

**STATE EMERGENCY AND RESCUE MANAGEMENT
(AMENDMENT) ACT 1994 No. 23**

NEW SOUTH WALES



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**STATE EMERGENCY AND RESCUE MANAGEMENT
(AMENDMENT) ACT 1994 No. 23**

NEW SOUTH WALES



Act No. 23, 1994

An Act to amend the State Emergency and Rescue Management Act 1989 to provide employment protection for volunteer emergency workers; and for other purposes. [Assented to 30 May 1994]

See also Bush Fires (Amendment) Act 1994.

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the State Emergency and Rescue Management (Amendment) Act 1994.

Commencement

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

**Amendment of State Emergency and Rescue Management Act 1989
No. 165**

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

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Part 3A:

After Part 3, insert:

**PART 3A—EMPLOYMENT PROTECTION FOR
VOLUNTEER EMERGENCY WORKERS**

Definitions

60A. (1) In this Part:

“**emergency operations**” are operations engaged in by an emergency services organisation in response to an emergency;

“**employee**” and “**employer**” are defined in subsection (2).

(2) A person is considered to be the employer of another person (and that other person is considered to be the employee) for the purposes of this Part if:

SCHEDULE 1—AMENDMENTS—*continued*

- (a) the person is the employer of the other person for the purposes of the Industrial Relations Act 1991, including by reason of Schedule 1 (Persons deemed to be employees) to that Act; or
- (b) the person is the bailor under a contract of bailment within the meaning of Chapter 6 of the Industrial Relations Act 1991 and the other person is the bailee engaged under that contract; or
- (c) the person is the holder of a licence under the Passenger Transport Act 1990 and the other person (being engaged in transporting passengers in a private hire vehicle pursuant to that licence) is a person to whom Chapter 6 of the Industrial Relations Act 1991 applies; or
- (d) the person is a principal contractor-under a contract of carriage within the meaning of Chapter 6 of the Industrial Relations Act 1991 and the other person is a contract carrier engaged under that contract.

Employees taking part in emergency operations protected from victimisation

60B. An employer must not victimise an employee of the employer for being absent if the absence was due to the employee taking part in emergency operations as a member of an emergency services organisation and the absence occurred while this Part applied to the operations (pursuant to an order of the Premier under this Part).

Maximum penalty: 30 penalty units.

What constitutes victimisation of employees

60C. An employer victimises an employee if the employer:

- (a) dismisses the employee from employment with the employer or terminates the engagement of the employee by the employer; or
- (b) alters the employee's position in his or her employment with the employer, or alters the circumstances of the employee's engagement by the employer, to the employee's prejudice; or

SCHEDULE 1—AMENDMENTS—*continued*

- (c) otherwise injures the employee in his or her employment with, or engagement by, the employer.

Order of the Premier applying Part to emergency operations

60D. (1) The Premier may, by order published in the Gazette, direct that emergency operations carried out in connection with an emergency specified in the order are operations to which this Part applies.

(2) In determining whether an order under this section is needed, the Premier is to have regard to the possible duration of the emergency.

(3) The Premier's order may apply to all emergency operations carried out in connection with the emergency or may be limited in its operation by reference to any one or more of the following:

- (a) particular operations or a class of operations;
- (b) a particular emergency services organisation or organisations taking part in those operations;
- (c) a particular area in which those operations are being carried out.

(4) The Premier's order remains in force for the period specified in the order unless revoked earlier. If no period is specified, the order remains in force until revoked. Revocation is to be by a further order of the Premier published in the Gazette.

(5) An order may be made under this section whether or not a state of emergency has been declared under section 33.

Onus of proof on employer in certain circumstances

60E. In proceedings for an offence under this Part, if all the facts necessary to prove the offence (other than the reason for the defendant's action) are proved, the defendant has the onus of proving that the defendant was not motivated by the reason alleged.

SCHEDULE 1—AMENDMENTS—*continued*

Orders ancillary to conviction

60F. (1) A court that convicts an employer of an offence under this Part may (with the concurrence of the victimised person concerned) make an order in terms of any one or more of the following:

- (a) directing the employer to pay the victimised person a specified sum by way of reimbursement for any salary, wages or other remuneration lost by the person because of the victimisation;
- (b) directing the employer to reinstate the victimised person to the employment of the employer in the position the person held immediately before any dismissal or any alteration to his or her employment or in a similar position;
- (c) declaring void, in whole or in part, a contract pursuant to which the victimised person is engaged by the employer;
- (d) varying, in whole or in part, any provision of a contract pursuant to which the victimised person is engaged by the employer;
- (e) directing payment to the victimised person, within a specified time, by the employer, of an amount that does not exceed the amount that the person would otherwise have received under the contract pursuant to which the victimised person was engaged by the employer;
- (f) directing payment to the victimised person, within a specified time, by the employer, of other damages in such sum as appears to the court appropriate to compensate the victimised person for other loss suffered by the person;
- (g) directing the employer to take such other measures as the court considers necessary in order to place the victimised person in the position in which the person would have been but for the victimisation.

SCHEDULE 1—AMENDMENTS—*continued*

(2) An order in the terms of subsection (1) (a), (e) or (f) operates as an order against the employer for the payment of money under the Local Courts (Civil Claims) Act 1970 and is enforceable as such an order under that Act.

(3) An employer must give effect to an order in terms of subsection (1) (b) or (g).

Maximum penalty: 30 penalty units.

(4) The amount of salary, wages or other remuneration that would have been payable to a person in respect of any period during which his or her employer fails to give effect to an order in terms of subsection (1) (b) is recoverable, as a debt due to the person by the employer, in any court of competent jurisdiction.

What constitutes “taking part in” emergency operations

60G. (1) A person is considered to be taking part in emergency operations only when the person is effectively devoting his or her time to those operations by making himself or herself available for those operations (even if not actively engaged in those operations at the time) in accordance with arrangements made with an emergency services organisation.

(2) For example, travel to or from the place where emergency operations are being carried out, being on standby at or near that place and rest during those operations (in accordance with arrangements made with an emergency services organisation) constitute taking part in those operations.

Certificate evidence that employee took part in emergency operations

60H. (1) The chief executive officer of an emergency services organisation may issue a certificate to the effect that a particular person was a member of the organisation during a particular emergency and took part in particular emergency operations carried out by the organisation in respect of that emergency in accordance with arrangements made with that organisation.

SCHEDULE 1—AMENDMENTS—*continued*

(2) Such a certificate is in any proceedings evidence of the matters certified.

(3) The chief executive officer of an emergency services organisation may delegate his or her functions under this section (except this power of delegation) to any officer of the organisation.

Part does not affect other remedies available to employee

60I. This Part does not affect any right or remedy that an employee or former employee may have under any other Act.

No contracting out

60J. This Part applies regardless of the terms of any agreement whether entered into before or after the commencement of this Part.

Industrial dispute does not prevent operation of Part

60K. Section 7 (Limitation on operation of Act—industrial disputes and civil disturbances) does not limit or otherwise affect the operation of this Part merely because the victimisation of an employee involves or gives rise to an industrial dispute.

(2) Part 4:

Renumber existing section 60A in Part 4 as section 60L.

(3) Schedule 4 (**Savings, transitional and other provisions**):

(a) From clause 1 (1) of Schedule 4, omit “this Act.”, insert instead the following Acts:

 this Act

 State Emergency and Rescue Management
 (Amendment) Act 1994

(b) From clause 1 (2) of Schedule 4, omit “this Act”, insert instead “the Act concerned”.

SCHEDULE 1—AMENDMENTS—*continued*

(c) After Part 2 of Schedule 4, insert:

**Part 3—Provisions consequent on the State
Emergency and Rescue Management (Amendment)
Act 1994**

Part 3A applies to existing employment

3. Part 3A of this Act applies in respect of any employment or engagement even if it commenced before the commencement of that Part.

*[Minister's second reading speech made in—
Legislative Assembly on 14 April 1994
Legislative Council on 5 May 1994]*