State Emergency and Rescue Management Act 1989 No 165

[1989-165]

New South Wales

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

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- **Does not include amendments by**
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- **See also**
  State Emergency and Rescue Management Amendment Bill 2009
  State Emergency Service Amendment Bill 2009

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New South Wales

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State Emergency and Rescue Management Act 1989 No 165

New South Wales

An Act relating to the management of State emergencies and rescues.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *State Emergency and Rescue Management Act 1989*.

2 Commencement

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

3 Definitions

(1) In this Act:

accredited rescue unit means a rescue unit accredited by the Minister under Division 4 of Part 3.

agency means a government agency or a non-government agency.

combat agency means the agency identified in Displan as the agency primarily responsible for controlling the response to a particular emergency.

control means the overall direction of the activities, agencies or individuals concerned.

co-ordination means the bringing together of agencies and individuals to ensure effective emergency or rescue management, but does not include the control of agencies and individuals by direction.

Displan means the State Disaster Plan referred to in section 12.

district means a district established under section 21.

District Emergency Management Committee means a District Emergency Management Committee constituted under Part 2.

emergency has the meaning given by section 4.

emergency operations centre means a centre established under this Act at a State, district or local level as a centre of communication, and as a centre for the co-ordination of operations and support, during an emergency.

emergency services organisation means the NSW Police Force, Fire Brigades, Rural Fire Brigades, Ambulance Service, State Emergency Service, Volunteer Rescue Association or any other agency which manages or controls an accredited rescue unit.

functional area means a category of services involved in the preparations for an emergency, including the following:

(a) agricultural and animal services,

(b) communication services,

(c) engineering services,

(d) environmental services,

(e) health services,

(f) public information services,

(g) transport services,

(h) welfare services.

government agency means:

(a) a government department or administrative office as defined in the *Public Sector Management Act 1988*,

(b) a public authority, being a body (whether incorporated or not) established by or under an Act for a public purpose, other than:

(i) the Legislative Council or Legislative Assembly or a committee of either or both of those bodies, or

(ii) a court or other judicial tribunal,

(c) the NSW Police Force,

(d) a local government council or other local authority, or

(e) a member or officer of an agency referred to in paragraphs (a)–(d) or any other person in the service of the Crown who has statutory functions, other than:

(i) the Governor, the Lieutenant-Governor or the Administrator of the State,

(ii) a Minister of the Crown,

(iii) a member of the Legislative Council or Legislative Assembly or an officer of that Council or Assembly, or

(iv) a judicial officer.

Local Emergency Management Committee means a Local Emergency Management Committee constituted under Part 2.

local government area means an ***area*** within the meaning of the *Local Government Act 1993* and includes a combined local government area as referred to in section 27.

non-government agency means a voluntary organisation or any other private individual or body, other than a government agency.

rescue means the safe removal of persons or domestic animals from actual or threatened danger of physical harm.

State Disasters Council means the State Disasters Council constituted under Part 2.

State Emergency Management Committee means the State Emergency Management Committee constituted under Part 2.

State Emergency Operations Controller means the State Emergency Operations Controller appointed under Part 2.

State Emergency Service means the State Emergency Service constituted under the *State Emergency Service Act 1989*.

state of emergency means a state of emergency declared under Division 4 of Part 2 and for the time being in force.

State Rescue Board means the State Rescue Board of New South Wales constituted under Part 3.

(2) 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 Definition of “emergency”

(1) In this Act:

emergency means an emergency due to an actual or imminent occurrence (such as fire, flood, storm, earthquake, explosion, terrorist act, accident, epidemic or warlike action) which:

(a) endangers, or threatens to endanger, the safety or health of persons or animals in the State, or

(b) destroys or damages, or threatens to destroy or damage, property in the State,

being an emergency which requires a significant and co-ordinated response.

(2) For the purposes of the definition of ***emergency***, property in the State includes any part of the environment of the State. Accordingly, a reference in this Act to:

(a) threats or danger to property includes a reference to threats or danger to the environment, and

(b) the protection of property includes a reference to the protection of the environment.

5 Stages of emergency

For the purposes of this Act:

(a) **prevention** in relation to an emergency includes the identification of hazards, the assessment of threats to life and property and the taking of measures to reduce potential loss to life or property, and

(b) **preparation** in relation to an emergency includes arrangements or plans to deal with an emergency or the effects of an emergency, and

(c) **response** in relation to an emergency includes the process of combating an emergency and of providing immediate relief for persons affected by an emergency, and

(d) **recovery** in relation to an emergency includes the process of returning an affected community to its proper level of functioning after an emergency.

6 Relationship between Part 2 (State emergency management) and Part 3 (State rescue management)

(1) Part 3 applies to a rescue operation whether it relates to a single incident or an emergency.

(2) However, if a rescue operation relates to an emergency Part 2 prevails.

(3) A dispute as to whether a rescue operation relates to a single incident or an emergency may be determined by the Minister or (subject to any determination of the Minister) by the State Emergency Operations Controller.

7 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 (other than a riot or civil disturbance resulting from and occurring during a state of emergency).

8 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.

9 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 State emergency management

Division 1 Emergency management at State level

Subdivision 1 The Minister and the State Disasters Council

10 Minister

(1) The Minister is responsible for:

(a) ensuring that adequate measures are taken by government agencies to prevent, prepare for, respond to and assist recovery from emergencies, and

(b) co-ordinating the activities of government agencies in taking those measures, and

(c) arranging for the preparation and review from time to time of Displan.

(2) In discharging any one or more of those responsibilities, the Minister may, on any occasion that the Minister thinks appropriate, call meetings of, consult with, and have regard to the advice of, the State Disasters Council.

(3) The following are, in the exercise of their functions under this Act, subject to the control and direction of the Minister:

(a) the State Emergency Management Committee,

(b) the State Emergency Operations Controller.

(4) The Minister may delegate to the State Emergency Operations Controller or other person the Minister’s functions under this Act, other than:

(a) the Minister’s functions under this section, and

(b) this power of delegation.

11 State Disasters Council

(1) There is established by this Act a State Disasters Council.

(2) The function of the Council is to advise the Minister on all matters relating to the prevention of, preparation for, response to and recovery from emergencies (including the co-ordination of the activities of government and non-government agencies in connection with those matters).

(3) The Council is to consist of:

(a) the Minister, who is to be the Chairperson of the Council, and

(b) the State Emergency Operations Controller, and

(b1) the Chairperson of the State Emergency Management Committee, and

(c) representatives of such relevant government and non-government agencies as the Minister may from time to time determine.

(4) The representative of a government agency is to be nominated by the Minister responsible for the agency and the representative of a non-government agency is to be nominated by the agency.

(5) Schedule 2 has effect with respect to the members and procedure of the Council.

Subdivision 2 The State Disaster Plan

12 State Disaster Plan

(1) There is to be a State Disaster Plan, to be called Displan.

(2) The object of Displan is to ensure the co-ordinated response to emergencies by all agencies having responsibilities and functions in emergencies.

(3) Displan is to:

(a) identify, in relation to each different form of emergency, the combat agency primarily responsible for controlling the response to the emergency, and

(b) provide for the co-ordination of the activities of other agencies in support of a combat agency in the event of an emergency, and

(c) specify the tasks to be performed by all agencies in the event of an emergency, and

(d) specify the responsibilities of the Minister and the State, District or Local Emergency Operations Controllers.

(4) As soon as practicable after Displan is prepared or altered following a review, the

Minister must:

(a) publish (in such manner as the Minister determines) a copy of Displan or the alterations to Displan, and

(b) forward a copy of Displan or the alterations to Displan to each agency to which Displan relates.

13 Operation of State Disaster Plan

(1) The relevant provisions of Displan have effect in the event of an emergency.

(2) Displan has effect in the event of an emergency whether or not a state of emergency has been declared.

(3) Agencies are authorised to undertake their responsibilities and functions under Displan in the event of an emergency. Government agencies may be required to do so by the Minister.

(4) Any question concerning the application or operation of Displan may be referred to and determined by the Minister.

(5) This section does not authorise or require any act or omission that is inconsistent with this or any other Act.

Subdivision 3 The State Emergency Management Committee

14 State Emergency Management Committee

(1) There is established by this Act a State Emergency Management Committee.

(2) The Committee is to consist of:

(a) the State Emergency Operations Controller, and

(b) representatives of such relevant government and non-government agencies as the Minister may from time to time determine.

(2A) One of the appointed members is, by the instrument of the member’s appointment as a member or by a subsequent instrument executed by the Minister, to be appointed as the Chairperson of the Committee.

(3) The representative of a government agency is to be nominated by the Minister responsible for the agency and the representative of a non-government agency is to be nominated by the State Disasters Council.

(4) The persons so nominated are to be persons who have authority to plan and commit their agencies’ resources in relation to the response and recovery stages of an emergency.

(5) Schedule 2 has effect with respect to the members and procedure of the State Emergency Management Committee.

15 Responsibility and functions of State Emergency Management Committee

(1) The State Emergency Management Committee is the principal committee established under this Act for the purposes of emergency management throughout the State and, in particular, is responsible for emergency planning at a State level.

(2) The State Emergency Management Committee has the following functions in relation to emergency management at a State level:

(a) to identify, evaluate and monitor hazards and threats to life and property,

(b) to establish and review appropriate emergency management structures at all levels,

(c) to identify emergency resources both within and outside the State and make plans for the allocation and co-ordination of the use of those resources,

(d) to establish and review systems for use in the control and co-ordination of emergency operations,

(e) to review and recommend emergency management legislation (including legislation and proposals for legislation of other agencies),

(f) to advise the Minister on the creation of combined local government emergency management arrangements,

(g) to establish communication networks within and between functional areas at all levels,

(h) to review plans at all levels and within each emergency services organisation and functional area,

(i) to produce specific hazard management guidelines,

(j) to arrange emergency management training for individuals, including individuals employed in emergency services organisations and functional areas,

(k) to produce and disseminate educational material on established emergency management policies and procedures,

(l) to arrange the conduct of training exercises to periodically test emergency management plans,

(m) to advise the Minister on the declaration of states of emergencies,

(n) to advise on the efficient use of local government resources in relation to Displan,

(o) to assist in the selection and training of district and local government personnel for appointment to relevant organisations under this Part,

(p) to act as the single point of contact for Commonwealth support to emergency operations in New South Wales in the absence of other arrangements,

(q) to produce standing orders and instructions and standing operating procedures under Displan,

(r) to assist the Minister, as required, in the preparation and review of Displan, and

(s) to arrange for graduated warnings of emergencies to the public.

16 Functional area sub-committees of State Emergency Management Committee

(1) The State Emergency Management Committee is required to establish such sub-committees as the Minister directs in connection with functional areas.

(2) A sub-committee established for a functional area is to co-ordinate the provision of functional area support for emergency operations.

17 Annual report by State Emergency Management Committee

(1) As soon as practicable after 30 June, but on or before 31 December, in each year, the State Emergency Management Committee is to prepare and forward to the Minister a report on its work and activities for the 12 months ending on 30 June in that year.

(2) The Minister is to lay any such report or cause it to be laid before both Houses of Parliament as soon as practicable after receiving the report.

Subdivision 4 The State Emergency Operations Controller

18 State Emergency Operations Controller

(1) The Governor may, on the recommendation of the Minister, appoint a State Emergency Operations Controller and a Deputy State Emergency Operations Controller.

(1A) The Minister is to consult with the Minister for Police before making a recommendation under subsection (1).

(1B) The person appointed as the State Emergency Operations Controller must be the Commissioner of Police or a member of the NSW Police Force Senior Executive Service and the person appointed as the Deputy State Emergency Operations Controller must be a member of the NSW Police Force Senior Executive Service.

(2) The persons so appointed must be persons who are, in the opinion of the Minister, experienced in emergency management.

(3) During the absence or a vacancy in the office of the State Emergency Operations Controller, the Deputy State Emergency Operations Controller has all the functions of the State Emergency Operations Controller.

(4) Schedule 1 has effect with respect to the State Emergency Operations Controller and the Deputy State Emergency Operations Controller.

19 Responsibility and functions of State Emergency Operations Controller

(1) The State Emergency Operations Controller is, subject to this section, responsible for controlling in accordance with this Act the response to an emergency:

(a) that affects more than one district, or

(b) for which the State Emergency Operations Controller assumes responsibility.

(1A) The State Emergency Operations Controller is not responsible for controlling the response to an emergency if there is a single combat agency primarily responsible under Displan for controlling the response to the emergency, unless the Controller assumes that responsibility in accordance with subsection (1B).

(1B) The State Emergency Operations Controller may assume responsibility for controlling the response to an emergency from the combat agency primarily so responsible under Displan if:

(a) the Controller is satisfied that it is necessary to do so in the particular circumstances of the case, and

(b) the combat agency has requested or 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.

(2) The State Emergency Operations Controller may, if responsible for controlling the response to an emergency:

(a) issue directions to agencies who have functions in connection with responses to the emergency, and

(b) appoint an officer of an agency to have overall control of particular activities in response to the emergency where a number of agencies are involved and those agencies do not agree on the matter.

(2A) The State Emergency Operations Controller may assist a combat agency that is primarily responsible for controlling the response to an emergency in carrying out that responsibility.

(3) The functions of the State Emergency Operations Controller may be exercised without the need for a declaration of a state of emergency, but during a state of emergency

the exercise of those functions is subject to Division 4.

20 State emergency operations centre

(1) The State Emergency Operations Controller is to establish and control a State emergency operations centre.

(2) The State emergency operations centre is to have:

(a) communication facilities for independent control and co-ordination of districts, and

(b) discrete communication facilities with heads of emergency services organisations and functional areas, and

(c) independent communications with the public broadcasting media network, and

(d) independent media information facilities.

(3) (Repealed)

Division 2 Emergency management at district level

21 Establishment of districts

(1) For the purposes of this Act, the State is divided into such districts as the Minister may determine by order published in the Gazette.

(2) Any such order may describe the boundaries of a district by reference to local government areas, maps or otherwise.

22 District Emergency Management Committees

(1) There is established by this Act a District Emergency Management Committee for each district.

(2) Each such Committee is to consist of:

(a) the District Emergency Operations Controller for the relevant district, who is to be the Chairperson of the Committee, and

(b) a senior representative of the council of each local government area within the relevant district, and

(c) a senior representative of each emergency services organisation operating in the relevant district, and

(d) a representative of the organisations providing services in each functional area in the relevant district as may be determined by the Minister from time to time.

(3) The representative of a council or an organisation is to be nominated by the council or

organisation. The representative of relevant organisations for a functional area under subsection (2) (d) is to be nominated in accordance with arrangements determined by the Minister.

(4) (Repealed)

(5) Schedule 2 has effect with respect to the members and procedure of a District Emergency Management Committee.

23 Functions of District Emergency Management Committees

(1) A District Emergency Management Committee is responsible for preparing plans in relation to the prevention of, preparation for, response to and recovery from emergencies in the district for which it is constituted.

(2) In the exercise of its functions, any such Committee is responsible to the State Emergency Management Committee.

24 District Emergency Operations Controller

(1) The Commissioner of Police is to appoint a District Emergency Operations Controller for each district who is to be a police officer holding the position of Region Commander.

(2) A District Emergency Operations Controller may appoint as his or her deputy a person who is:

(a) a police officer of or above the rank of Superintendent, and

(b) in the opinion of the District Emergency Operations Controller, experienced in emergency management.

(3) During the absence, or a vacancy in the office, of a District Emergency Operations Controller, the District Emergency Operations Controller’s deputy has all the functions of the District Emergency Operations Controller under this Act.

25 Functions of District Emergency Operations Controller

(1) The District Emergency Operations Controller for a district is, subject to this section, responsible for controlling in accordance with this Act the response to an emergency:

(a) that affects more than one local government area in the district, or

(b) for which the District Emergency Operations Controller assumes responsibility.

(1A) The District Emergency Operations Controller is not responsible for controlling the response to an emergency if there is a single combat agency primarily responsible under Displan for controlling the response to the emergency, unless the Controller assumes that responsibility in accordance with subsection (1B).

(1B) The District Emergency Operations Controller may assume responsibility for controlling the response to an emergency from the combat agency primarily so responsible under Displan if:

(a) the State Emergency Operations Controller is satisfied that it is necessary to do so in the particular circumstances of the case, and

(b) the combat agency has requested or agreed to the District Emergency Operations Controller assuming that responsibility or, in the case of any disagreement on the matter, the Minister has directed the District Emergency Operations Controller to do so.

(1C) The District Emergency Operations Controller is not responsible for controlling the response to an emergency for which the State Emergency Operations Controller has assumed responsibility.

(2) The District Emergency Operations Controller may, if responsible for controlling the response to an emergency, issue directions to agencies who have functions in connection with responses to the emergency.

(2A) The District Emergency Operations Controller may assist a combat agency that is primarily responsible for controlling the response to an emergency in carrying out that responsibility.

(3) The functions of the District Emergency Operations Controller may be exercised without the need for a declaration of a state of emergency, but during a state of emergency the exercise of those functions is subject to Division 4.

(4) The District Emergency Operations Controller is to establish and control a District emergency operations centre.

(5) The District Emergency Operations Controller is subject to the direction of the State Emergency Operations Controller.

26 NSW Police Force to provide executive support for District Emergency Management Committee and Operations Controller

(1) The NSW Police Force is to provide executive support facilities for each District Emergency Management Committee and District Emergency Operations Controller in the district concerned.

(2) The principal executive officer is to be known as the District Emergency Management Officer.

Division 3 Emergency management at local level

27 Combination of local government areas

If the councils of 2 or more local government areas agree (with the approval of the Minister) to combine their emergency management arrangements under this Part, a reference in this Part:

(a) to a local government area is a reference to the combined local government areas concerned, and

(b) to the council of that combined local government area is a reference to the principal council nominated in the agreement.

28 Local Emergency Management Committees

(1) There is established by this Act a Local Emergency Management Committee for each local government area.

(2) Each such Committee is to consist of:

(a) a senior representative of the council of the relevant local government area nominated by that council, who is to be the Chairperson of the Committee, and

(b) a senior representative of each emergency services organisation operating in the relevant local government area, and

(c) representatives of such organisations providing services in functional areas in the relevant local government area as the council of that area may from time to time determine, and

(d) the Local Emergency Operations Controller for the relevant local government area.

(3) The Chairperson of a Committee is to be a person who has the authority of the council to co-ordinate the use of the council’s resources in the prevention of, preparation for, response to and recovery from emergencies.

(4) (Repealed)

(5) The representative of an organisation is to be nominated by the organisation.

(6) (Repealed)

(7) Schedule 2 has effect with respect to the members and procedure of a Local Emergency Management Committee.

29 Functions of Local Emergency Management Committees

(1) A Local Emergency Management Committee is responsible for the preparation of plans in relation to the prevention of, preparation for, response to and recovery from

emergencies in the local government area for which it is constituted.

(2) In the exercise of its functions, any such Committee is responsible to the relevant District Emergency Management Committee.

30 Local Emergency Operations Controller

(1) The District Emergency Operations Controller is to appoint a Local Emergency Operations Controller for each local government area.

(2) The person appointed:

(a) must be a police officer stationed within the district (established under section 21) in which the local government area is located, or, if that is not reasonably practicable, within a district that is, in the opinion of the District Emergency Operations Controller, nearby, and

(b) must be a person who, in the opinion of the District Emergency Operations Controller, has experience in emergency management.

(3) (Repealed)

31 Functions of Local Emergency Operations Controller

(1) The Local Emergency Operations Controller for an area is, subject to this section, responsible for controlling in accordance with this Act the response to an emergency that affects only that area.

(1A) The Local Emergency Operations Controller is not responsible for controlling the response to an emergency if there is a single combat agency primarily responsible under Displan for controlling the response to the emergency, unless the Controller assumes that responsibility in accordance with subsection (1B).

(1B) The Local Emergency Operations Controller may assume responsibility for controlling the response to an emergency from the combat agency primarily so responsible under Displan if:

(a) the State Emergency Operations Controller is satisfied that it is necessary to do so in the particular circumstances of the case, and

(b) the combat agency has requested or agreed to the Local Emergency Operations Controller assuming that responsibility or, in the case of any disagreement on the matter, the Minister has directed the Local Emergency Operations Controller to do so.

(1C) The Local Emergency Operations Controller is not responsible for controlling the response to an emergency for which the State or District Emergency Operations Controller has assumed responsibility.

(2) The Local Emergency Operations Controller may, if responsible for controlling the response to an emergency, issue directions to agencies who have functions in connection with responses to the emergency.

(2A) The Local Emergency Operations Controller may assist a combat agency that is primarily responsible for controlling the response to an emergency in carrying out that responsibility.

(3) The functions of the Local Emergency Operations Controller may be exercised without the need for a declaration of a state of emergency, but during a state of emergency the exercise of those functions is subject to Division 4.

(4) The Local Emergency Operations Controller is to establish and control a local emergency operations centre.

(5) The Local Emergency Operations Controller is subject to the direction of the relevant District Emergency Operations Controller.

32 Councils to provide executive support for Local Emergency Management Committee and Operations Controller

(1) A council is to provide executive support facilities for the Local Emergency Management Committee and the Local Emergency Operations Controller in its area.

(2) The principal executive officer is to be known as the Local Emergency Management Officer.

Division 4 State of emergency

32A Definitions

In this Division:

emergency area means the area in which a state of emergency is declared to exist.

emergency services officer means any of the following:

(a) a police officer,

(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.

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

33 Declaration of state of emergency

(1) If the Premier is satisfied that an emergency constitutes a significant and widespread danger to life or property in New South Wales, the Premier may, by order in writing, declare that a state of emergency exists in the whole, or in any specified part or parts, of New South Wales in relation to that emergency.

(2) The Premier may, by order in writing, revoke a declaration of a state of emergency at any time.

34 Publication of declaration

As soon as practicable after making or revoking a declaration of a state of emergency, the Premier must:

(a) cause notice of the declaration or revocation to be broadcast by a television or radio station in the State, and

(b) cause a copy of the relevant order to be published in the Gazette.

35 Duration of state of emergency

(1) An order declaring a state of emergency has effect immediately on its being made.

(2) Unless it is sooner revoked, the declaration of a state of emergency remains in force for such period (not exceeding 30 days) as is specified in the declaration.

(3) The declaration of a state of emergency does not prevent the declaration of further states of emergencies in relation to the same or a different emergency.

36 Power to direct government agencies etc during state of emergency

(1) In a state of emergency, the Minister is responsible for controlling and co-ordinating the activities of such government agencies, and the allocation of such available resources of the Government, as the Minister considers necessary or desirable for responding to the emergency.

(2) For that purpose, the Minister may direct any government agency to do or refrain from doing any act, or to exercise or refrain from exercising any function.

(3) If a direction is given to a government agency under this section:

(a) the government agency must comply with the direction, and

(b) the direction prevails over anything to the contrary in any Act or law, except the *Essential Services Act 1988*.

37 Power to evacuate or to take other steps concerning persons

(1) The Minister may, if satisfied that it is necessary or convenient to do so for the

purpose of responding to an emergency, direct, or authorise an emergency services 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 services 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)

37A Powers to take other safety measures

(1) The Minister may, if satisfied that there are reasonable grounds for so doing for the purpose of protecting persons or animals from injury or death or protecting property in a state of emergency, direct, or authorise an emergency services officer to direct, the doing of any one or more of the following:

(a) the closure to traffic of any street, road, lane, thoroughfare or footpath or place open to or used by the public, in an emergency area or any part of an emergency area,

(b) the closure of any other public or private place in an emergency area or any part of an emergency area,

(c) the pulling down, destruction or shoring up of any wall or premises that have been damaged or rendered insecure in an emergency area or any part of an emergency area,

(d) 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,

(e) 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,

(f) 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) The cost of taking action under subsection (1) (c) is to be borne by the owner of the wall or premises and is to be paid to, and may be recovered in a court of competent jurisdiction by, the Minister for reimbursement of the costs of the emergency services organisation of pulling down, destroying or shoring up the wall or premises concerned.

(3) For the purposes of the exercise of a function under subsection (1) (d), the Minister or an emergency services officer 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 Minister or emergency services officer.

(4) A person must comply with a requirement, or directions, under subsection (3).

Maximum penalty: 50 penalty units.

(5) A person who supplies a substance referred to in subsection (1) (d) or (e) 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 Minister or emergency services officer.

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

37B Power to enter premises

A person may enter any premises for the purposes of complying with a direction under section 37A (1).

37C 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 Minister or the emergency services 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.

37D Care to be taken

In the exercise of a function under section 37A, a person authorised to enter premises

must do as little damage as possible.

37E Use of force

(1) Reasonable force may be used for the purpose of gaining entry to premises to comply with a direction under section 37A but only if the Minister:

(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 37A.

(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.

37F Authority to enter premises

(1) A power conferred 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 Minister or the emergency services officer who issued the direction under section 37A.

(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.

38 Power to take possession of property

(1) In a state of emergency, the Minister may, for the purposes of responding to the emergency, take possession and make use of any person's property.

(2) If the property of a person is taken or used under this section that person is to receive such compensation as may be determined by the Minister, but is not entitled to receive compensation.

(3) Any such person may apply to the Premier for a review of any determination as to compensation made by the Minister under this section.

39 Limitation on operation of this Division

The functions of the Minister under this Division are only exercisable in relation to:

(a) a part of the State in which a state of emergency exists, and

(b) an emergency in respect of which a state of emergency exists.

40 Offence to obstruct Minister or emergency personnel

A person must not obstruct or hinder the Minister, or any other person acting with the authority of the Minister, in the exercise of a function under this Division.

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

41 Exculpation from liability during state of emergency

A person may not bring proceedings against the Crown, a Minister or any body or person acting in the execution of this Division for any damage, loss, death or injury sustained because of anything done or omitted to be done in good faith under this Division during a state of emergency.

Part 3 State rescue management

Division 1 State Rescue Board

42 Constitution of Board

(1) There is constituted by this Act a corporation with the corporate name of the State Rescue Board of New South Wales.

(2) The Board:

(a) has the functions conferred or imposed on it by or under this or any other Act, and

(b) is, for the purposes of any Act, a statutory body representing the Crown.

43 Composition of Board

(1) The State Rescue Board is to consist of not less than 8 members, being:

(a) the State Emergency Operations Controller,

(b) the Director-General of the State Emergency Service,

(c) a member of the NSW Police Force Senior Executive Service nominated by the Commissioner of Police,

(d) the Commissioner of New South Wales Fire Brigades,

(e) the Commissioner of the NSW Rural Fire Service,

(f) the State Superintendent of the New South Wales Ambulance Service,

(g) the President of the Volunteer Rescue Association of New South Wales, and

(g1) the Chairperson of the Volunteer Marine Rescue Council of New South Wales,

(h) the heads of any other volunteer rescue agencies approved for the time being by the Minister.

(2) One of the members of the Board is to be appointed as the Chairperson of the Board by the Minister.

44 Provisions relating to members and procedure of Board

Schedule 3 has effect.

45 Board subject to Ministerial control

The State Rescue Board is, in the exercise of its functions, subject to the control and direction of the Minister.

46 (Repealed)

Division 2 Functions of State Rescue Board

47 Principal function of Board

The principal function of the State Rescue Board is to ensure the maintenance of efficient and effective rescue services throughout the State.

48 Particular duties of Board

(1) The State Rescue Board is required to:

(a) develop policies to promote the provision of comprehensive, balanced and co-ordinated rescue services throughout the State,

(b) make recommendations to the Minister on policy matters relating to the provision of rescue services within the State,

(c) review planning for single incident rescues within the State,

(d) (Repealed)

(e) review and disseminate to relevant agencies technical information relating to rescue operations,

(f) ensure proper liaison and co-ordination with Federal and other State organisations in connection with rescue services,

(g) provide advice and recommendations on the compatibility of rescue equipment, including communications equipment,

(h) make recommendations to the Minister on the accreditation of rescue units (both permanent and volunteer) for participation in rescue operations,

(i) make recommendations to the Minister on levels of Government support (including financial assistance under section 60) to volunteer organisations providing rescue services,

(j) assist in the conduct of training exercises in rescue operations involving the various agencies concerned,

(k) (Repealed)

(l) monitor the training standards of the permanent and volunteer services in rescue,

(m) review proposals for amendment of legislation relating to rescue and make recommendations to the Minister, and

(n) make reports or recommendations to the Minister on any matter referred to the Board by the Minister.

(2) (Repealed)

48A District and local rescue committees

(1) Rescue committees are to be established for each district and for each local government area.

(2) The rescue committee for a district is to be chaired by the District Emergency Operations Controller for the district and is to comprise senior representatives of emergency services organisations operating in the district nominated by those

organisations.

(3) The rescue committee for a local government area is to be chaired by the Local Emergency Operations Controller for the area and is to comprise senior representatives of emergency services organisations operating in the area nominated by those organisations.

(4) Rescue committees are to assist the State Rescue Board in the exercise of its functions within the district or local government area concerned. In particular, a rescue committee is to assist the State Rescue Board in determining whether the accreditation of a rescue unit to operate in the district or area should be recommended to the Minister.

(5) Rescue committees are subject to the control and direction of the State Rescue Board.

(6) The State Rescue Board may approve of a single rescue committee for 2 or more local government areas. In that case, a reference in this section:

(a) to a local government area is a reference to the combined local government areas concerned, and

(b) to the Local Emergency Operations Controller for the area is a reference to the principal Controller designated in the approval.

49 Board’s decisions to be implemented by rescue agencies

(1) The agency which manages or controls any accredited rescue unit is required to implement (in accordance with law) the decisions of the State Rescue Board under this Part in connection with rescue operations carried out by that rescue unit.

(2) Except as provided by subsection (1), nothing in this Part affects the exercise by such an agency of its functions or the exercise of the management functions of the chief executive of the agency.

49A Annual report by Board

(1) As soon as practicable after 30 June, but on or before 31 December, in each year, the State Rescue Board is to prepare and forward to the Minister a report on its work and activities for the 12 months ending on 30 June in that year.

(2) The Minister is to lay any such report or cause it to be laid before both Houses of Parliament as soon as practicable after receiving the report.

Division 3 Police control of rescue operations etc

50 Police at scene to co-ordinate etc rescue operation

(1) The senior police officer present at the scene of a rescue operation is responsible for

co-ordinating and determining the priorities of action of the agencies engaged in the rescue operation.

(2) This section applies whether the agency so engaged in the rescue operation is a permanent or volunteer agency.

(3) This section does not apply to a rescue operation if the control of the rescue operation is vested by law in some other person or agency, such as:

(a) a rescue operation in which the person or property is endangered by fire and at which a member of a Fire Brigade is in charge, or

(b) a rescue operation which results from an emergency and which is subject to the control of some other person or agency in accordance with Part 2.

(4) This section applies despite anything to the contrary in the *Fire Brigades Act 1909*, the *Ambulance Services Act 1990* or any other Act.

51 Notification of rescue incidents to police

(1) In this section:

relevant rescue agency means:

(a) the agency which manages or controls Fire Brigades,

(b) the agency which manages or controls the Ambulance Service.

(2) Immediately after a relevant rescue agency becomes aware of an incident which requires or is likely to require the rescue of any person, the agency must notify a member of the NSW Police Force of all relevant information concerning the incident.

(3) A relevant rescue agency is not required to notify a member of the NSW Police Force of any such incident if it is aware that the incident has already been notified to a member of the NSW Police Force.

Division 4 Accreditation of rescue units

52 Definitions

(1) In this Division:

rescue unit means a unit (comprising a group of persons) which carries out rescue operations for the protection of the public or a section of the public.

rescue vehicle means a vehicle that is designed, adapted or equipped for use in rescue work and:

(a) is clearly marked with the word “Rescue”, or

(b) is fitted with warning devices, such as flashing lights or a siren,

or both.

(2) An organisation, such as the Royal Society for the Prevention of Cruelty to Animals, New South Wales or the Wildlife Information and Rescue Service, that specialises in animal welfare or animal rescue operations or both does not constitute a rescue unit for the purposes of this Division.

53 Offence to operate rescue unit or rescue vehicle without accreditation

(1) A person who establishes, manages or controls a rescue unit which is not accredited under this Division is guilty of an offence.

Maximum penalty: 50 penalty units.

(1A) It is an offence for a person who is not a member of a rescue unit accredited under this Division to display, drive or operate a rescue vehicle.

Maximum penalty: 50 penalty units.

(1B) It is a defence to any proceeding under subsection (1A) if the person who contravened the subsection had a reasonable excuse or lawful authority for displaying, driving or operating the rescue vehicle.

(2) A rescue unit is required to be accredited even though:

(a) it is a unit of the NSW Police Force, the Fire Brigades, the Ambulance Service, the State Emergency Service or any other government agency, or

(b) it is a unit of a volunteer agency, or

(c) it carries out, in addition to operations for the rescue of persons, other operations such as the rescue of animals or the recovery of property.

(3) A rescue unit is not required to be accredited:

(a) if it is a unit only engaged in surf life-saving, or

(b) if it is a unit managed or controlled by a Port Corporation (within the meaning of the *Ports and Maritime Administration Act 1995*), the Maritime Authority of NSW or other agency and is principally concerned in the salvage of vessels, or

(c) if it is a unit (including a unit of the New South Wales Mines Rescue Brigade) which only carries out rescues at mines under the *Mines Rescue Act 1994*, or

(d) in any other circumstances prescribed by the regulations.

54 Accreditation of rescue units by Minister

(1) Application may be made to the Minister for the accreditation of a rescue unit.

(2) An application for accreditation is required to be lodged with the State Rescue Board.

(3) The State Rescue Board is to report to the Minister on the need for the rescue unit concerned, the standard of equipment and training and the effect of accreditation of the unit on the control and co-ordination of rescue services.

(4) The Minister may accept or refuse an application for accreditation.

(5) The Minister is to have regard to any recommendation made by the State Rescue Board on an application for accreditation, but is not bound by the recommendation.

55 Limitation on accreditation

(1) The accreditation of a rescue unit may be limited by the Minister to the carrying out of rescue operations in a particular area or of a particular kind, or otherwise.

(2) An accredited rescue unit which carries out rescue operations in contravention of any such limitation is to be taken to be not accredited for the purposes of this Division.

56 Duration of accreditation

(1) The Minister may accredit a rescue unit for a specified period or indefinitely.

(2) The Minister may at any time cancel the accreditation of a rescue unit.

57 Register of personnel of rescue units

(1) The agency which manages or controls an accredited rescue unit is required to maintain a register of the personnel who comprise the unit.

(2) That agency is to provide a copy of the register to the State Rescue Board as soon as practicable after the accreditation of the rescue unit and every 6 months thereafter.

Division 5 General provisions

58 Arrangements for inter-State co-operation in rescue

(1) The State Rescue Board may make arrangements with any agency which manages or controls inter-State rescue units:

(a) for those rescue units to carry out rescue operations in New South Wales, or

(b) for accredited rescue units under this Division to carry out rescue operations outside New South Wales.

(2) An inter-State rescue unit which carries out a rescue operation in New South Wales in

accordance with any such arrangement is not required to be accredited under Division 4, but is to be regarded as an accredited rescue unit for the purposes of this Division.

(3) In this section:

inter-State rescue unit means a rescue unit established and operating in another State or in a Territory of the Commonwealth.

59 Liability for actions of members of rescue units and volunteers

(1) Anything done or omitted to be done by an accredited rescue unit or by a person as a member of an accredited rescue unit or authorised volunteer does not, if done or omitted in good faith in connection with a rescue operation or otherwise in response to an emergency, subject the accredited rescue unit, the person or any other person to any action, liability, claim or demand.

(2) Anything done or omitted to be done by a casual volunteer does not, if done or omitted in good faith in connection with a rescue operation or otherwise in response to an emergency, subject the volunteer personally to any action, liability, claim or demand.

(3) In this section:

accredited rescue unit includes:

(a) a rescue unit (within the meaning of Division 4) engaged in surf life-saving, and

(b) any organisation or agency (other than a government agency) that manages or controls an accredited rescue unit.

authorised volunteer means a person who assists an accredited rescue unit in carrying out a rescue operation with the consent of the person in charge of the rescue operation.

casual volunteer means a person who assists, on his or her own initiative, in a rescue operation or otherwise in response to an emergency in circumstances in which the assistance was reasonably given.

60 Financial assistance to volunteer rescue agencies

(1) The Minister may, out of money to be provided by Parliament, provide financial assistance to volunteer rescue agencies approved by the Minister.

(2) The Minister may approve an agency for the purposes of this section if:

(a) it is a non-profit agency whose members carry out rescue operations on a voluntary basis, and

(b) it manages or controls accredited rescue units, and

(c) it meets any other requirements of the Minister.

(3) The form of financial assistance and the maximum amount of financial assistance is to be determined by the Minister.

Part 3A Employment protection for volunteer emergency workers

60A Definitions

(1) In this Part:

emergency operations are operations engaged in by an emergency services organisation in response to an emergency.

employee and ***employer*** are defined in subsection (2).

(2) A person is considered to be the employer of another person (and that other person is considered to be the employee) for the purposes of this Part if:

(a) the person is the employer of the other person for the purposes of the *Industrial Relations Act 1996*, including by reason of Schedule 1 (Persons deemed to be employees) to that Act, or

(b) the person is the bailor under a contract of bailment within the meaning of Chapter 6 of the *Industrial Relations Act 1996* and the other person is the bailee engaged under that contract, or

(c) the person is the holder of a licence under the *Passenger Transport Act 1990* and the other person (being engaged in transporting passengers in a private hire vehicle pursuant to that licence) is a person to whom Chapter 6 of the *Industrial Relations Act 1996* applies, or

(d) the person is a principal contractor under a contract of carriage within the meaning of Chapter 6 of the *Industrial Relations Act 1996* and the other person is a contract carrier engaged under that contract.

60B Employees taking part in emergency operations protected from victimisation

An employer must not victimise an employee of the employer for being absent if the absence was due to the employee taking part in emergency operations as a member of an emergency services organisation and the absence occurred while this Part applied to the operations (pursuant to an order of the Premier under this Part).

Maximum penalty: 30 penalty units.

60C What constitutes victimisation of employees

An employer victimises an employee if the employer:

(a) dismisses the employee from employment with the employer or terminates the engagement of the employee by the employer, or

(b) alters the employee's position in his or her employment with the employer, or alters the circumstances of the employee's engagement by the employer, to the employee's prejudice, or

(c) otherwise injures the employee in his or her employment with, or engagement by, the employer.

60D Order of the Premier applying Part to emergency operations

(1) The Premier may, by order published in the Gazette, direct that emergency operations carried out in connection with an emergency specified in the order are operations to which this Part applies.

(2) In determining whether an order under this section is needed, the Premier is to have regard to the possible duration of the emergency.

(3) The Premier's order may apply to all emergency operations carried out in connection with the emergency or may be limited in its operation by reference to any one or more of the following:

(a) particular operations or a class of operations,

(b) a particular emergency services organisation or organisations taking part in those operations,

(c) a particular area in which those operations are being carried out.

(4) The Premier's order remains in force for the period specified in the order unless revoked earlier. If no period is specified, the order remains in force until revoked. Revocation is to be by a further order of the Premier published in the Gazette.

(5) An order may be made under this section whether or not a state of emergency has been declared under section 33.

60E Onus of proof on employer in certain circumstances

In proceedings for an offence under this Part, if all the facts necessary to prove the offence (other than the reason for the defendant's action) are proved, the defendant has the onus of proving that the defendant was not motivated by the reason alleged.

60F Orders ancillary to conviction

(1) A court that convicts an employer of an offence under this Part may (with the concurrence of the victimised person concerned) make an order in terms of any one or more of the following:

(a) directing the employer to pay the victimised person a specified sum by way of reimbursement for any salary, wages or other remuneration lost by the person because of the victimisation,

(b) directing the employer to reinstate the victimised person to the employment of the employer in the position the person held immediately before any dismissal or any alteration to his or her employment or in a similar position,

(c) declaring void, in whole or in part, a contract pursuant to which the victimised person is engaged by the employer,

(d) varying, in whole or in part, any provision of a contract pursuant to which the victimised person is engaged by the employer,

(e) directing payment to the victimised person, within a specified time, by the employer, of an amount that does not exceed the amount that the person would otherwise have received under the contract pursuant to which the victimised person was engaged by the employer,

(f) directing payment to the victimised person, within a specified time, by the employer, of other damages in such sum as appears to the court appropriate to compensate the victimised person for other loss suffered by the person,

(g) directing the employer to take such other measures as the court considers necessary in order to place the victimised person in the position in which the person would have been but for the victimisation.

(2) An order in the terms of subsection (1) (a), (e) or (f) operates as an order against the employer for the payment of money under the *Civil Procedure Act 2005* and is enforceable as such an order under that Act.

(3) An employer must give effect to an order in terms of subsection (1) (b) or (g).

Maximum penalty: 30 penalty units.

(4) The amount of salary, wages or other remuneration that would have been payable to a person in respect of any period during which his or her employer fails to give effect to an order in terms of subsection (1) (b) is recoverable, as a debt due to the person by the employer, in any court of competent jurisdiction.

60G What constitutes “taking part in” emergency operations

(1) A person is considered to be taking part in emergency operations only when the person is effectively devoting his or her time to those operations by making himself or herself available for those operations (even if not actively engaged in those operations at the time) in accordance with arrangements made with an emergency services organisation.

(2) For example, travel to or from the place where emergency operations are being carried out, being on standby at or near that place and rest during those operations (in accordance with arrangements made with an emergency services organisation) constitute taking part in those operations.

60H Certificate evidence that employee took part in emergency operations

(1) The chief executive officer of an emergency services organisation may issue a certificate to the effect that a particular person was a member of the organisation during a particular emergency and took part in particular emergency operations carried out by the organisation in respect of that emergency in accordance with arrangements made with that organisation.

(2) Such a certificate is in any proceedings evidence of the matters certified.

(3) The chief executive officer of an emergency services organisation may delegate his or her functions under this section (except this power of delegation) to any officer of the organisation.

60I Part does not affect other remedies available to employee

This Part does not affect any right or remedy that an employee or former employee may have under any other Act.

60J No contracting out

This Part applies regardless of the terms of any agreement whether entered into before or after the commencement of this Part.

60K Industrial dispute does not prevent operation of Part

Section 7 (Limitation on operation of Act—industrial disputes and civil disturbances) does not limit or otherwise affect the operation of this Part merely because the victimisation of an employee involves or gives rise to an industrial dispute.

Part 4 Miscellaneous

60KA Definitions

In this Part:

danger area means the area specified by a senior police officer as the area in which an emergency is causing or threatening to cause injury or death.

emergency or rescue management organisation means any of the following:

(a) the State Disasters Council,

(b) the State Emergency Management Committee,

(c) a District Emergency Management Committee,

(d) a Local Emergency Management Committee,

(e) the State Rescue Board,

(f) a committee or sub-committee of a body referred to in paragraphs (a)–(e).

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

senior police officer means a police officer of or above the rank of sergeant or a police officer of a class prescribed as being within this definition by the regulations.

60L Power of police to evacuate or to take other steps concerning persons

(1) A senior police officer may, if satisfied that there are reasonable grounds for doing so for the purpose of protecting persons from injury or death threatened by an actual or imminent emergency, direct, or authorise another police officer to direct, a person to do any or all of the following:

(a) to leave any particular premises and to move outside the danger 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 danger area,

(c) not to enter the danger area.

(1A) A senior police officer may, if satisfied that there are reasonable grounds for doing so for the purpose of protecting persons from chemical, biological or radiological contamination, direct or authorise another police officer to direct, a person who may have been subjected to such contamination to do any or all of the following:

(a) to remain in a particular area,

(b) to remain quarantined from other persons,

(c) to submit to decontamination procedures.

(2) If a person does not comply with a direction given under this section, a police 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) Neither this section nor section 6 of the *Police Service Act 1990* imposes a duty on a police officer to use force to ensure compliance with a direction under this section.

(5) (Repealed)

61 Power of police to take other safety measures

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

(a) the closure to traffic of any street, road, lane, thoroughfare or footpath or place open to or used by the public, in a danger area or any part of a danger area,

(a1) the removal of vehicles in a danger area or any part of a danger area,

(b) the closure of any other public or private place in a danger area or any part of a danger area,

(c) the pulling down, destruction or shoring up of any wall or premises that have been damaged or rendered insecure in a danger area or any part of a danger area,

(d) 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 a danger area or any part of a danger area,

(e) the shutting off or disconnecting of the supply of gas or electricity to any premises in a danger area or any part of a danger area,

(f) the taking possession of, and removal or destruction of any material or thing in a danger area or any part of a danger area that may be dangerous to life or property or that may interfere with the response of emergency services to the emergency,

(g) the protection or isolation of any material or thing in a danger area by preventing a person from removing or otherwise interfering with the material or thing.

(2) The cost of taking action under subsection (1) (c) is to be borne by the owner of the wall or premises and is to be paid to, and may be recovered in a court of competent jurisdiction by, the Commissioner of Police.

(3) For the purposes of the exercise of a function under subsection (1) (d), a senior police officer 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 officer.

(4) A person must comply with a requirement, or directions, under subsection (3).

Maximum penalty: 50 penalty units.

(5) A person who supplies a substance referred to in subsection (1) (d) or (e) 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 senior

police officer.

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

61A Power to enter premises

A police officer may enter any premises for the purposes of complying with a direction under section 61 (1).

61B Notice of entry

(1) A police officer 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 senior police officer giving the direction has authorised in writing (either generally or in a particular case) entry without notice.

(2) In any other case, the police officer must give the owner or occupier of the premises reasonable written notice of the intention to enter the premises.

61C Care to be taken

In the exercise of a function under section 61, a police officer authorised to enter premises must do as little damage as possible.

61D Use of force

(1) Reasonable force may be used for the purpose of gaining entry to premises to comply with a direction under section 61 but only if the senior police officer:

(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 police officer authorised to enter premises uses force to do so, the police officer must, as soon as practicable, inform the senior police officer who directed him or her to exercise the function under section 61.

(3) The senior police officer so informed must give notice of the use of force to the Commissioner of Police.

(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 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 for Police under this section.

61E Police officer to produce warrant card if required

A power to enter premises, or to take action on premises, may not be exercised unless the police officer proposing to exercise the power produces his or her warrant card if required to do so by the owner or occupier of the premises.

62 Personal liability of members of management organisations etc

A matter or thing done by:

(a) an emergency or rescue management organisation, or

(b) a member of any such organisation or of the staff of any such organisation (in the person’s capacity as such a member), or

(c) the State Emergency Operations Controller or a District or Local Emergency Operations Controller (in the person’s capacity as such a controller),

does not, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject the member or controller personally to any action, liability, claim or demand.

62A Certain damage to be covered by insurance

(1) Any damage to property caused by the exercise in good faith of functions under section 37A (1) or 61 (1) by:

(a) the Minister or an emergency services officer authorised by the Minister during a state of emergency, or

(b) a senior police officer or another police officer authorised by a senior police officer at an actual or imminent emergency, or

(c) a person acting on and in accordance with a direction given by:

(i) the Minister or an emergency services officer authorised by the Minister under section 37A (1) during a state of emergency, or

(ii) a senior police officer or another police officer authorised by a senior police officer under section 61 (1) at an actual or imminent emergency,

is taken to be damage by the happening that constitutes the emergency (being fire, flood, storm, tempest, explosion 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 or animals 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.

62B Obstruction of members of rescue units

A person must not obstruct or hinder a member of an accredited rescue unit acting in connection with a rescue operation or otherwise in response to an emergency.

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

63 This Act not to limit other Acts or laws

Except as expressly provided by this Act, this Act does not limit the operation of any other Act or law.

63A Staff

(1) Such staff as may be necessary to enable:

(a) a relevant emergency or rescue management organisation to exercise its functions, and

(b) the operation of the State emergency operations centre,

is to be employed under Part 2 of the *Public Sector Management Act 1988*.

(2) In this section, ***relevant emergency or rescue management organisation*** means:

(a) the State Disasters Council, or

(b) the State Emergency Management Committee, or

(c) the State Rescue Board, or

(d) a subcommittee of any such organisation.

63B Offences relating to emergency services organisations

(1) A person who manufactures or sells emergency services organisation insignia is guilty of an offence.

Maximum penalty: 50 penalty units.

(2) A person who:

(a) uses or displays emergency services organisation insignia, or

(b) impersonates an emergency services organisation officer,

with the intention to deceive is guilty of an offence.

Maximum penalty: 50 penalty units.

(3) A person is not guilty of an offence under this section if:

(a) the person's conduct is authorised by the relevant emergency services organisation, or

(b) the person establishes that the conduct is for the purposes of a public entertainment, or

(c) the person establishes that the person has a reasonable excuse.

(4) In this section:

emergency services organisation insignia means:

(a) any items (being uniforms, insignia, emblems, logos, devices, accoutrements and other things) that are generally recognised as pertaining to an emergency services organisation (other than the NSW Police Force) or as being used by an emergency services organisation officer, or

(b) any parts of any such items, or

(c) any reasonable imitation of any such items or parts, or

(d) any thing or class of thing prescribed by the regulations as being within this definition (whether or not it may already be within this definition),

but does not include any thing or class of thing prescribed by the regulations as being outside this definition.

emergency services organisation officer includes an employee, member, volunteer or any other person who exercises functions on behalf of an emergency services organisation (other than the NSW Police Force).

sell means sell, exchange or let on hire, and includes:

(a) offer, expose, possess, send, forward or deliver for sale, exchange or hire, or

(b) cause, suffer or allow any of the above.

64 Service of documents

(1) A document may be served on an emergency or rescue management organisation by leaving it at, or by sending it by registered post to, the office of the organisation.

(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 an emergency or rescue management organisation in a manner not provided for by this section.

65 Proof of certain matters not required

In any legal proceedings, proof is not required (until evidence is given to the contrary) of:

(a) the constitution of an emergency or rescue management organisation, or

(b) any resolution of such an organisation, or

(c) the appointment of, or the holding of office by, any member of such an organisation, or

(d) the presence of a quorum at any meeting of such an organisation.

66 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.

67 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) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

68 Savings, transitional and other provisions

Schedule 4 has effect.

69 (Repealed)

Schedule 1 Provisions relating to State Emergency Operations

Controller

(Section 18 (4))

1 Definition

In this Schedule:

Controller means the State Emergency Operations Controller or the Deputy State Emergency Operations Controller.

2 Term of office

Subject to this Schedule, the Controller holds office for such period, not exceeding 5 years, as is specified in the instrument of appointment of the Controller, but is eligible (if otherwise qualified) for re-appointment.

3 Hours of duty

The Controller is to devote such time to the duties of his or her office as the Minister may from time to time require.

4 Remuneration

The Controller is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Governor may from time to time determine in respect of the Controller.

5 Casual vacancies

(1) The office of the Controller becomes vacant if the Controller:

(a) dies, or

(b) completes a term of office and is not re-appointed, or

(c) resigns the office by instrument in writing addressed to the Minister, or

(d) is retired or removed from office by the Governor under this clause or under Part 8 of the *Public Sector Management Act 1988*, or

(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

(f) becomes a temporary patient or a continued treatment patient within the meaning of the *Mental Health Act 1958*, a forensic patient within the meaning of the *Mental Health Act 1983* or a protected person within the meaning of the *Protected Estates Act 1983*, or

(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.

(2) The Governor may remove the Controller from office at any time.

6 Filling of vacancy in office of the Controller

If the office of the Controller becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

7 Part 2 of Public Sector Management Act 1988 not to apply

Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of the Controller.

Schedule 2 Provisions relating to members and procedure of emergency management organisations

(Sections 11 (5), 14 (5), 22 (5) and 28 (7))

1 Definitions

In this Schedule:

member means a member of a relevant organisation.

relevant organisation means:

(a) the State Disasters Council, or

(b) the State Emergency Management Committee, or

(c) a District Emergency Management Committee, or

(d) a Local Emergency Management Committee.

2 Deputies of members

(1) A member may, from time to time, appoint a person to be the member's deputy, and the member may revoke any such appointment.

(2) In the absence of a member, the member's deputy:

(a) may, if available, act in the place of the member, and

(b) while so acting, has all the functions of the member and is to be taken to be a member.

3 Terms of office

Subject to this Schedule, a member (other than an ex-officio member) holds office until a successor is appointed.

4 Vacancy in office

(1) The office of a member (other than an ex-officio member) becomes vacant if:

(a) the member dies, or

(b) a successor to the member is duly appointed, or

(c) the member resigns the office by instrument in writing addressed to the person who appointed the member, or

(d) the member is removed from office by the person who appointed the member.

(2) If the office of any such member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

5 Effect of certain other Acts

(1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a member.

(2) If by or under any Act provision is made:

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or

(b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member.

(3) The office of a member is not, for the purposes of any Act, an office or place of profit under the Crown.

6 General procedure

The procedure for the calling of meetings of a relevant organisation and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by that organisation.

7 Quorum

The quorum for a meeting of a relevant organisation is a majority of the members of the organisation for the time being.

8 Presiding member

(1) The Chairperson of a relevant organisation or, in the absence of the Chairperson, the Deputy Chairperson (if any) or, in the absence of both, another member elected to chair the meeting by the members present is to preside at a meeting of the organisation.

(2) The person presiding at any meeting of a relevant organisation has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

9 Voting

A decision supported by a majority of the votes cast at a meeting of a relevant organisation at which a quorum is present is the decision of the organisation.

10 Committees

(1) A relevant organisation may establish committees to assist it in connection with the exercise of any of its functions.

(2) It does not matter that any or all of the members of a committee are not members of the relevant organisation.

(3) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings is to be as determined by the relevant organisation or (subject to any determination of that organisation) by the committee.

Schedule 3 Provisions relating to members and procedure of State Rescue Board

(Section 44)

1 Definitions

In this Schedule:

Board means the State Rescue Board.

member means a member of the Board.

2 Allowances

A member referred to in section 43 (1) (g) or (h) is entitled to be paid such allowances as the Minister may from time to time determine in respect of the member.

3 General procedure

The procedure for the calling of meetings of the Board and for the conduct of business at those meetings shall, subject to this Act and the regulations, be as determined by the Board.

4 Quorum

The quorum for a meeting of the Board is 5 members.

5 Presiding member

(1) The Chairperson of the Board or, in the absence of the Chairperson, the Deputy Chairperson (or, in the absence of both, another member elected to chair the meeting by the members present) is to preside at a meeting of the Board.

(2) The person presiding at any meeting of the Board has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

6 Voting

A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

7 Transaction of business outside meetings or by telephone etc

(1) The Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Board for the time being, and a resolution in writing approved in writing by a majority of those members is to be taken to be a decision of the Board.

(2) The Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.

(3) For the purposes of:

(a) the approval of a resolution under subclause (1), or

(b) a meeting held in accordance with subclause (2),

the Chairperson and each member have the same voting rights they have at an ordinary meeting of the Board.

(4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Board.

(5) Papers may be circulated among members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

8 Committees of Board

(1) The Board may establish committees to assist it in connection with the exercise of any of its functions.

(2) It does not matter that any or all of the members of a committee are not members of the Board.

(3) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings is to be as determined by the Board or (subject to any determination of the Board) by the committee.

9 First meeting

The Minister may call the first meeting of the Board in such manner as the Minister thinks fit.

Schedule 4 Savings, transitional and other provisions

(Section 68)

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

State Emergency and Rescue Management (Amendment) Act 1994

State Emergency Legislation Amendment Act 1995

State Emergency and Rescue Management Amendment Act 2000

State Emergency and Rescue Management Amendment (Botany Emergency Works) Act 2008

(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 such 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 Accreditation of rescue units—existing units

(1) A person who manages or controls a rescue unit established before the commencement of section 53 (Offence to operate rescue unit without accreditation) is not guilty of an offence under that section during the transition period.

(2) For the purposes of this clause, the transition period is the period between the commencement of section 53 and the expiry of 3 months after that commencement.

Part 3 Provisions consequent on the State Emergency and Rescue Management (Amendment) Act 1994

3 Part 3A applies to existing employment

Part 3A of this Act applies in respect of any employment or engagement even if it commenced before the commencement of that Part.

Part 4 Provisions consequent on State Emergency Legislation Amendment Act 1995

4 State Emergency Operations Controller to cease to be Chairperson of State Emergency Management Committee and State Rescue Board

On and from the commencement of this Part, the State Emergency Operations Controller:

(a) ceases to hold office as the Chairperson of the State Emergency Management Committee and of the State Rescue Board, and

(b) is not entitled to any remuneration or compensation because of the loss of those offices.

5 Director-General of SES to cease to be Deputy State Emergency Operations Controller and Deputy Chairperson of State Rescue Board

On and from the commencement of this Part, the Director-General of the State Emergency Service:

(a) ceases to hold office as Deputy State Emergency Operations Controller and Deputy Chairperson of the State Rescue Board, and

(b) is not entitled to any remuneration or compensation because of the loss of those offices.

6 Continuation of appointment of State Emergency Operations Controller

The person who, on the commencement of the amendment made to section 18 (1) by the *State Emergency Legislation Amendment Act 1995*, is the State Emergency Operations

Controller is taken to be appointed under that subsection as so amended.

7 References to State Rescue and Emergency Services Board

On and from the commencement of this Part, a reference in any Act (other than this Act) or statutory instrument, or any other instrument, or in any other document, to the State Rescue and Emergency Services Board is to be read as a reference to the State Rescue Board.

Part 5 Provisions consequent on State Emergency and Rescue Management Amendment Act 2000

8 Definition

In this Part:

amending Act means the *State Emergency and Rescue Management Amendment Act 2000*.

9 Existing District and Local Rescue Sub-committees

(1) District Rescue Sub-committees established under section 22 (4) are, on the repeal of section 22 (4) by the amending Act, taken to be district rescue committees established under section 48A.

(2) Local rescue sub-committees established under section 28 (6) are, on the repeal of section 28 (6) by the amending Act, taken to be local rescue committees established under section 48A.

Part 6 Special provisions relating to emergency works at Botany site

10 Definitions

In this Part:

BBB Constructions means BBB Constructions Pty Ltd ACN 119 554 700.

Botany site means the area bounded by and including Botany Road, McEvoy Street, Retreat Street and Wyndham Street, Alexandria.

Director-General means the Director-General of the Department of Commerce.

emergency works means the carrying out of the following works on the Botany site:

(a) the shoring up (including re-anchoring) of retaining or other walls that support premises or roads in the Botany site,

(b) if the Director-General considers it necessary to do so, grouting behind the walls to reseal them against the ingress of water,

(c) other stabilisation work on the site (including the construction and progressive removal of an earth berm and any stabilisation work required as a result of the collapse of any such wall),

and includes any preparatory examination, survey, excavation or other thing done for the purposes of carrying out those works.

senior police officer means a police officer of or above the rank of sergeant.

the contractors means the persons engaged by the Director-General to carry out the emergency works.

11 Carrying out of the emergency works

(1) The emergency works are authorised and required to be carried out by the Director-General.

(2) The Director-General may engage persons to carry out the emergency works.

(3) The contractors may include a person who is the owner or occupier of land in the Botany site or who has been engaged by any such owner or occupier to do work on the site.

12 Access to site to carry out works etc

(1) The Director-General, the contractors, police officers and any other persons authorised by the Director-General or a senior police officer may enter the Botany site for the purposes of carrying out (or supervising or assisting in the carrying out) of the emergency works.

(2) Notice of intention to enter the Botany site is not required to be given to anyone.

(3) Sections 61C–61E of this Act apply to any such entry in the same way as they apply to entry under section 61 of this Act.

(4) Section 62A of this Act extends to the exercise in good faith of functions under this Part by the Director-General, the contractors and others, and so applies as if the happening that constitutes the emergency were the happening that caused the damage that requires the carrying out of the emergency works.

13 Access to plans, drawings or other documents relating to Botany site

(1) The Director-General may request BBB Constructions, or a person who has been engaged by BBB Constructions to carry out work on the Botany site, to provide the Director-General with such plans, drawings or other documents relating to the site and the work carried out (or to be carried out) on the site:

(a) that are in the possession of BBB Constructions or the person, and

(b) that the Director-General requires for the purposes of carrying out the emergency works.

(2) A person requested to provide any such document must comply with the request within such time as the Director-General specifies in the request.

Maximum penalty: 50 penalty units.