



New South Wales

State Emergency Service Amendment Bill 2005

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *State Emergency Service Act 1989* (***the Principal Act***) as follows:

- (a) to extend the functions of the State Emergency Service to the protection of life and property in storms and floods and to remove civil defence from the functions of the Service,
- (b) to replace State Emergency Service divisions with regions and to allow the Director-General of the State Emergency Service (the ***Director-General***) to divide the State into regions without the need to seek approval from the State Emergency Operations Controller,
- (c) to recognise the volunteer status of members of the State Emergency Service,
- (d) to provide that the Director-General be recognised as the State controller for the State Emergency Service, and to allow the Director-General to make arrangements to assist States and Territories that do not have any SES units,
- (e) to allow the Director-General to appoint more than one local controller for a local government area and to form an SES unit on his or her own initiative,

- (f) to make other miscellaneous amendments of a minor, consequential or savings or transitional nature.

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 the date of assent.

Clause 3 is a formal provision that gives effect to the amendments to the *State Emergency Service Act 1989* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendment to the *State Emergency and Rescue Management Act 1989* set out in Schedule 2.

Clause 5 repeals the *State Emergency Service Regulation 2001*.

Schedule 1 **Amendment of State Emergency Service Act 1989**

Schedule 1 [1] and [11] amend the definitions of *Deputy Director-General* and *Director-General* and section 9 of the Principal Act, respectively, to update references to an Act.

Schedule 1 [2] repeals the definitions of *division*, *division controller* and *S.E.S. unit* and replaces them with definitions of *region*, *region controller* and *SES unit* to reflect a change in terminology for the purposes of the Principal Act. The amendment also inserts proposed definitions of *exercise*, *function* and *unit controller*. **Schedule 1 [4], [19] and [29]** make consequential amendments.

Schedule 1 [3], [15] and [31] make statute law revision amendments in relation to references in the Principal Act to SES units.

Schedule 1 [5] and [9] repeal section 5 and amend section 8, respectively, of the Principal Act to remove civil defence functions of the State Emergency Service. **Schedule 1 [27]** makes a consequential amendment.

Schedule 1 [6] amends section 7 of the Principal Act to reflect the volunteer status of the officers and members of SES units.

Schedule 1 [7] amends section 8 of the Principal Act to include the protection of persons from dangers to their safety and health, and property from destruction or damage, arising from floods and storms, as one of the functions of the State Emergency Service.

Schedule 1 [8], [13], [26] and [32] remove references to “tempest” and “tempests” in the Principal Act, which are superfluous terms already covered by references to “storm” and “storms”.

Schedule 1 [10] and [28] amend sections 8 and 21, respectively, of the Principal Act to update references to various emergency services organisations.

Schedule 1 [12] amends section 11 of the Principal Act to provide that the Director-General may use the title “State controller” in the exercise of his or her functions, and that the Deputy Director-General may use the title “Deputy State controller”.

Schedule 1 [14] substitutes section 14 of the Principal Act to remove the requirement that the Director-General, before dividing the State into regions, is to obtain the approval of the State Emergency Operations Controller.

Schedule 1 [16] substitutes section 16 of the Principal Act to replace the term division controller with region controller, reflecting the change in terminology from divisions to regions. The section provides for the appointment of a member of staff of the State Emergency Service as a region controller for a region. The section also allows for the appointment of a deputy region controller, which was previously provided for in the *State Emergency Service Regulation 2001*.

Schedule 1 [17] amends section 17 of the Principal Act to allow the Director-General to appoint more than one local controller for a local government area. **Schedule 1 [20]** makes a consequential amendment.

Schedule 1 [18] amends section 17 of the Principal Act to allow the Director-General to revoke the appointment of a local controller at any time and for any reason.

Schedule 1 [21] inserts proposed sections 17A–17D into the Principal Act, the provisions of which were previously contained in the *State Emergency Service Regulation 2001*.

Proposed section 17A (Unit controllers) provides for the appointment and responsibilities of a unit controller, and for unit controllers to be subject to the directions of the Director-General, the relevant region controller or the relevant local controller.

Proposed section 17B (Terms of appointment for local and unit controllers) provides for the term of appointment for local controllers and unit controllers to be subject to an annual review and report. These provisions were previously contained in the *State Emergency Service Regulation 2001*.

Proposed section 17C (Local and unit controller deputies) provides for the appointment of deputy controllers in relation to local controllers and unit controllers.

Proposed section 17D (Region headquarters unit) provides that the State Emergency Service may make available such of its staff and facilities as the Director-General considers appropriate to establish a headquarters for a region.

Schedule 1 [22] amends section 18 of the Principal Act to allow the Director-General to register any group of persons as an SES unit. Currently, only an association of persons formed for the purpose of dealing with emergencies to which the Principal Act applies may be registered as an SES unit.

Schedule 1 [23] inserts proposed section 18AA (Granting, suspension and withdrawal of membership of SES units) which provides for the manner in which membership of an SES unit may be granted, suspended or withdrawn. These provisions were previously contained in the *State Emergency Service Regulation 2001*.

Schedule 1 [24] amends section 18A of the Principal Act to clarify the definition of *senior emergency officer* for the purposes of Part 5 of that Act.

Schedule 1 [25] updates a reference to a rural fire brigade.

Schedule 1 [30] amends section 23 of the Principal Act to provide that the Director-General may make arrangements with States and Territories that do not have similar SES units to this State to assist those States and Territories in relation to certain emergencies.

Schedule 1 [33] inserts proposed section 28A (Donations of financial or material support) to provide that the unit controller of an SES unit must keep written records of any donations of financial or material support provided to the unit, and that a copy of those records is to be furnished to the Director-General if requested. These provisions were previously contained in the *State Emergency Service Regulation 2001*.

Schedule 1 [34] enables savings and transitional regulations to be made as a consequence of the proposed Act. **Schedule 1 [35]** makes a consequential amendment.

Schedule 1 [36] inserts savings and transitional provisions as a consequence of the enactment of the proposed Act.

Schedule 2 Amendment of State Emergency and Rescue Management Act 1989

Schedule 2 makes an amendment consequential on the amendment made by **Schedule 1 [24]**.

First print



New South Wales

State Emergency Service Amendment Bill 2005

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of State Emergency Service Act 1989 No 164	2
4 Amendment of State Emergency and Rescue Management Act 1989 No 165	2
5 Repeal	2
Schedule 1 Amendment of State Emergency Service Act 1989	3
Schedule 2 Amendment of State Emergency and Rescue Management Act 1989	12

State Emergency Service Amendment Bill 2005

Contents

Page



New South Wales

State Emergency Service Amendment Bill 2005

No. , 2005

A Bill for

An Act to amend the *State Emergency Service Act 1989* with respect to the organisation, functions and operation of the State Emergency Service; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>State Emergency Service Amendment Act 2005</i> .	3
2 Commencement	4
This Act commences on the date of assent to this Act.	5
3 Amendment of State Emergency Service Act 1989 No 164	6
The <i>State Emergency Service Act 1989</i> is amended as set out in Schedule 1.	7 8
4 Amendment of State Emergency and Rescue Management Act 1989 No 165	9 10
The <i>State Emergency and Rescue Management Act 1989</i> is amended as set out in Schedule 2.	11 12
5 Repeal	13
The <i>State Emergency Service Regulation 2001</i> is repealed.	14

Schedule 1 Amendment of State Emergency Service Act 1989

	(Section 3)	1 2 3
[1] Section 3 Definitions		4
	Omit “ <i>Public Sector Management Act 1988</i> ” wherever occurring from the definitions of Deputy Director-General and Director-General in section 3 (1).	5 6
	Insert instead “ <i>Public Sector Employment and Management Act 2002</i> ”.	7
[2] Section 3 (1)		8
	Omit the definitions of division , division controller and S.E.S. unit .	9
	Insert in alphabetical order:	10
	exercise a function includes perform a duty.	11
	function includes a power, authority or duty.	12
	region means a region established under section 14.	13
	region controller means the controller appointed under section 16 for SES units in a region.	14 15
	SES unit means an organisation registered as an SES unit under section 18.	16 17
	unit controller means the unit controller for an SES unit appointed under section 17A.	18 19
[3] Sections 3 (1), definition of “local controller”, 8 (1) (e), 9 (2), 17 (3), 18 (2)–(5), 23, 25 (1) (a) and 29 (2) (b)		20 21
	Omit “S.E.S.” wherever occurring. Insert instead “SES”.	22
[4] Section 3 (3)		23
	Omit the subsection.	24
[5] Section 5 Operation of Act in relation to civil defence		25
	Omit the section.	26
[6] Section 7 State Emergency Service		27
	Omit section 7 (2) (b). Insert instead:	28
	(b) the volunteer officers and volunteer members of all SES units.	29 30

State Emergency Service Amendment Bill 2005

Schedule 1 Amendment of State Emergency Service Act 1989

[7] Section 8 Functions of Service	1
Insert before section 8 (1) (a):	2
(aa) to protect persons from dangers to their safety and health, and to protect property from destruction or damage, arising from floods and storms,	3 4 5
[8] Section 8 (1) (b)	6
Omit “and tempests”.	7
[9] Section 8 (1) (c)	8
Omit the paragraph.	9
[10] Section 8 (1) (g)	10
Omit “the Police Force, Fire Brigades, Bush Fire Brigades or Ambulance Service”.	11 12
Insert instead “NSW Police, New South Wales Fire Brigades, the NSW Rural Fire Service or the Ambulance Service”.	13 14
[11] Section 9 Director-General, Deputy Director-General and other staff	15
Omit “Part 2 of the <i>Public Sector Management Act 1988</i> ” from section 9 (1).	16
Insert instead “Chapter 2 of the <i>Public Sector Employment and Management Act 2002</i> ”.	17 18
[12] Section 11 Director-General responsible for administration of Service	19
Insert at the end of the section:	20
(2) The Director-General, in connection with the exercise of his or her functions under this Act, may use the title “State controller” and the Deputy Director-General may use the title “Deputy State controller”.	21 22 23 24
[13] Section 12 Planning and preparation by Director-General	25
Omit “, storms and tempests” from section 12 (3). Insert instead “and storms”.	26
[14] Section 14	27
Omit the section. Insert instead:	28
14 Service regions	29
The Director-General may divide the State into regions for the purposes of this Act.	30 31

[15] Part 4, heading	1
Omit “S.E.S.”. Insert instead “SES”.	2
[16] Section 16	3
Omit the section. Insert instead:	4
16 Region controllers	5
(1) The Director-General may appoint a member of staff of the State Emergency Service as the region controller for a region.	6 7
(2) A region controller is, subject to any direction of the Director-General, responsible for the control and co-ordination of the activities of SES units in the relevant region.	8 9 10
(3) The Director-General may appoint any person to act as a deputy to a region controller.	11 12
(4) The functions of a region controller may be exercised by his or her deputy during any absence from duty of the region controller.	13 14
[17] Section 17 Local controllers	15
Omit “any person as the” from section 17 (1).	16
Insert instead “one or more persons as a”.	17
[18] Section 17 (2)	18
Insert “and for any reason” after “time”.	19
[19] Section 17 (3)	20
Omit “division”. Insert instead “region”.	21
[20] Section 17 (4)	22
Omit “the local controller”. Insert instead “a local controller”.	23
[21] Sections 17A–17D	24
Insert after section 17:	25
17A Unit controllers	26
(1) The Director-General may appoint any person as the unit controller for an SES unit and may revoke the appointment at any time and for any reason.	27 28 29

(2)	A unit controller is, subject to any direction of the Director-General, the relevant region controller or the relevant local controller, responsible for the control and co-ordination of the activities of the unit.	1 2 3 4
(3)	In the case of a local government area for which there is only one SES unit, the unit controller for that unit is taken to be the local controller unless a local controller is appointed under section 17 (1).	5 6 7 8
17B	Terms of appointment for local and unit controllers	9
(1)	A local controller or unit controller is to be appointed for such term (not exceeding 2 years) as is specified in his or her instrument of appointment, but is, at the end of that term, eligible for re-appointment.	10 11 12 13
(2)	Each local controller and unit controller is subject to an annual review and report to be carried out by the Director-General.	14 15
17C	Local and unit controller deputies	16
(1)	A region controller may, in consultation with a local controller in the relevant region, appoint any person to act as a deputy to the local controller.	17 18 19
(2)	A region controller may, in consultation with a unit controller in the relevant region, appoint any person to act as a deputy to the unit controller.	20 21 22
(3)	An appointment made under subsection (1) or (2) may be revoked at any time and for any reason by the region controller who made the appointment.	23 24 25
(4)	The functions of a local controller or unit controller may be exercised by his or her deputy during any absence from duty of the local controller or unit controller.	26 27 28
17D	Region headquarters unit	29
(1)	The State Emergency Service may make available such of its staff and facilities as the Director-General considers appropriate to establish a headquarters for a region.	30 31 32
(2)	A region controller, together with:	33
(a)	the members of staff of the State Emergency Service attached to the headquarters for the region, and	34 35
(b)	any volunteers assisting in the running of the headquarters, may be registered as an SES unit (as a <i>region headquarters unit</i>) under section 18.	36 37 38

(3)	The function of a region headquarters unit is to assist the region controller in the exercise of his or her responsibilities.	1 2
[22]	Section 18 SES units	3
	Omit section 18 (1). Insert instead:	4
(1)	The Director-General may, by instrument in writing, register a group of persons as an SES unit and assign it a distinctive name.	5 6
(1A)	The Director-General may register a group of persons under subsection (1) on his or her own initiative or on the application of an association of persons formed for the purpose of dealing with emergencies to which this Act applies.	7 8 9 10
(1B)	On the registration of an SES unit under subsection (1A), the group of persons or the members of the association are members of the SES unit, subject to section 18AA.	11 12 13
[23]	Section 18AA	14
	Insert after section 18:	15
18AA	Granting, suspension and withdrawal of membership of SES units	16
(1)	Membership of an SES unit may be granted, suspended or withdrawn by any of the following:	17 18
(a)	the Director-General,	19
(b)	a region controller, local controller or unit controller responsible for the SES unit.	20 21
(2)	Membership of an SES unit may be withdrawn at any time and for any reason.	22 23
(3)	Membership of an SES unit may be suspended at any time, but only for the purposes of conducting an investigation into:	24 25
(a)	the member's alleged offence against any law, or	26
(b)	the member's alleged contravention of, or failure to comply with, the procedures or instructions of the State Emergency Service.	27 28 29
(4)	A person whose membership of an SES unit is withdrawn may:	30
(a)	if the membership was withdrawn by the Director-General—apply to the Director-General to reconsider that action, or	31 32 33
(b)	if the membership was withdrawn by a region controller, local controller or unit controller—appeal to the Director-General against that action.	34 35 36

State Emergency Service Amendment Bill 2005

Schedule 1 Amendment of State Emergency Service Act 1989

(5)	On an application or an appeal being made by a person under subsection (4), the Director-General may:	1
	(a) reinstate the person's membership, or	2
	(b) confirm the withdrawal of the person's membership.	3
(6)	The procedures for:	4
	(a) suspending or withdrawing membership of an SES unit, and	5
	(b) appealing against the withdrawal of membership of an SES unit,	6
	are to be as set out in the procedure manuals maintained by the State Emergency Service.	7
(7)	This section has effect despite any other law relating to membership of an association that is an SES unit.	8
[24]	Section 18A Definitions	9
	Omit “, or a divisional executive officer or the Director, Operations of that Service” from paragraph (c) of the definition of <i>senior emergency officer</i> .	10
[25]	Section 18A, definition of “senior emergency officer”	11
	Omit “bush fire brigade” from paragraph (d).	12
	Insert instead “rural fire brigade”.	13
[26]	Section 19 Emergencies to which Part applies	14
	Omit “, storm or tempest” from section 19 (a). Insert instead “or storm”.	15
[27]	Section 19 (b)	16
	Omit “(c) or”.	17
[28]	Section 21 Duty to recognise authority of Director-General and emergency officers	18
	Omit “the Police Force” from section 21 (1). Insert instead “NSW Police”.	19
[29]	Section 21 (1)	20
	Omit “division”. Insert instead “region”.	21

[30] Section 23 Arrangements for inter-State co-operation in emergencies	1
Insert after section 23 (2):	2
(2A) The Director-General may make arrangements with an appropriate agency of a State or Territory that does not operate or manage an inter-State SES unit for SES units under this Act to carry out operations in that State or Territory in response to emergencies to which this Part applies.	3 4 5 6 7
[31] Section 23 (3)	8
Omit “ <i>S.E.S.</i> ”. Insert instead “ <i>SES</i> ”.	9
[32] Section 25A Certain damage to be covered by insurance	10
Omit “, tempest” from section 25A (1) (b).	11
[33] Section 28A	12
Insert after section 28:	13
28A Donations of financial or material support	14
(1) The unit controller of an SES unit must keep written records of any donations of financial or material support provided to the unit.	15 16 17
(2) A copy of those records is to be furnished to the Director-General immediately on request by the Director-General.	18 19
[34] Schedule 1 Savings, transitional and other provisions	20
Omit clause 1 (1). Insert instead:	21
(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:	22 23 24
this Act	25
<i>State Emergency Service Amendment Act 2005</i>	26
[35] Schedule 1, clause 1 (2)	27
Omit “this Act”. Insert instead “the Act concerned”.	28

[36] Schedule 1, Part 3	1
Insert after Part 2:	2
Part 3 Provisions consequent on enactment of State Emergency Service Amendment Act 2005	3
	4
	5
6 Definition	6
In this Part:	7
<i>amending Act</i> means the <i>State Emergency Service Amendment Act 2005</i> .	8
	9
7 Construction of references to S.E.S. units	10
A reference in any other Act, or in any instrument, to an S.E.S. unit is taken to be a reference to an SES unit.	11
	12
8 Continuation of regions and office of region controllers	13
(1) A division established under this Act (as in force immediately before the commencement of the amending Act) is taken to be a region established under section 14.	14
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	16
(2) A reference in any other Act, or in any instrument, to a division (within the meaning of this Act as in force immediately before the commencement of the amending Act) is taken to be a reference to a region.	17
	18
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	20
(3) A reference in any other Act, or in any instrument, to a division controller (within the meaning of this Act as in force immediately before the commencement of the amending Act) is taken to be a reference to a region controller.	21
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	24
(4) A person holding office as a division controller under this Act (as in force immediately before the commencement of the amending Act):	25
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	27
(a) is taken to be a region controller appointed under section 16, as substituted by the amending Act, and	28
	29
(b) continues to hold office as a region controller.	30
(5) It does not matter that a person referred to in subclause (4) is not a member of staff of the State Emergency Service.	31
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9 Continuation of office of unit controllers

A person holding office as a unit controller immediately before the repeal of the *State Emergency Service Regulation 2001* continues to hold office as a unit controller for the balance of his or her term of office or until the person's appointment is revoked in accordance with this Act, whichever occurs first.

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10 Continuation of office of deputy controllers

A person holding office as a deputy to a division controller, local controller or unit controller immediately before the repeal of the *State Emergency Service Regulation 2001* continues to hold that office for the balance of his or her term of office or until the person's appointment is revoked in accordance with this Act, whichever occurs first.

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**Schedule 2 Amendment of State Emergency and
Rescue Management Act 1989**

1
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(Section 4)

3

Section 32A Definitions

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Omit “, or a divisional executive officer or the Director, Operations of that
Service” from paragraph (c) of the definition of *emergency services officer*.

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