

## ESSENTIAL SERVICES BILL 1988

NEW SOUTH WALES



### EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to enable the government to take expeditious and appropriate measures to protect the community from disruption in the provision of essential services, whether the disruption arises from industrial action or otherwise.

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#### PART 1—PRELIMINARY

**Clause 1** specifies the short title of the proposed Act.

**Clause 2** provides that the proposed Act is to commence on the date of assent.

**Clause 3** defines certain expressions for the purposes of the proposed Act.

**Clause 4** specifies those services which are essential services. For the purposes of the proposed Act, a service is an essential service if it consists of any of the following:

- (a) the production, supply or distribution of any form of energy, power or fuel or of energy, power or fuel resources;
- (b) the public transportation of persons or freight;
- (c) the provision of fire-fighting services;
- (d) the provision of public health services (including hospital or medical services);
- (e) the provision of ambulance services;
- (f) the production, supply or distribution of pharmaceutical products;
- (g) the provision of garbage, sanitary cleaning or sewerage services;
- (h) the supply or distribution of water;
- (i) the conduct of a welfare institution;
- (j) the conduct of a prison;
- (k) the provision of any service necessary for a service referred to in paragraphs (a)–(j).

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As well as specifying particular services, the clause empowers the Governor, by order published in the Gazette, to declare any service to be an essential service for the purposes of the proposed Act.

**Clause 5** provides that the proposed Act is to have effect despite the provisions of any other Act, any judgment or order or any other instrument or agreement.

**Clause 6** provides that the powers conferred by or under the proposed Act are to be in addition to and not in derogation from any other powers exercisable apart from the proposed Act.

**Clause 7** provides that the proposed Act is to bind the Crown.

**PART 2—DISRUPTION TO ESSENTIAL SERVICE**

**Clause 8** enables the Governor-in-Council, if the provision of an essential service is, or is likely to be, disrupted or reduced to an inadequate extent, to declare by proclamation that the essential service is one in respect of which regulations may be made under clause 9. Such a proclamation may be made whether or not an emergency situation exists, or is likely to exist, in relation to the essential service. Such a proclamation is to specify the Minister of the Crown who is to be responsible for a regulation made under clause 9 in relation to the essential service. Such a proclamation may continue in force for a maximum of 30 days.

**Clause 9** enables the Governor-in-Council to make a regulation in accordance with the regulation-making powers conferred by the clause to ensure the proper provision of an essential service during the period for which a proclamation continues in force under clause 8.

**Clause 10** enables the Governor-in-Council, if the provision of an essential service is, or is likely to be, disrupted or reduced to an inadequate extent and if an emergency situation exists, or is likely to exist, in relation to the essential service, to declare by order in writing that a state of emergency exists in relation to the essential service. Such an order is to specify the Minister of the Crown who may give directions under clause 11 in relation to the essential service. Such an order may continue in force for a maximum of 30 days.

**Clause 11** enables the Minister of the Crown specified in an order declaring the existence of a state of emergency in relation to an essential service to give directions by notice in writing, in accordance with the powers conferred by the clause, to ensure the proper provision of the essential service during the period for which the order continues in force under clause 10. A direction may be brought to the attention of a person affected by it either by publishing the direction in the Gazette or by service of a copy personally or by post or telegram.

**PART 3—ENTRY AND INSPECTION**

**Clause 12** enables the Minister administering the proposed Act or a Minister specified in a proclamation under clause 8 or an order under clause 10 to appoint inspectors for the purposes of the proposed Act.

**Clause 13** specifies the powers of entry, inspection and investigation which may be exercised by inspectors. The powers may only be exercised in relation to an essential service the subject of a proclamation under clause 8 or an order under clause 10 while the proclamation or order is in force.

**Clause 14** makes it an offence to obstruct an inspector, to wilfully furnish false information to an inspector and to impersonate an inspector.

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**PART 4—INDUSTRIAL ACTION**

**Clause 15** enables the Minister of the Crown who has the responsibility for administering the proposed Act, while a proclamation under clause 8 or an order under clause 10 is in force in relation to an essential service, to refer any industrial matter relating to the essential service to the Industrial Commission for determination.

**Clause 16** confers on an employer who is adversely affected by the disruption to an essential service the right to stand down an employee from duty if the employee has not been able to be usefully employed for at least 5 days. Notice of the stand down is required to be given to each employee. Leave and superannuation entitlements of an employee stood down under the clause are preserved but all other rights and entitlements of the employee are foregone during the period of stand down. The clause enables the Minister or a union which represents employees stood down to apply to the Industrial Commission for an order restraining the stand down. On the hearing of an application by the Minister or a union, the Minister or union has the onus of proving that the employees concerned should not be stood down.

**Clause 17** enables the registration of a union engaged in providing an essential service and which, while a proclamation under clause 8 or an order under clause 10 is in force, engages in activities which are contrary to the public interest, to be suspended and cancelled. If registration is cancelled, the industrial registrar is prohibited from accepting, within 3 years after the date of deregistration, any application for registration of a trade union which is the same, or substantially the same, as the union whose registration has been cancelled.

**Clause 18** provides, as an alternative to the sanction of deregistration contained in clause 17, for the rules of the union concerned to be amended so as to exclude from membership particular members who engage in activities which are contrary to the public interest.

**Clause 19** provides that if the registration of a union is cancelled by operation of clause 17 or if the rules of a union are amended under clause 18 so as to exclude certain members from membership, the Industrial Commission may amend the rules of another union to enable members of the deregistered union or the excluded members to become members of that other union.

**Clause 20** enables the industrial registrar, as a consequential matter, to amend the rules of a union following the making of an order under clause 18 or 19.

**Clause 21** prevents the making of appeals against decisions relating to the deregistration of unions and the amendment of union rules.

**Clause 22** preserves the obligations, penalties and liabilities of a union and union members despite the cancellation of the union's registration under clause 17.

**Clause 23** enables the Industrial Commission to appoint a receiver of the property of a union in order to recover a penalty imposed under the proposed Act on a union or union member and which is unpaid.

**PART 5—MISCELLANEOUS**

**Clause 24** exempts persons acting under the authority of the proposed Act from liability for their actions.

**Clause 25** requires information obtained in connection with the administration or execution of the proposed Act to be kept confidential, except where it may be disclosed with lawful excuse.

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**Clause 26** provides that a person who commits an offence against a regulation made under clause 9 is liable to a penalty not exceeding 10 penalty units (\$1,000). The clause also provides the same penalty for the offence of refusing or failing to comply with a direction given under clause 11 or an order or direction made or given under clause 27.

**Clause 27** enables directions to be given to a person convicted of an offence against a regulation made under clause 9 or convicted of failing to comply with a direction under clause 11 so as to deny the person access to the essential service concerned during the period for which the regulation made under clause 9 or direction under clause 11 remains in force.

**Clause 28** enables proceedings for an offence against the proposed Act or regulations to be dealt with summarily before an industrial magistrate or a Local Court.

**Clause 29** enables the making of regulations for the general purposes of the proposed Act.

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