

# State Emergency Service Act 1989 No 164

[1989-164]



New South Wales

## Status Information

### Currency of version

Historical version for 29 June 2000 to 16 November 2005 (accessed 15 October 2024 at 10:26)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **See also**  
[State Emergency Service Amendment Bill 2005](#)

### Authorisation

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File last modified 8 November 2005

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# State Emergency Service Act 1989 No 164



New South Wales

An Act to establish the State Emergency Service and define its functions; to make provision for the handling of certain emergencies; to repeal the *State Emergency Services and Civil Defence Act 1972*; to amend certain other Acts; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *State Emergency Service Act 1989*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Definitions

(1) In this Act:

**Deputy Director-General** means the Deputy Director-General of the State Emergency Service holding office as such under the *Public Sector Management Act 1988*.

**Director-General** means the Director-General of the State Emergency Service holding office as such under the *Public Sector Management Act 1988*.

**division** means a division established under section 14.

**division controller** means the controller of S.E.S. units in a division appointed under section 16.

**emergency officer** means the Director-General or a person appointed under section 15 as an emergency officer.

**local controller** means a controller of S.E.S. units in a local government area appointed under section 17.

**S.E.S. unit** means an organisation registered as an S.E.S. unit under this Act.

**State Emergency Service** means the State Emergency Service of New South Wales

established under this Act.

- (2) Words and expressions in this Act have the same meanings as in the *State Emergency and Rescue Management Act 1989*, except in so far as the context or subject-matter otherwise indicates or requires.
- (3) In this Act:
  - (a) a reference to a function includes a reference to a power, authority and duty, and
  - (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

#### **4 Limitation on operation of Act—industrial disputes and civil disturbances**

This Act does not authorise the taking of measures directed at:

- (a) bringing an industrial dispute to an end, or
- (b) controlling a riot or other civil disturbance.

#### **5 Operation of Act in relation to civil defence**

This Act authorises the taking of civil defence measures, not being actual military combat or preparations for military combat.

#### **6 Act binds the Crown**

This Act binds the Crown, not only in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

## **Part 2 The State Emergency Service**

### **7 State Emergency Service**

- (1) There shall be a State Emergency Service of New South Wales.
- (2) The State Emergency Service is to comprise:
  - (a) the Director-General, Deputy Director-General and other staff of the Service, and
  - (b) the members of all S.E.S. units.

### **8 Functions of Service**

- (1) The State Emergency Service has the following functions:
  - (a) to act as the combat agency for dealing with floods (including the establishment of flood warning systems) and to co-ordinate the evacuation and welfare of affected communities,

- (b) to act as the combat agency for damage control for storms and tempests and to co-ordinate the evacuation and welfare of affected communities,
  - (c) as directed by the State Emergency Operations Controller, to act as the primary agency for civil defence planning and as an agency for the conduct of civil defence operations,
  - (d) as directed by the State Emergency Operations Controller, to deal with an emergency where no other agency has lawful authority to assume command of the emergency operation,
  - (e) to carry out, by accredited S.E.S. units, rescue operations allocated by the State Rescue Board,
  - (f) to assist the State Emergency Operations Controller to carry out emergency management functions relating to the prevention of, preparation for, response to and recovery from emergencies in accordance with the *State Emergency and Rescue Management Act 1989*,
  - (g) to assist, at their request, members of the Police Force, Fire Brigades, Bush Fire Brigades or Ambulance Service in dealing with any incident or emergency,
  - (h) to maintain effective liaison with all emergency services organisations,
  - (i) to carry out such other functions as may be assigned to it by or under this or any other Act, or by the State Emergency Operations Controller or the Minister.
- (2) The functions of the State Emergency Service are to be exercised in accordance with the *State Emergency and Rescue Management Act 1989* and, in particular, with the requirements under Displan or any state of emergency under that Act.

## **Part 3 The Director-General and other staff of the Service**

### **9 Director-General, Deputy Director-General and other staff**

- (1) A Director-General, Deputy Director-General and such other staff as may be necessary for the purposes of this Act are to be employed under Part 2 of the *Public Sector Management Act 1988*.
- (2) Subsection (1) does not apply to members of S.E.S. units.
- (3) The Director-General may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of a government department, an administrative office or a public or local authority.
- (4) For the purposes of this Act, a person whose services are made use of under this section is a member of the staff of the State Emergency Service.

## **10 Ministerial control**

The Director-General, Deputy Director-General and other members of the State Emergency Service are, in the exercise of their functions under this Act, subject to the control and direction of the Minister.

## **11 Director-General responsible for administration of Service**

The Director-General is responsible for managing and controlling the activities of the State Emergency Service.

## **12 Planning and preparation by Director-General**

- (1) The Director-General is required to undertake such planning and make such preparations as the Director-General thinks fit for the purpose of enabling the Director-General's functions under this Act to be exercised in the most effective manner.
- (2) The Director-General may constitute committees to collate and assess information, or give advice or assistance to the Director-General or any other person or agency, in relation to the functions of the State Emergency Service.
- (3) The Director-General is to arrange for the collation, assessment and public dissemination of information relating to floods, storms and tempests.

## **13 Delegation by Director-General**

The Director-General may delegate to the Deputy Director-General or any other member of the State Emergency Service or to an emergency officer the Director-General's functions under this Act, other than this power of delegation.

## **14 Service divisions**

The Director-General may, by order in writing and with the approval of the State Emergency Operations Controller, divide the State into divisions for the purposes of this Act.

## **Part 4 Emergency officers and S.E.S. units**

### **15 Emergency officers**

- (1) The Director-General is an emergency officer for the purposes of this Act.
- (2) The Director-General may appoint any person, or a person belonging to a class of persons, as an emergency officer for the purposes of this Act.
- (3) A person may be appointed as an emergency officer whether or not the person is a member of the State Emergency Service.
- (4) The Director-General may revoke an appointment under this section at any time.

- (5) The Director-General is to arrange for suitable training to be provided to emergency officers.

#### **16 Division controllers**

- (1) The Director-General may appoint any person as the division controller for a division.
- (2) The Director-General may revoke an appointment under this section at any time.
- (3) A division controller is, subject to any direction of the Director-General, responsible for the control and co-ordination of the activities of S.E.S. units in the relevant division.

#### **17 Local controllers**

- (1) The Director-General may, on the recommendation of the council of a local government area, appoint any person as the local controller for the area.
- (2) The Director-General may revoke an appointment under this section at any time.
- (3) A local controller is, subject to any direction of the Director-General or the relevant division controller, responsible for the control and co-ordination of the activities of S.E.S. units in the relevant local government area.
- (4) The Director-General may appoint as the local controller an emergency officer not recommended by the council of the local government area concerned if the council fails to make a recommendation which is acceptable to the Director-General within 30 days after the council is requested to do so by the Director-General.
- (5) The council of a local government area must, within 3 months of the appointment of a local controller for the area, provide (free of charge) suitable training facilities and storage and office accommodation to enable the local controller to exercise his or her functions.
- (6) Any such facilities and accommodation are to be of a standard approved by the Director-General.

#### **18 S.E.S. units**

- (1) On the application of an association of persons formed for the purpose of dealing with emergencies to which this Act applies, the Director-General may, by instrument in writing, register the association as an S.E.S. unit and assign it a distinctive name.
- (2) An association of persons may be registered as an S.E.S. unit whether or not it is an incorporated body.
- (3) The Director-General may, by instrument in writing, revoke the registration of an association as an S.E.S. unit.
- (4) The Director-General may apply for the accreditation of an S.E.S. unit as a rescue unit



under Part 3 of the *State Emergency and Rescue Management Act 1989*.

- (5) The trustees of any real or personal property of an S.E.S. unit may vest that property in the Crown, to be held by the Crown subject to this Act but free from any other trust.

## **Part 5 Emergencies and emergency powers**

### **18A Definitions**

In this Part:

**emergency area** means the area affected by an emergency to which this Part applies.

**premises** includes land, place, building, vehicle, vessel or aircraft, or any part of premises.

**senior emergency officer** means any of the following:

- (a) a police officer of or above the rank of sergeant or a police officer for the time being in charge of a police station,
- (b) an officer of New South Wales Fire Brigades of or above the position of station commander,
- (c) an officer of the State Emergency Service of or above the position of unit controller, or a divisional executive officer or the Director, Operations of that Service,
- (d) a member of a bush fire brigade of or above the position of deputy captain,
- (e) a District Emergency Management Officer.

### **19 Emergencies to which Part applies**

This Part applies to:

- (a) an emergency referred to in section 8 (1) (a) or (b) relating to a flood, storm or tempest, or
- (b) an emergency referred to in section 8 (1) (c) or (d) which the State Emergency Operations Controller has directed the Director-General to deal with.

### **20 Director-General to control emergencies**

Subject to the *State Emergency and Rescue Management Act 1989*, the Director-General is to have overall control of operations in response to an emergency to which this Part applies.

### **21 Duty to recognise authority of Director-General and emergency officers**

- (1) Every member of the Police Force and all other members of emergency services

organisations are to recognise, in connection with operations in response to an emergency to which this Part applies, the authority of the Director-General and emergency officers acting under the Director-General's orders or the orders of the division controller or local controller.

- (2) It is the duty of every such member to assist the Director-General or other emergency officer in connection with those operations.

## **22 Power to evacuate or to take other steps concerning persons**

- (1) The Director-General may, if satisfied that it is necessary or convenient to do so for the purpose of responding to an emergency to which this Part applies, direct, or authorise an emergency officer to direct, a person to do any or all of the following:

- (a) to leave any particular premises and to move out of an emergency area or any part of an emergency area,
- (b) to take any children or adults present in any particular premises who are in the person's care and to move them outside the emergency area or any part of the emergency area,
- (c) not to enter the emergency area or any part of the emergency area.

- (2) If the person does not comply with the direction, an emergency officer may do all such things as are reasonably necessary to ensure compliance with it, using such force as is reasonably necessary in the circumstances.

- (3) The regulations may limit the circumstances, and regulate the manner, in which the powers conferred by this section may be exercised.

- (4) (Repealed)

## **22A Power to take other safety measures**

- (1) The Director-General may, if satisfied that there are reasonable grounds for doing so for the purpose of protecting persons from injury or death or protecting property threatened by an actual or imminent emergency, direct, or authorise a senior emergency officer to direct, the doing of any one or more of the following:

- (a) the shutting off or disconnecting of the supply of any water, gas, liquid, solid, grain, powder or other substance in or from any main, pipeline, container or storage facility in an emergency area or any part of an emergency area,
- (b) the shutting off or disconnecting of the supply of gas or electricity to any premises in an emergency area or any part of an emergency area,
- (c) the taking possession of, and removal or destruction of any material or thing in an emergency area or any part of an emergency area that may be dangerous to life

or property or that may interfere with the response of emergency services to the emergency.

- (2) For the purposes of the exercise of a function under subsection (1) (a), the Director-General or a senior emergency officer authorised by the Director-General may require the person who controls or supplies the substance concerned to immediately send some competent person to the scene for the purpose of shutting it off or disconnecting it in accordance with the reasonable directions of the Director-General or senior emergency officer.
- (3) A person must comply with a requirement, or directions, under subsection (2).  
Maximum penalty: 50 penalty units.
- (4) A person who supplies a substance referred to in subsection (1) (a) or (b) is not liable for any damages because of any interruption of that supply under this section if the supply is shut off or disconnected in accordance with the directions of the Director-General or senior emergency officer.
- (5) The regulations may limit the circumstances, and regulate the manner, in which the powers conferred by this section may be exercised.

#### **22B Power to enter premises**

A person may enter any premises for the purposes of complying with a direction under section 22A (1).

#### **22C Notice of entry**

- (1) A person authorised to enter premises may enter the premises without giving notice:
  - (a) if entry to the premises is made with the consent of the owner or occupier, or
  - (b) if the entry is made to a part of the premises that is open to the public, or
  - (c) if entry is required urgently and the case is one in which the Director-General or senior emergency officer giving the direction has authorised in writing (either generally or in a particular case) entry without notice.
- (2) In any other case, the person must give the owner or occupier of the premises reasonable written notice of the intention to enter the premises.

#### **22D Care to be taken**

In the exercise of a function under section 22A, a person authorised to enter premises must do as little damage as possible.

## **22E Use of force**

- (1) Reasonable force may be used for the purpose of gaining entry to premises to comply with a direction under section 22A but only if the Director-General or the senior emergency officer giving the direction:
  - (a) has authorised in writing the use of force in the particular case, or
  - (b) has specified in writing the circumstances that are required to exist before force may be used and the particular case falls within those circumstances.
- (2) If a person authorised to enter premises uses force to do so, the person must, as soon as practicable, inform the person who directed him or her to exercise the function under section 22A.
- (3) The person so informed of the use of force must give notice of the use of force to such persons or authorities as appear to the person to be appropriate in the circumstances.
- (4) If a person's property is damaged by the exercise of a right of entry, the person is to receive such compensation as may be determined by the Minister or, if the damage arose as the result of the exercise of a right of entry by a police officer, the Minister for Police, but is not entitled to receive compensation.
- (5) A person may apply to the Premier for a review of a determination as to compensation made by the Minister or the Minister for Police under this section.

## **22F Authority to enter premises**

- (1) A power to enter premises, or to take action on premises, may not be exercised unless the person proposing to exercise the power is in possession of an authority and produces the authority if required to do so by the owner or occupier of the premises.
- (2) The authority must be a written authority that:
  - (a) states that it is issued under this Act, and
  - (b) gives the name of the person to whom it is issued, and
  - (c) describes the nature of the powers conferred and the source of the powers, and
  - (d) states the date (if any) on which it expires, and
  - (e) describes the kind of premises to which the power extends, and
  - (f) bears the signature of the Director-General or the senior emergency officer who issued the direction under section 22A.
- (3) However, despite subsections (1) and (2), a police officer exercising a power to enter premises, or to take action on premises, must produce his or her warrant card if

required to do so by the owner or occupier of the premises in lieu of an authority.

### **23 Arrangements for inter-State co-operation in emergencies**

- (1) The Director-General may make arrangements with any agency which manages or controls inter-State S.E.S. units:
  - (a) for those units to carry out operations in New South Wales in response to emergencies to which this Part applies, and
  - (b) for S.E.S. units under this Act to carry out similar operations outside New South Wales.
- (2) An inter-State S.E.S. unit carrying out operations in New South Wales in accordance with any such arrangement is to be regarded as an S.E.S. unit under this Act.
- (3) In this section, ***inter-State S.E.S. unit*** means a unit established and operating in another State or in a Territory of the Commonwealth.

### **24 Offence to obstruct Director-General or emergency officer**

A person must not obstruct or hinder the Director-General or other emergency officer, or any other person acting with the authority of the Director-General, in the exercise of a function under this Act.

Maximum penalty: 50 penalty units or imprisonment for 2 years, or both.

## **Part 6 Miscellaneous**

### **25 Personal liability of members of Service and volunteers**

- (1) A matter or thing done by:
  - (a) a member of the State Emergency Service, including a member of an S.E.S. unit, or
  - (b) an emergency officer, or
  - (c) a casual volunteer,

does not, if the matter or thing was done in good faith for the purpose of exercising the functions of or assisting the State Emergency Service, subject the member, officer or volunteer personally to any action, liability, claim or demand.

- (2) In this section:

***casual volunteer*** means a person who, with the consent of the member or officer, assists a member of the State Emergency Service or an emergency officer in the exercise of the Service's functions.

## **25A Certain damage to be covered by insurance**

- (1) Any damage to property caused by the exercise in good faith of functions under section 22A (1) by:
  - (a) the Director-General or a senior emergency officer authorised by the Director-General during an emergency to which Part 5 applies, or
  - (b) a person acting on and in accordance with a direction given by the Director-General or a senior emergency officer authorised by the Director-General under section 22A (1) during an emergency to which Part 5 applies, is taken to be damage by the happening that constitutes the emergency (being flood, storm, tempest or other risk, contingency or event) for the purposes of any policy of insurance against the risk, contingency or event concerning an act or omission that covers the property.
- (2) This section applies only in respect of damage to property caused in the exercise of a function to protect persons from injury or death or property from damage if those persons are, or the property is, endangered by the happening that constitutes the emergency or endangered by the escape or likely escape of hazardous material as the result of that happening.
- (3) Any provision, stipulation, covenant or condition in any agreement that negatives, limits or modifies or purports to negative, limit or modify the operation of this section is void and of no effect.
- (4) In this section, ***hazardous material*** means anything that, when produced, stored, moved, used or otherwise dealt with without adequate safeguards to prevent it from escaping, may cause injury or death or damage to property.

## **26 This Act not to limit other Acts or laws**

This Act does not limit the operation of any other Act or law.

## **27 Service of documents**

- (1) A document may be served on the Director-General by leaving it at, or by sending it by post to, the office of the Director-General.
- (2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on the Director-General in a manner not provided for by this section.

## **28 Proceedings for offences**

Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

## **29 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, the regulations may make provision for or with respect to:
  - (a) the exercise of the functions of an emergency officer, and
  - (b) the formation, amalgamation and dissolution of S.E.S. units and the exercise of their functions.
- (3) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

## **30 Savings, transitional and other provisions**

Schedule 1 has effect.

## **31 Repeal of [State Emergency Services and Civil Defence Act 1972](#) and regulations**

The [State Emergency Services and Civil Defence Act 1972](#) and the *State Emergency Services and Civil Defence Regulations* are repealed.

## **32-35 (Repealed)**

## **Schedule 1 Savings, transitional and other provisions**

(Section 30)

## **Part 1 General**

### **1 Savings and transitional regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.
- (2) Any such provision may, if the regulations so provide, take effect on the date of assent to this Act or a later date.
- (3) To the extent to which any provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its

publication.

## **Part 2 Provisions consequent on this Act**

### **2 Superseded references**

In any other Act, or in any instrument made under any Act or in any other instrument of any kind:

- (a) a reference to State Emergency Services and Civil Defence is to be read as a reference to the State Emergency Service, and
- (b) a reference to the Director or other officer or member of State Emergency Services and Civil Defence is to be read as a reference to the Director-General or other officer or member of the State Emergency Service.

### **3 Director, Deputy and other public service staff**

The repeal of the *State Emergency Services and Civil Defence Act 1972* does not affect the appointment of the person holding office as the Director or as the Deputy Director of the State Emergency Service at the time of that repeal or of other staff under the *Public Sector Management Act 1988*.

### **4 Local controllers and other officers**

A person holding office as a local controller, or holding any other office, under section 8 of the *State Emergency Services and Civil Defence Act 1972* is to be taken to have been appointed to that office under this Act.

### **5 Division of State**

The divisions established by an order in force under section 7 of the *State Emergency Services and Civil Defence Act 1972* immediately before the repeal of that Act are to be taken to be divisions established under this Act until altered under this Act.