



New South Wales

State Emergency Legislation Amendment Bill 1995

Explanatory note

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

Overview of Bill

The objects of this Bill are as follows:

- (a) to extend the emergency powers that may be exercised under the *State Emergency and Rescue Management Act 1989* (the SERM Act) and the *State Emergency Service Act 1989* (the SES Act) while limiting the classes of persons who may direct the use of those powers,
 - (b) to relieve utilities or other suppliers of energy or similar resources or substances from liability in damages for any interruption in supply occurring because of the exercise of the extended emergency powers,
 - (c) to provide that any damage caused by the exercise of the extended emergency powers is to be treated as covered by any existing appropriate policies of insurance,
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- (d) to limit the definition of *rescue* under the SERM Act to the safe removal of persons and domestic animals, rather than any animals, and to make it clear that organisations concerned with animal welfare and rescue, such as the Royal Society for the Prevention of Cruelty to Animals, New South Wales, are not rescue units for the purposes of the Act,
- (e) to provide that it is an offence for a person who is not a member of an accredited rescue unit to display, drive or operate a rescue vehicle or rescue vessel without a reasonable excuse or lawful authority,
- (f) to change the name of the State Rescue and Emergency Services Board to the State Rescue Board, to alter the composition of the Board and to enable the Minister for Emergency Services to appoint its Chairperson,
- (g) to replace a mandatory obligation on the Minister for Emergency Services to consult with the State Disasters Council concerning the exercise of the Minister's responsibilities under the SERM Act with a discretionary power under which the Minister may call meetings of, consult with and have regard to the advice of that Council in cases in which the Minister considers this to be appropriate,
- (h) to enable the Minister for Emergency Services to appoint the Chairperson of the State Emergency Management Committee,
- (i) to remove the requirement for the Director-General of the State Emergency Service to be the Deputy State Emergency Operations Controller, to provide that the Governor may appoint that official on the recommendation of the Minister for Emergency Services and to require that the State Emergency Operations Controller and the Deputy State Emergency Operations Controller must be senior police officers,
- (j) to replace requirements for the senior police officer stationed in a district to be the District Emergency Operations Controller for the district and for the senior police officer stationed within a local government area to be the Local Emergency Operations Controller for the area with provisions permitting the Commissioner of Police to appoint a police officer of or above a specified rank to those positions,
- (k) to replace a requirement for the State Emergency Service to provide executive support facilities for each District Emergency Management Committee and Operations Controller with a requirement that that support be provided by the Police Service,

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- (l) to remove any suggestion that it is obligatory for a council of a local government area to nominate an officer of the State Emergency Service as its representative on and, accordingly, as Chairperson of, the Local Emergency Management Committee for its area,
- (m) to enact other provisions of a minor, consequential or ancillary nature and amendments by way of statute law revision,
- (n) to make consequential savings and transitional provisions.

Outline of provisions

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

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

Clause 3 gives effect to the amendments to the *State Emergency and Rescue Management Act 1989* as set out in Schedule 1.

Clause 4 gives effect to the amendments to the *State Emergency Service Act 1989* as set out in Schedule 2.

Schedules

Schedule 1 Amendment of State Emergency and Rescue Management Act 1989

Extension of emergency powers

Schedule 1 [19] provides for an extension of the kinds of directions that may be given by the Minister for Emergency Services or an emergency services officer authorised by the Minister to preserve life or property in a state of emergency. These powers include the giving of directions for:

- the closure of any street or other thoroughfare or any other public or private place in an emergency area
- the pulling down, destruction or shoring up of walls or premises that have been damaged or rendered insecure in an emergency area
- the shutting off or disconnecting of the supply of energy-related or other substances in or from any main, pipeline, container or storage facility in an emergency area

- the shutting off or disconnecting of the supply of gas or electricity to any premises in an emergency area
- the taking possession of, or removal or destruction of any material or thing in an emergency area that may be dangerous to life or property or that may interfere with the response of emergency services to an emergency.

This item empowers the Minister or an emergency service officer to require persons who control or supply energy-related or other substances to shut down or disconnect supplies, and provides that suppliers, acting on directions, are not liable for damage caused by any interruption of supply arising from the operation of the provision. The item also empowers persons to enter premises (which includes land, buildings or vehicles) to carry out functions in accordance with directions in a state of emergency.

Schedule 1 [17] restricts the categories of emergency service officers who may direct the use of the extended emergency powers, and makes consequential amendments to definitions. **Schedule 1 [18]** is a consequential amendment.

Schedule 1 [34] contains provisions similar to those set out in Schedule 1 [19] to cover actions by a senior police officer acting in the case of an actual or threatened emergency to protect persons from injury or death. **Schedule 1 [31]–[33]** make consequential amendments.

Schedule 1 [35] provides that damage to property caused by emergency services officers at an emergency or threatened emergency in the exercise of their functions is to be treated as damage by the event that constitutes the emergency for the purposes of any insurance policy.

Similar amendments, referred to below, are made to the SES Act by Schedule 2 in relation to the exercise of emergency powers by the Director-General of the State Emergency Service and emergency officers acting under that Act.

Accreditation of animal welfare organisations not required

Schedule 1 [1] makes it clear that the SERM Act applies to the rescue of domestic animals only and not to all animals. **Schedule 1 [29]** provides that organisations specialising in animal welfare and rescue are not rescue units within the meaning of the SERM Act. Accordingly, such units do not require accreditation under the Act.

Operation of rescue vehicles without accreditation

Schedule 1 [28] defines a rescue vehicle (which includes a vessel) and **Schedule 1 [30]** provides that it is an offence for a person who is not a member of a rescue unit accredited under the SERM Act to display, drive or operate a rescue vehicle without a reasonable excuse or lawful authority.

State Rescue Board

The proposed Act changes the name of the State Rescue and Emergency Services Board to the State Rescue Board. **Schedule 1 [2]** and **[3]** make provision as to this.

Schedule 1 [20] increases the membership of the Board from 7 to 8 members, the additional member being, as provided for by **Schedule 1 [26]**, the Chairperson of the Volunteer Marine Rescue Council of New South Wales. **Schedule 1 [37]** makes a consequential adjustment of the quorum required for meetings of the Board.

Schedule 1 [24] and **[25]** make amendments, by way of statute law revision, relating to the membership of the Board.

Schedule 1 [21] and **[22]** remove requirements for the State Emergency Operations Controller and the Deputy State Emergency Operations Controller to be the Chairperson and Deputy Chairperson of the Board. **Schedule 1 [27]** provides that the Minister may appoint any member of the Board to be its Chairperson. **Schedule 1 [23]** replaces a requirement for the State Commander of the Police Service to be a member of the Board with a requirement that a member of the Police Service Senior Executive Service must be a member of the Board. (The present State Commander of the Police Service, who is the State Emergency Operations Controller, holds a position on the Board in the latter capacity. The current appointment of the State Commander is saved by a provision set out in **Schedule 1 [39]**.)

State Disasters Council

Schedule 1 [4] removes the mandatory obligation on the Minister for Emergency Services to consult with, and have regard to the advice of, the State Disasters Council in connection with the exercise of the Minister's responsibilities under the SERM Act and provides instead that the Minister may call meetings of, consult with, and have regard to the advice of, that Council when the Minister thinks that this is appropriate.

Chairperson of State Emergency Management Committee

Schedule 1 [5] removes the requirement for the State Emergency Operations Controller to be the Chairperson of the State Emergency Management Committee. **Schedule 1 [6]** provides for the appointment of the Chairperson of the Committee by the Minister for Emergency Services from among its appointed members.

State Emergency Operations Controller and Deputy State Emergency Operations Controller

Schedule 1 [7] provides for the appointment of a Deputy State Emergency Operations Controller by the Governor on the recommendation of the Minister for Emergency Services in place of the Director-General of the State Emergency Service.

Schedule 1 [8] requires the Minister for Emergency Services to consult with the Minister for Police before recommending persons for appointment as State Emergency Operations Controller or Deputy State Emergency Operations Controller. The item also requires that the person appointed as the State Emergency Operations Controller must be the Commissioner of Police or a member of the Police Service Senior Executive Service and that the Deputy State Emergency Operations Controller must be a member of the Police Service Senior Executive Service.

Schedule 1 [9] omits the requirement for the Director-General of the State Emergency Service to be the Deputy State Emergency Operations Controller and that item and **Schedule 1 [10]** and **[36]** make consequential amendments.

Schedule 1 [11] omits a requirement for the State Rescue Board to provide the State Emergency Operations Controller with staff and facilities for the State emergency operations centre.

District Emergency Operations Controllers and Local Emergency Operations Controllers

Schedule 1 [12] and **[16]** enable the Commissioner of Police to appoint a police officer of a specified rank stationed within a district to be the District Emergency Operations Controller for the district and a police officer stationed within a local government area to be the Local Emergency Operations Controller for the area in place of the current requirements for those offices to be filled by the senior police officer in the district or area.

Executive support for District Emergency Management Committees and Operations Controllers

Schedule 1 [13] requires the Police Service to provide executive support facilities for each District Emergency Management Committee and District Emergency Operations Controller in place of the State Emergency Service. **Schedule 1 [14]** makes an amendment by way of statute law revision.

Local Emergency Management Committees

Schedule 1 [15] omits a provision stating that a council of a local government area may appoint an officer of the State Emergency Service as Chairperson of the Local Emergency Management Committee for the area. This provision has created some difficulty in view of the fact that another provision within the same section provides that a Local Emergency Management Committee is to consist (among others) of:

- (a) *a senior representative of the council of the relevant local government area nominated by that council, who is to be the Chairperson of the Committee.*

Savings and transitional provisions

Schedule 1 [39] inserts various savings and transitional provisions in Schedule 4 to the SERM Act as a consequence of amendments referred to above. **Schedule 1 [38]** makes a consequential amendment to that Schedule.

Schedule 2 Amendment of State Emergency Services Act 1989

Extension of emergency powers

Schedule 2 [4] provides for an extension of directions that may be given by the Director-General of the State Emergency Service or a senior emergency officer authorised by the Director-General to preserve life or property in an emergency. These powers involve the giving of directions for:

- the shutting off or disconnecting of the supply of energy-related or other substances in or from any main, pipeline, container or storage facility in an emergency area

- the shutting off or disconnecting of the supply of gas or electricity to any premises in an emergency area
- the taking possession of, or removal or destruction of any material or thing in an emergency area that may be dangerous to life or property or that may interfere with the response of emergency services to an emergency.

The item empowers the Director-General or an emergency officer to require persons who control or supply energy-related or other substances to shut down or disconnect supplies, and provides that suppliers, acting on reasonable directions, are not liable for damage caused by any interruption of supply arising from the operation of the provision. The item also empowers persons to enter premises (which includes land, buildings or vehicles) to carry out functions in accordance with directions in an emergency.

Schedule 2 [2] restricts the categories of emergency officers who may be authorised to exercise the extended emergency powers and makes consequential amendments to definitions. **Schedule 2 [3]** is a consequential amendment.

Schedule 2 [5] provides that damage to property caused by emergency officers during certain emergencies in the exercise of their functions is to be treated as damage by the event that constitutes the emergency for the purposes of any insurance policy.

State Rescue Board

Schedule 2 [1] makes an amendment that is consequential on the change of the name of the State Rescue and Emergency Services Board to the State Rescue Board.

First print



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No , 1995

A Bill for

An Act to amend the *State Emergency and Rescue Management Act 1989* to extend the powers that may be exercised in a state of emergency or danger area; to vary provisions concerning the administration and operations of emergency and rescue services; to amend the *State Emergency Service Act 1989* to extend the powers that may be exercised in an emergency; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *State Emergency Legislation Amendment Act 1995*.

2 Commencement

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

3 Amendment of State Emergency and Rescue Management Act 1989 No 165

The *State Emergency and Rescue Management Act 1989* is amended as set out in Schedule 1.

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4 Amendment of State Emergency Service Act 1989 No 164

The *State Emergency Service Act 1989* is amended as set out in Schedule 2.

**Schedule 1 Amendment of State Emergency and
Rescue Management Act 1989**

(Section 3)

[1] Section 3 Definitions

Insert "domestic" after "or" where firstly occurring in the definition
of *rescue* in section 3 (1). 5

[2] Section 3 (1)

Omit the definition of *State Rescue and Emergency Services Board*.
Insert instead:

State Rescue Board means the State Rescue Board of 10
New South Wales constituted under Part 3.

[3] The whole Act

Omit "State Rescue and Emergency Services Board" wherever
occurring.
Insert instead "State Rescue Board". 15

[4] Section 10 Minister

Omit section 10 (2). Insert instead:

- (2) In discharging any one or more of those responsibilities,
the Minister may, on any occasion that the Minister
thinks appropriate, call meetings of, consult with, and 20
have regard to the advice of, the State Disasters Council.

[5] Section 14 State Emergency Management Committee

Omit ", who is to be the Chairperson of the Committee" from
section 14 (2) (a).

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Schedule 1 Amendment of State Emergency and Rescue Management Act 1989

[6] Section 14 (2A)

Insert after section 14 (2):

- (2A) One of the appointed members is, by the instrument of the member's appointment as a member or by a subsequent instrument executed by the Minister, to be appointed as the Chairperson of the Committee. 5

[7] Section 18 State Emergency Operations Controller

Insert "and a Deputy State Emergency Operations Controller" after "Controller" in section 18 (1).

[8] Section 18 (1A) and (1B)

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Insert after section 18 (1):

- (1A) The Minister is to consult with the Minister for Police before making a recommendation under subsection (1).
- (1B) The person appointed as the State Emergency Operations Controller must be the Commissioner of Police or a member of the Police Service Senior Executive Service and the person appointed as the Deputy State Emergency Operations Controller must be a member of the Police Service Senior Executive Service. 15

[9] Section 18 (2) and (3)

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Omit the subsections. Insert instead:

- (2) The persons so appointed must be persons who are, in the opinion of the Minister, experienced in emergency management.
- (3) During the absence or a vacancy in the office of the State Emergency Operations Controller, the Deputy State Emergency Operations Controller has all the functions of the State Emergency Operations Controller. 25

[10] Section 18 (4)

Insert "and the Deputy State Emergency Operations Controller"
after "State Emergency Operations Controller".

[11] Section 20 State emergency operations centre

Omit section 20 (3).

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[12] Section 24

Omit the section. Insert instead:

24 District Emergency Operations Controller

The Commissioner of Police is to appoint a District
Emergency Operations Controller for each district who is
to be a police officer holding the position of District
Commander stationed within that district.

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**[13] Section 26 Police Service to provide executive support for
District Emergency Management Committee and Operations
Controller**

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Omit "State Emergency Service" from section 26 (1).
Insert instead "Police Service".

[14] Section 26 (1)

Omit "in its area". Insert instead "in the district concerned".

[15] Section 28 Local Emergency Management Committees

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Omit section 28 (4).

[16] Section 30

Omit the section. Insert instead:

30 Local Emergency Operations Controller

The Commissioner of Police is to appoint a Local
Emergency Operations Controller for a local government
area who is to be a police officer stationed within that
area.

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[17] Section 32A

Insert before section 33:

32A Definitions

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In this Division:

emergency area means the area in which a state of
emergency is declared to exist.

emergency services officer means any of the following:

- (a) a police officer, 15
- (b) an officer of New South Wales Fire Brigades of or
above the rank of station officer,
- (c) an officer of the State Emergency Service of or
above the position of unit controller, or a
divisional executive officer or the Director, 20
Operations of that Service,
- (d) a member of a bush fire brigade of or above the
position of deputy captain,
- (e) a District Emergency Management Officer.

premises includes land, place, building, vehicle, vessel 25
or aircraft, or any part of premises.

[18] Section 37 Power to evacuate or to take other steps concerning persons

Omit section 37 (4).

[19] Sections 37A–37F

Insert after section 37:

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37A Power to take other safety measures

- (1) The Minister may, if satisfied that there are reasonable grounds for so doing for the purpose of protecting persons from injury or death or protecting property in a state of emergency, direct, or authorise an emergency services officer to direct, the doing of any one or more of the following: 10
- (a) the closure to traffic of any street, road, lane, thoroughfare or footpath or place open to or used by the public, in an emergency area or any part of an emergency area, 15
- (b) the closure of any other public or private place in an emergency area or any part of an emergency area,
- (c) the pulling down, destruction or shoring up of any wall or premises that have been damaged or rendered insecure in an emergency area or any part of an emergency area, 20
- (d) the shutting off or disconnecting of the supply of any water, gas, liquid, solid, grain, powder or other substance in or from any main, pipeline, container or storage facility in an emergency area or any part of an emergency area, 25
- (e) the shutting off or disconnecting of the supply of gas or electricity to any premises in an emergency area or any part of an emergency area, 30

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- (f) the taking possession of, and removal or destruction of any material or thing in an emergency area or any part of an emergency area that may be dangerous to life or property or that may interfere with the response of emergency services to the emergency. 5
- (2) The cost of taking action under subsection (1) (c) is to be borne by the owner of the wall or premises and is to be paid to, and may be recovered in a court of competent jurisdiction by, the Minister for reimbursement of the costs of the emergency services organisation of pulling down, destroying or shoring up the wall or premises concerned. 10
- (3) For the purposes of the exercise of a function under subsection (1) (d), the Minister or an emergency services officer may require the person who controls or supplies the substance concerned to immediately send some competent person to the scene for the purpose of shutting it off or disconnecting it in accordance with the reasonable directions of the Minister or emergency services officer. 15 20
- (4) A person must comply with a requirement, or directions, under subsection (3).
Maximum penalty: 50 penalty units.
- (5) A person who supplies a substance referred to in subsection (1) (d) or (e) is not liable for any damages because of any interruption of that supply under this section if the supply is shut off or disconnected in accordance with the directions of the Minister or emergency services officer. 25 30
- (6) The regulations may limit the circumstances, and regulate the manner, in which the powers conferred by this section may be exercised.

37B Power to enter premises

A person may enter any premises for the purposes of complying with a direction under section 37A (1). 35

37C Notice of entry

- (1) A person authorised to enter premises may enter the premises without giving notice:
 - (a) if entry to the premises is made with the consent of the owner or occupier, or 5
 - (b) if the entry is made to a part of the premises that is open to the public, or
 - (c) if entry is required urgently and the case is one in which the Minister or the emergency services officer giving the direction has authorised in writing (either generally or in a particular case) entry without notice. 10
- (2) In any other case, the person must give the owner or occupier of the premises reasonable written notice of the intention to enter the premises. 15

37D Care to be taken

In the exercise of a function under section 37A, a person authorised to enter premises must do as little damage as possible.

37E Use of force

- (1) Reasonable force may be used for the purpose of gaining entry to premises to comply with a direction under section 37A but only if the Minister: 20
 - (a) has authorised in writing the use of force in the particular case, or 25
 - (b) has specified in writing the circumstances that are required to exist before force may be used and the particular case falls within those circumstances.
- (2) If a person authorised to enter premises uses force to do so, the person must, as soon as practicable, inform the person who directed him or her to exercise the function under section 37A. 30

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- (3) The person so informed of the use of force must give notice of the use of force to such persons or authorities as appear to the person to be appropriate in the circumstances.
- (4) If a person's property is damaged by the exercise of a right of entry, the person is to receive such compensation as may be determined by the Minister or, if the damage arose as the result of the exercise of a right of entry by a police officer, the Minister for Police, but is not entitled to receive compensation. 5 10
- (5) A person may apply to the Premier for a review of a determination as to compensation made by the Minister or the Minister for Police under this section.

37F Authority to enter premises

- (1) A power conferred to enter premises, or to take action on premises, may not be exercised unless the person proposing to exercise the power is in possession of an authority and produces the authority if required to do so by the owner or occupier of the premises. 15
- (2) The authority must be a written authority that: 20
 - (a) states that it is issued under this Act, and
 - (b) gives the name of the person to whom it is issued, and
 - (c) describes the nature of the powers conferred and the source of the powers, and 25
 - (d) states the date (if any) on which it expires, and
 - (e) describes the kind of premises to which the power extends, and
 - (f) bears the signature of the Minister or the emergency services officer who issued the direction under section 37A. 30
- (3) However, despite subsections (1) and (2), a police officer exercising a power to enter premises, or to take action on premises, must produce his or her warrant card if required to do so by the owner or occupier of the premises in lieu of an authority. 35

[20] Section 43 Composition of Board

Omit "7" from section 43 (1). Insert instead "8".

[21] Section 43 (1) (a)

Omit ", who is to be the Chairperson of the Board".

[22] Section 43 (1) (b)

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Omit ", who is to be the Deputy Chairperson of the Board".

[23] Section 43 (1) (c)

Omit the paragraph. Insert instead:

- (c) a member of the Police Service Senior Executive Service nominated by the Commissioner of Police,

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[24] Section 43 (1) (d)

Omit the paragraph. Insert instead:

- (d) the Commissioner of New South Wales Fire Brigades,

[25] Section 43 (1) (e)

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Omit the paragraph. Insert instead:

- (e) the Commissioner of Bush Fire Services,

[26] Section 43 (1) (g1)

Insert after paragraph (g):

- (g1) the Chairperson of the Volunteer Marine Rescue Council of New South Wales,

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[27] Section 43 (2)

Omit the subsection. Insert instead:

- (2) One of the members of the Board is to be appointed as the Chairperson of the Board by the Minister.

[28] Section 52 Definitions

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Insert after the definition of *rescue unit*:

rescue vehicle means a vehicle or vessel that is designed, adapted or equipped for use in rescue work and:

- (a) is clearly marked with the word "Rescue", or
(b) is fitted with warning devices, such as flashing lights or a siren, 10
or both.

[29] Section 52 (2)

Insert at the end of the section:

- (2) An organisation, such as the Royal Society for the Prevention of Cruelty to Animals, New South Wales or the Wildlife Information and Rescue Service, that specialises in animal welfare or animal rescue operations or both does not constitute a rescue unit for the purposes of this Division. 15
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[30] Section 53 Offence to operate rescue unit or rescue vehicle without accreditation

Insert after section 53 (1):

- (1A) It is an offence for a person who is not a member of a rescue unit accredited under this Division to display, drive or operate a rescue vehicle. 25

Maximum penalty: 50 penalty units.

- (1B) It is a defence to any proceeding under subsection (1A) if the person who contravened the subsection had a reasonable excuse or lawful authority for displaying, driving or operating the rescue vehicle. 30

[31] Section 60KA

Insert at the beginning of Part 4:

60KA Definitions

In this Part:

danger area means the area specified by a senior police officer as the area in which an emergency is causing or threatening to cause injury or death. 5

emergency or rescue management organisation means any of the following:

- (a) the State Disasters Council, 10
- (b) the State Emergency Management Committee,
- (c) a District Emergency Management Committee,
- (d) a Local Emergency Management Committee,
- (e) the State Rescue Board,
- (f) a committee or sub-committee of a body referred to in paragraphs (a)–(e). 15

premises includes land, place, building, vehicle, vessel or aircraft, or any part of premises.

senior police officer means a police officer of or above the rank of sergeant or a police officer of a class prescribed as being within this definition by the regulations. 20

[32] Section 60L Power of police to evacuate or to take other steps concerning persons

Omit section 60L (5). 25

[33] Section 61

Omit the section.

[34] Sections 61–61E

Insert after section 60L:

61 Power of police to take other safety measures

- (1) A senior police officer may, if satisfied that there are reasonable grounds for doing so for the purpose of protecting persons from injury or death or protecting property threatened by an actual or imminent emergency, direct, or authorise another police officer to direct, the doing of any one or more of the following:
- (a) the closure to traffic of any street, road, lane, thoroughfare or footpath or place open to or used by the public, in a danger area or any part of a danger area, 10
 - (b) the closure of any other public or private place in a danger area or any part of a danger area, 15
 - (c) the pulling down, destruction or shoring up of any wall or premises that have been damaged or rendered insecure in a danger area or any part of a danger area, 20
 - (d) the shutting off or disconnecting of the supply of any water, gas, liquid, solid, grain, powder or other substance in or from any main, pipeline, container or storage facility in a danger area or any part of a danger area, 25
 - (e) the shutting off or disconnecting of the supply of gas or electricity to any premises in a danger area or any part of a danger area, 30
 - (f) the taking possession of, and removal or destruction of any material or thing in a danger area or any part of a danger area that may be dangerous to life or property or that may interfere with the response of emergency services to the emergency.
- (2) The cost of taking action under subsection (1) (c) is to be borne by the owner of the wall or premises and is to be paid to, and may be recovered in a court of competent jurisdiction by, the Commissioner of Police. 35

- (3) For the purposes of the exercise of a function under subsection (1) (d), a senior police officer may require the person who controls or supplies the substance concerned to immediately send some competent person to the scene for the purpose of shutting it off or disconnecting it in accordance with the reasonable directions of the officer. 5
- (4) A person must comply with a requirement, or directions, under subsection (3).
Maximum penalty: 50 penalty units. 10
- (5) A person who supplies a substance referred to in subsection (1) (d) or (e) is not liable for any damages because of any interruption of that supply under this section if the supply is shut off or disconnected in accordance with the directions of the senior police officer. 15
- (6) The regulations may limit the circumstances, and regulate the manner, in which the powers conferred by this section may be exercised.

61A Power to enter premises 20

A police officer may enter any premises for the purposes of complying with a direction under section 61 (1).

61B Notice of entry

- (1) A police officer authorised to enter premises may enter the premises without giving notice: 25
- (a) if entry to the premises is made with the consent of the owner or occupier, or
- (b) if the entry is made to a part of the premises that is open to the public, or
- (c) if entry is required urgently and the case is one in which the senior police officer giving the direction has authorised in writing (either generally or in a particular case) entry without notice. 30

- (2) In any other case, the police officer must give the owner or occupier of the premises reasonable written notice of the intention to enter the premises.

61C Care to be taken

In the exercise of a function under section 61, a police officer authorised to enter premises must do as little damage as possible. 5

61D Use of force

- (1) Reasonable force may be used for the purpose of gaining entry to premises to comply with a direction under section 61 but only if the senior police officer: 10
- (a) has authorised in writing the use of force in the particular case, or
- (b) has specified in writing the circumstances that are required to exist before force may be used and the particular case falls within those circumstances. 15
- (2) If a police officer authorised to enter premises uses force to do so, the police officer must, as soon as practicable, inform the senior police officer who directed him or her to exercise the function under section 61. 20
- (3) The senior police officer so informed must give notice of the use of force to the Commissioner of Police.
- (4) If a person's property is damaged by the exercise of a right of entry the person is to receive such compensation as may be determined by the Minister for Police, but is not entitled to receive compensation. 25
- (5) A person may apply to the Premier for a review of a determination as to compensation made by the Minister for Police under this section.

61E Police officer to produce warrant card if required

A power to enter premises, or to take action on premises, may not be exercised unless the police officer proposing to exercise the power produces his or her warrant card if required to do so by the owner or occupier of the premises. 5

[35] Section 62A

Insert after section 62:

62A Certain damage to be covered by insurance

- (1) Any damage to property caused by the exercise in good faith of functions under section 37A (1) or 61 (1) by: 10
- (a) the Minister or an emergency services officer authorised by the Minister during a state of emergency, or
 - (b) a senior police officer or another police officer authorised by a senior police officer at an actual or imminent emergency, or 15
 - (c) a person acting on and in accordance with a direction given by:
 - (i) the Minister or an emergency services officer authorised by the Minister under section 37A (1) during a state of emergency, or 20
 - (ii) a senior police officer or another police officer authorised by a senior police officer under section 61 (1) at an actual or imminent emergency, 25

is taken to be damage by the happening that constitutes the emergency (being fire, flood, storm, tempest, explosion or other risk, contingency or event) for the purposes of any policy of insurance against the risk, contingency or event concerning an act or omission that covers the property. 30

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Schedule 1 Amendment of State Emergency and Rescue Management Act 1989

- (2) This section applies only in respect of damage to property caused in the exercise of a function to protect persons from injury or death or property from damage if those persons are, or the property is, endangered by the happening that constitutes the emergency or endangered by the escape or likely escape of hazardous material as the result of that happening. 5
- (3) Any provision, stipulation, covenant or condition in any agreement that negatives, limits or modifies or purports to negative, limit or modify the operation of this section is void and of no effect. 10
- (4) In this section, ***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. 15

[36] Schedule 1 Provisions relating to State Emergency Operations Controller and Deputy State Emergency Operations Controller

Insert "or the Deputy State Operations Controller" at the end of the definition of ***Controller***. 20

[37] Schedule 3 Provisions relating to members and procedure of State Rescue Board

Omit "4" from clause 4. Insert instead "5".

[38] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 1 (1): 25

State Emergency Legislation Amendment Act 1995

[39] Schedule 4, Part 4

Insert after Part 3:

**Part 4 Provisions consequent on State Emergency
Legislation Amendment Act 1995**

**4 State Emergency Operations Controller to cease to be
Chairperson of State Emergency Management Committee
and State Rescue Board** 5

On and from the commencement of this Part, the State
Emergency Operations Controller:

- (a) ceases to hold office as the Chairperson of the 10
State Emergency Management Committee and of
the State Rescue Board, and
- (b) is not entitled to any remuneration or
compensation because of the loss of those offices.

**5 Director-General of SES to cease to be Deputy State
Emergency Operations Controller and Deputy
Chairperson of State Rescue Board** 15

On and from the commencement of this Part, the
Director-General of the State Emergency Service:

- (a) ceases to hold office as Deputy State Emergency 20
Operations Controller and Deputy Chairperson of
the State Rescue Board, and
- (b) is not entitled to any remuneration or
compensation because of the loss of those offices.

**6 Continuation of appointment of State Emergency
Operations Controller** 25

The person who, on the commencement of the
amendment made to section 18 (1) by the *State
Emergency Legislation Amendment Act 1995*, is the State
Emergency Operations Controller is taken to be 30
appointed under that subsection as so amended.

7 References to State Rescue and Emergency Services Board

On and from the commencement of this Part, a reference in any Act (other than this Act) or statutory instrument, or any other instrument, or in any other document, to the State Rescue and Emergency Services Board is to be read as a reference to the State Rescue Board.

5

Schedule 2 Amendment of State Emergency Service Act 1989

(Section 4)

[1] Section 8 Functions of Service

Omit "State Rescue and Emergency Services Board" from section 8 (1) (e). 5

Insert instead "State Rescue Board".

[2] Section 18A

Insert at the beginning of Part 5:

18A Definitions

10

In this Part:

emergency area means the area affected by an emergency to which this Part applies.

premises includes land, place, building, vehicle, vessel or aircraft, or any part of premises. 15

senior emergency officer means any of the following:

- (a) a police officer of or above the rank of sergeant or a police officer for the time being in charge of a police station,
- (b) an officer of New South Wales Fire Brigades of or above the rank of station officer, 20
- (c) an officer of the State Emergency Service of or above the position of unit controller, or a divisional executive officer or the Director, Operations of that Service, 25
- (d) a member of a bush fire brigade of or above the position of deputy captain,
- (e) a District Emergency Management Officer.

[3] Section 22 Power to evacuate or to take other steps concerning persons

30

Omit section 22 (4).

[4] Sections 22A–22F

Insert after section 22:

22A Power to take other safety measures

- (1) The Director-General may, if satisfied that there are reasonable grounds for doing so for the purpose of protecting persons from injury or death or protecting property threatened by an actual or imminent emergency, direct, or authorise a senior emergency officer to direct, the doing of any one or more of the following: 5
- (a) the shutting off or disconnecting of the supply of any water, gas, liquid, solid, grain, powder or other substance in or from any main, pipeline, container or storage facility in an emergency area or any part of an emergency area, 10
- (b) the shutting off or disconnecting of the supply of gas or electricity to any premises in an emergency area or any part of an emergency area, 15
- (c) the taking possession of, and removal or destruction of any material or thing in an emergency area or any part of an emergency area that may be dangerous to life or property or that may interfere with the response of emergency services to the emergency. 20
- (2) For the purposes of the exercise of a function under subsection (1) (a), the Director-General or a senior emergency officer authorised by the Director-General may require the person who controls or supplies the substance concerned to immediately send some competent person to the scene for the purpose of shutting it off or disconnecting it in accordance with the reasonable directions of the Director-General or senior emergency officer. 25 30
- (3) A person must comply with a requirement, or directions, under subsection (2).
- Maximum penalty: 50 penalty units. 35

-
- (4) A person who supplies a substance referred to in subsection (1) (a) or (b) is not liable for any damages because of any interruption of that supply under this section if the supply is shut off or disconnected in accordance with the directions of the Director-General or senior emergency officer. 5
- (5) The regulations may limit the circumstances, and regulate the manner, in which the powers conferred by this section may be exercised.

22B Power to enter premises

10

A person may enter any premises for the purposes of complying with a direction under section 22A (1).

22C Notice of entry

- (1) A person authorised to enter premises may enter the premises without giving notice: 15
- (a) if entry to the premises is made with the consent of the owner or occupier, or
- (b) if the entry is made to a part of the premises that is open to the public, or
- (c) if entry is required urgently and the case is one in which the Director-General or senior emergency officer giving the direction has authorised in writing (either generally or in a particular case) entry without notice. 20
- (2) In any other case, the person must give the owner or occupier of the premises reasonable written notice of the intention to enter the premises. 25

22D Care to be taken

In the exercise of a function under section 22A, a person authorised to enter premises must do as little damage as possible. 30

22E Use of force

- (1) Reasonable force may be used for the purpose of gaining entry to premises to comply with a direction under section 22A but only if the Director-General or the senior emergency officer giving the direction: 5
 - (a) has authorised in writing the use of force in the particular case, or
 - (b) has specified in writing the circumstances that are required to exist before force may be used and the particular case falls within those circumstances. 10
- (2) If a person authorised to enter premises uses force to do so, the person must, as soon as practicable, inform the person who directed him or her to exercise the function under section 22A.
- (3) The person so informed of the use of force must give notice of the use of force to such persons or authorities as appear to the person to be appropriate in the circumstances. 15
- (4) If a person's property is damaged by the exercise of a right of entry, the person is to receive such compensation as may be determined by the Minister or, if the damage arose as the result of the exercise of a right of entry by a police officer, the Minister for Police, but is not entitled to receive compensation. 20
- (5) A person may apply to the Premier for a review of a determination as to compensation made by the Minister or the Minister for Police under this section. 25

22F Authority to enter premises

- (1) A power to enter premises, or to take action on premises, may not be exercised unless the person proposing to exercise the power is in possession of an authority and produces the authority if required to do so by the owner or occupier of the premises. 30

-
- (2) The authority must be a written authority that:
- (a) states that it is issued under this Act, and
 - (b) gives the name of the person to whom it is issued, and
 - (c) describes the nature of the powers conferred and the source of the powers, and 5
 - (d) states the date (if any) on which it expires, and
 - (e) describes the kind of premises to which the power extends, and
 - (f) bears the signature of the Director-General or the senior emergency officer who issued the direction under section 22A. 10
- (3) However, despite subsections (1) and (2), a police officer exercising a power to enter premises, or to take action on premises, must produce his or her warrant card if required to do so by the owner or occupier of the premises in lieu of an authority. 15

[5] Section 25A

Insert after section 25:

25A Certain damage to be covered by insurance 20

- (1) Any damage to property caused by the exercise in good faith of functions under section 22A (1) by:
- (a) the Director-General or a senior emergency officer authorised by the Director-General during an emergency to which Part 5 applies, or 25
 - (b) a person acting on and in accordance with a direction given by the Director-General or a senior emergency officer authorised by the Director-General under section 22A (1) during an emergency to which Part 5 applies, 30

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- is taken to be damage by the happening that constitutes the emergency (being flood, storm, tempest or other risk, contingency or event) for the purposes of any policy of insurance against the risk, contingency or event concerning an act or omission that covers the property. 5
- (2) This section applies only in respect of damage to property caused in the exercise of a function to protect persons from injury or death or property from damage if those persons are, or the property is, endangered by the happening that constitutes the emergency or endangered by the escape or likely escape of hazardous material as the result of that happening. 10
- (3) Any provision, stipulation, covenant or condition in any agreement that negatives, limits or modifies or purports to negative, limit or modify the operation of this section is void and of no effect. 15
- (4) In this section, *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. 20



New South Wales

State Emergency Legislation Amendment Bill 1995

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This PUBLIC BILL, originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

*Clerk of the Legislative Assembly.
Legislative Assembly*



New South Wales

State Emergency Legislation Amendment Bill 1995

Act No , 1995

An Act to amend the *State Emergency and Rescue Management Act 1989* to extend the powers that may be exercised in a state of emergency or danger area; to vary provisions concerning the administration and operations of emergency and rescue services; to amend the *State Emergency Service Act 1989* to extend the powers that may be exercised in an emergency; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *State Emergency Legislation Amendment Act 1995*.

2 Commencement

5

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

3 Amendment of State Emergency and Rescue Management Act 1989 No 165

The *State Emergency and Rescue Management Act 1989* is amended as set out in Schedule 1.

10

4 Amendment of State Emergency Service Act 1989 No 164

The *State Emergency Service Act 1989* is amended as set out in Schedule 2.

Schedule 1 Amendment of State Emergency and Rescue Management Act 1989

(Section 3)

[1] Section 3 Definitions

Insert "domestic" after "or" where firstly occurring in the definition of *rescue* in section 3 (1). 5

[2] Section 3 (1)

Omit the definition of *State Rescue and Emergency Services Board*.
Insert instead:

State Rescue Board means the State Rescue Board of New South Wales constituted under Part 3. 10

[3] The whole Act

Omit "State Rescue and Emergency Services Board" wherever occurring.
Insert instead "State Rescue Board". 15

[4] Section 10 Minister

Omit section 10 (2). Insert instead:

- (2) In discharging any one or more of those responsibilities, the Minister may, on any occasion that the Minister thinks appropriate, call meetings of, consult with, and have regard to the advice of, the State Disasters Council. 20

[5] Section 14 State Emergency Management Committee

Omit ", who is to be the Chairperson of the Committee" from section 14 (2) (a).

[6] Section 14 (2A)

Insert after section 14 (2):

- (2A) One of the appointed members is, by the instrument of the member's appointment as a member or by a subsequent instrument executed by the Minister, to be appointed as the Chairperson of the Committee. 5

[7] Section 18 State Emergency Operations Controller

Insert "and a Deputy State Emergency Operations Controller" after "Controller" in section 18 (1).

[8] Section 18 (1A) and (1B)

10

Insert after section 18 (1):

- (1A) The Minister is to consult with the Minister for Police before making a recommendation under subsection (1).
- (1B) The person appointed as the State Emergency Operations Controller must be the Commissioner of Police or a member of the Police Service Senior Executive Service and the person appointed as the Deputy State Emergency Operations Controller must be a member of the Police Service Senior Executive Service. 15

[9] Section 18 (2) and (3)

20

Omit the subsections. Insert instead:

- (2) The persons so appointed must be persons who are, in the opinion of the Minister, experienced in emergency management.
- (3) During the absence or a vacancy in the office of the State Emergency Operations Controller, the Deputy State Emergency Operations Controller has all the functions of the State Emergency Operations Controller. 25

[10] Section 18 (4)

Insert “and the Deputy State Emergency Operations Controller”
after “State Emergency Operations Controller”.

[11] Section 20 State emergency operations centre

Omit section 20 (3).

5

[12] Section 24

Omit the section. Insert instead:

24 District Emergency Operations Controller

The Commissioner of Police is to appoint a District
Emergency Operations Controller for each district who is
to be a police officer holding the position of District
Commander stationed within that district.

10

**[13] Section 26 Police Service to provide executive support for
District Emergency Management Committee and Operations
Controller**

15

Omit “State Emergency Service” from section 26 (1).
Insert instead “Police Service”.

[14] Section 26 (1)

Omit “in its area”. Insert instead “in the district concerned”.

[15] Section 28 Local Emergency Management Committees

20

Omit section 28 (4).

[16] Section 30

Omit the section. Insert instead:

30 Local Emergency Operations Controller

The Commissioner of Police is to appoint a Local
Emergency Operations Controller for a local government
area who is to be a police officer stationed within that
area.

5

[17] Section 32A

Insert before section 33:

32A Definitions

10

In this Division:

emergency area means the area in which a state of
emergency is declared to exist.

emergency services officer means any of the following:

- (a) a police officer, 15
- (b) an officer of New South Wales Fire Brigades of or
above the position of station commander,
- (c) an officer of the State Emergency Service of or
above the position of unit controller, or a
divisional executive officer or the Director,
Operations of that Service, 20
- (d) a member of a bush fire brigade of or above the
position of deputy captain,
- (e) a District Emergency Management Officer.

premises includes land, place, building, vehicle, vessel
or aircraft, or any part of premises. 25

[18] Section 37 Power to evacuate or to take other steps concerning persons

Omit section 37 (4).

[19] Sections 37A–37F

Insert after section 37:

5

37A Power to take other safety measures

- (1) The Minister may, if satisfied that there are reasonable grounds for so doing for the purpose of protecting persons from injury or death or protecting property in a state of emergency, direct, or authorise an emergency services officer to direct, the doing of any one or more of the following: 10
- (a) the closure to traffic of any street, road, lane, thoroughfare or footpath or place open to or used by the public, in an emergency area or any part of an emergency area, 15
- (b) the closure of any other public or private place in an emergency area or any part of an emergency area,
- (c) the pulling down, destruction or shoring up of any wall or premises that have been damaged or rendered insecure in an emergency area or any part of an emergency area, 20
- (d) the shutting off or disconnecting of the supply of any water, gas, liquid, solid, grain, powder or other substance in or from any main, pipeline, container or storage facility in an emergency area or any part of an emergency area, 25
- (e) the shutting off or disconnecting of the supply of gas or electricity to any premises in an emergency area or any part of an emergency area, 30

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- (f) the taking possession of, and removal or destruction of any material or thing in an emergency area or any part of an emergency area that may be dangerous to life or property or that may interfere with the response of emergency services to the emergency. 5
- (2) The cost of taking action under subsection (1) (c) is to be borne by the owner of the wall or premises and is to be paid to, and may be recovered in a court of competent jurisdiction by, the Minister for reimbursement of the costs of the emergency services organisation of pulling down, destroying or shoring up the wall or premises concerned. 10
- (3) For the purposes of the exercise of a function under subsection (1) (d), the Minister or an emergency services officer may require the person who controls or supplies the substance concerned to immediately send some competent person to the scene for the purpose of shutting it off or disconnecting it in accordance with the reasonable directions of the Minister or emergency services officer. 15 20
- (4) A person must comply with a requirement, or directions, under subsection (3).
Maximum penalty: 50 penalty units.
- (5) A person who supplies a substance referred to in subsection (1) (d) or (e) is not liable for any damages because of any interruption of that supply under this section if the supply is shut off or disconnected in accordance with the directions of the Minister or emergency services officer. 25 30
- (6) The regulations may limit the circumstances, and regulate the manner, in which the powers conferred by this section may be exercised.

37B Power to enter premises

- A person may enter any premises for the purposes of complying with a direction under section 37A (1). 35

37C Notice of entry

- (1) A person authorised to enter premises may enter the premises without giving notice:
 - (a) if entry to the premises is made with the consent of the owner or occupier, or 5
 - (b) if the entry is made to a part of the premises that is open to the public, or
 - (c) if entry is required urgently and the case is one in which the Minister or the emergency services officer giving the direction has authorised in writing (either generally or in a particular case) entry without notice. 10
- (2) In any other case, the person must give the owner or occupier of the premises reasonable written notice of the intention to enter the premises. 15

37D Care to be taken

In the exercise of a function under section 37A, a person authorised to enter premises must do as little damage as possible.

37E Use of force

- (1) Reasonable force may be used for the purpose of gaining entry to premises to comply with a direction under section 37A but only if the Minister: 20
 - (a) has authorised in writing the use of force in the particular case, or 25
 - (b) has specified in writing the circumstances that are required to exist before force may be used and the particular case falls within those circumstances.
- (2) If a person authorised to enter premises uses force to do so, the person must, as soon as practicable, inform the person who directed him or her to exercise the function under section 37A. 30

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- (3) The person so informed of the use of force must give notice of the use of force to such persons or authorities as appear to the person to be appropriate in the circumstances.
- (4) If a person's property is damaged by the exercise of a right of entry, the person is to receive such compensation as may be determined by the Minister or, if the damage arose as the result of the exercise of a right of entry by a police officer, the Minister for Police, but is not entitled to receive compensation. 5
10
- (5) A person may apply to the Premier for a review of a determination as to compensation made by the Minister or the Minister for Police under this section.

37F Authority to enter premises

- (1) A power conferred to enter premises, or to take action on premises, may not be exercised unless the person proposing to exercise the power is in possession of an authority and produces the authority if required to do so by the owner or occupier of the premises. 15
- (2) The authority must be a written authority that: 20
 - (a) states that it is issued under this Act, and
 - (b) gives the name of the person to whom it is issued, and
 - (c) describes the nature of the powers conferred and the source of the powers, and 25
 - (d) states the date (if any) on which it expires, and
 - (e) describes the kind of premises to which the power extends, and
 - (f) bears the signature of the Minister or the emergency services officer who issued the direction under section 37A. 30
- (3) However, despite subsections (1) and (2), a police officer exercising a power to enter premises, or to take action on premises, must produce his or her warrant card if required to do so by the owner or occupier of the premises in lieu of an authority. 35

[20] Section 43 Composition of Board

Omit “7” from section 43 (1). Insert instead “8”.

[21] Section 43 (1) (a)

Omit “, who is to be the Chairperson of the Board”.

[22] Section 43 (1) (b)

5

Omit “, who is to be the Deputy Chairperson of the Board”.

[23] Section 43 (1) (c)

Omit the paragraph. Insert instead:

- (c) a member of the Police Service Senior Executive Service nominated by the Commissioner of Police,

10

[24] Section 43 (1) (d)

Omit the paragraph. Insert instead:

- (d) the Commissioner of New South Wales Fire Brigades,

[25] Section 43 (1) (e)

15

Omit the paragraph. Insert instead:

- (e) the Commissioner of Bush Fire Services,

[26] Section 43 (1) (g1)

Insert after paragraph (g):

- (g1) the Chairperson of the Volunteer Marine Rescue Council of New South Wales,

20

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[27] Section 43 (2)

Omit the subsection. Insert instead:

- (2) One of the members of the Board is to be appointed as the Chairperson of the Board by the Minister.

[28] Section 52 Definitions

5

Insert after the definition of *rescue unit*:

rescue vehicle means a vehicle that is designed, adapted or equipped for use in rescue work and:

- (a) is clearly marked with the word "Rescue", or
(b) is fitted with warning devices, such as flashing lights or a siren,

10

or both.

[29] Section 52 (2)

Insert at the end of the section:

- (2) An organisation, such as the Royal Society for the Prevention of Cruelty to Animals, New South Wales or the Wildlife Information and Rescue Service, that specialises in animal welfare or animal rescue operations or both does not constitute a rescue unit for the purposes of this Division.

15

20

[30] Section 53 Offence to operate rescue unit or rescue vehicle without accreditation

Insert after section 53 (1):

- (1A) It is an offence for a person who is not a member of a rescue unit accredited under this Division to display, drive or operate a rescue vehicle.

25

Maximum penalty: 50 penalty units.

- (1B) It is a defence to any proceeding under subsection (1A) if the person who contravened the subsection had a reasonable excuse or lawful authority for displaying, driving or operating the rescue vehicle.

30

[31] Section 60KA

Insert at the beginning of Part 4:

60KA Definitions

In this Part:

danger area means the area specified by a senior police officer as the area in which an emergency is causing or threatening to cause injury or death. 5

emergency or rescue management organisation means any of the following:

- (a) the State Disasters Council, 10
- (b) the State Emergency Management Committee,
- (c) a District Emergency Management Committee,
- (d) a Local Emergency Management Committee,
- (e) the State Rescue Board,
- (f) a committee or sub-committee of a body referred to in paragraphs (a)–(e). 15

premises includes land, place, building, vehicle, vessel or aircraft, or any part of premises.

senior police officer means a police officer of or above the rank of sergeant or a police officer of a class prescribed as being within this definition by the regulations. 20

[32] Section 60L Power of police to evacuate or to take other steps concerning persons

Omit section 60L (5). 25

[33] Section 61

Omit the section.

[34] Sections 61–61E

Insert after section 60L:

61 Power of police to take other safety measures

- (1) A senior police officer may, if satisfied that there are reasonable grounds for doing so for the purpose of protecting persons from injury or death or protecting property threatened by an actual or imminent emergency, direct, or authorise another police officer to direct, the doing of any one or more of the following:
- (a) the closure to traffic of any street, road, lane, thoroughfare or footpath or place open to or used by the public, in a danger area or any part of a danger area, 10
 - (b) the closure of any other public or private place in a danger area or any part of a danger area, 15
 - (c) the pulling down, destruction or shoring up of any wall or premises that have been damaged or rendered insecure in a danger area or any part of a danger area, 20
 - (d) the shutting off or disconnecting of the supply of any water, gas, liquid, solid, grain, powder or other substance in or from any main, pipeline, container or storage facility in a danger area or any part of a danger area, 25
 - (e) the shutting off or disconnecting of the supply of gas or electricity to any premises in a danger area or any part of a danger area, 30
 - (f) the taking possession of, and removal or destruction of any material or thing in a danger area or any part of a danger area that may be dangerous to life or property or that may interfere with the response of emergency services to the emergency.
- (2) The cost of taking action under subsection (1) (c) is to be borne by the owner of the wall or premises and is to be paid to, and may be recovered in a court of competent jurisdiction by, the Commissioner of Police. 35

- (3) For the purposes of the exercise of a function under subsection (1) (d), a senior police officer may require the person who controls or supplies the substance concerned to immediately send some competent person to the scene for the purpose of shutting it off or disconnecting it in accordance with the reasonable directions of the officer. 5
- (4) A person must comply with a requirement, or directions, under subsection (3).
Maximum penalty: 50 penalty units. 10
- (5) A person who supplies a substance referred to in subsection (1) (d) or (e) is not liable for any damages because of any interruption of that supply under this section if the supply is shut off or disconnected in accordance with the directions of the senior police officer. 15
- (6) The regulations may limit the circumstances, and regulate the manner, in which the powers conferred by this section may be exercised.
- 61A Power to enter premises** 20
A police officer may enter any premises for the purposes of complying with a direction under section 61 (1).
- 61B Notice of entry**
- (1) A police officer authorised to enter premises may enter the premises without giving notice: 25
- (a) if entry to the premises is made with the consent of the owner or occupier, or
- (b) if the entry is made to a part of the premises that is open to the public, or
- (c) if entry is required urgently and the case is one in which the senior police officer giving the direction has authorised in writing (either generally or in a particular case) entry without notice. 30

- (2) In any other case, the police officer must give the owner or occupier of the premises reasonable written notice of the intention to enter the premises.

61C Care to be taken

In the exercise of a function under section 61, a police officer authorised to enter premises must do as little damage as possible. 5

61D Use of force

- (1) Reasonable force may be used for the purpose of gaining entry to premises to comply with a direction under section 61 but only if the senior police officer: 10
- (a) has authorised in writing the use of force in the particular case, or
- (b) has specified in writing the circumstances that are required to exist before force may be used and the particular case falls within those circumstances. 15
- (2) If a police officer authorised to enter premises uses force to do so, the police officer must, as soon as practicable, inform the senior police officer who directed him or her to exercise the function under section 61. 20
- (3) The senior police officer so informed must give notice of the use of force to the Commissioner of Police.
- (4) If a person's property is damaged by the exercise of a right of entry the person is to receive such compensation as may be determined by the Minister for Police, but is not entitled to receive compensation. 25
- (5) A person may apply to the Premier for a review of a determination as to compensation made by the Minister for Police under this section.

61E Police officer to produce warrant card if required

A power to enter premises, or to take action on premises, may not be exercised unless the police officer proposing to exercise the power produces his or her warrant card if required to do so by the owner or occupier of the premises.

5

[35] Section 62A

Insert after section 62:

62A Certain damage to be covered by insurance

- (1) Any damage to property caused by the exercise in good faith of functions under section 37A (1) or 61 (1) by: 10
- (a) the Minister or an emergency services officer authorised by the Minister during a state of emergency, or
 - (b) a senior police officer or another police officer authorised by a senior police officer at an actual or imminent emergency, or 15
 - (c) a person acting on and in accordance with a direction given by:
 - (i) the Minister or an emergency services officer authorised by the Minister under section 37A (1) during a state of emergency, or 20
 - (ii) a senior police officer or another police officer authorised by a senior police officer under section 61 (1) at an actual or imminent emergency, 25

is taken to be damage by the happening that constitutes the emergency (being fire, flood, storm, tempest, explosion or other risk, contingency or event) for the purposes of any policy of insurance against the risk, contingency or event concerning an act or omission that covers the property.

30

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- (2) This section applies only in respect of damage to property caused in the exercise of a function to protect persons from injury or death or property from damage if those persons are, or the property is, endangered by the happening that constitutes the emergency or endangered by the escape or likely escape of hazardous material as the result of that happening. 5
- (3) Any provision, stipulation, covenant or condition in any agreement that negatives, limits or modifies or purports to negative, limit or modify the operation of this section is void and of no effect. 10
- (4) In this section, *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. 15

[36] Schedule 1 Provisions relating to State Emergency Operations Controller and Deputy State Emergency Operations Controller

Insert "or the Deputy State Operations Controller" at the end of the definition of *Controller*. 20

[37] Schedule 3 Provisions relating to members and procedure of State Rescue Board

Omit "4" from clause 4. Insert instead "5".

[38] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 1 (1): 25

State Emergency Legislation Amendment Act 1995

[39] Schedule 4, Part 4

Insert after Part 3:

**Part 4 Provisions consequent on State Emergency
Legislation Amendment Act 1995**

**4 State Emergency Operations Controller to cease to be
Chairperson of State Emergency Management Committee
and State Rescue Board** 5

On and from the commencement of this Part, the State
Emergency Operations Controller:

- (a) ceases to hold office as the Chairperson of the 10
State Emergency Management Committee and of
the State Rescue Board, and
- (b) is not entitled to any remuneration or
compensation because of the loss of those offices.

**5 Director-General of SES to cease to be Deputy State
Emergency Operations Controller and Deputy
Chairperson of State Rescue Board** 15

On and from the commencement of this Part, the
Director-General of the State Emergency Service:

- (a) ceases to hold office as Deputy State Emergency 20
Operations Controller and Deputy Chairperson of
the State Rescue Board, and
- (b) is not entitled to any remuneration or
compensation because of the loss of those offices.

**6 Continuation of appointment of State Emergency
Operations Controller** 25

The person who, on the commencement of the
amendment made to section 18 (1) by the *State
Emergency Legislation Amendment Act 1995*, is the State
Emergency Operations Controller is taken to be 30
appointed under that subsection as so amended.

State Emergency Legislation Amendment Bill 1995

Schedule 1 Amendment of State Emergency and Rescue Management Act 1989

7 References to State Rescue and Emergency Services Board

On and from the commencement of this Part, a reference in any Act (other than this Act) or statutory instrument, or any other instrument, or in any other document, to the State Rescue and Emergency Services Board is to be read as a reference to the State Rescue Board.

5

Schedule 2 Amendment of State Emergency Service Act 1989

(Section 4)

[1] Section 8 Functions of Service

Omit "State Rescue and Emergency Services Board" from 5
section 8 (1) (e).
Insert instead "State Rescue Board".

[2] Section 18A

Insert at the beginning of Part 5:

18A Definitions

10

In this Part:

emergency area means the area affected by an
emergency to which this Part applies.

premises includes land, place, building, vehicle, vessel
or aircraft, or any part of premises.

15

senior emergency officer means any of the following:

(a) a police officer of or above the rank of sergeant or
a police officer for the time being in charge of a
police station,

(b) an officer of New South Wales Fire Brigades of or
above the position of station commander,

20

(c) an officer of the State Emergency Service of or
above the position of unit controller, or a
divisional executive officer or the Director,
Operations of that Service,

25

(d) a member of a bush fire brigade of or above the
position of deputy captain,

(e) a District Emergency Management Officer.

**[3] Section 22 Power to evacuate or to take other steps concerning
persons**

30

Omit section 22 (4).

[4] Sections 22A–22F

Insert after section 22:

22A Power to take other safety measures

- (1) The Director-General may, if satisfied that there are reasonable grounds for doing so for the purpose of protecting persons from injury or death or protecting property threatened by an actual or imminent emergency, direct, or authorise a senior emergency officer to direct, the doing of any one or more of the following: 5
- (a) the shutting off or disconnecting of the supply of any water, gas, liquid, solid, grain, powder or other substance in or from any main, pipeline, container or storage facility in an emergency area or any part of an emergency area, 10
- (b) the shutting off or disconnecting of the supply of gas or electricity to any premises in an emergency area or any part of an emergency area, 15
- (c) the taking possession of, and removal or destruction of any material or thing in an emergency area or any part of an emergency area that may be dangerous to life or property or that may interfere with the response of emergency services to the emergency. 20
- (2) For the purposes of the exercise of a function under subsection (1) (a), the Director-General or a senior emergency officer authorised by the Director-General may require the person who controls or supplies the substance concerned to immediately send some competent person to the scene for the purpose of shutting it off or disconnecting it in accordance with the reasonable directions of the Director-General or senior emergency officer. 25 30
- (3) A person must comply with a requirement, or directions, under subsection (2).
- Maximum penalty: 50 penalty units. 35

-
- (4) A person who supplies a substance referred to in subsection (1) (a) or (b) is not liable for any damages because of any interruption of that supply under this section if the supply is shut off or disconnected in accordance with the directions of the Director-General or senior emergency officer.

5

- (5) The regulations may limit the circumstances, and regulate the manner, in which the powers conferred by this section may be exercised.

22B Power to enter premises

10

A person may enter any premises for the purposes of complying with a direction under section 22A (1).

22C Notice of entry

- (1) A person authorised to enter premises may enter the premises without giving notice:

15

(a) if entry to the premises is made with the consent of the owner or occupier, or

(b) if the entry is made to a part of the premises that is open to the public, or

(c) if entry is required urgently and the case is one in which the Director-General or senior emergency officer giving the direction has authorised in writing (either generally or in a particular case) entry without notice.

20

- (2) In any other case, the person must give the owner or occupier of the premises reasonable written notice of the intention to enter the premises.

25

22D Care to be taken

In the exercise of a function under section 22A, a person authorised to enter premises must do as little damage as possible.

30

22E Use of force

- (1) Reasonable force may be used for the purpose of gaining entry to premises to comply with a direction under section 22A but only if the Director-General or the senior emergency officer giving the direction: 5
- (a) has authorised in writing the use of force in the particular case, or
- (b) has specified in writing the circumstances that are required to exist before force may be used and the particular case falls within those circumstances. 10
- (2) If a person authorised to enter premises uses force to do so, the person must, as soon as practicable, inform the person who directed him or her to exercise the function under section 22A.
- (3) The person so informed of the use of force must give notice of the use of force to such persons or authorities as appear to the person to be appropriate in the circumstances. 15
- (4) If a person's property is damaged by the exercise of a right of entry, the person is to receive such compensation as may be determined by the Minister or, if the damage arose as the result of the exercise of a right of entry by a police officer, the Minister for Police, but is not entitled to receive compensation. 20
- (5) A person may apply to the Premier for a review of a determination as to compensation made by the Minister or the Minister for Police under this section. 25

22F Authority to enter premises

- (1) A power to enter premises, or to take action on premises, may not be exercised unless the person proposing to exercise the power is in possession of an authority and produces the authority if required to do so by the owner or occupier of the premises. 30

-
- (2) The authority must be a written authority that:
- (a) states that it is issued under this Act, and
 - (b) gives the name of the person to whom it is issued, and
 - (c) describes the nature of the powers conferred and the source of the powers, and 5
 - (d) states the date (if any) on which it expires, and
 - (e) describes the kind of premises to which the power extends, and
 - (f) bears the signature of the Director-General or the senior emergency officer who issued the direction under section 22A. 10
- (3) However, despite subsections (1) and (2), a police officer exercising a power to enter premises, or to take action on premises, must produce his or her warrant card if required to do so by the owner or occupier of the premises in lieu of an authority. 15

[5] Section 25A

Insert after section 25:

25A Certain damage to be covered by insurance 20

- (1) Any damage to property caused by the exercise in good faith of functions under section 22A (1) by:
- (a) the Director-General or a senior emergency officer authorised by the Director-General during an emergency to which Part 5 applies, or 25
 - (b) a person acting on and in accordance with a direction given by the Director-General or a senior emergency officer authorised by the Director-General under section 22A (1) during an emergency to which Part 5 applies, 30

State Emergency Legislation Amendment Bill 1995

Schedule 2 Amendment of State Emergency Service Act 1989

- is taken to be damage by the happening that constitutes the emergency (being flood, storm, tempest or other risk, contingency or event) for the purposes of any policy of insurance against the risk, contingency or event concerning an act or omission that covers the property. 5
- (2) This section applies only in respect of damage to property caused in the exercise of a function to protect persons from injury or death or property from damage if those persons are, or the property is, endangered by the happening that constitutes the emergency or endangered by the escape or likely escape of hazardous material as the result of that happening. 10
- (3) Any provision, stipulation, covenant or condition in any agreement that negatives, limits or modifies or purports to negative, limit or modify the operation of this section is void and of no effect. 15
- (4) In this section, *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. 20



New South Wales

State Emergency Legislation Amendment Act 1995 No 91

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New South Wales

State Emergency Legislation Amendment Act 1995 No 91

Act No 91, 1995

An Act to amend the *State Emergency and Rescue Management Act 1989* to extend the powers that may be exercised in a state of emergency or danger area; to vary provisions concerning the administration and operations of emergency and rescue services; to amend the *State Emergency Service Act 1989* to extend the powers that may be exercised in an emergency; and for other purposes. [Assented to 21 December 1995]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *State Emergency Legislation Amendment Act 1995*.

2 Commencement

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

3 Amendment of State Emergency and Rescue Management Act 1989 No 165

The *State Emergency and Rescue Management Act 1989* is amended as set out in Schedule 1.

4 Amendment of State Emergency Service Act 1989 No 164

The *State Emergency Service Act 1989* is amended as set out in Schedule 2.

Schedule 1 Amendment of State Emergency and Rescue Management Act 1989

(Section 3)

[1] Section 3 Definitions

Insert "domestic" after "or" where firstly occurring in the definition of *rescue* in section 3 (1).

[2] Section 3 (1)

Omit the definition of *State Rescue and Emergency Services Board*.
Insert instead:

State Rescue Board means the State Rescue Board of
New South Wales constituted under Part 3.

[3] The whole Act

Omit "State Rescue and Emergency Services Board" wherever
occurring.
Insert instead "State Rescue Board".

[4] Section 10 Minister

Omit section 10 (2). Insert instead:

- (2) In discharging any one or more of those responsibilities,
the Minister may, on any occasion that the Minister
thinks appropriate, call meetings of, consult with, and
have regard to the advice of, the State Disasters Council.

[5] Section 14 State Emergency Management Committee

Omit " , who is to be the Chairperson of the Committee" from
section 14 (2) (a).

[6] Section 14 (2A)

Insert after section 14 (2):

- (2A) One of the appointed members is, by the instrument of the member's appointment as a member or by a subsequent instrument executed by the Minister, to be appointed as the Chairperson of the Committee.

[7] Section 18 State Emergency Operations Controller

Insert "and a Deputy State Emergency Operations Controller" after "Controller" in section 18 (1).

[8] Section 18 (1A) and (1B)

Insert after section 18 (1):

- (1A) The Minister is to consult with the Minister for Police before making a recommendation under subsection (1).
- (1B) The person appointed as the State Emergency Operations Controller must be the Commissioner of Police or a member of the Police Service Senior Executive Service and the person appointed as the Deputy State Emergency Operations Controller must be a member of the Police Service Senior Executive Service.

[9] Section 18 (2) and (3)

Omit the subsections. Insert instead:

- (2) The persons so appointed must be persons who are, in the opinion of the Minister, experienced in emergency management.
- (3) During the absence or a vacancy in the office of the State Emergency Operations Controller, the Deputy State Emergency Operations Controller has all the functions of the State Emergency Operations Controller.

[10] Section 18 (4)

Insert “and the Deputy State Emergency Operations Controller”
after “State Emergency Operations Controller”.

[11] Section 20 State emergency operations centre

Omit section 20 (3).

[12] Section 24

Omit the section. Insert instead:

24 District Emergency Operations Controller

The Commissioner of Police is to appoint a District
Emergency Operations Controller for each district who is
to be a police officer holding the position of District
Commander stationed within that district.

**[13] Section 26 Police Service to provide executive support for
District Emergency Management Committee and Operations
Controller**

Omit “State Emergency Service” from section 26 (1).
Insert instead “Police Service”.

[14] Section 26 (1)

Omit “in its area”. Insert instead “in the district concerned”.

[15] Section 28 Local Emergency Management Committees

Omit section 28 (4).

[16] Section 30

Omit the section. Insert instead:

30 Local Emergency Operations Controller

The Commissioner of Police is to appoint a Local Emergency Operations Controller for a local government area who is to be a police officer stationed within that area.

[17] Section 32A

Insert before section 33:

32A Definitions

In this Division:

emergency area means the area in which a state of emergency is declared to exist.

emergency services officer means any of the following:

- (a) a police officer,
- (b) an officer of New South Wales Fire Brigades of or above the position of station commander,
- (c) an officer of the State Emergency Service of or above the position of unit controller, or a divisional executive officer or the Director, Operations of that Service,
- (d) a member of a bush fire brigade of or above the position of deputy captain,
- (e) a District Emergency Management Officer.

premises includes land, place, building, vehicle, vessel or aircraft, or any part of premises.

[18] Section 37 Power to evacuate or to take other steps concerning persons

Omit section 37 (4).

[19] Sections 37A–37F

Insert after section 37:

37A Power to take other safety measures

- (1) The Minister may, if satisfied that there are reasonable grounds for so doing for the purpose of protecting persons from injury or death or protecting property in a state of emergency, direct, or authorise an emergency services officer to direct, the doing of any one or more of the following:
 - (a) the closure to traffic of any street, road, lane, thoroughfare or footpath or place open to or used by the public, in an emergency area or any part of an emergency area,
 - (b) the closure of any other public or private place in an emergency area or any part of an emergency area,
 - (c) the pulling down, destruction or shoring up of any wall or premises that have been damaged or rendered insecure in an emergency area or any part of an emergency area,
 - (d) the shutting off or disconnecting of the supply of any water, gas, liquid, solid, grain, powder or other substance in or from any main, pipeline, container or storage facility in an emergency area or any part of an emergency area,
 - (e) the shutting off or disconnecting of the supply of gas or electricity to any premises in an emergency area or any part of an emergency area,

- (f) the taking possession of, and removal or destruction of any material or thing in an emergency area or any part of an emergency area that may be dangerous to life or property or that may interfere with the response of emergency services to the emergency.
- (2) The cost of taking action under subsection (1) (c) is to be borne by the owner of the wall or premises and is to be paid to, and may be recovered in a court of competent jurisdiction by, the Minister for reimbursement of the costs of the emergency services organisation of pulling down, destroying or shoring up the wall or premises concerned.
- (3) For the purposes of the exercise of a function under subsection (1) (d), the Minister or an emergency services officer may require the person who controls or supplies the substance concerned to immediately send some competent person to the scene for the purpose of shutting it off or disconnecting it in accordance with the reasonable directions of the Minister or emergency services officer.
- (4) A person must comply with a requirement, or directions, under subsection (3).
Maximum penalty: 50 penalty units.
- (5) A person who supplies a substance referred to in subsection (1) (d) or (e) is not liable for any damages because of any interruption of that supply under this section if the supply is shut off or disconnected in accordance with the directions of the Minister or emergency services officer.
- (6) The regulations may limit the circumstances, and regulate the manner, in which the powers conferred by this section may be exercised.

37B Power to enter premises

A person may enter any premises for the purposes of complying with a direction under section 37A (1).

37C Notice of entry

- (1) A person authorised to enter premises may enter the premises without giving notice:
 - (a) if entry to the premises is made with the consent of the owner or occupier, or
 - (b) if the entry is made to a part of the premises that is open to the public, or
 - (c) if entry is required urgently and the case is one in which the Minister or the emergency services officer giving the direction has authorised in writing (either generally or in a particular case) entry without notice.
- (2) In any other case, the person must give the owner or occupier of the premises reasonable written notice of the intention to enter the premises.

37D Care to be taken

In the exercise of a function under section 37A, a person authorised to enter premises must do as little damage as possible.

37E Use of force

- (1) Reasonable force may be used for the purpose of gaining entry to premises to comply with a direction under section 37A but only if the Minister:
 - (a) has authorised in writing the use of force in the particular case, or
 - (b) has specified in writing the circumstances that are required to exist before force may be used and the particular case falls within those circumstances.
- (2) If a person authorised to enter premises uses force to do so, the person must, as soon as practicable, inform the person who directed him or her to exercise the function under section 37A.

- (3) The person so informed of the use of force must give notice of the use of force to such persons or authorities as appear to the person to be appropriate in the circumstances.
- (4) If a person's property is damaged by the exercise of a right of entry, the person is to receive such compensation as may be determined by the Minister or, if the damage arose as the result of the exercise of a right of entry by a police officer, the Minister for Police, but is not entitled to receive compensation.
- (5) A person may apply to the Premier for a review of a determination as to compensation made by the Minister or the Minister for Police under this section.

37F Authority to enter premises

- (1) A power conferred to enter premises, or to take action on premises, may not be exercised unless the person proposing to exercise the power is in possession of an authority and produces the authority if required to do so by the owner or occupier of the premises.
- (2) The authority must be a written authority that:
 - (a) states that it is issued under this Act, and
 - (b) gives the name of the person to whom it is issued, and
 - (c) describes the nature of the powers conferred and the source of the powers, and
 - (d) states the date (if any) on which it expires, and
 - (e) describes the kind of premises to which the power extends, and
 - (f) bears the signature of the Minister or the emergency services officer who issued the direction under section 37A.
- (3) However, despite subsections (1) and (2), a police officer exercising a power to enter premises, or to take action on premises, must produce his or her warrant card if required to do so by the owner or occupier of the premises in lieu of an authority.

[20] Section 43 Composition of Board

Omit “7” from section 43 (1). Insert instead “8”.

[21] Section 43 (1) (a)

Omit “, who is to be the Chairperson of the Board”.

[22] Section 43 (1) (b)

Omit “, who is to be the Deputy Chairperson of the Board”.

[23] Section 43 (1) (c)

Omit the paragraph. Insert instead:

- (c) a member of the Police Service Senior Executive Service nominated by the Commissioner of Police,

[24] Section 43 (1) (d)

Omit the paragraph. Insert instead:

- (d) the Commissioner of New South Wales Fire Brigades,

[25] Section 43 (1) (e)

Omit the paragraph. Insert instead:

- (e) the Commissioner of Bush Fire Services,

[26] Section 43 (1) (g1)

Insert after paragraph (g):

- (g1) the Chairperson of the Volunteer Marine Rescue Council of New South Wales,

[27] Section 43 (2)

Omit the subsection. Insert instead:

- (2) One of the members of the Board is to be appointed as the Chairperson of the Board by the Minister.

[28] Section 52 Definitions

Insert after the definition of *rescue unit*:

rescue vehicle means a vehicle that is designed, adapted or equipped for use in rescue work and:

- (a) is clearly marked with the word "Rescue", or
- (b) is fitted with warning devices, such as flashing lights or a siren,

or both.

[29] Section 52 (2)

Insert at the end of the section:

- (2) An organisation, such as the Royal Society for the Prevention of Cruelty to Animals, New South Wales or the Wildlife Information and Rescue Service, that specialises in animal welfare or animal rescue operations or both does not constitute a rescue unit for the purposes of this Division.

[30] Section 53 Offence to operate rescue unit or rescue vehicle without accreditation

Insert after section 53 (1):

- (1A) It is an offence for a person who is not a member of a rescue unit accredited under this Division to display, drive or operate a rescue vehicle.

Maximum penalty: 50 penalty units.

- (1B) It is a defence to any proceeding under subsection (1A) if the person who contravened the subsection had a reasonable excuse or lawful authority for displaying, driving or operating the rescue vehicle.

[31] Section 60KA

Insert at the beginning of Part 4:

60KA Definitions

In this Part:

danger area means the area specified by a senior police officer as the area in which an emergency is causing or threatening to cause injury or death.

emergency or rescue management organisation means any of the following:

- (a) the State Disasters Council,
- (b) the State Emergency Management Committee,
- (c) a District Emergency Management Committee,
- (d) a Local Emergency Management Committee,
- (e) the State Rescue Board,
- (f) a committee or sub-committee of a body referred to in paragraphs (a)–(e).

premises includes land, place, building, vehicle, vessel or aircraft, or any part of premises.

senior police officer means a police officer of or above the rank of sergeant or a police officer of a class prescribed as being within this definition by the regulations.

[32] Section 60L Power of police to evacuate or to take other steps concerning persons

Omit section 60L (5).

[33] Section 61

Omit the section.

[34] Sections 61–61E

Insert after section 60L:

61 Power of police to take other safety measures

- (1) A senior police officer may, if satisfied that there are reasonable grounds for doing so for the purpose of protecting persons from injury or death or protecting property threatened by an actual or imminent emergency, direct, or authorise another police officer to direct, the doing of any one or more of the following:
 - (a) the closure to traffic of any street, road, lane, thoroughfare or footpath or place open to or used by the public, in a danger area or any part of a danger area,
 - (b) the closure of any other public or private place in a danger area or any part of a danger area,
 - (c) the pulling down, destruction or shoring up of any wall or premises that have been damaged or rendered insecure in a danger area or any part of a danger area,
 - (d) the shutting off or disconnecting of the supply of any water, gas, liquid, solid, grain, powder or other substance in or from any main, pipeline, container or storage facility in a danger area or any part of a danger area,
 - (e) the shutting off or disconnecting of the supply of gas or electricity to any premises in a danger area or any part of a danger area,
 - (f) the taking possession of, and removal or destruction of any material or thing in a danger area or any part of a danger area that may be dangerous to life or property or that may interfere with the response of emergency services to the emergency.
- (2) The cost of taking action under subsection (1) (c) is to be borne by the owner of the wall or premises and is to be paid to, and may be recovered in a court of competent jurisdiction by, the Commissioner of Police.

- (3) For the purposes of the exercise of a function under subsection (1) (d), a senior police officer may require the person who controls or supplies the substance concerned to immediately send some competent person to the scene for the purpose of shutting it off or disconnecting it in accordance with the reasonable directions of the officer.
- (4) A person must comply with a requirement, or directions, under subsection (3).

Maximum penalty: 50 penalty units.
- (5) A person who supplies a substance referred to in subsection (1) (d) or (e) is not liable for any damages because of any interruption of that supply under this section if the supply is shut off or disconnected in accordance with the directions of the senior police officer.
- (6) The regulations may limit the circumstances, and regulate the manner, in which the powers conferred by this section may be exercised.

61A Power to enter premises

A police officer may enter any premises for the purposes of complying with a direction under section 61 (1).

61B Notice of entry

- (1) A police officer authorised to enter premises may enter the premises without giving notice:
 - (a) if entry to the premises is made with the consent of the owner or occupier, or
 - (b) if the entry is made to a part of the premises that is open to the public, or
 - (c) if entry is required urgently and the case is one in which the senior police officer giving the direction has authorised in writing (either generally or in a particular case) entry without notice.

- (2) In any other case, the police officer must give the owner or occupier of the premises reasonable written notice of the intention to enter the premises.

61C Care to be taken

In the exercise of a function under section 61, a police officer authorised to enter premises must do as little damage as possible.

61D Use of force

- (1) Reasonable force may be used for the purpose of gaining entry to premises to comply with a direction under section 61 but only if the senior police officer:
 - (a) has authorised in writing the use of force in the particular case, or
 - (b) has specified in writing the circumstances that are required to exist before force may be used and the particular case falls within those circumstances.
- (2) If a police officer authorised to enter premises uses force to do so, the police officer must, as soon as practicable, inform the senior police officer who directed him or her to exercise the function under section 61.
- (3) The senior police officer so informed must give notice of the use of force to the Commissioner of Police.
- (4) If a person's property is damaged by the exercise of a right of entry the person is to receive such compensation as may be determined by the Minister for Police, but is not entitled to receive compensation.
- (5) A person may apply to the Premier for a review of a determination as to compensation made by the Minister for Police under this section.

61E Police officer to produce warrant card if required

A power to enter premises, or to take action on premises, may not be exercised unless the police officer proposing to exercise the power produces his or her warrant card if required to do so by the owner or occupier of the premises.

[35] Section 62A

Insert after section 62:

62A Certain damage to be covered by insurance

- (1) Any damage to property caused by the exercise in good faith of functions under section 37A (1) or 61 (1) by:
- (a) the Minister or an emergency services officer authorised by the Minister during a state of emergency, or
 - (b) a senior police officer or another police officer authorised by a senior police officer at an actual or imminent emergency, or
 - (c) a person acting on and in accordance with a direction given by:
 - (i) the Minister or an emergency services officer authorised by the Minister under section 37A (1) during a state of emergency, or
 - (ii) a senior police officer or another police officer authorised by a senior police officer under section 61 (1) at an actual or imminent emergency,

is taken to be damage by the happening that constitutes the emergency (being fire, flood, storm, tempest, explosion or other risk, contingency or event) for the purposes of any policy of insurance against the risk, contingency or event concerning an act or omission that covers the property.

- (2) This section applies only in respect of damage to property caused in the exercise of a function to protect persons from injury or death or property from damage if those persons are, or the property is, endangered by the happening that constitutes the emergency or endangered by the escape or likely escape of hazardous material as the result of that happening.
- (3) Any provision, stipulation, covenant or condition in any agreement that negatives, limits or modifies or purports to negative, limit or modify the operation of this section is void and of no effect.
- (4) In this section, *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.

[36] Schedule 1 Provisions relating to State Emergency Operations Controller and Deputy State Emergency Operations Controller

Insert "or the Deputy State Operations Controller" at the end of the definition of *Controller*.

[37] Schedule 3 Provisions relating to members and procedure of State Rescue Board

Omit "4" from clause 4. Insert instead "5".

[38] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

State Emergency Legislation Amendment Act 1995

[39] Schedule 4, Part 4

Insert after Part 3:

**Part 4 Provisions consequent on State Emergency
Legislation Amendment Act 1995**

**4 State Emergency Operations Controller to cease to be
Chairperson of State Emergency Management Committee
and State Rescue Board**

On and from the commencement of this Part, the State
Emergency Operations Controller:

- (a) ceases to hold office as the Chairperson of the
State Emergency Management Committee and of
the State Rescue Board, and
- (b) is not entitled to any remuneration or
compensation because of the loss of those offices.

**5 Director-General of SES to cease to be Deputy State
Emergency Operations Controller and Deputy
Chairperson of State Rescue Board**

On and from the commencement of this Part, the
Director-General of the State Emergency Service:

- (a) ceases to hold office as Deputy State Emergency
Operations Controller and Deputy Chairperson of
the State Rescue Board, and
- (b) is not entitled to any remuneration or
compensation because of the loss of those offices.

**6 Continuation of appointment of State Emergency
Operations Controller**

The person who, on the commencement of the
amendment made to section 18 (1) by the *State
Emergency Legislation Amendment Act 1995*, is the State
Emergency Operations Controller is taken to be
appointed under that subsection as so amended.

7 References to State Rescue and Emergency Services Board

On and from the commencement of this Part, a reference in any Act (other than this Act) or statutory instrument, or any other instrument, or in any other document, to the State Rescue and Emergency Services Board is to be read as a reference to the State Rescue Board.

Schedule 2 Amendment of State Emergency Service Act 1989

(Section 4)

[1] Section 8 Functions of Service

Omit "State Rescue and Emergency Services Board" from section 8 (1) (e).

Insert instead "State Rescue Board".

[2] Section 18A

Insert at the beginning of Part 5:

18A Definitions

In this Part:

emergency area means the area affected by an emergency to which this Part applies.

premises includes land, place, building, vehicle, vessel or aircraft, or any part of premises.

senior emergency officer means any of the following:

- (a) a police officer of or above the rank of sergeant or a police officer for the time being in charge of a police station,
- (b) an officer of New South Wales Fire Brigades of or above the position of station commander,
- (c) an officer of the State Emergency Service of or above the position of unit controller, or a divisional executive officer or the Director, Operations of that Service,
- (d) a member of a bush fire brigade of or above the position of deputy captain,
- (e) a District Emergency Management Officer.

[3] Section 22 Power to evacuate or to take other steps concerning persons

Omit section 22 (4).

[4] Sections 22A–22F

Insert after section 22:

22A Power to take other safety measures

- (1) The Director-General may, if satisfied that there are reasonable grounds for doing so for the purpose of protecting persons from injury or death or protecting property threatened by an actual or imminent emergency, direct, or authorise a senior emergency officer to direct, the doing of any one or more of the following:
 - (a) the shutting off or disconnecting of the supply of any water, gas, liquid, solid, grain, powder or other substance in or from any main, pipeline, container or storage facility in an emergency area or any part of an emergency area,
 - (b) the shutting off or disconnecting of the supply of gas or electricity to any premises in an emergency area or any part of an emergency area,
 - (c) the taking possession of, and removal or destruction of any material or thing in an emergency area or any part of an emergency area that may be dangerous to life or property or that may interfere with the response of emergency services to the emergency.
- (2) For the purposes of the exercise of a function under subsection (1) (a), the Director-General or a senior emergency officer authorised by the Director-General may require the person who controls or supplies the substance concerned to immediately send some competent person to the scene for the purpose of shutting it off or disconnecting it in accordance with the reasonable directions of the Director-General or senior emergency officer.
- (3) A person must comply with a requirement, or directions, under subsection (2).

Maximum penalty: 50 penalty units.

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- (4) A person who supplies a substance referred to in subsection (1) (a) or (b) is not liable for any damages because of any interruption of that supply under this section if the supply is shut off or disconnected in accordance with the directions of the Director-General or senior emergency officer.
 - (5) The regulations may limit the circumstances, and regulate the manner, in which the powers conferred by this section may be exercised.

22B Power to enter premises

A person may enter any premises for the purposes of complying with a direction under section 22A (1).

22C Notice of entry

- (1) A person authorised to enter premises may enter the premises without giving notice:
 - (a) if entry to the premises is made with the consent of the owner or occupier, or
 - (b) if the entry is made to a part of the premises that is open to the public, or
 - (c) if entry is required urgently and the case is one in which the Director-General or senior emergency officer giving the direction has authorised in writing (either generally or in a particular case) entry without notice.
- (2) In any other case, the person must give the owner or occupier of the premises reasonable written notice of the intention to enter the premises.

22D Care to be taken

In the exercise of a function under section 22A, a person authorised to enter premises must do as little damage as possible.

22E Use of force

- (1) Reasonable force may be used for the purpose of gaining entry to premises to comply with a direction under section 22A but only if the Director-General or the senior emergency officer giving the direction:
 - (a) has authorised in writing the use of force in the particular case, or
 - (b) has specified in writing the circumstances that are required to exist before force may be used and the particular case falls within those circumstances.
- (2) If a person authorised to enter premises uses force to do so, the person must, as soon as practicable, inform the person who directed him or her to exercise the function under section 22A.
- (3) The person so informed of the use of force must give notice of the use of force to such persons or authorities as appear to the person to be appropriate in the circumstances.
- (4) If a person's property is damaged by the exercise of a right of entry, the person is to receive such compensation as may be determined by the Minister or, if the damage arose as the result of the exercise of a right of entry by a police officer, the Minister for Police, but is not entitled to receive compensation.
- (5) A person may apply to the Premier for a review of a determination as to compensation made by the Minister or the Minister for Police under this section.

22F Authority to enter premises

- (1) A power to enter premises, or to take action on premises, may not be exercised unless the person proposing to exercise the power is in possession of an authority and produces the authority if required to do so by the owner or occupier of the premises.

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- (2) The authority must be a written authority that:
- (a) states that it is issued under this Act, and
 - (b) gives the name of the person to whom it is issued, and
 - (c) describes the nature of the powers conferred and the source of the powers, and
 - (d) states the date (if any) on which it expires, and
 - (e) describes the kind of premises to which the power extends, and
 - (f) bears the signature of the Director-General or the senior emergency officer who issued the direction under section 22A.
- (3) However, despite subsections (1) and (2), a police officer exercising a power to enter premises, or to take action on premises, must produce his or her warrant card if required to do so by the owner or occupier of the premises in lieu of an authority.

[5] Section 25A

Insert after section 25:

25A Certain damage to be covered by insurance

- (1) Any damage to property caused by the exercise in good faith of functions under section 22A (1) by:
- (a) the Director-General or a senior emergency officer authorised by the Director-General during an emergency to which Part 5 applies, or
 - (b) a person acting on and in accordance with a direction given by the Director-General or a senior emergency officer authorised by the Director-General under section 22A (1) during an emergency to which Part 5 applies,

is taken to be damage by the happening that constitutes the emergency (being flood, storm, tempest or other risk, contingency or event) for the purposes of any policy of insurance against the risk, contingency or event concerning an act or omission that covers the property.

- (2) This section applies only in respect of damage to property caused in the exercise of a function to protect persons from injury or death or property from damage if those persons are, or the property is, endangered by the happening that constitutes the emergency or endangered by the escape or likely escape of hazardous material as the result of that happening.
- (3) Any provision, stipulation, covenant or condition in any agreement that negatives, limits or modifies or purports to negative, limit or modify the operation of this section is void and of no effect.
- (4) In this section, *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.

[Minister's second reading speech made in—
Legislative Assembly on 26 October 1995
Legislative Council on 15 December 1995]

BY AUTHORITY