

STATE EMERGENCY SERVICE ACT 1989 No. 164

NEW SOUTH WALES



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SCHEDULE 1 - SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

STATE EMERGENCY SERVICE ACT 1989 No. 164

NEW SOUTH WALES



Act No. 164, 1989

An Act to establish the State Emergency Service and define its functions; to make provision for the handling of certain emergencies; to repeal the State Emergency Services and Civil Defence Act 1972; to amend certain other Acts; and for other purposes. [Assented to 14 December 1989]

The Legislature of New South Wales enacts:

PART 1 - PRELIMINARY

Short title

1. This Act may be cited as the State Emergency Service Act 1989.

Commencement

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

Definitions

3. (1) In this Act:

"**Deputy Director**" means the Deputy Director of the State Emergency Service holding office as such under the Public Sector Management Act 1988;

"**Director**" means the Director of the State Emergency Service holding office as such under the Public Sector Management Act 1988;

"**division**" means a division established under section 14;

"**division controller**" means the controller of S.E.S. units in a division appointed under section 16;

"**emergency officer**" means the Director or a person appointed under section 15 as an emergency officer;

"**local controller**" means a controller of S.E.S. units in a local government area appointed under section 17;

"**S.E.S. unit**" means an organisation registered as an S.E.S. unit under this Act;

"**State Emergency Service**" means the State Emergency Service of New South Wales established under this Act.

(2) Words and expressions in this Act have the same meanings as in the State Emergency and Rescue Management Act 1989, except in so far as the context or subject-matter otherwise indicates or requires.

- (3) In this Act:

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

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

Limitation on operation of Act - industrial disputes and civil disturbances

4. This Act does not authorise the taking of measures directed at:
- (a) bringing an industrial dispute to an end; or
 - (b) controlling a riot or other civil disturbance.

Operation of Act in relation to civil defence

5. This Act authorises the taking of civil defence measures, not being actual military combat or preparations for military combat.

Act binds the Crown

6. This Act binds the Crown, not only in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

PART 2 - THE STATE EMERGENCY SERVICE

State Emergency Service

7. (1) There shall be a State Emergency Service of New South Wales.
- (2) The State Emergency Service is to comprise:
- (a) the Director, Deputy Director and other staff of the Service; and
 - (b) the members of all S.E.S. units.

Functions of Service

8. (1) The State Emergency Service has the following functions:
- (a) to act as the combat agency for dealing with floods (including the establishment of flood warning systems) and to co-ordinate the evacuation and welfare of affected communities;
 - (b) to act as the combat agency for damage control for storms and tempests and to co-ordinate the evacuation and welfare of affected communities;
 - (c) as directed by the State Emergency Operations Controller, to act as the primary agency for civil defence planning and as an agency for the conduct of civil defence operations;

- (d) as directed by the State Emergency Operations Controller, to deal with an emergency where no other agency has lawful authority to assume command of the emergency operation;
- (e) to carry out, by accredited S.E.S. units, rescue operations allocated by the State Rescue and Emergency Services Board;
- (f) to assist the State Emergency Operations Controller to carry out emergency management functions relating to the prevention of, preparation for, response to and recovery from emergencies in accordance with the State Emergency and Rescue Management Act 1989;
- (g) to assist, at their request, members of the Police Force, Fire Brigades, Bush Fire Brigades or Ambulance Service in dealing with any incident or emergency;
- (h) to maintain effective liaison with all emergency services organisations;
- (i) to carry out such other functions as may be assigned to it by or under this or any other Act, or by the State Emergency Operations Controller or the Minister.

(2) The functions of the State Emergency Service are to be exercised in accordance with the State Emergency and Rescue Management Act 1989 and, in particular, with the requirements under Displan or any state of emergency under that Act.

PART 3 - THE DIRECTOR AND OTHER STAFF OF THE SERVICE

Director, Deputy Director and other staff

9. (1) A Director, Deputy Director and such other staff as may be necessary for the purposes of this Act are to be employed under Part 2 of the Public Sector Management Act 1988.

(2) Subsection (1) does not apply to members of S.E.S. units.

(3) The Director may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of a government department, an administrative office or a public or local authority.

(4) For the purposes of this Act, a person whose services are made use of under this section is a member of the staff of the State Emergency Service.

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Ministerial control

10. The Director, Deputy Director and other members of the State Emergency Service are, in the exercise of their functions under this Act, subject to the control and direction of the Minister.

Director responsible for administration of Service

11. The Director is responsible for managing and controlling the activities of the State Emergency Service.

Planning and preparation by Director

12. (1) The Director is required to undertake such planning and make such preparations as the Director thinks fit for the purpose of enabling the Director's functions under this Act to be exercised in the most effective manner.

(2) The Director may constitute committees to collate and assess information, or give advice or assistance to the Director or any other person or agency, in relation to the functions of the State Emergency Service.

(3) The Director is to arrange for the collation, assessment and public dissemination of information relating to floods, storms and tempests.

Delegation by Director

13. The Director may delegate to the Deputy Director or any other member of the State Emergency Service or to an emergency officer the Director's functions under this Act, other than this power of delegation.

Service divisions

14. The Director may, by order in writing and with the approval of the State Emergency Operations Controller, divide the State into divisions for the purposes of this Act.

PART 4 - EMERGENCY OFFICERS AND S.E.S UNITS

Emergency officers

15. (1) The Director is an emergency officer for the purposes of this Act.

(2) The Director may appoint any person, or a person belonging to a class of persons, as an emergency officer for the purposes of this Act.

(3) A person may be appointed as an emergency officer whether or not the person is a member of the State Emergency Service.

(4) The Director may revoke an appointment under this section at any time.

(5) The Director is to arrange for suitable training to be provided to emergency officers.

Division controllers

16. (1) The Director may appoint an emergency officer as the division controller for a division.

(2) The Director may revoke an appointment under this section at any time.

(3) A division controller is, subject to any direction of the Director, responsible for the control and co-ordination of the activities of S.E.S. units in the relevant division.

Local controllers

17. (1) The Director may, on the recommendation of the council of a local government area, appoint an emergency officer as the local controller for the area.

(2) The Director may revoke an appointment under this section at any time.

(3) A local controller is, subject to any direction of the Director or the relevant division controller, responsible for the control and co-ordination of the activities of S.E.S. units in the relevant local government area.

(4) The Director may appoint as the local controller an emergency officer not recommended by the council of the local government area concerned if the council fails to make a recommendation which is acceptable to the Director within 30 days after the council is requested to do so by the Director.

(5) The council of a local government area must, within 3 months of the appointment of a local controller for the area, provide (free of charge) suitable training facilities and storage and office

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accommodation to enable the local controller to exercise his or her functions.

(6) Any such facilities and accommodation are to be of a standard approved by the Minister.

S.E.S. units

18. (1) On the application of an association of persons formed for the purpose of dealing with emergencies to which this Act applies, the Director may, by instrument in writing, register the association as an S.E.S. unit and assign it a distinctive name.

(2) An association of persons may be registered as an S.E.S. unit whether or not it is an incorporated body.

(3) The Director may, by instrument in writing, revoke the registration of an association as an S.E.S. unit.

(4) The Director may apply for the accreditation of an S.E.S. unit as a rescue unit under Part 3 of the State Emergency and Rescue Management Act 1989.

(5) The trustees of any real or personal property of an S.E.S. unit may vest that property in the Crown, to be held by the Crown subject to this Act but free from any other trust.

PART 5 - EMERGENCIES AND EMERGENCY POWERS

Emergencies to which Part applies

19. This Part applies to:

- (a) an emergency referred to in section 8 (1) (a) or (b) relating to a flood, storm or tempest; or
- (b) an emergency referred to in section 8 (1) (c) or (d) which the State Emergency Operations Controller has directed the Director to deal with.

Director to control emergencies

20. Subject to the State Emergency and Rescue Management Act 1989, the Director is to have overall control of operations in response to an emergency to which this Part applies.

Duty to recognise authority of Director and emergency officers

21. (1) Every member of the Police Force and all other members of emergency services organisations are to recognise, in connection with operations in response to an emergency to which this Part applies, the authority of the Director and emergency officers acting under the Director's orders or the orders of the division controller or local controller.

(2) It is the duty of every such member to assist the Director or other emergency officer in connection with those operations.

Power to evacuate persons etc.

22. (1) The Director may, if satisfied that it is necessary or convenient to do so for the purpose of responding to an emergency to which this Part applies, direct, or authorise an emergency officer to direct, a person to do any or all of the following:

- (a) to leave any particular premises and to move out of an emergency area or any part of an emergency area;
- (b) to take any children or adults present in any particular premises who are in the person's care and to move them outside the emergency area or any part of the emergency area;
- (c) not to enter the emergency area or any part of the emergency area.

(2) If the person does not comply with the direction, an emergency officer may do all such things as are reasonably necessary to ensure compliance with it, using such force as is reasonably necessary in the circumstances.

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

(4) In this section:

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

"premises" includes place, building, vehicle, vessel or aircraft.

Arrangements for inter-State co-operation in emergencies

23. (1) The Director may make arrangements with any agency which manages or controls inter-State S.E.S. units:

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- (a) for those units to carry out operations in New South Wales in response to emergencies to which this Part applies; and
- (b) for S.E.S. units under this Act to carry out similar operations outside New South Wales.

(2) An inter-State S.E.S. unit carrying out operations in New South Wales in accordance with any such arrangement is to be regarded as an S.E.S. unit under this Act.

(3) In this section, "**inter-State S.E.S. unit**" means a unit established and operating in another State or in a Territory of the Commonwealth.

Offence to obstruct etc. Director or emergency officer

24. A person must not obstruct or hinder the Director or other emergency officer, or any other person acting with the authority of the Director, in the exercise of a function under this Act.

Maximum penalty: 50 penalty units.

PART 6 - MISCELLANEOUS

Personal liability of members of Service and volunteers

25. (1) A matter or thing done by:

- (a) a member of the State Emergency Service, including a member of an S.E.S. unit; or
- (b) an emergency officer; or
- (c) a casual volunteer,

does not, if the matter or thing was done in good faith for the purpose of exercising the functions of or assisting the State Emergency Service, subject the member, officer or volunteer personally to any action, liability, claim or demand.

(2) In this section:

"**casual volunteer**" means a person who, with the consent of the member or officer, assists a member of the State Emergency Service or an emergency officer in the exercise of the Service's functions.

This Act not to limit other Acts or laws

26. This Act does not limit the operation of any other Act or law.

Service of documents

27. (1) A document may be served on the Director by leaving it at, or by sending it by post to, the office of the Director.

(2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on the Director in a manner not provided for by this section.

Proceedings for offences

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

Regulations

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

(2) In particular, the regulations may make provision for or with respect to:

- (a) the exercise of the functions of an emergency officer; and
- (b) the formation, amalgamation and dissolution of S.E.S. units and the exercise of their functions.

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

Savings, transitional and other provisions

30. Schedule 1 has effect.

Repeal of State Emergency Services and Civil Defence Act 1972 and regulations

31. The State Emergency Services and Civil Defence Act 1972 and the State Emergency Services and Civil Defence Regulations are repealed.

- (ii) the State Emergency and Rescue Management Act 1989 or the State Emergency Service Act 1989; or
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SCHEDULE 1 - SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

(Sec. 30)

Part 1 - General

Savings and transitional regulations

1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) Any such provision may, if the regulations so provide, take effect on the date of assent to this Act or a later date.

(3) To the extent to which any provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 - Provisions consequent on this Act

Superseded references

2. In any other Act, or in any instrument made under any Act or in any other instrument of any kind:

- (a) a reference to State Emergency Services and Civil Defence is to be read as a reference to the State Emergency Service; and
- (b) a reference to the Director or other officer or member of State Emergency Services and Civil Defence is to be read as a reference to the Director or other officer or member of the State Emergency Service.

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SCHEDULE 1 - SAVINGS, TRANSITIONAL AND OTHER
PROVISIONS - *continued*

Director, Deputy and other public service staff

3. The repeal of the State Emergency Services and Civil Defence Act 1972 does not affect the appointment of the Director, Deputy Director or other staff under the Public Sector Management Act 1988.

Local controllers and other officers

4. A person holding office as a local controller, or holding any other office, under section 8 of the State Emergency Services and Civil Defence Act 1972 is to be taken to have been appointed to that office under this Act.

Division of State

5. The divisions established by an order in force under section 7 of the State Emergency Services and Civil Defence Act 1972 immediately before the repeal of that Act are to be taken to be divisions established under this Act until altered under this Act.

[*Minister's second reading speech made in -
Legislative Council on 22 November 1989
Legislative Assembly on 29 November 1989*]