

[Act 1995 No 91]



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,

* Amended in committee—see table at end of volume.

- (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,

- (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.