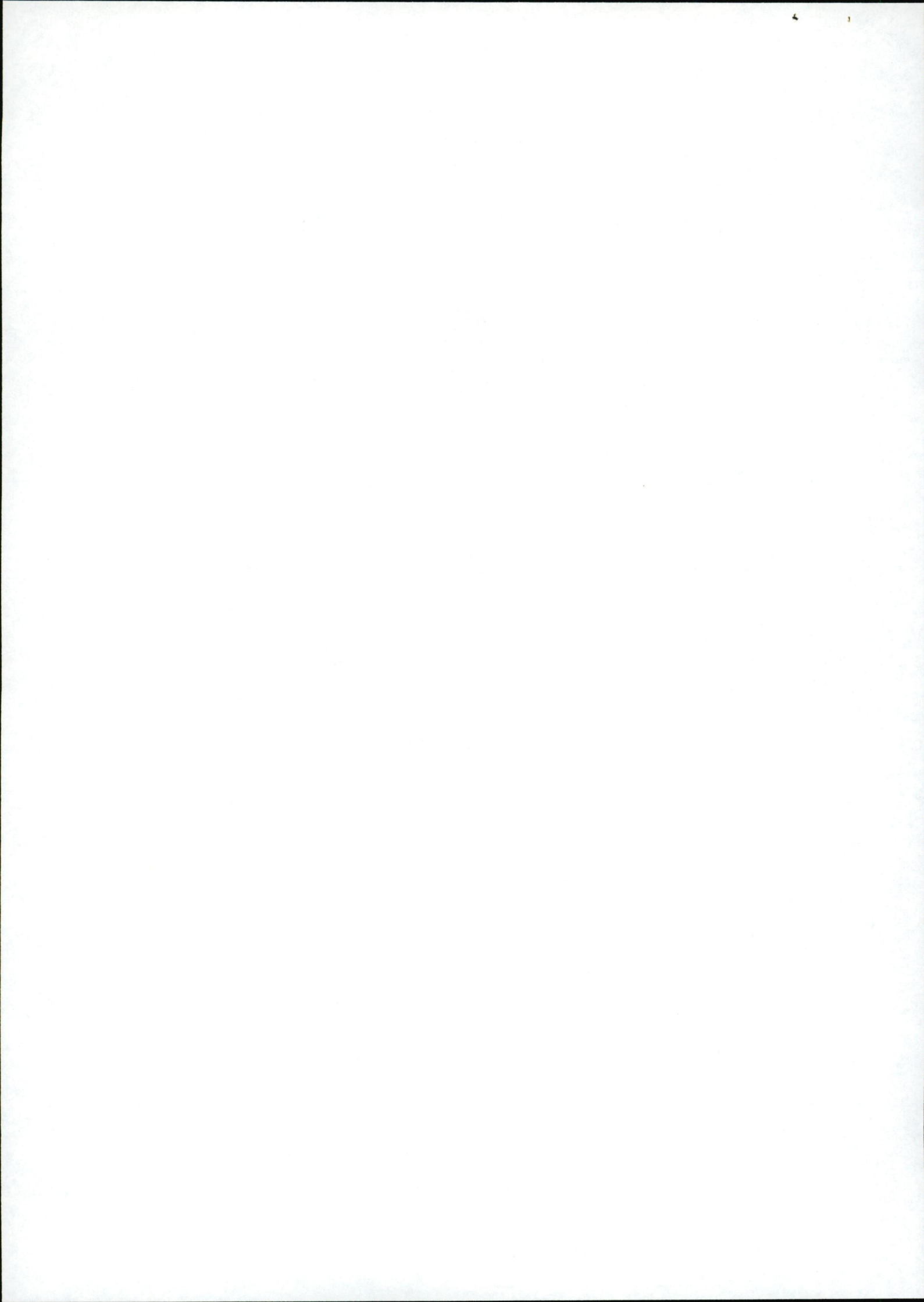
Mr President, the Fire Brigades hazmat response role has been acknowledged in 2 documents of significant importance

produced in cooperation with the Environment Protection Authority. They are the Enviroplan and the Hazmat plan.

Mr President, the present legislative basis for the Fire Brigades response to hazardous material incidents is implicit only.

The Brigades rely on Section 7 of the Fire Brigades Act which authorises the taking of action to protect persons from injury or death and prevent damage to property in non-fire situations.

This is in marked contrast to Fire Brigades authority with respect to fires where the legislation confers explicit



duties, powers and indemnities on the Brigades.

Accordingly Mr President, the broad thrust of this Bill, which amends the Fire Brigades Act, is to:

- ratify the authority of the NSW Fire Brigades as the combat authority for dealing

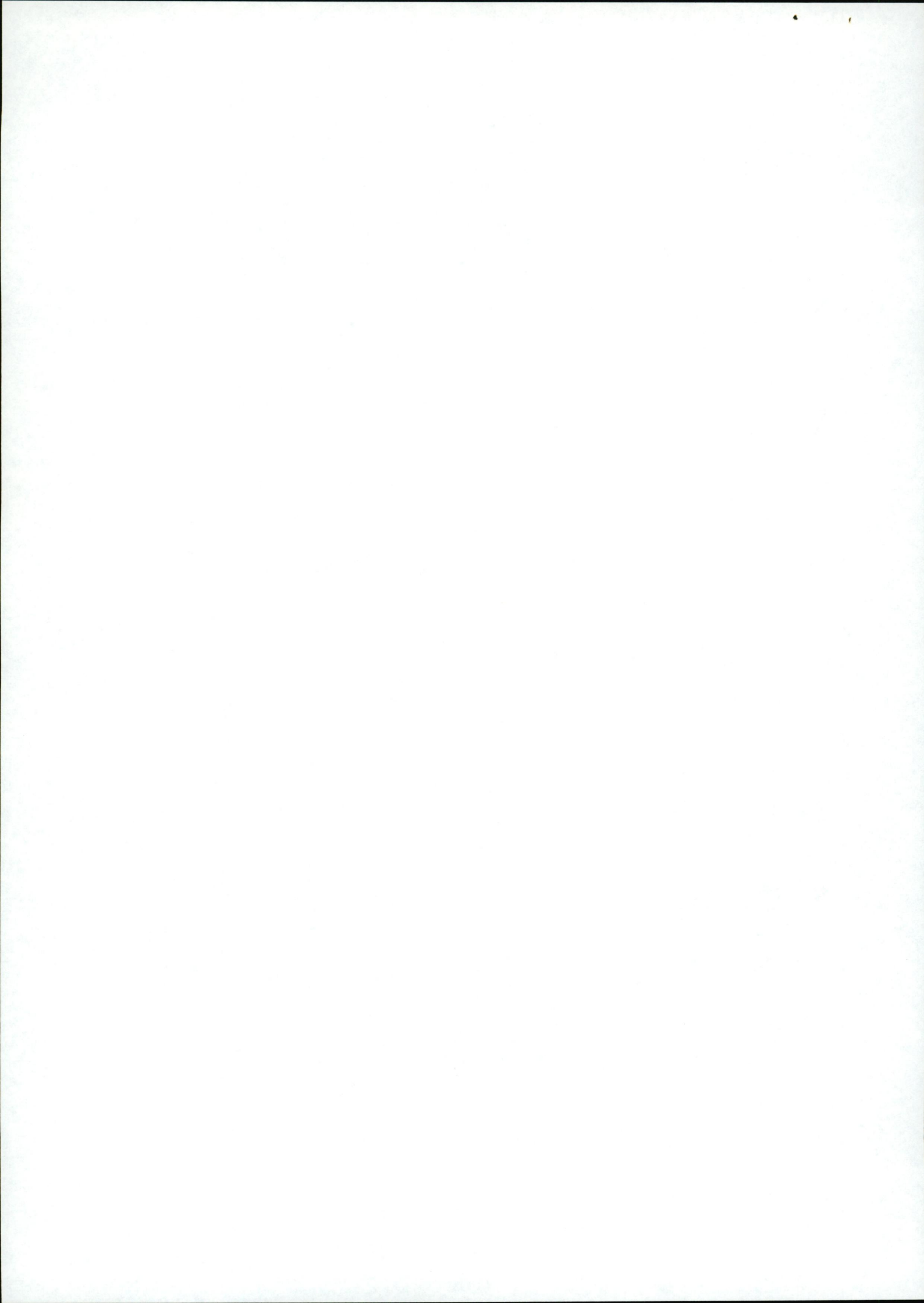
with land-based hazardous material incidents,

- provide appropriate powers and indemnities to enable the Brigades to respond to hazardous material incidents, and

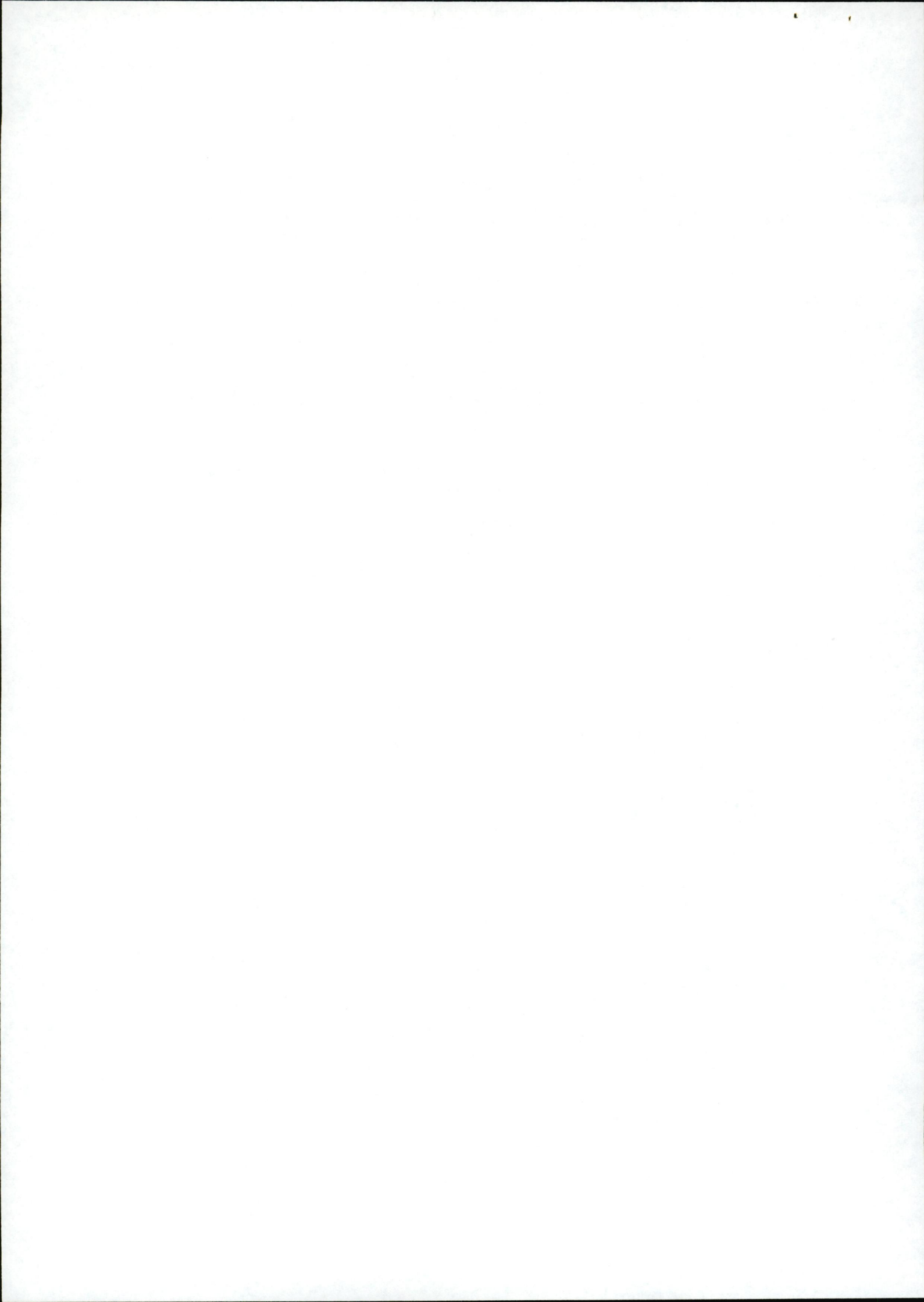
- authorise the Brigades to charge for the cost of its attendance at these incidents.

Let me assure Honourable Members that the Fire Brigades has already established a comprehensive infrastructure for dealing with hazardous material incidents.

By the end of 1993 all fire stations throughout the State will have received specialist training for this role.



Furthermore, 185 country stations will have received equipment under a program directed to give most country stations the resources to render safe routine chemical spills and to provide an operationally safe environment for firefighters attending hazardous material incidents.



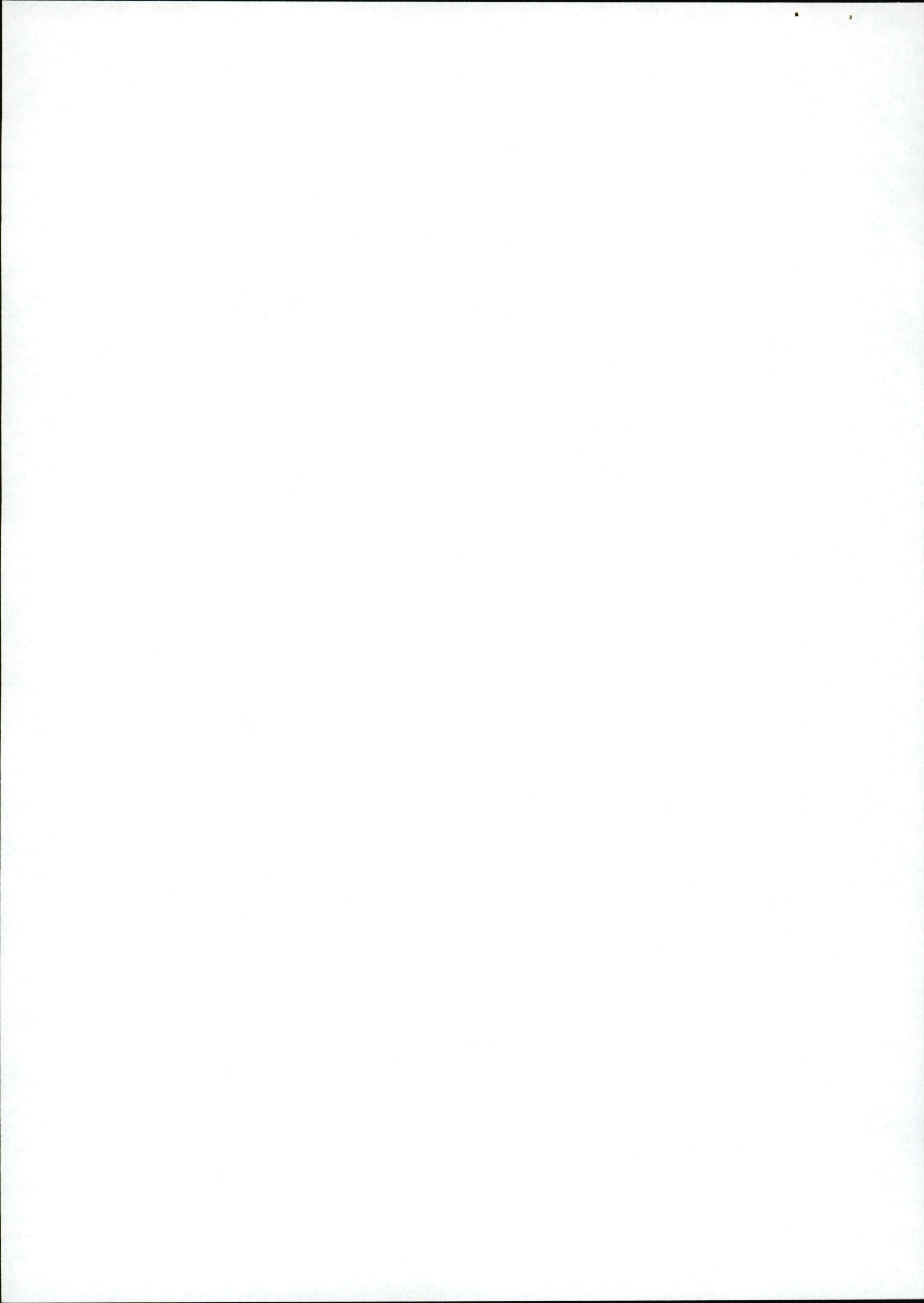
The hazmat equipment is being installed in kits on the majority of the State's fire engines.

These kits contain chemical recovery bins, hydrocarbon booms, chemical pillows, a PH meter, denso putty, soda ash and other essential gear.

The fire engines also carry spillage clothing, foam, surface

active agents, chemical handbooks and Hazchem cards.

With country fire station now well equipped, a further component of the Brigades three year strategy to upgrade its hazmat capacity will be the establishment of eight Sydney metropolitan fire stations as hazardous materials support stations.

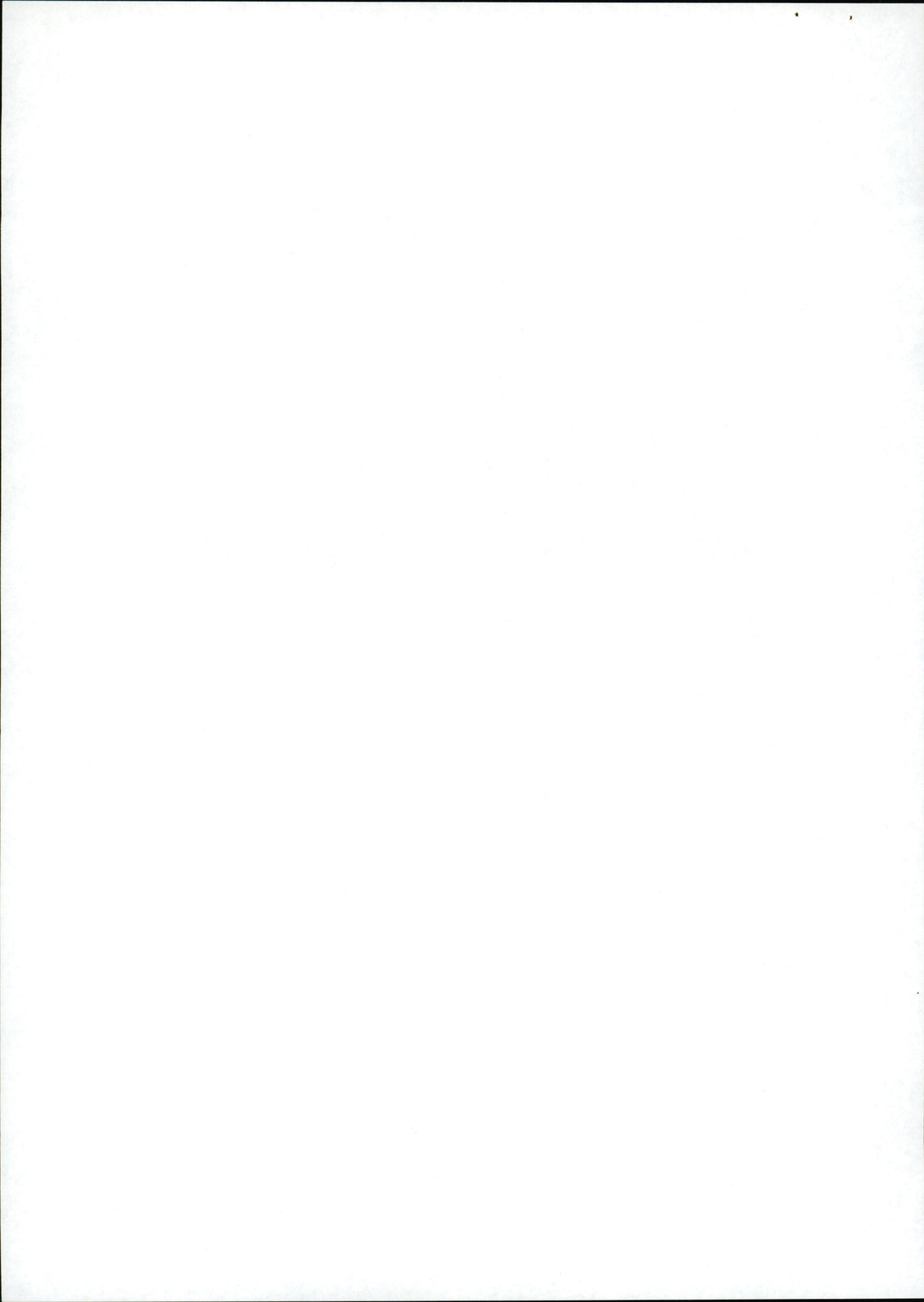


Neutral Bay, Hornsby, Marrickville, Cabramatta, Kellyville, St Marys, Engadine and Lidcombe will support both the first fire stations at an incident and the Brigades' main Hazmat unit which is located at Chullora.

In both Wollongong and Newcastle one fire station will

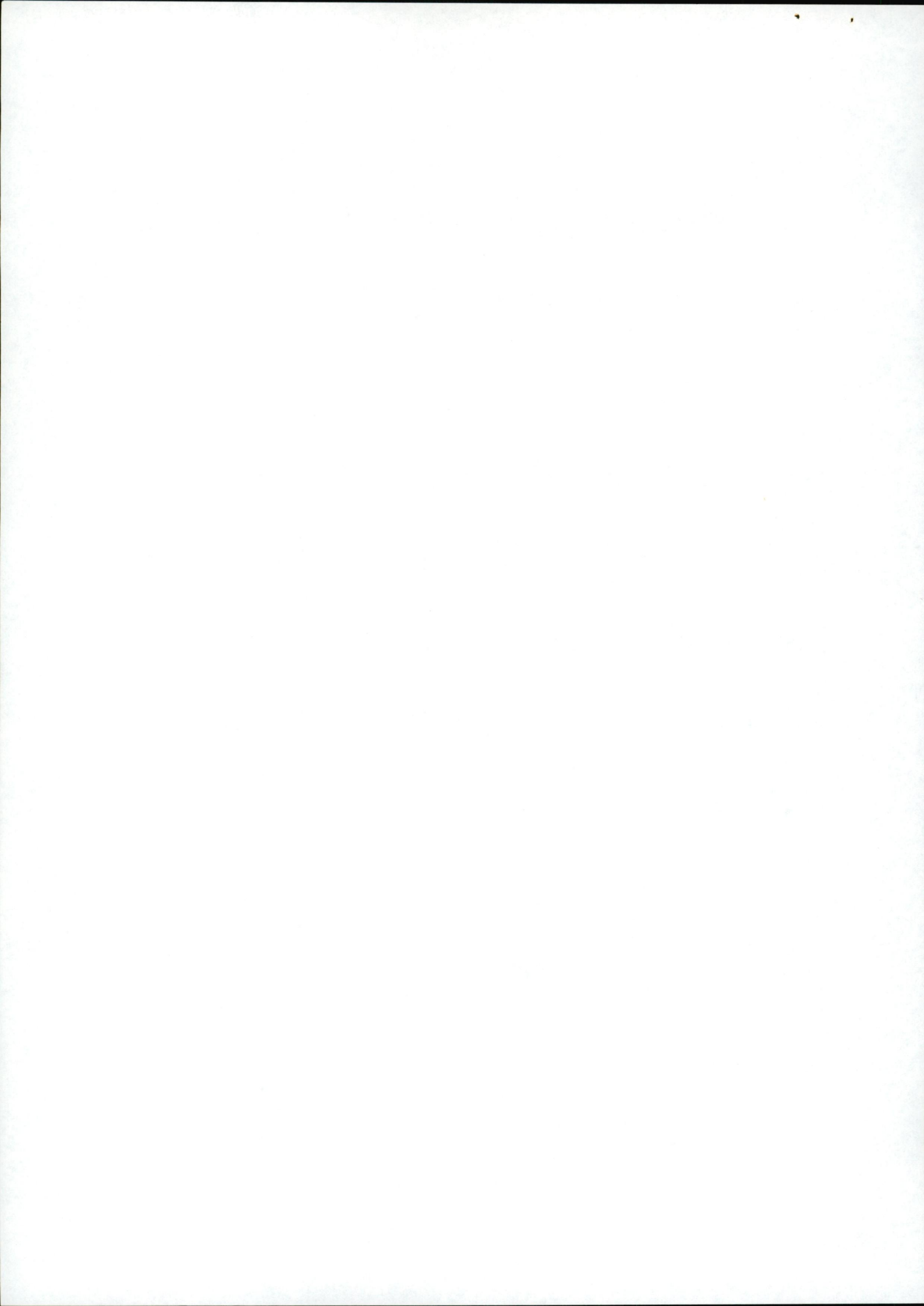
be similarly resourced within 1993/94.

Mr President, the Fire Brigades' State Communication Centre has access to DataChem, a computerised list of the 60,000 chemicals which fire brigades are most likely to encounter, along with a list of their dangerous properties and



the most appropriate way of rendering them safe.

In addition, the Workcover Authority has designed and implemented the Stored Chemical Information Database (SCID) to provide information on the nature and quantity of dangerous chemicals stored on sites.



When an emergency call is received at the NSW Fire Brigades' Communication Centre, SCID automatically searches for the site information.

Firefighters have immediate access to details about the type and typical quantities of chemicals stored, a map of the site indicating the location of

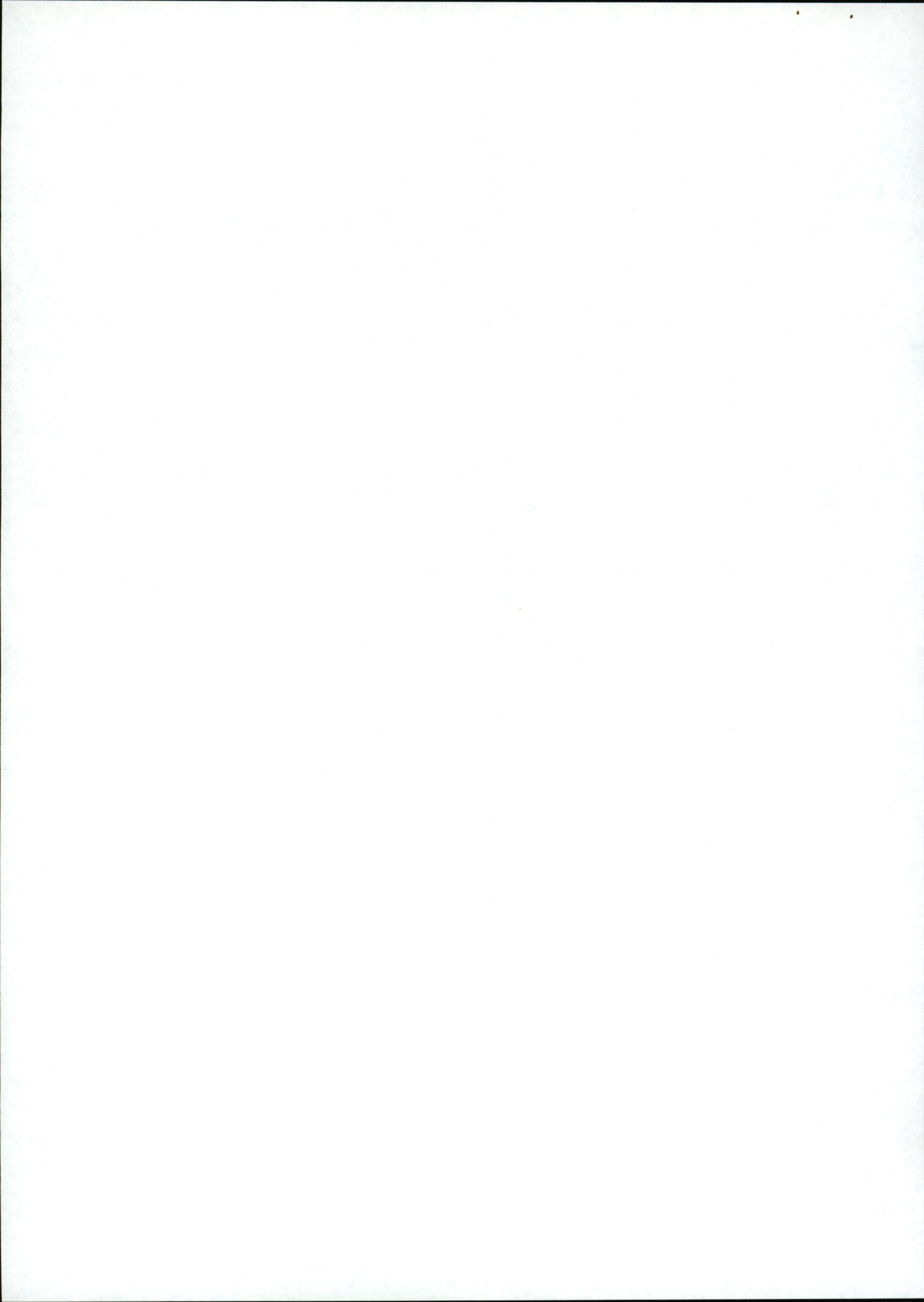
the chemicals and information on the best means of approaching an emergency situation.

Mr President, let me now turn to the most significant provisions of the Bill.

The Bill contains a broad definition of "hazardous

material" and "hazardous material incident".

Any substance that escapes and causes or threatens to cause injury or death or damage to property may be the subject of a hazardous material incident, even though it may not be an inherently dangerous substance.



Clause 4 of the Bill which amends Section 6 provides for the Fire Brigades to take all practical measures for protecting and saving life and property endangered by hazardous material incidents, for confining or ending such incidents and for rendering the sites of such incidents safe.

In contrast within the Fire Brigades duty to respond to fires within declared Fire Districts, the duty of the Fire Brigades in relation to hazardous material incidents will be State-wide.

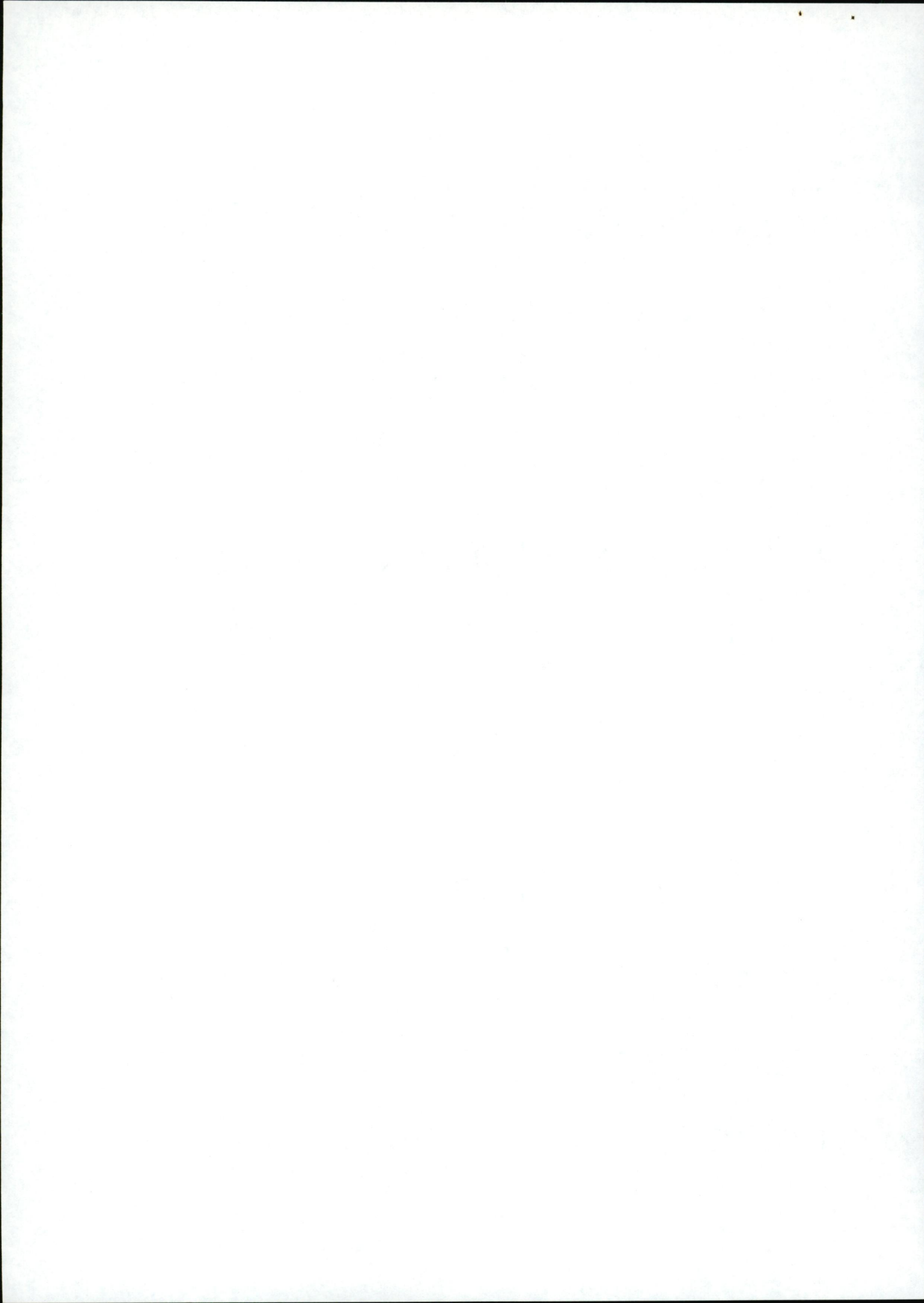
However it will not apply to incidents occurring on State waters. The Maritime Services

Board will continue to respond to these incidents.

The primary consideration which make it necessary for the Brigades to assume State-wide responsibility for hazardous material incidents is that the transport network of the State is where many of these incidents occur.

Heavy vehicles are increasingly carrying chemicals and other dangerous goods including biological materials and radioactive substances along the major transport corridors of NSW.

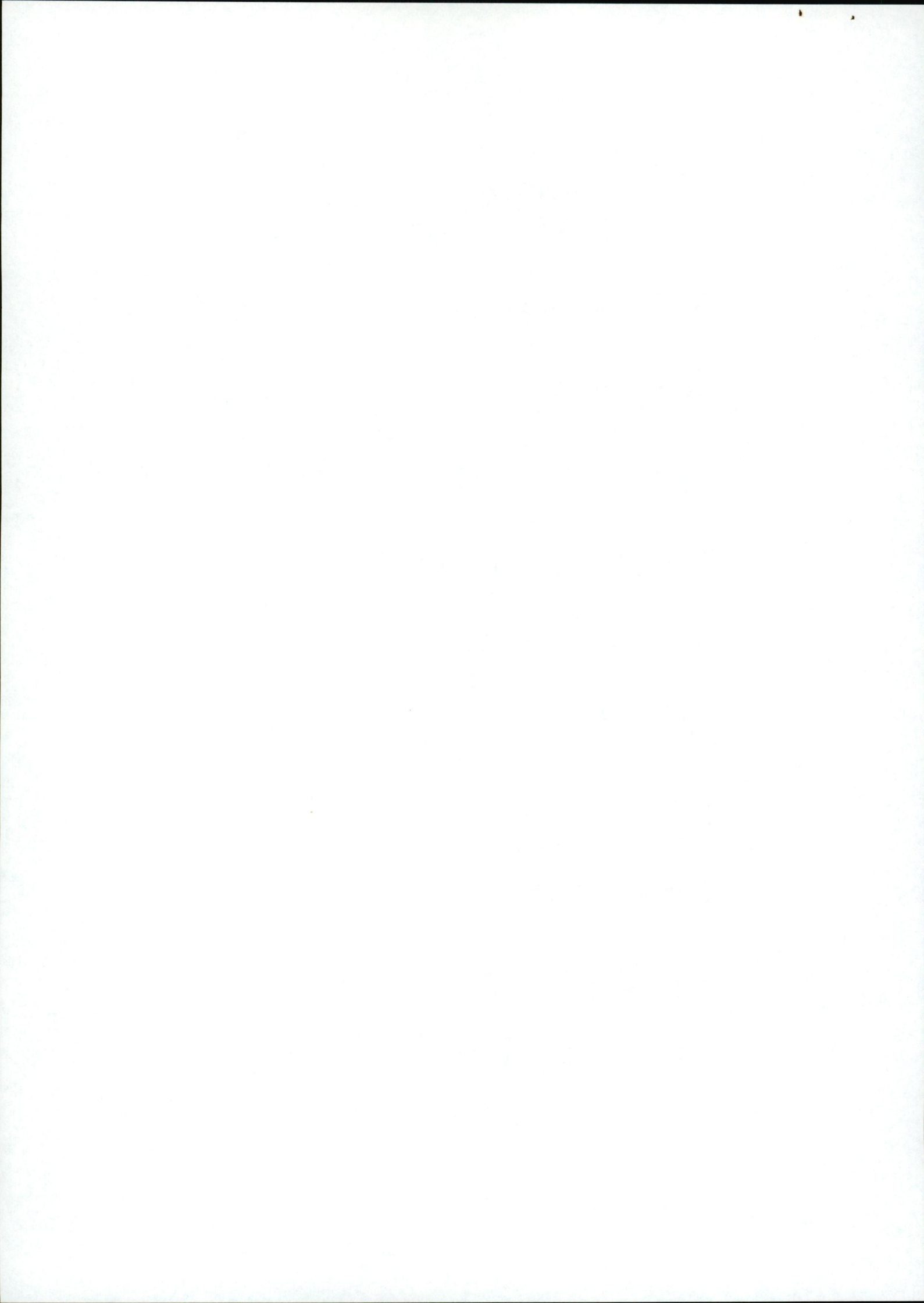
To be in a position to deal with incidents which may occur anywhere in the State, the combat agency must accept a



would have in dealing with a fire. They include:

- the power to close streets or public places in the vicinity of an incident to traffic,
- the authority to take water free of charge, for the purpose of dealing with an incident,

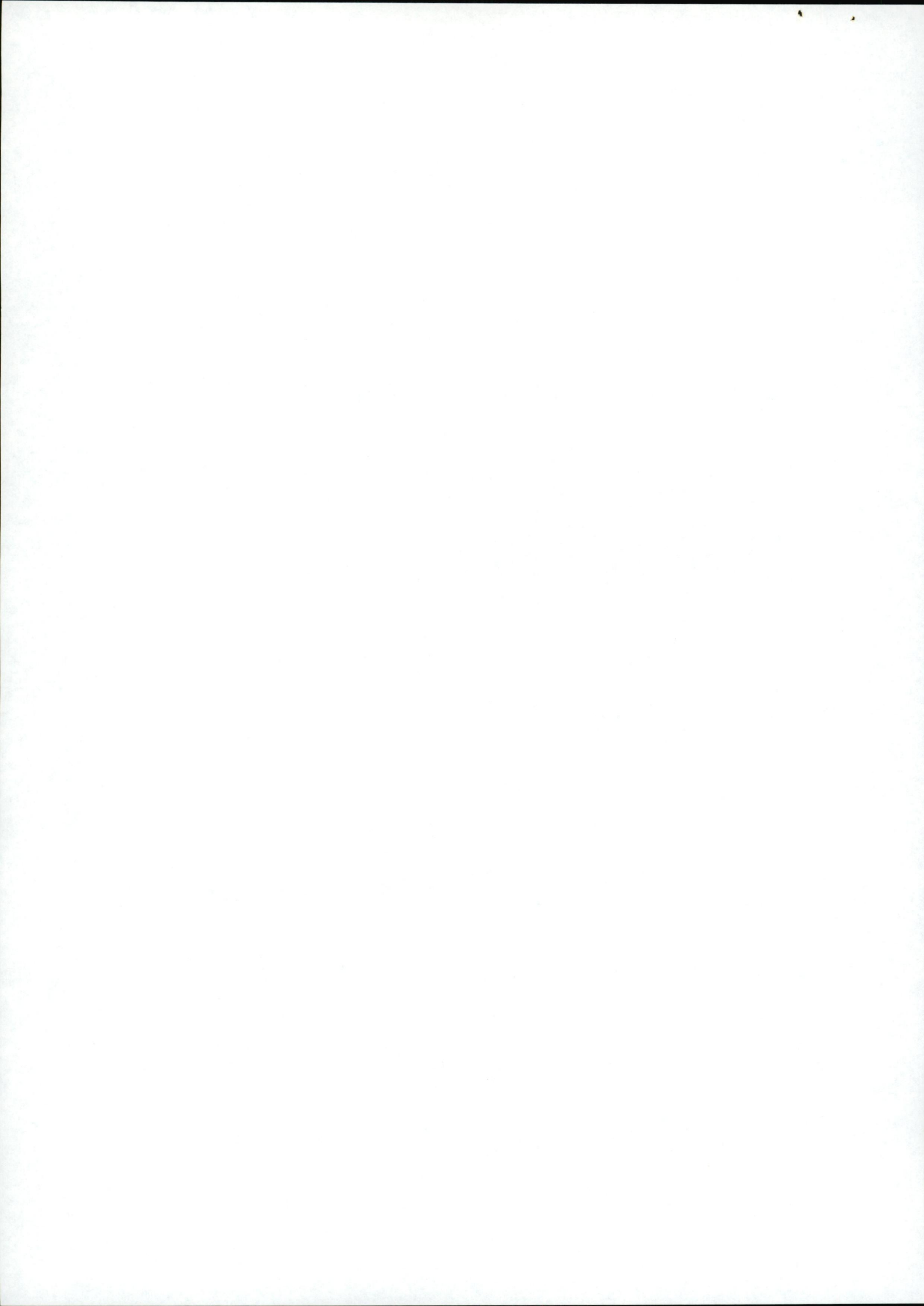
- to take possession of buildings, vehicles, vessels and other property and to move vehicles, vessels or other property,
- to shore up buildings or walls affected by hazardous materials incidents,
- to **cut** off the gas or electricity supply to



premises near the site of such an incident, and

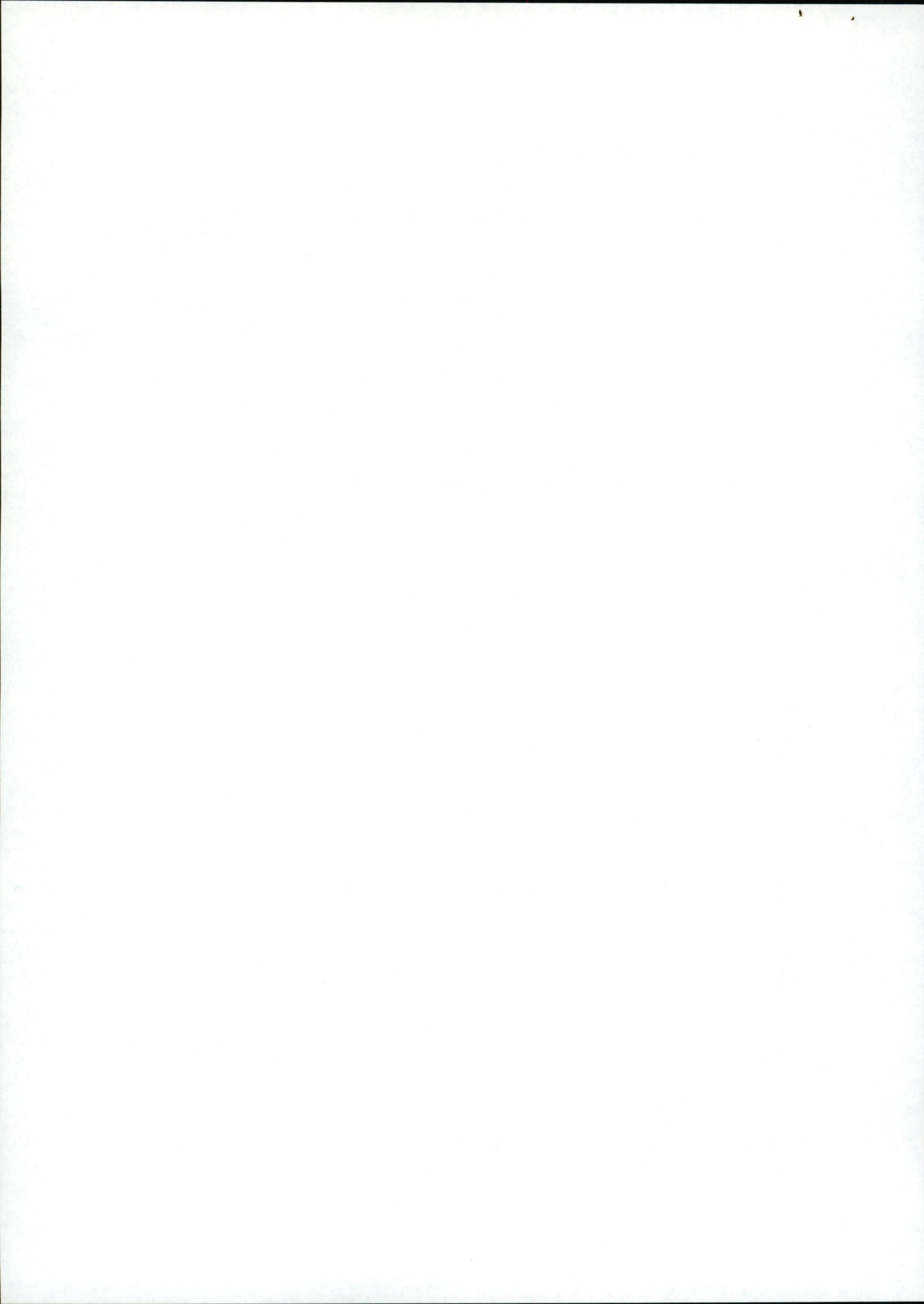
- to remove any persons, vehicle, vessel or thing interfering with the officer's dealing with the incident.

Section 25 of the Fire Brigades Act is amended by the Bill to require members of the Police Service and others to recognise



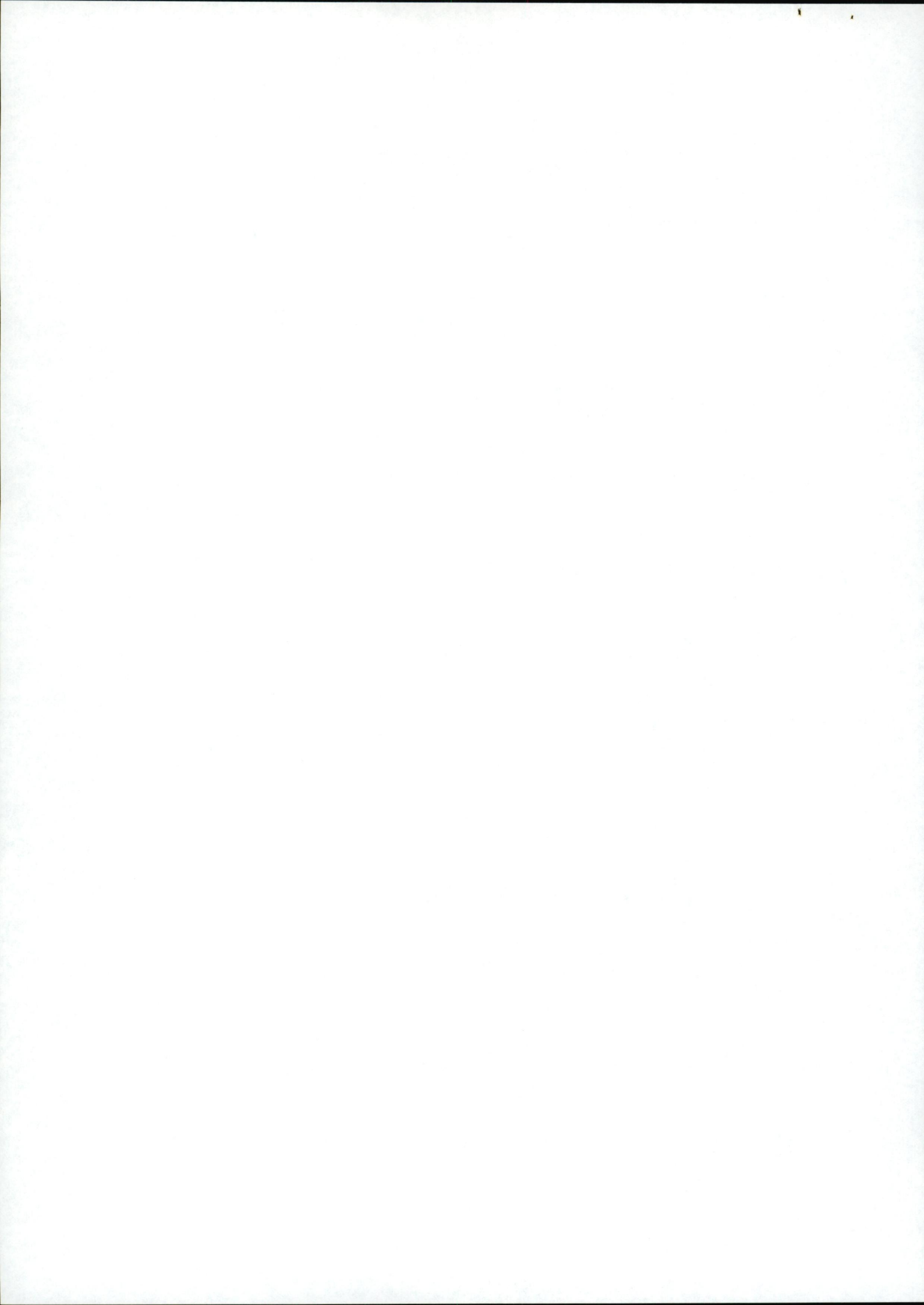
the authority of fire brigades officers at hazardous material incidents and to the support that authority when dealing with the incident.

Mr President, I would like to acknowledge the assistance of the Insurance Council of Australia whose Officers have co-operated in the preparation of this legislation.



Under the existing Act the holders of fire insurance policies could claim for damage done to their property by the Fire Brigades in the necessary discharge of its firefighting operation.

The proposed amendment to Section 38 extends this avenue of claim so that if the Brigades damages property in the course

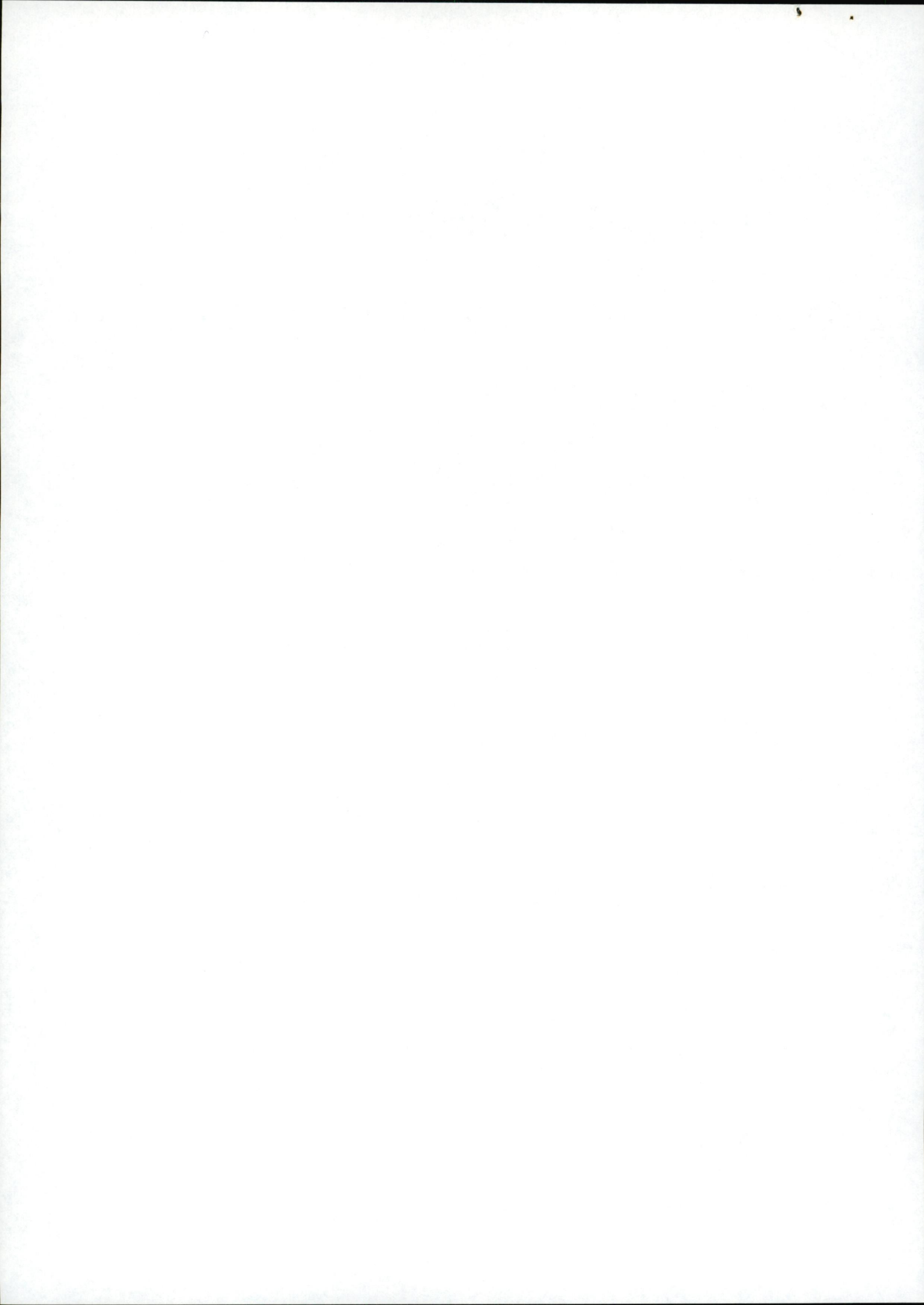


of servicing a hazardous materials incident, the affected property owners will be able to make a claim against their fire insurance policies as if the damage had been caused by fire.

This amendment will affect not only householders but also commercial and industrial fire insurance contracts.

It is therefore intended to delay proclamation of the relevant provision of the Bill until 1 July 1994, to provide Insurance Companies with a sufficient lead time to discuss the matter with their clients and renegotiate policies where it is appropriate to do so.

Mr President, in approving the formal extension of the



activities of the NSW Fire Brigades into hazardous materials incidents response, the Government is concerned that this should not result in new impositions on public funding.

Accordingly, a new provision will entitle the Director-General of the Brigades to recover costs for the services of the Brigades

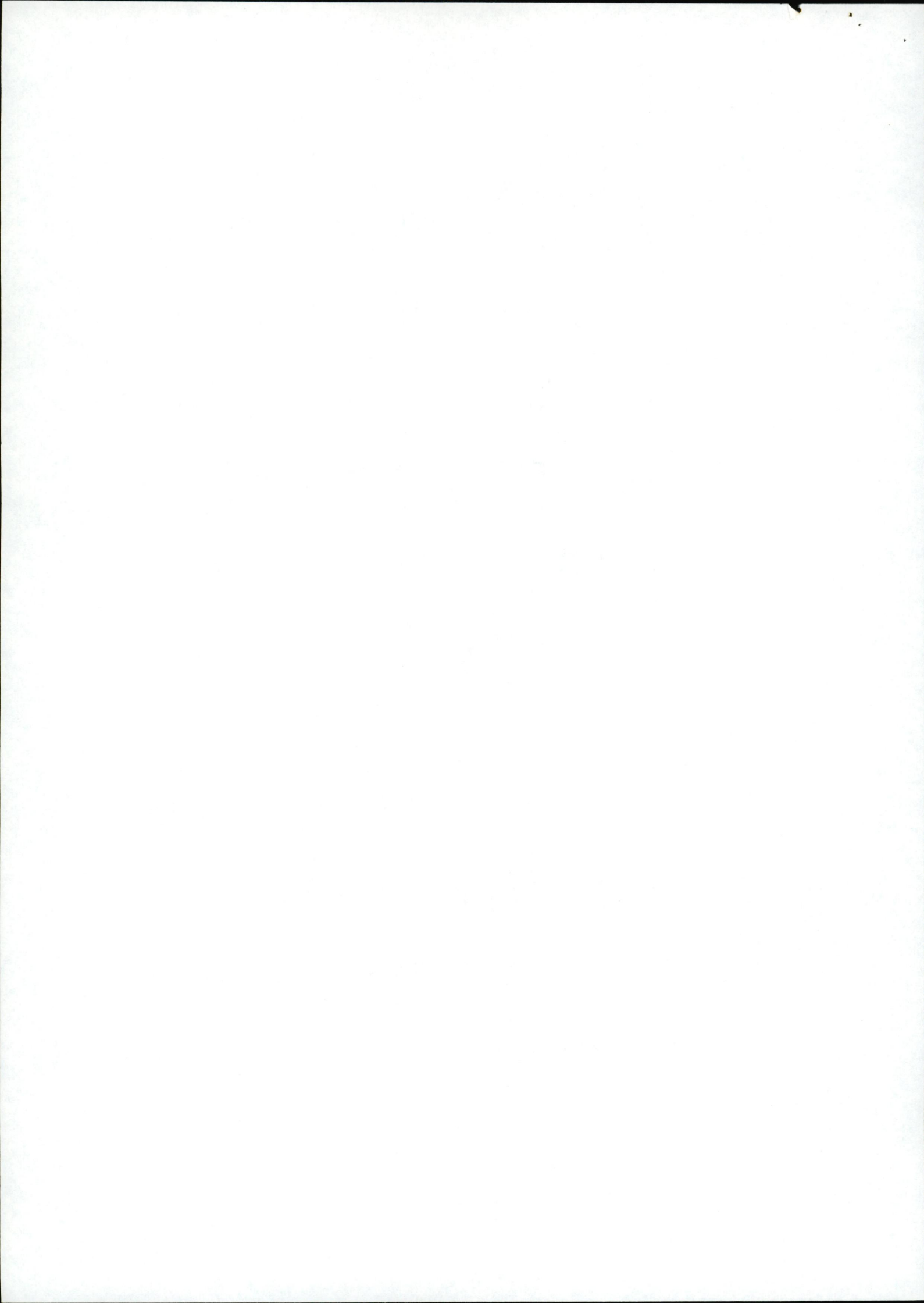
in respect of hazardous materials incidents anywhere in the State.

Guidelines are being developed for the imposition of cost-recovery as follows:

- 1. The incident should have involved over one hour of Brigade time and a substantial amount of resources.

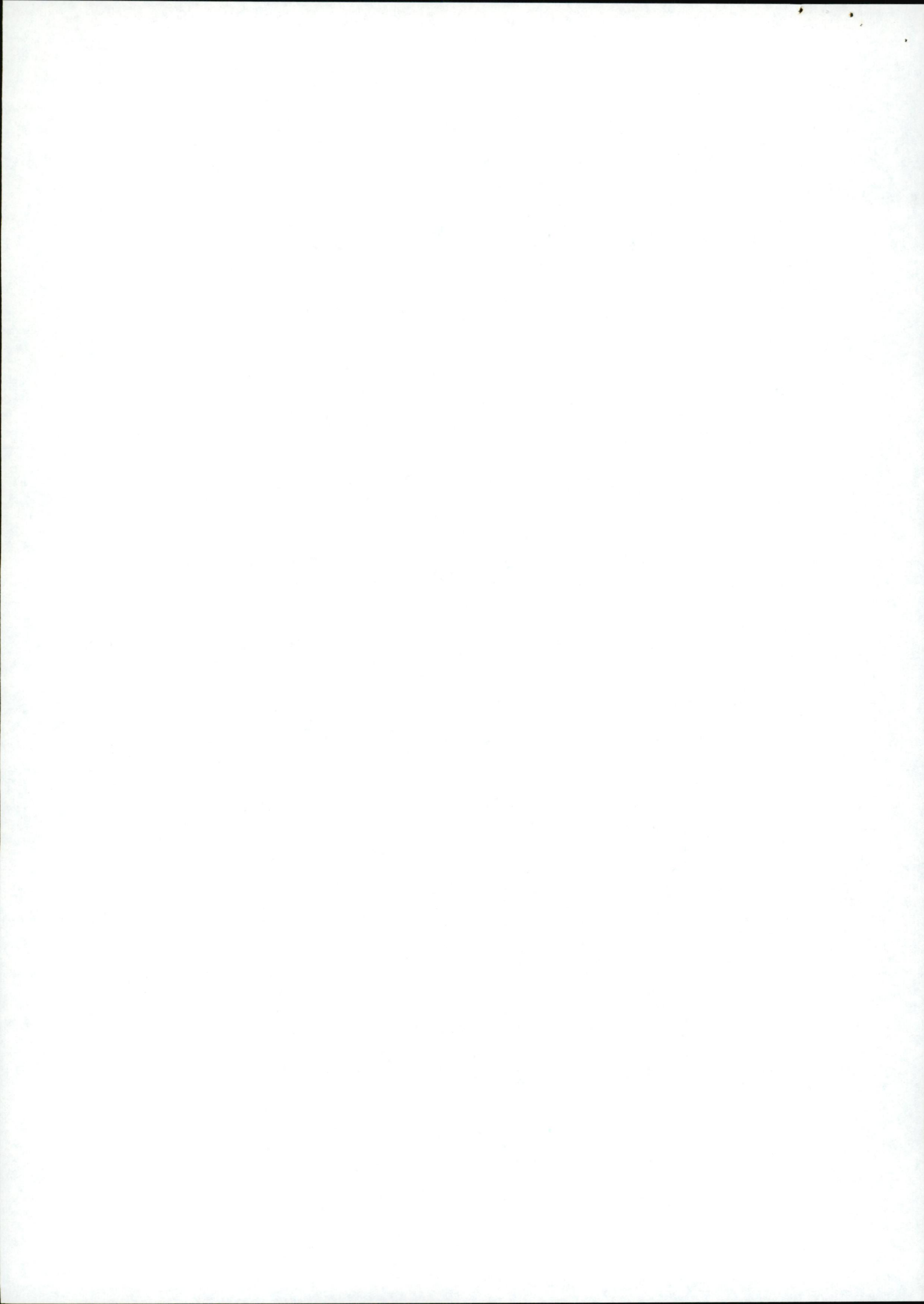
This will ensure that charges will be made if there is a significant commitment, and will exclude minor incidents where the administrative costs of raising an invoice would outweigh the value of the claim.

- 2. The Director-General will have the discretion to scale down the scheduled charges, for example in situations where the imposition of the full charges would cause unreasonable hardship, or otherwise work against the public interest.



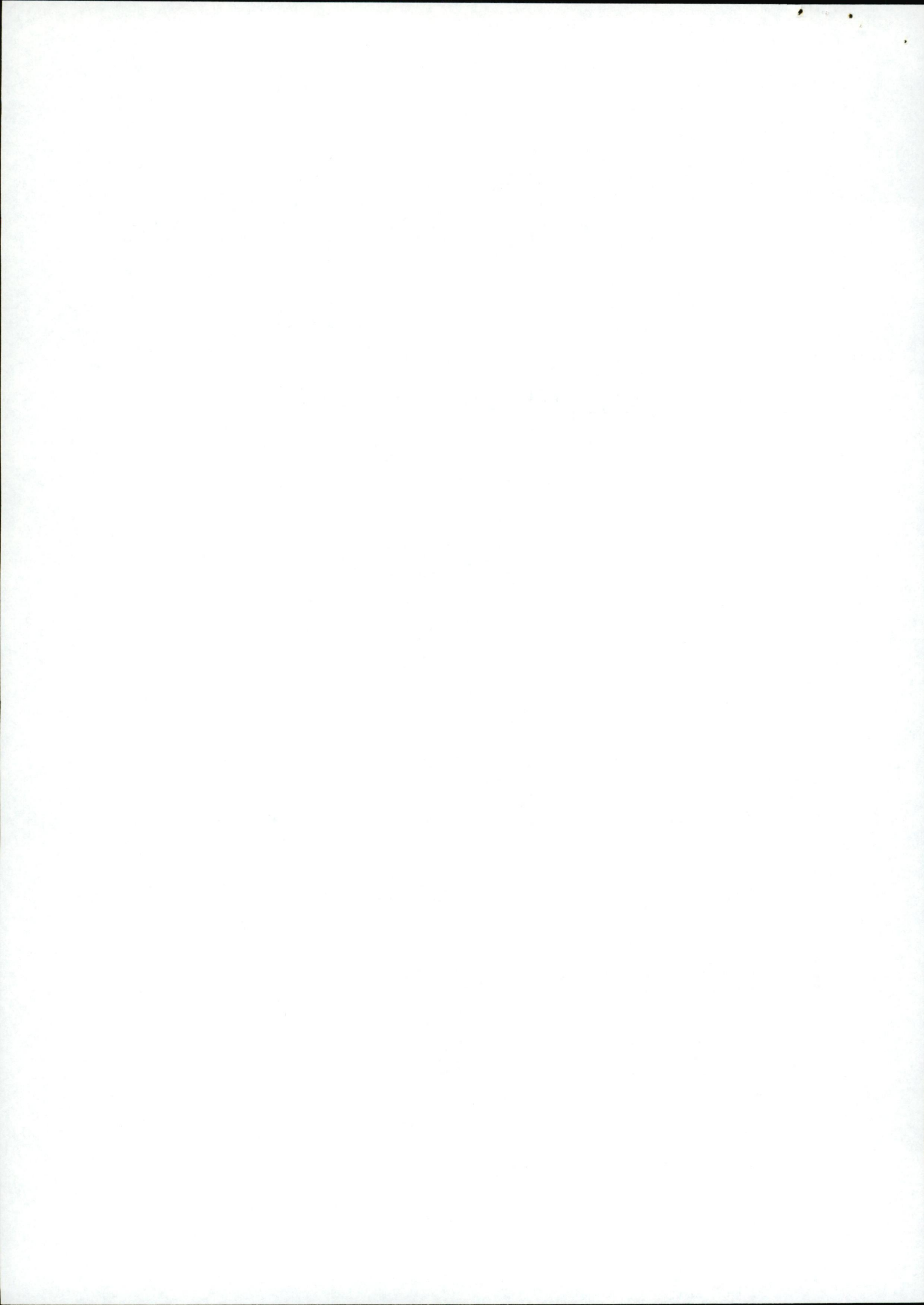
- 3. At the commencement of the legislation, the schedule of charges will be the same as the table of charges for attending fire outside the districts, set out in the Fire Brigades (Charges) Regulation 1989.

- 4. If the hazardous material incident also



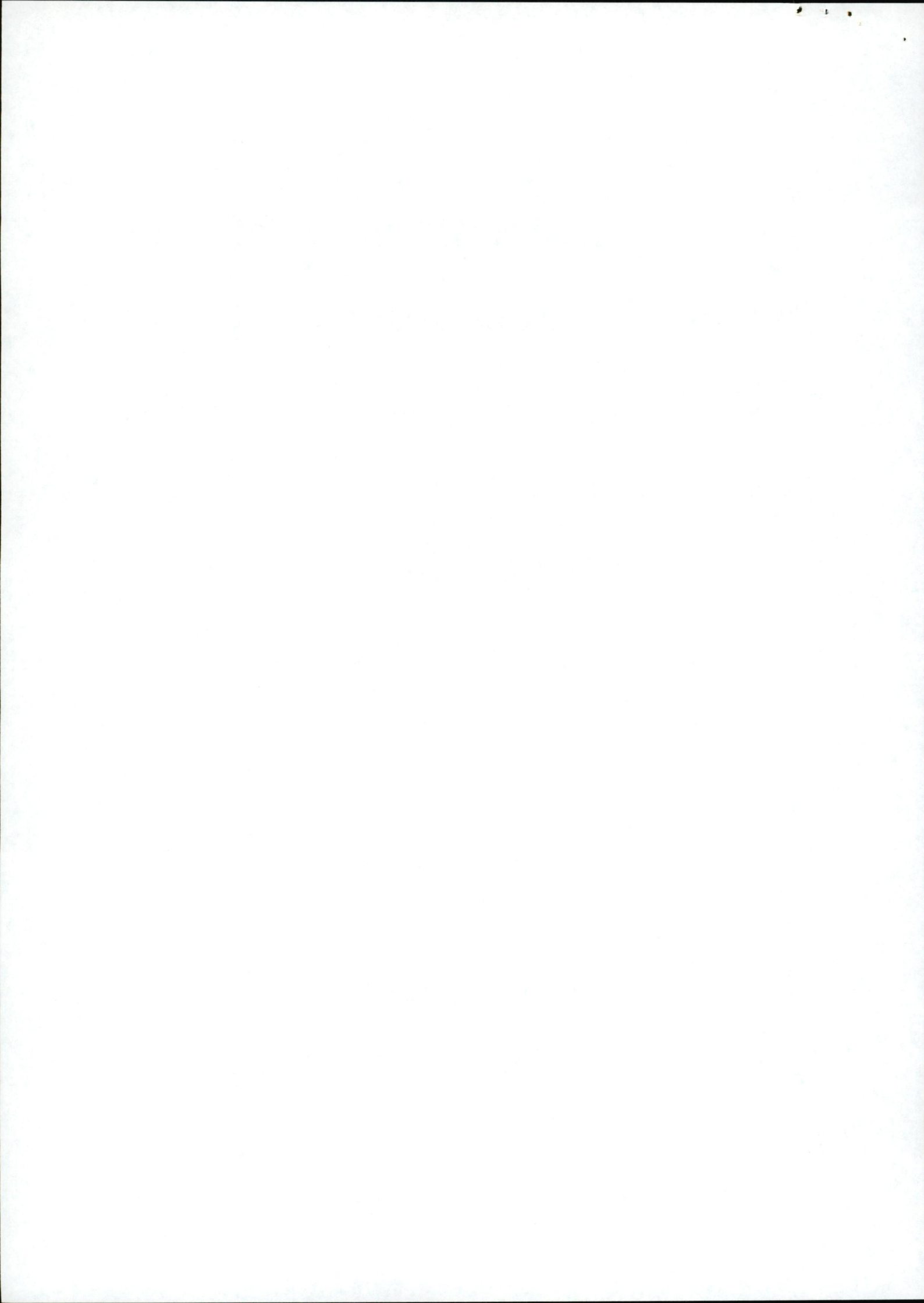
involves fire or the risk of fire and the property/owners are insured for such risks, the incident may not be charged for.

These are preliminary guidelines, and will evolve as incidents are examined on a case by case basis.



The Government is confident that the insurance infrastructure underpinning the chemical and transport industries will support the introduction of cost recovery for the response of the Brigades to hazardous materials incidents.

Mr President, one remaining provision which I bring to



attention is Clause 22 of the Bill which amends Section 31.

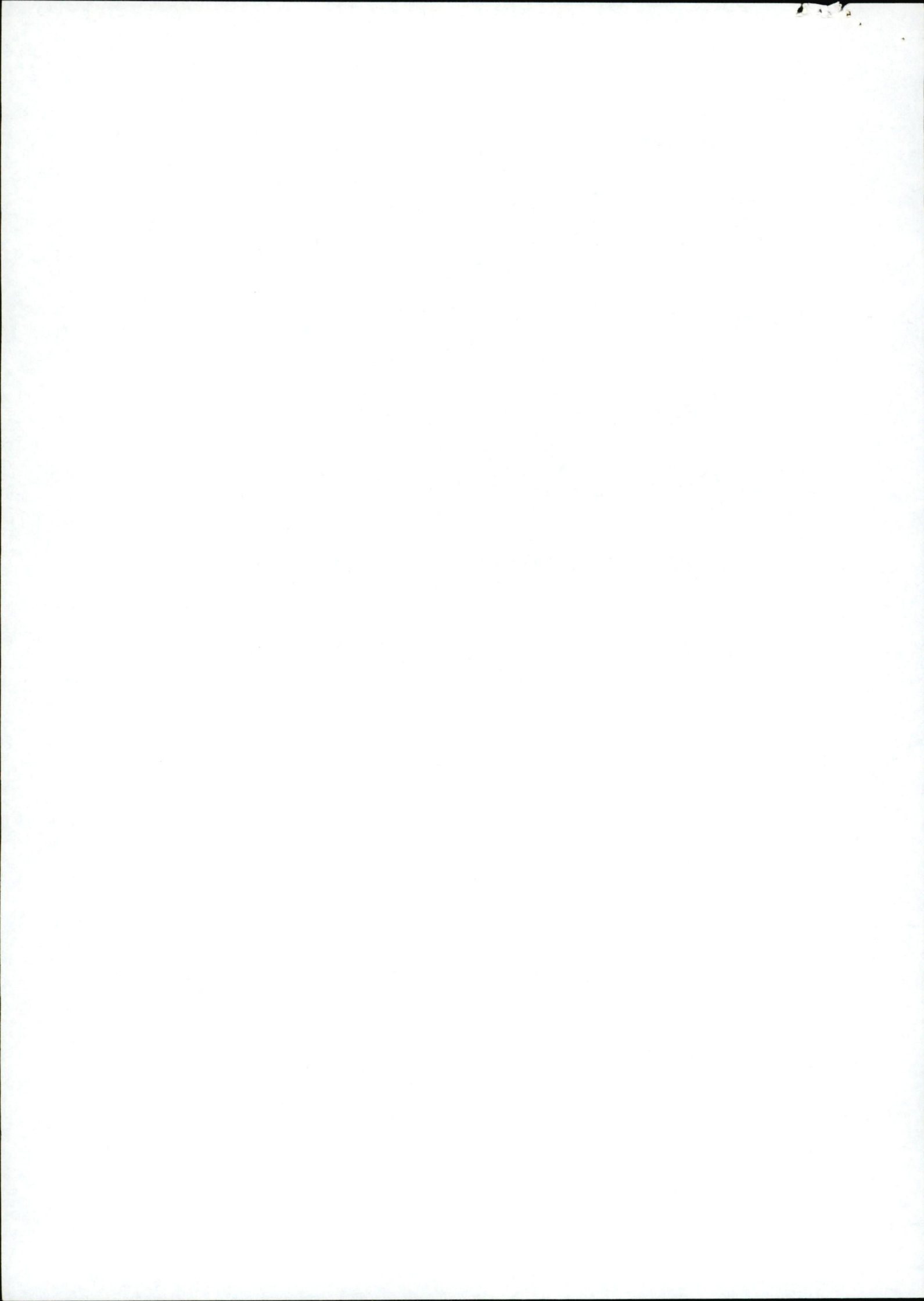
As the purpose of this legislation is to recognise the role of the NSW Fire Brigades as hazardous material combat agency, a limitation is made on the formation of other bodies for this role.

Recognition is given to the need of firms such as chemical manufacturers which commission in-house emergency works crews as part of their risk management handling.

The limitation is designed to prevent the uncontrolled development of hazardous material response units, and

particularly to avoid the expenditure of public funds on training or equipping any agencies other than the single combat agency designated by the State's emergency planning organisation.

Mr President, in commending this Bill to the House I am confident that it will receive



bipartisan support, as it does no more than validate the present role of the NSW Fire Brigades as the combat agency for land-based hazardous materials incidents in New South Wales.

**FIRE BRIGADES (HAZARDOUS MATERIALS) AMENDMENT
ACT 1993 No. 110**

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Fire Brigades Act 1989 No. 192

SCHEDULE 1—AMENDMENTS

**FIRE BRIGADES (HAZARDOUS MATERIALS) AMENDMENT
ACT 1993 No. 110**

NEW SOUTH WALES



Act No. 110, 1993

An Act to amend the Fire Brigades Act 1989 so as to confer on New South Wales Fire Brigades certain powers and duties in respect of hazardous material incidents; and for other purposes. [Assented to 3 December 1993]

Fire Brigades (Hazardous Materials) Amendment Act 1993 No. 110

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Fire Brigades (Hazardous Materials) Amendment Act 1993.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Fire Brigades Act 1989 No. 192

3. The Fire Brigades Act 1989 is amended as set out in Schedule 1.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Long title:

After "fire" where firstly occurring, insert "and from hazardous material incidents,".

(2) Section 3 (**Definitions**):

In section 3 (1), insert in alphabetical order:

"hazardous material" means anything that, when produced, stored, moved, used or otherwise dealt with without adequate safeguards to prevent it from escaping, may cause injury or death or damage to property;

"hazardous material incident" means an actual or impending land-based spillage or other escape of hazardous material that causes or threatens to cause injury or death or damage to property;

(3) Section 4 (**Application of Act**):

At the end of section 4, insert:

(2) This Act applies to land-based hazardous material incidents (and to any fires that may result from them) that occur anywhere in the State except on State waters, as defined in the Marine Pollution Act 1987.

(3) A hazardous material incident that occurs in or on a building, bridge or other structure or on any body of water (not being part of State waters) is taken to be land-based.

Fire Brigades (Hazardous Materials) Amendment Act 1993 No. 110

SCHEDULE 1—AMENDMENTS—*continued*

(4) Section 6 (**Duty to deal with fires and hazardous material incidents**):

At the end of section 6, insert:

(2) It is the duty of the Director-General to take all practicable measures:

- (a) for protecting and saving life and property endangered by hazardous material incidents; and
- (b) for confining or ending such an incident; and
- (c) for rendering the site of such an incident safe.

(5) Section 7:

Omit the section, insert instead:

General authority to protect persons and property

7. (1) The Director-General is authorised to take measures anywhere in the State for protecting persons from injury or death and property from damage, whether or not fire or a hazardous material incident is involved.

(2) In the case of fire, it does not matter whether or not the persons are, or the property is, within a fire district.

(6) Section 9 (**Volunteer fire brigades**):

Omit section 9 (1) (a), insert instead:

- (a) the association is formed for the purpose of extinguishing fires and of taking measures referred to in section 6 (2) in relation to hazardous material incidents; and

(7) Part 3 and Division 1 of Part 3, headings:

Omit the headings, insert instead:

**PART 3—FIGHTING AND PREVENTING FIRES
AND DEALING WITH HAZARDOUS MATERIAL
INCIDENTS**

**Division 1—Powers at fires and hazardous material
incidents**

(8) Section 11 (**Brigades to proceed with speed to suspected fires or hazardous material incidents**):

At the end of section 11, insert:

Fire Brigades (Hazardous Materials) Amendment Act 1993 No. 110

SCHEDULE 1—AMENDMENTS—*continued*

(2) When there is a report of a hazardous material incident, a fire brigade must, despite anything to the contrary in any Act:

- (a) proceed with all speed to the site of the incident; and
- (b) try by all possible means to render the site of the incident safe and save any lives and property that are in danger.

(9) **Section 12 (Investigation of reported fires and hazardous material incidents):**

Omit section 12 (1), insert instead:

- (1) The officer in charge may, with or without members of a fire brigade, enter any place:
 - (a) in respect of which an alarm of fire is raised to ascertain whether there is a fire at the place; or
 - (b) in respect of which a report of a hazardous material incident has been made to ascertain whether there is any hazardous material at the place that is, or is about to be, the subject of a hazardous material incident.

(10) **Section 13 (General powers of officers at fires and hazardous material incidents):**

After section 13 (1), insert:

- (1A) At the site of a hazardous material incident, the officer in charge:
 - (a) may take such measures as the officer thinks proper for the protection and saving of life and property, for confining and ending the incident and for rendering the site safe; and
 - (b) is to control and direct the operations of any fire brigade.

The site is taken to be such area in the vicinity of the incident as is for the time being determined by the officer in charge.

Fire Brigades (Hazardous Materials) Amendment Act 1993 No. 110

SCHEDULE 1—AMENDMENTS—*continued*

(11) Section 14 (**Closure of streets and public places**):

At the end of section 14, insert:

(2) The officer in charge at a hazardous material incident may cause any street or public place in the vicinity of the site of the incident to be closed to traffic until the site has been rendered safe.

(12) Section 15 (**Use of water etc.**):

Omit “may, for the purpose of extinguishing or controlling a fire”, insert instead “or hazardous material incident may, for the purpose of extinguishing or controlling a fire or confining or ending the incident or rendering the site of the incident safe”.

(13) Section 16 (**Taking possession etc. of buildings and vessels during fires or hazardous material incidents**):

After section 16 (2), insert:

(2A) For the purpose of confining or ending a hazardous material incident or rendering the site of such an incident safe, the officer in charge may:

- (a) take possession of any building, vehicle or vessel in the vicinity of that site and any property (whether or not the property consists of a hazardous material) in it or on it; and
- (b) cause such a vehicle or vessel to be removed or remove any such property and keep it in safe custody.

(14) Section 17 (**Making walls and buildings safe**):

After section 17 (1), insert:

(1A) The officer in charge at a hazardous material incident may, during the incident or immediately after it, pull down, destroy or shore up any wall or building damaged or rendered insecure by the incident or which, in the officer’s opinion, may be dangerous to life or property.

Fire Brigades (Hazardous Materials) Amendment Act 1993 No. 110

SCHEDULE 1—AMENDMENTS—*continued*

(15) Section 18 (**Disconnection etc. of gas and electricity**):

After section 18 (1), insert:

(1A) The officer in charge at a hazardous material incident may cause the supply of gas or electricity to any premises in the vicinity of the site of the incident to be shut off or disconnected.

(16) Section 19 (**General power to remove persons or obstacles**):

After “fire” where firstly and secondly occurring, insert “or hazardous material incident”.

(17) Section 22 (**Authority to enter land and buildings**):

(a) After “fire” where firstly occurring, insert “or hazardous material incident”.

(b) After “fire” where secondly occurring, insert “or incident”.

(18) Section 24 (**Officer in charge may authorise others to exercise functions**):

In section 24 (1), after “at a fire”, insert “or hazardous material incident”.

(19) Section 25 (**Duty to recognise authority of officers**):

(a) From section 25, omit “Police Force” wherever occurring, insert instead “Police Service”.

(b) In section 25 (3), after “fire”, insert “or a hazardous material incident”.

(20) Section 26 (**Interstate assistance**):

(a) From section 26 (1), omit “Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.”.

(b) After section 26 (1), insert:

(1A) A person who is a member of an interstate fire brigade and present at a hazardous material incident in the State for the purpose of trying to confine or end the incident, to render the site of the incident safe or to save any lives or property in danger there must:

(a) obey any orders given to the person by the officer in charge at the incident; and

Fire Brigades (Hazardous Materials) Amendment Act 1993 No. 110

SCHEDULE 1—AMENDMENTS—*continued*

- (b) place any gear or equipment in the person's charge at the disposal of the officer in charge at the incident.
- (c) In section 26 (2), after "the fire" wherever occurring, insert "or incident".

(21) Section 30 (**Information may be requested from owner**):

Omit section 30 (2), insert instead:

(2) On request made by a person authorised by this section, the owner of premises where a fire or hazardous material incident occurs, the owner or driver of a vehicle conveying personal property and involved in a hazardous material incident, or the owner of any personal property on any such premises or vehicle or which has been destroyed or damaged by fire or such an incident, must:

- (a) inform the authorised person whether the premises or property were or was insured at the time or during the period specified by the person; and
- (b) give the authorised person full particulars of any such insurance, including the name of the insurer and the amount of the insurance.

Personal property includes any hazardous material.

(22) Section 31 (**Fire brigade not to be constituted unless authorised**):

After section 31 (1), insert:

(1A) It is unlawful for any persons to constitute or maintain any body for the purpose of taking measures referred to in section 6 (2) in relation to hazardous material incidents except:

- (a) as a permanent or volunteer fire brigade under the authority of this Act; or
- (b) on premises or land owned or used by the persons or at which they are employed; or
- (c) where the body consists of employees of the persons and the body is constituted to deal with incidents involving hazardous materials owned by or transported by vehicles or other means of transport owned by the persons; or
- (d) with the approval of the Director-General.

Fire Brigades (Hazardous Materials) Amendment Act 1993 No. 110

SCHEDULE 1—AMENDMENTS—*continued*

(23) Section 36 (**Director-General may be represented at inquiry**):

In section 36 (1), after “fire”, insert “or hazardous material incident”.

(24) Section 38 (**Certain damage to be covered by insurance**):

(a) In section 38 (1), after “at a fire”, insert “or a hazardous material incident”.

(b) In section 38 (2), after “fire”, insert “or endangered by the escape or likely escape of hazardous material”.

(25) Section 40 (**Charges for attending fires or hazardous material incidents**):

(a) From section 40 (2), omit “an area”, insert instead “a fire district”.

(b) After section 40 (4), insert:

(4A) If a hazardous material incident occurs anywhere in the State, the Director-General is entitled to recover charges, not exceeding the prescribed charges, for services rendered by any members of a fire brigade in endeavouring:

(a) to confine or end the incident, or to render the site of the incident safe; or

(b) to save any lives or property in danger.

(4B) Those charges may be recovered from:

(a) the owner of, or the person having charge of, the hazardous material involved; or

(b) the owner or occupier of the premises on which, or the owner or person in charge of the vehicle or vessel on or in which, or arising out of the use of which, the incident occurred.

(4C) This section does not allow recovery of charges for a fire within a fire district even though the fire arose from a hazardous material incident.

Fire Brigades (Hazardous Materials) Amendment Act 1993 No. 110

SCHEDULE 1—AMENDMENTS—*continued*

(26) Section 41 (**Apportionment of charges**):

- (a) In section 41 (1), after “section 40”, insert “in respect of a fire”.
- (b) After section 41 (3), insert:
 - (4) The charges payable under section 40 otherwise than in respect of a fire are to be ratably apportioned in accordance with the regulations, if the regulations so provide.

(27) Schedule 4 (**Savings and transitional provisions**):

- (a) Omit the heading to Part 4, insert instead:

Part 4—Miscellaneous provisions relating to the commencement of this Act

- (b) At the end of Part 4, insert:

Part 5—Miscellaneous provisions relating to the Fire Brigades (Hazardous Materials) Amendment Act 1993

Transitional and saving provisions

22. (1) An amendment made by the Fire Brigades (Hazardous Materials) Amendment Act 1993 (**the 1993 Act**):

- (a) applies to a hazardous material incident whether the spillage or other escape of the material concerned occurred before or occurs after the amendment commences; but
- (b) does not so apply as to impose any duty on a person retrospectively.

(2) An approval of an association as a volunteer fire brigade that was in force under section 9 immediately before the amendment of that section by the 1993 Act is taken to have been granted under that section as so amended.

(3) The amendments made to section 38 by the 1993 Act apply only in respect of a hazardous material incident that occurs after those amendments commence and affect a policy of insurance in force when such an incident occurs whether the policy was effected before or is effected after that commencement.

Fire Brigades (Hazardous Materials) Amendment Act 1993 No. 110

SCHEDULE 1—AMENDMENTS—*continued*

(4) Any maximum charges prescribed for the purposes of section 40 (2) when section 40 (4A) commences are, subject to the regulations, taken to be prescribed as maximum charges for the purposes of section 40 (4A) also.

[*Minister's second reading speech made in—
Legislative Assembly on 11 November 1993 a.m.
Legislative Council on 19 November 1993*]