



New South Wales

Emergency Legislation Amendment Act 2012 No 103

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New South Wales

Emergency Legislation Amendment Act 2012 No 103

Act No 103, 2012

*An Act to amend the *Fire Brigades Act 1989*, the *Rural Fires Act 1997*, the *State Emergency and Rescue Management Act 1989* and the *State Emergency Service Act 1989* to make further provision in relation to the investigation of fires and State emergency management; and for other purposes. [Assented to 26 November 2012]*

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Emergency Legislation Amendment Act 2012*.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 Amendment of Fire Brigades Act 1989 No 192

[1] Section 22 Authority to enter land and buildings

Insert at the end of the section:

- (2) Subsection (1) does not apply if entry is made only for the purpose of assisting in the prevention of fires by investigating the cause or origin of a fire.

[2] Part 3, Division 2A

Insert after Division 2 of Part 3:

Division 2A Special powers to enter land to investigate fires

22A Object of Division

The object of this Division is to assist in the prevention of fires by expressly authorising entry onto land to investigate the cause or origin of a fire.

22B Meaning of “land”

In this Division, *land* includes any building on the land and any vessel.

22C Power to enter land up to 24 hours after fire

- (1) The Commissioner may enter and inspect any land for the purposes of investigating the cause or origin of any fire that has occurred on that land or any adjacent land, but only for a period of up to 24 hours after the fire has been put out and the land is safe to enter.
- (2) The power conferred on the Commissioner under subsection (1) may be exercised with or without the consent of the owner or occupier of the land concerned.
- (3) This section does not authorise the Commissioner to enter any part of land used only for residential purposes without the authority of a search warrant under section 22D or the consent of the owner or occupier of the land concerned.

22D Search warrants

- (1) The Commissioner may apply to an authorised officer for a search warrant for any land if the Commissioner reasonably

believes that entry onto the land is necessary for the purposes of the investigation of the cause or origin of any fire that has occurred on that land or any adjacent land.

- (2) An authorised officer to whom an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising the Commissioner or any other person named in the warrant to enter land for the purposes of the investigation of the cause or origin of any fire that has occurred on that land or any adjacent land.
- (3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (4) In this section:
authorised officer has the same meaning as in the *Law Enforcement (Powers and Responsibilities) Act 2002*.

[3] Schedule 4 Savings and transitional provisions

Insert at the end of clause 2 (1):

any other Act that amends this Act.

Schedule 2 Amendment of Rural Fires Act 1997 No 65

[1] Section 4 Definitions

Omit the note to the section. Insert instead:

Note. Some expressions defined in the *State Emergency and Rescue Management Act 1989* that are used in this Act are:

combat agency means the agency identified in the State Emergency Management Plan as the agency primarily responsible for controlling the response to a particular emergency.

emergency means an emergency due to an actual or imminent occurrence (such as fire, flood, storm, earthquake, explosion, terrorist act, accident, epidemic or warlike action) which:

- (a) endangers, or threatens to endanger, the safety or health of persons or animals in the State, or
- (b) destroys or damages, or threatens to destroy or damage, property in the State,

being an emergency which requires a significant and co-ordinated response.

emergency services organisation means the NSW Police Force, Fire and Rescue NSW, Rural Fire Brigades, Ambulance Service of NSW, State Emergency Service, Volunteer Rescue Association or any other agency which manages or controls an accredited rescue unit.

State Emergency Management Plan means the State Emergency Management Plan referred to in section 12 of the *State Emergency and Rescue Management Act 1989*.

[2] Section 9 Functions of Service

Omit “Displan” wherever occurring in the note to section 9 (1) (b) and in section 9 (2).

Insert instead “the State Emergency Management Plan”.

[3] Sections 14 (2), 21 (2) (b) (iii), 44 (2), 45 (1) and 47 (1) (b) and Dictionary (paragraph (b) of the definition of “fire fighting authority”)

Omit “New South Wales Fire Brigades” wherever occurring.

Insert instead “Fire and Rescue NSW”.

[4] Section 33D Functions of Commissioner that may be exercised by others

Insert after section 33D (3):

- (4) Any function conferred or imposed on the Commissioner under section 33B or 33C may be exercised by a police officer for the purpose of determining whether the cause or origin of the fire should be the subject of a criminal investigation.

(5) Subsection (4) does not limit any of the functions of a police officer under this or any other Act.

[5] Sections 33D (1) and (3), 47 (1) (b), 55 (1) (b), 85 (paragraph (c) of the definition of “appropriate authority”), 100K (1) (h) and 128 (2) (paragraph (e) of the definition of “protected person or body”)

Omit “NSW Fire Brigades” wherever occurring.

Insert instead “Fire and Rescue NSW”.

[6] Section 131A

Insert after section 131:

131A Power to require name and address

(1) An authorised officer who intends to serve a penalty notice on a person under section 131, or a police officer who has reason to suspect that a person is committing an offence against this Act or the regulations, may direct the person to state the person’s full name and residential address.

(2) A person must not, without reasonable excuse, fail to comply with a direction under this section.
Maximum penalty: 5 penalty units.

(3) A person is not guilty of an offence under this section unless the authorised officer or police officer (as the case may be) explained to the person, when giving the direction, that failure to comply with the direction is an offence.

(4) An authorised officer or police officer may request a person who is required under this section to state the person’s full name and residential address to provide evidence of the correctness of the name and address if the officer reasonably suspects the stated name or address is false.

[7] Section 132 Powers of police officers to give directions

Omit section 132 (1) (a).

[8] Section 132 (3)

Insert “, without reasonable excuse,” after “not”.

[9] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

any other Act that amends this Act.

Emergency Legislation Amendment Act 2012 No 103

Amendment of Rural Fires Act 1997 No 65

Schedule 2

[10] Dictionary

Omit the definition of *Displan*.

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

[1] Section 3 Definitions

Omit the definition of *Chief Executive, Emergency Management NSW* from section 3 (1).

Insert instead:

Chief Executive, Emergency Services means the person holding office under Chapter 1A of the *Public Sector Employment and Management Act 2002* as the Chief Executive of the Ministry for Police and Emergency Services.

[2] Sections 3 (1) (definitions of “combat agency” and “recovery agency”), 10 (1) (c), 12 (2) and (4), 13 (1), (3) and (4), 15 (d) and (e), 19 (1A) and (1B), 20B (2) and (3), 25 (1A) and (1B) and 31 (1A) and (1B)

Omit “Displan” wherever occurring.

Insert instead “the State Emergency Management Plan”.

[3] Section 3 (1)

Omit the definitions of *Displan*, *district*, *District Emergency Management Committee* and *Emergency Management NSW*.

[4] Section 3 (1), definition of “emergency operations centre”

Omit “district”. Insert instead “regional”.

[5] Section 3 (1), definition of “emergency services organisation”

Omit “Fire Brigades, Rural Fire Brigades, Ambulance Service”.

Insert instead “Fire and Rescue NSW, Rural Fire Brigades, Ambulance Service of NSW”.

[6] Section 3 (1), definition of “functional area”

Omit “preparations for”.

Insert instead “prevention of, preparation for, responses to or recovery from”.

[7] Section 3 (1), definition of “functional area”

Omit paragraph (b). Insert instead:

- (b) telecommunications services,
- (b1) energy and utility services,

[8] Section 3 (1)

Insert in alphabetical order:

region means a region established under section 21.

Regional Emergency Management Committee means a Regional Emergency Management Committee constituted under Part 2.

State Emergency Management Plan means the State Emergency Management Plan referred to in section 12.

[9] Part 2, Division 1, Subdivision 2, heading

Omit “Disaster”. Insert instead “**Emergency Management**”.

[10] Section 12 State Emergency Management Plan

Omit section 12 (1). Insert instead:

- (1) There is to be a State Emergency Management Plan.

[11] Sections 12 (3) and 13 (2)

Omit “Displan” wherever occurring.

Insert instead “The State Emergency Management Plan”.

[12] Sections 12 (3) (d), 22 (1), (2) (a) and (5), 23 (1), 24, 25 (except where secondly occurring in section 25 (1B) (b) and (4)), 26 (1), 29 (2), 30, 31 (1C) and (5), 32A (paragraph (e) of the definition of “emergency services officer”), 48A (2), 60KA (paragraph (c) of the definition of “emergency or rescue management organisation”) and 62 (c) and clause 1 of Schedule 2 (paragraph (c) of the definition of “relevant organisation”)

Omit “District” wherever occurring. Insert instead “Regional”.

[13] Sections 12 (4), 17 (1) and 20A (2)

Omit “Emergency Management NSW” wherever occurring.

Insert instead “Emergency Services”.

[14] Section 14 State Emergency Management Committee

Omit section 14 (3). Insert instead:

- (3) The representative of a non-government agency is to be nominated by the Minister and the representative of a government agency is to be nominated by the Minister responsible for the agency.

[15] Section 16 Functional area sub-committees of State Emergency Management Committee

Omit “emergency operations” from section 16 (2).

Insert instead “activities carried out to prevent, prepare for, respond to or recover from an emergency”.

[16] Sections 19 (1) (a) and 20B (1) (a), Division 2 of Part 2 (heading), sections 21 (2), 22 (1) and (2) (a)–(c), 23 (1), 24 (1), 25 (1), 26 (1), 30 (2) (a) and 48A (1), (2) and (4)

Omit “district” wherever occurring. Insert instead “region”.

[17] Sections 20 (2) (a) and 21 (1)

Omit “districts” wherever occurring. Insert instead “regions”.

[18] Section 22 Regional Emergency Management Committees

Omit section 22 (2) (d). Insert instead:

- (d) a representative of each organisation that:
 - (i) provides services in a functional area or areas in the relevant region, and
 - (ii) the Minister determines from time to time is to be represented on the Committee.

[19] Section 22 (3)

Omit the subsection. Insert instead:

- (3) The representative of an emergency services organisation is to be nominated by the organisation. The representative of an organisation providing services in a functional area is to be nominated in accordance with arrangements determined by the Minister.

[20] Section 23 Functions of Regional Emergency Management Committees

Insert “and reviewing” after “preparing” in section 23 (1).

[21] Section 23 (1A)

Insert after section 23 (1):

- (1A) Without limiting subsection (1), any such Committee may:
 - (a) review and monitor emergency management policy and practice across the region, and

Note. The State Emergency Management Committee is responsible for reviewing, monitoring and developing emergency management policy and practice at a State level and for

disseminating information about that policy and practice, including to Regional and Local Emergency Management Committees.

- (b) review and prepare plans in respect of the region that are, or are proposed to be, subplans or supporting plans established under the State Emergency Management Plan, and
- (c) make recommendations about and assist in the co-ordination of training in relation to emergency management across the region, and
- (d) develop, conduct and evaluate regional emergency management training exercises, and
- (e) facilitate regional level emergency management capability through inter-agency co-ordination, co-operation and information sharing arrangements, and
- (f) assist the Regional Emergency Operations Controller for the relevant region in the Controller's role under section 25, and
- (g) carry out such other functions as are:
 - (i) related to this Act, and
 - (ii) assigned to the Committee (or to Regional Emergency Management Committees generally) from time to time by the State Emergency Management Committee.

[22] Section 25 Functions of Regional Emergency Operations Controller

Omit "or, in the case of any disagreement on the matter, the Minister has directed the District Emergency Operations Controller to do so" from section 25 (1B) (b).

[23] Section 25 (4)

Omit "District emergency operations centre".

Insert instead "regional emergency operations centre".

[24] Section 26 NSW Police Force to provide executive support for Regional Emergency Management Committee and Operations Controller

Omit section 26 (2).

[25] Section 28 Local Emergency Management Committees

Omit section 28 (2) (a). Insert instead:

- (a) the General Manager of the council of the relevant local government area, who is to be the Chairperson of the Committee, and

[26] Section 28 (2) (c)

Omit the paragraph. Insert instead:

- (c) a representative of each organisation that:
 - (i) provides services in a functional area or areas in the relevant local government area, and
 - (ii) the council of that area determines from time to time is to be represented on the Committee, and

[27] Section 28 (3)

Omit the subsection.

[28] Section 29 Functions of Local Emergency Management Committees

Insert “and review” after “the preparation” in section 29 (1).

[29] Section 29 (1A)

Insert after section 29 (1):

- (1A) Without limiting subsection (1), any such Committee may:
 - (a) give effect to and carry out emergency management policy and practice, consistent with information on that policy and practice disseminated by the State Emergency Management Committee, and
 - (b) review and prepare plans in respect of the relevant local government area that are, or are proposed to be, subplans or supporting plans established under the State Emergency Management Plan, and
 - (c) make recommendations about and assist in the co-ordination of training in relation to emergency management in the relevant local government area, and
 - (d) develop, conduct and evaluate local emergency management training exercises, and
 - (e) facilitate local level emergency management capability through inter-agency co-ordination, co-operation and information sharing arrangements, and

- (f) assist the Local Emergency Operations Controller for the relevant local government area in the Controller's role under section 31, and
- (g) such other functions as are:
 - (i) related to this Act, and
 - (ii) assigned to the Committee (or to Local Emergency Management Committees generally) from time to time by the relevant Regional Emergency Management Committee or by the State Emergency Management Committee.

[30] Section 31 Functions of Local Emergency Operations Controller

Omit "or, in the case of any disagreement on the matter, the Minister has directed the Local Emergency Operations Controller to do so" from section 31 (1B) (b).

[31] Section 32 Councils to provide executive support for Local Emergency Management Committee and Operations Controller

Omit section 32 (2).

[32] Sections 32A (paragraph (b) of the definition of "emergency services officer") and 43 (1) (d)

Omit "New South Wales Fire Brigades" wherever occurring.

Insert instead "Fire and Rescue NSW".

[33] Section 43 Composition of Board

Omit "New South Wales Ambulance Service" from section 43 (1) (f).

Insert instead "Ambulance Service of NSW".

[34] Section 43 (1) (g1)

Omit "the Volunteer Marine Rescue Council of New South Wales".

Insert instead "Volunteer Marine Rescue NSW".

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

Omit "the Fire Brigades, the Ambulance Service" from section 53 (2) (a).

Insert instead "Fire and Rescue NSW, the Ambulance Service of NSW".

[36] Section 60A Interpretation

Omit "*employee* and *employer* are defined in subsection (2)." from section 60A (1).

[37] Section 60A (2)

Omit “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:”.

Insert instead “The circumstances in which 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 include the following:”

[38] Section 60A (2)

Omit “, or” wherever occurring. Insert instead “, ”.

[39] Section 60A (2) (a1)

Insert after section 60A (2) (a):

- (a1) the person engages the other person to carry out regular work under one or more contracts for services and the value of that work represents a substantial proportion of the regular work carried out by the other person,

[40] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

any other Act that amends this Act.

[41] Schedule 4, Part 9

Insert after Part 8:

Part 9 Provisions consequent on Emergency Legislation Amendment Act 2012

16 Definition of “amending Act”

In this Part, *amending Act* means the *Emergency Legislation Amendment Act 2012*.

17 State Emergency Management Plan

- (1) Displan, as in force under section 12 (1) immediately before the commencement of the amending Act, is taken to be the State Emergency Management Plan.
- (2) A reference in any Act, any instrument made under an Act or a document of any kind to Displan or the State Disaster Plan is taken to be a reference to the State Emergency Management Plan.

18 Existing districts established under section 21

- (1) Districts established under section 21 before the commencement of the amending Act are taken to be regions.
- (2) A reference in any Act, any instrument made under an Act or a document of any kind to a district established under section 21 is taken to be a reference to a region.

19 Existing District Emergency Management Committees

- (1) District Emergency Management Committees constituted under Part 2 of this Act before the commencement of the amending Act are taken to be Regional Emergency Management Committees.
- (2) A reference in any Act, any instrument made under an Act or a document of any kind to such a District Emergency Management Committee is taken to be a reference to a Regional Emergency Management Committee established under that Part.

20 Existing District Emergency Operations Controllers

- (1) Any person holding office as a District Emergency Operations Controller, or as the deputy of that District Emergency Operations Controller, immediately before the commencement of the amending Act is taken to have been appointed as the Regional Emergency Operations Controller or as the deputy of that Regional Emergency Operations Controller (as the case may be).
- (2) A reference in any Act, any instrument made under an Act or a document of any kind to a District Emergency Operations Controller appointed under section 24 is taken to be a reference to a Regional Emergency Operations Controller.

21 Repeal of sections 26 (2) and 32 (2)

The repeal of sections 26 (2) and 32 (2) by the amending Act does not operate to abolish any positions.

Schedule 4 Amendment of State Emergency Service Act 1989 No 164

[1] Section 8 Functions of Service

Omit “New South Wales Fire Brigades, the NSW Rural Fire Service or the Ambulance Service” from section 8 (1) (g).

Insert instead “Fire and Rescue NSW, the NSW Rural Fire Service or the Ambulance Service of NSW”.

[2] Section 8 (2)

Omit “Displan”. Insert instead “the State Emergency Management Plan”.

[3] Section 18A Definitions

Omit “New South Wales Fire Brigades” from paragraph (b) of the definition of *senior emergency officer*.

Insert instead “Fire and Rescue NSW”.

[4] Section 18A, paragraph (e) of the definition of “senior emergency officer”

Omit “District”. Insert instead “Regional”.

[Second reading speech made in—

Legislative Council on 22 August 2012

Legislative Assembly on 17 October 2012]