

State Emergency Service Act 1989 No 164

[1989-164]



New South Wales

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Notes—

- **Does not include amendments by**
Police Amendment (Miscellaneous) Act 2006 No 94 (not commenced)

Authorisation

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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 Employment and Management Act 2002*.

Director-General means the Director-General of the State Emergency Service holding office as such under the *Public Sector Employment and Management Act 2002*.

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

exercise a function includes perform a duty.

function includes a power, authority or duty.

local controller means a controller of SES units in a local government area appointed under section 17.

region means a region established under section 14.

region controller means the controller appointed under section 16 for SES units in a

region.

SES unit means an organisation registered as an SES unit under section 18.

State Emergency Service means the State Emergency Service of New South Wales established under this Act.

unit controller means the unit controller for an SES unit appointed under section 17A.

(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(3) (Repealed)

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5 (Repealed)

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 volunteer officers and volunteer members of all SES units.

8 Functions of Service

- (1) The State Emergency Service has the following functions:
 - (aa) to protect persons from dangers to their safety and health, and to protect property from destruction or damage, arising from floods and storms,
 - (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 to co-ordinate the evacuation and welfare of affected communities,
 - (c) (Repealed)
 - (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 SES 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 NSW Police, New South Wales Fire Brigades, the NSW Rural Fire Service or the 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 Chapter 2 of the *Public Sector Employment and Management Act 2002*.
- (2) Subsection (1) does not apply to members of SES 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

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

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 and storms.

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 regions

The Director-General may divide the State into regions for the purposes of this Act.

Part 4 Emergency officers and SES 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 Region controllers

- (1) The Director-General may appoint a member of staff of the State Emergency Service as the region controller for a region.
- (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.
- (3) The Director-General may appoint any person to act as a deputy to a region controller.
- (4) The functions of a region controller may be exercised by his or her deputy during any absence from duty of the region controller.

17 Local controllers

- (1) The Director-General may, on the recommendation of the council of a local government area, appoint one or more persons as a local controller for the area.
- (2) The Director-General may revoke an appointment under this section at any time and for any reason.
- (3) A local controller is, subject to any direction of the Director-General or the relevant region controller, responsible for the control and co-ordination of the activities of SES units in the relevant local government area.
- (4) The Director-General may appoint as a 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.

17A Unit controllers

- (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.

- (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.
- (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).

17B Terms of appointment for local and unit controllers

- (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.
- (2) Each local controller and unit controller is subject to an annual review and report to be carried out by the Director-General.

17C Local and unit controller deputies

- (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.
- (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.
- (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.
- (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.

17D Region headquarters unit

- (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.
- (2) A region controller, together with:
 - (a) the members of staff of the State Emergency Service attached to the headquarters for the region, and
 - (b) any volunteers assisting in the running of the headquarters,may be registered as an SES unit (as a **region headquarters unit**) under section 18.
- (3) The function of a region headquarters unit is to assist the region controller in the exercise of his or her responsibilities.

18 SES units

- (1) The Director-General may, by instrument in writing, register a group of persons as an SES unit and assign it a distinctive name.
- (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.
- (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.
- (2) An association of persons may be registered as an SES 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 SES unit.
- (4) The Director-General may apply for the accreditation of an SES 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 SES unit may vest that property in the Crown, to be held by the Crown subject to this Act but free from any other trust.

18AA Granting, suspension and withdrawal of membership of SES units

- (1) Membership of an SES unit may be granted, suspended or withdrawn by any of the following:
 - (a) the Director-General,
 - (b) a region controller, local controller or unit controller responsible for the SES unit.
- (2) Membership of an SES unit may be withdrawn at any time and for any reason.
- (3) Membership of an SES unit may be suspended at any time, but only for the purposes of conducting an investigation into:
 - (a) the member's alleged offence against any law, or
 - (b) the member's alleged contravention of, or failure to comply with, the procedures or instructions of the State Emergency Service.
- (4) A person whose membership of an SES unit is withdrawn may:
 - (a) if the membership was withdrawn by the Director-General—apply to the Director-General to reconsider that action, or
 - (b) if the membership was withdrawn by a region controller, local controller or unit controller—appeal to the Director-General against that action.

- (5) On an application or an appeal being made by a person under subsection (4), the Director-General may:
- (a) reinstate the person's membership, or
 - (b) confirm the withdrawal of the person's membership.
- (6) The procedures for:
- (a) suspending or withdrawing membership of an SES unit, and
 - (b) appealing against the withdrawal of membership of an SES unit,
- are to be as set out in the procedure manuals maintained by the State Emergency Service.
- (7) This section has effect despite any other law relating to membership of an association that is an SES unit.

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,
- (d) a member of a rural 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 or storm, or
- (b) an emergency referred to in section 8 (1) (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 NSW Police 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 region 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 SES 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 SES units under this Act to carry out similar operations outside New South Wales.

(2) An inter-State SES unit carrying out operations in New South Wales in accordance with any such arrangement is to be regarded as an SES unit under this Act.

(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) In this section, ***inter-State SES 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 SES 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 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.

28A Donations of financial or material support

- (1) The unit controller of an SES unit must keep written records of any donations of financial or material support provided to the unit.
- (2) A copy of those records is to be furnished to the Director-General immediately on request by the Director-General.

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 SES 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 the following Acts:

 this Act

State Emergency Service Amendment Act 2005

- (2) Any such provision may, if the regulations so provide, take effect on the date of assent to the Act concerned 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.

Part 3 Provisions consequent on enactment of *State Emergency Service Amendment Act 2005*

6 Definition

In this Part:

amending Act means the *State Emergency Service Amendment Act 2005*.

7 Construction of references to S.E.S. units

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.

8 Continuation of regions and office of region controllers

- (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.
- (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.
- (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.
- (4) A person holding office as a division controller under this Act (as in force immediately before the commencement of the amending Act):
 - (a) is taken to be a region controller appointed under section 16, as substituted by the amending Act, and
 - (b) continues to hold office as a region controller.
- (5) It does not matter that a person referred to in subclause (4) is not a member of staff

of the State Emergency Service.

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.

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.