



New South Wales

State Emergency and Rescue Management Amendment Bill 2009

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 and Rescue Management Act 1989* (the *principal Act*):

- (a) to provide for the appointment of a State Emergency Recovery Controller and a Deputy State Emergency Recovery Controller, and
- (b) to make provision with respect to functions and responsibilities of the State Emergency Recovery Controller, and
- (c) to provide that the State Emergency Recovery Controller is to be a member of the State Disasters Council and the State Emergency Management Committee.

This Bill also makes a consequential amendment to the *State Emergency Service Act 1989*.

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 to the proposed Act.

Schedule 1 Amendment of State Emergency and Rescue Management Act 1989 No 165

Schedule 1 [1] amends section 3 of the principal Act to include definitions for the terms *State Emergency Recovery Controller* (being the State Emergency Recovery Controller appointed under proposed section 20A) and *recovery agency* (being an agency identified in the State Disaster Plan as the agency primarily responsible for controlling the recovery from an emergency).

Schedule 1 [2] amends section 10 of the principal Act to provide that the State Emergency Recovery Controller exercises his or her functions under the principal Act subject to the control and direction of the Minister.

Schedule 1 [3] amends section 10 (4) of the principal Act to provide that the Minister may delegate certain functions under the principal Act to the State Emergency Recovery Controller.

Schedule 1 [4] amends section 11 of the principal Act to provide that the State Emergency Recovery Controller is to be a member of the State Disasters Council.

Schedule 1 [5] amends section 12 of the principal Act to provide that the State Disaster Plan is to specify the responsibilities of the State Emergency Recovery Controller.

Schedule 1 [6] amends section 14 of the principal Act to provide that the State Emergency Recovery Controller is to be a member of the State Emergency Management Committee.

Schedule 1 [8] inserts proposed Subdivision 5 (proposed sections 20A and 20B) in Division 1 of Part 2 of the principal Act.

Proposed section 20A provides that the Minister may appoint:

- (a) a senior executive officer, with experience in emergency management, as the State Emergency Recovery Controller, and
- (b) a senior executive officer or senior officer, with experience in emergency management, as the Deputy State Emergency Recovery Controller, to exercise the functions of the State Emergency Recovery Controller during any absence of, or vacancy in the office of, the State Emergency Recovery Controller.

Proposed section 20B makes provision for the responsibilities and functions of the State Emergency Recovery Controller. In particular, the section deals with the following matters:

- (a) the circumstances in which the State Emergency Recovery Controller is responsible for the recovery from an emergency,
- (b) the circumstances in which the State Emergency Recovery Controller may assume responsibility for the recovery from an emergency when the State Disaster Plan designates a recovery agency with primary responsibility for controlling the recovery from the emergency,

- (c) the authority of the State Emergency Recovery Controller to issue directions to certain agencies and appoint officers to control particular activities of certain agencies, where the State Emergency Recovery Controller is responsible for controlling the recovery from an emergency.

Schedule 1 [7] and [9]–[11] make consequential amendments.

Schedule 1 [12] and [13] make minor amendments in the nature of statute law revision.

Schedule 1 [14] amends clause 1 of Schedule 4 to the principal Act to enable regulations of a savings or transitional nature to be made as a consequence of the enactment of the proposed Act.

Schedule 2 Amendment of State Emergency Service Act 1989 No 164

Schedule 2 makes a consequential amendment to section 8 of the *State Emergency Service Act 1989*.

First print



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New South Wales

State Emergency and Rescue Management Amendment Bill 2009

No. , 2009

A Bill for

An Act to amend the *State Emergency and Rescue Management Act 1989* to provide for the appointment of a State Emergency Recovery Controller; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>State Emergency and Rescue Management Amendment Act 2009</i> .	3 4
2 Commencement	5
This Act commences on the date of assent to this Act.	6

Schedule 1	Amendment of State Emergency and Rescue Management Act 1989 No 165	1
		2
[1] Section 3 Definitions		3
	Insert in appropriate order in section 3 (1):	4
	<i>recovery agency</i> means the agency identified in Displan as the agency primarily responsible for controlling the recovery from a particular emergency.	5
		6
		7
	<i>State Emergency Recovery Controller</i> means the State Emergency Recovery Controller appointed under Part 2.	8
		9
[2] Section 10 Minister		10
	Insert after section 10 (3) (b):	11
	(c) the State Emergency Recovery Controller.	12
[3] Section 10 (4)		13
	Insert “, State Emergency Recovery Controller” after “Controller”.	14
[4] Section 11 State Disasters Council		15
	Insert after section 11 (3) (b1):	16
	(b2) the State Emergency Recovery Controller, and	17
[5] Section 12 State Disaster Plan		18
	Omit section 12 (3) (d). Insert instead:	19
	(d) specify the responsibilities of the Minister, the State, District or Local Emergency Operations Controller and the State Emergency Recovery Controller.	20
		21
		22
[6] Section 14 State Emergency Management Committee		23
	Insert after section 14 (2) (a):	24
	(a1) the State Emergency Recovery Controller, and	25
[7] Section 19 Responsibility and functions of State Emergency Operations Controller		26
		27
	Omit “or agreed to the Controller assuming” from section 19 (1B) (b).	28
	Insert instead “that the Controller assume, or has agreed to the Controller assuming”.	29
		30

[8] Part 2, Division 1, Subdivision 5	1
Insert after section 20:	2
Subdivision 5 The State Emergency Recovery Controller	3
20A State Emergency Recovery Controller	4
(1) The Minister may appoint a State Emergency Recovery Controller and a Deputy State Emergency Recovery Controller.	5 6
(2) The person appointed as the State Emergency Recovery Controller must be a senior executive officer and the person appointed as the Deputy State Emergency Recovery Controller must be a senior executive officer or a senior officer.	7 8 9 10
(3) The persons so appointed must be persons who are, in the opinion of the Minister, experienced in emergency management.	11 12
(4) During the absence or a vacancy in the office of the State Emergency Recovery Controller, the Deputy State Emergency Recovery Controller has all of the functions of the State Emergency Recovery Controller.	13 14 15 16
(5) Schedule 1 contains provisions with respect to the State Emergency Recovery Controller and the Deputy State Emergency Recovery Controller.	17 18 19
(6) In this section:	20
<i>senior executive officer</i> has the same meaning as in the <i>Public Sector Employment and Management Act 2002</i> .	21 22
<i>senior officer</i> means a person employed in a position in the Public Service for which the rate of salary or wages payable to the person exceed the maximum rate payable for Grade 12, Administrative and Clerical Division, of the Public Service.	23 24 25 26
20B Responsibility and functions of State Emergency Recovery Controller	27 28
(1) The State Emergency Recovery Controller is, subject to this section, responsible for controlling in accordance with this Act the recovery from an emergency:	29 30 31
(a) that affects more than one district, or	32
(b) for which the State Emergency Recovery Controller assumes responsibility.	33 34
(2) The State Emergency Recovery Controller is not responsible for controlling the recovery from an emergency if there is a single recovery agency primarily responsible under Displan for	35 36 37

controlling the recovery from the emergency, unless the Controller assumes that responsibility in accordance with subsection (3).	1 2 3
(3) The State Emergency Recovery Controller may assume responsibility for controlling the recovery from an emergency from the recovery agency primarily so responsible under Displan if:	4 5 6 7
(a) the Controller is satisfied that it is necessary to do so in the particular circumstances of the case, and	8 9
(b) the recovery agency has requested that the Controller assume, or has agreed to the Controller assuming, that responsibility or, in the case of any disagreement on the matter, the Minister has directed the Controller to do so.	10 11 12 13
(4) The State Emergency Recovery Controller may, if responsible for controlling the recovery from an emergency:	14 15
(a) issue directions to agencies who have functions in connection with recovery from an emergency, and	16 17
(b) appoint an officer of an agency to have overall control of particular activities in recovery from an emergency where a number of agencies are involved and those agencies do not agree on the matter.	18 19 20 21
(5) The State Emergency Recovery Controller may assist a recovery agency that is primarily responsible for controlling the recovery from an emergency in carrying out that responsibility.	22 23 24
(6) The functions of the State Emergency Recovery Controller may be exercised without the need for a declaration of a state of emergency.	25 26 27
[9] Schedule 1, heading	28
Omit the heading and the section reference following the heading.	29
Insert instead:	30
Schedule 1 Provisions relating to Controllers	31
(Sections 18 (4) and 20A (5))	32
[10] Schedule 1, clause 1	33
Omit the definition of <i>Controller</i> . Insert instead:	34
<i>Controller</i> means the State Emergency Operations Controller, Deputy State Emergency Operations Controller, State	35 36

State Emergency and Rescue Management Amendment Bill 2009

Schedule 1 Amendment of State Emergency and Rescue Management Act 1989 No
165

	Emergency Recovery Controller or Deputy State Emergency Recovery Controller.	1 2
[11]	Schedule 1, clause 5	3
	Omit the clause. Insert instead:	4
	5 Casual vacancies	5
	(1) The office of the Controller becomes vacant if the Controller:	6
	(a) dies, or	7
	(b) completes a term of office and is not re-appointed, or	8
	(c) resigns the office by instrument in writing addressed to the Minister, or	9 10
	(d) is removed from office under this clause, or	11
	(e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or	12 13 14 15
	(f) becomes a mentally incapacitated person, or	16
	(g) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.	17 18 19 20 21
	(2) The Governor (or, in the case of the State Emergency Recovery Controller or Deputy State Emergency Recovery Controller, the Minister) may remove the Controller from office at any time.	22 23 24
[12]	Schedule 1, clause 7	25
	Omit the clause. Insert instead:	26
	7 Chapter 1A of Public Sector Employment and Management Act 2002 not to apply	27 28
	Chapter 1A of the <i>Public Sector Employment and Management Act 2002</i> does not apply to or in respect of the appointment of the Controller.	29 30 31
[13]	Schedule 2 Provisions relating to members and procedure of emergency management organisations	32 33
	Omit clause 5 (1). Insert instead:	34

(1) Chapter 1A of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of the appointment of a member. 1
2
3

[14] Schedule 4 Savings, transitional and other provisions 4

Insert at the end of clause 1 (1): 5

State Emergency and Rescue Management Amendment Act 2009 6

**Schedule 2 Amendment of State Emergency Service
Act 1989 No 164**

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Section 8 Functions of Service

Omit “for, response to and recovery from” from section 8 (1) (f).

Insert instead “for and response to, and to assist the State Emergency Recovery
Controller to carry out emergency management functions relating to the
recovery from,”