

# State Emergency Service Act 1989 No 164

[1989-164]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

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

### Notes—

- **Does not include amendments by**  
[Statute Law \(Miscellaneous Provisions\) Act 2009 No 56](#) (not commenced — to commence on 17.7.2009)
- **See also**  
[State Emergency Service Amendment Bill 2009](#)

### Authorisation

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# State Emergency Service Act 1989 No 164



New South Wales

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# State Emergency Service Act 1989 No 164



New South Wales

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

## Part 1 Preliminary

### 1 Name of Act

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

### 2 Commencement

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

### 3 Definitions

(1) In this Act:

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

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

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

**exercise** a function includes perform a duty.

**function** includes a power, authority or duty.

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

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

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

region.

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

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

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

(2) Words and expressions in this Act have the same meanings as in the *State Emergency and Rescue Management Act 1989*, except in so far as the context or subject-matter otherwise indicates or requires.

(3) (Repealed)

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

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

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

#### **5 (Repealed)**

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

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

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

### **7 State Emergency Service**

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

### **8 Functions of Service**

- (1) The State Emergency Service has the following functions:
  - (aa) to protect persons from dangers to their safety and health, and to protect property from destruction or damage, arising from floods and storms,
  - (a) to act as the combat agency for dealing with floods (including the establishment

of flood warning systems) and to co-ordinate the evacuation and welfare of affected communities,

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

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

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

- (1) A Director-General, Deputy Director-General and such other staff as may be necessary for the purposes of this Act are to be employed under Chapter 2 of the *Public Sector Employment and Management Act 2002*.
- (2) Subsection (1) does not apply to members of SES units.
- (3) The Director-General may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of a government department, an administrative office or a public or local authority.



- (4) For the purposes of this Act, a person whose services are made use of under this section is a member of the staff of the State Emergency Service.

## **10 Ministerial control**

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

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

- (1) The Director-General is responsible for managing and controlling the activities of the State Emergency Service.
- (2) The Director-General, in connection with the exercise of his or her functions under this Act, may use the title "State controller" and the Deputy Director-General may use the title "Deputy State controller".

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

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

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

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

## **14 Service regions**

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

## **Part 4 Emergency officers and SES units**

### **15 Emergency officers**

- (1) The Director-General is an emergency officer for the purposes of this Act.
- (2) The Director-General may appoint any person, or a person belonging to a class of persons, as an emergency officer for the purposes of this Act.

- (3) A person may be appointed as an emergency officer whether or not the person is a member of the State Emergency Service.
- (4) The Director-General may revoke an appointment under this section at any time.
- (5) The Director-General is to arrange for suitable training to be provided to emergency officers.

## **16 Region controllers**

- (1) The Director-General may appoint a member of staff of the State Emergency Service as the region controller for a region.
- (2) A region controller is, subject to any direction of the Director-General, responsible for the control and co-ordination of the activities of SES units in the relevant region.
- (3) The Director-General may appoint any person to act as a deputy to a region controller.
- (4) The functions of a region controller may be exercised by his or her deputy during any absence from duty of the region controller.

## **17 Local controllers**

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

## **17A Unit controllers**

- (1) The Director-General may appoint any person as the unit controller for an SES unit

and may revoke the appointment at any time and for any reason.

- (2) A unit controller is, subject to any direction of the Director-General, the relevant region controller or the relevant local controller, responsible for the control and co-ordination of the activities of the unit.
- (3) In the case of a local government area for which there is only one SES unit, the unit controller for that unit is taken to be the local controller unless a local controller is appointed under section 17 (1).

#### **17B Terms of appointment for local and unit controllers**

- (1) A local controller or unit controller is to be appointed for such term (not exceeding 2 years) as is specified in his or her instrument of appointment, but is, at the end of that term, eligible for re-appointment.
- (2) Each local controller and unit controller is subject to an annual review and report to be carried out by the Director-General.

#### **17C Local and unit controller deputies**

- (1) A region controller may, in consultation with a local controller in the relevant region, appoint any person to act as a deputy to the local controller.
- (2) A region controller may, in consultation with a unit controller in the relevant region, appoint any person to act as a deputy to the unit controller.
- (3) An appointment made under subsection (1) or (2) may be revoked at any time and for any reason by the region controller who made the appointment.
- (4) The functions of a local controller or unit controller may be exercised by his or her deputy during any absence from duty of the local controller or unit controller.

#### **17D Region headquarters unit**

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

## **18 SES units**

- (1) The Director-General may, by instrument in writing, register a group of persons as an SES unit and assign it a distinctive name.
- (1A) The Director-General may register a group of persons under subsection (1) on his or her own initiative or on the application of an association of persons formed for the purpose of dealing with emergencies to which this Act applies.
- (1B) On the registration of an SES unit under subsection (1A), the group of persons or the members of the association are members of the SES unit, subject to section 18AA.
- (2) An association of persons may be registered as an SES unit whether or not it is an incorporated body.
- (3) The Director-General may, by instrument in writing, revoke the registration of an association as an SES unit.
- (4) The Director-General may apply for the accreditation of an SES unit as a rescue unit under Part 3 of the *State Emergency and Rescue Management Act 1989*.
- (5) The trustees of any real or personal property of an SES unit may vest that property in the Crown, to be held by the Crown subject to this Act but free from any other trust.

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

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

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

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

### **18A Definitions**

In this Part:

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

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

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

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

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

This Part applies to:

- (a) an emergency referred to in section 8 (1) (a) or (b) relating to a flood or storm, or
- (b) an emergency referred to in section 8 (1) (d) which the State Emergency Operations

Controller has directed the Director-General to deal with.

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

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

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

- (1) Every member of the NSW Police Force and all other members of emergency services organisations are to recognise, in connection with operations in response to an emergency to which this Part applies, the authority of the Director-General and emergency officers acting under the Director-General's orders or the orders of the region controller or local controller.
- (2) It is the duty of every such member to assist the Director-General or other emergency officer in connection with those operations.

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

- (1) The Director-General may, if satisfied that it is necessary or convenient to do so for the purpose of responding to an emergency to which this Part applies, direct, or authorise an emergency officer to direct, a person to do any or all of the following:
  - (a) to leave any particular premises and to move out of an emergency area or any part of an emergency area,
  - (b) to take any children or adults present in any particular premises who are in the person's care and to move them outside the emergency area or any part of the emergency area,
  - (c) not to enter the emergency area or any part of the emergency area.
- (2) If the person does not comply with the direction, an emergency officer may do all such things as are reasonably necessary to ensure compliance with it, using such force as is reasonably necessary in the circumstances.
- (3) The regulations may limit the circumstances, and regulate the manner, in which the powers conferred by this section may be exercised.
- (4) (Repealed)

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

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

- (a) the shutting off or disconnecting of the supply of any water, gas, liquid, solid, grain, powder or other substance in or from any main, pipeline, container or storage facility in an emergency area or any part of an emergency area,
  - (b) the shutting off or disconnecting of the supply of gas or electricity to any premises in an emergency area or any part of an emergency area,
  - (c) the taking possession of, and removal or destruction of any material or thing in an emergency area or any part of an emergency area that may be dangerous to life or property or that may interfere with the response of emergency services to the emergency.
- (2) For the purposes of the exercise of a function under subsection (1) (a), the Director-General or a senior emergency officer authorised by the Director-General may require the person who controls or supplies the substance concerned to immediately send some competent person to the scene for the purpose of shutting it off or disconnecting it in accordance with the reasonable directions of the Director-General or senior emergency officer.
- (3) A person must comply with a requirement, or directions, under subsection (2).  
Maximum penalty: 50 penalty units.
- (4) A person who supplies a substance referred to in subsection (1) (a) or (b) is not liable for any damages because of any interruption of that supply under this section if the supply is shut off or disconnected in accordance with the directions of the Director-General or senior emergency officer.
- (5) The regulations may limit the circumstances, and regulate the manner, in which the powers conferred by this section may be exercised.

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

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

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

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

reasonable written notice of the intention to enter the premises.

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

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

#### **22E Use of force**

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

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

- (1) A power to enter premises, or to take action on premises, may not be exercised unless the person proposing to exercise the power is in possession of an authority and produces the authority if required to do so by the owner or occupier of the premises.
- (2) The authority must be a written authority that:
  - (a) states that it is issued under this Act, and
  - (b) gives the name of the person to whom it is issued, and
  - (c) describes the nature of the powers conferred and the source of the powers, and
  - (d) states the date (if any) on which it expires, and
  - (e) describes the kind of premises to which the power extends, and



(f) bears the signature of the Director-General or the senior emergency officer who issued the direction under section 22A.

(3) However, despite subsections (1) and (2), a police officer exercising a power to enter premises, or to take action on premises, must produce his or her warrant card if required to do so by the owner or occupier of the premises in lieu of an authority.

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

(1) The Director-General may make arrangements with any agency which manages or controls inter-State SES units:

(a) for those units to carry out operations in New South Wales in response to emergencies to which this Part applies, and

(b) for SES units under this Act to carry out similar operations outside New South Wales.

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

(2A) The Director-General may make arrangements with an appropriate agency of a State or Territory that does not operate or manage an inter-State SES unit for SES units under this Act to carry out operations in that State or Territory in response to emergencies to which this Part applies.

(3) In this section, ***inter-State SES unit*** means a unit established and operating in another State or in a Territory of the Commonwealth.

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

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

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

## **Part 5A State Emergency Service Fund**

### **Note—**

This Part requires local government councils and insurance companies to contribute, along with the State Government, to the costs of State Emergency Service expenditure. The total amount required to be contributed is based on estimated State Emergency Service expenditure.

## **Division 1 Preliminary**

### **24A Definitions**

In this Part:

**Fund** means the State Emergency Service Fund established under section 24B.

**insurance company** means any body corporate, partnership, association, underwriter or person that or who:

- (a) issues or undertakes liability under policies of insurance against loss of or damage to any property situated in New South Wales, or
- (b) receives premiums in respect of such policies of insurance on behalf of or for transmission to any body corporate, partnership, association, underwriter or person outside New South Wales.

**State Emergency Service expenditure**, in relation to a specified period, means the aggregate of:

- (a) recurrent expenditure incurred during the period in the exercise of the State Emergency Service's functions under this Act, and
- (b) capital expenditure incurred during the period in the exercise of the State Emergency Service's functions under this Act, and
- (c) recurrent expenditure incurred during the period in respect of the administrative costs of the Service or the Minister incurred under the authority of this Act.

## **Division 2 The Fund**

### **24B State Emergency Service Fund**

- (1) There is to be established in the Special Deposits Account in the Treasury a State Emergency Service Fund into which are to be paid all contributions and other money received under this Part.
- (2) There is payable from the Fund:
  - (a) money to assist in meeting the costs of State Emergency Service expenditure, and
  - (b) all money directed to be paid from the Fund by or under this or any other Act.

## **Division 3 Estimates of Fund expenditure and contributions**

### **24C Estimate to be prepared by Minister**

- (1) The Minister must, before or as soon as practicable after the end of a financial year, prepare and:
  - (a) subject to the concurrence of the Treasurer, adopt an estimate of the probable State Emergency Service expenditure, and
  - (b) adopt an estimate of the parts of such expenditure applicable to each area of council,

for the next financial year.

- (2) In determining the part of State Emergency Service capital expenditure applicable to a council, the Minister may apply such proportion of that expenditure to each council as the Minister thinks fit.
- (3) Before preparing the estimate, the Minister is to consider the report and recommendation of the Director-General in respect of the matters referred to in subsection (1).
- (4) The total amount required to be contributed under this Part for a financial year is the amount of the estimate of the probable State Emergency Service expenditure, subject to this Part.

#### **24D Councils to furnish information to Minister**

For the purpose of enabling the Minister to prepare the estimates referred to in section 24C a council must, at such times and in such manner as the Director-General may require, furnish to the Director-General such information relating to the Service, SES units or emergency officers, the equipment of the Service and such other matters relating to the organisation of the Service as the Director-General may require.

#### **24E Times for instalment payments**

The contributions payable under this Part (including advance payments) are to be paid on or before 1 July, 1 October, 1 January and 1 April in each financial year, or on or before such other days as the Director-General may direct and notify to the contributors concerned.

#### **24F Contributions due and payable within 60 days of assessment**

- (1) Contributions payable under this Part are due and payable on assessment by the Minister and any such contribution not paid within 60 days of the date of assessment shown on the assessment notice is, unless the Minister otherwise determines, to be increased by 10% of the amount of the contribution payable.
- (2) Contributions or any part of contributions not paid by any insurance company or council within 90 days of the date of assessment and all penalties incurred in respect of failure to pay any contribution constitute a debt due and payable to the Minister and are recoverable in any court of competent jurisdiction by the Minister.

#### **24G Deficits and excesses in contributions**

- (1) If, in any financial year, the amount received by the Minister from contributions under this Part falls short of the expenditure based on the estimate for that financial year, the deficit is to be added to the estimate of expenditure for the following year and the contributions are to be increased accordingly.

- (2) If the amount received by the Minister in any financial year from contributions under this Part exceeds the expenditure based on the estimate for that financial year, then the excess is to be treated as a credit in favour of the estimated income of the following year and the contributions reduced accordingly.
- (3) For the purposes of this section any deficit or excess in respect of any financial year is to be the deficit or excess as certified by the Auditor-General.

## **Division 4 Contributions by Treasurer**

### **24H Contributions by Treasurer**

- (1) Of the amount required to be contributed to the Fund, the Treasurer must contribute 14.6%.
- (2) The Treasurer may, in addition to the contribution to the Fund under subsection (1), from time to time advance such money to the Fund subject to such terms and conditions as the Treasurer may determine.
- (3) Any money payable by the Treasurer under this section is to be paid out of money provided by Parliament.

## **Division 5 Contributions by local government areas**

### **24I Contributions required from councils**

- (1) Of the amount required to be contributed to the Fund, 11.7% is to be contributed by the councils of each local government area or areas the whole or part of which is within a region.
- (2) Funds of a council derived from donations and other voluntary contributions made for the purposes of this Act may not be used towards payments by the council under subsection (1) unless the Minister so approves.

### **24J Determination of contributions of councils**

- (1) The contributions of councils are to be determined as follows:
  - (a) that part of the estimated expenditure applicable to any region that is to be contributed by councils is to be contributed by those councils the areas or any parts of which are within the region,
  - (b) the total amount of the contribution of any council is to be determined by the Minister.
- (2) The amount of the contribution payable by any council may be raised if necessary, and despite any statutory limit of such rates, by an increase of the ordinary rate by such a sum in the dollar as will be sufficient to provide the amount of the contribution,

and that increase is for all purposes to be taken to form part of the ordinary rate.

- (3) Every council and every officer of the council must, when so required by the Minister, furnish the Minister with all such documents, papers and information as the Minister may require to determine the contribution of the council.

#### **24K Advance contribution payment by councils**

- (1) If the amount required to be contributed by a local government area has not been finally determined by 1 July in any financial year, the council concerned must make an advance contribution payment to the Director-General pending the making of an estimate for that financial year for all councils.
- (2) The advance contribution is to be an amount determined by the Director-General.
- (3) When the estimates for all councils are determined, the required contribution for the financial year is to be adjusted by the Director-General having regard to the amount of the advance contribution payment.

### **Division 6 Contributions by insurance companies**

#### **24L Contributions required from insurance companies**

Of the total amount required to be contributed to the Fund for a financial year, 73.7% is to be contributed by insurance companies in accordance with this Division.

#### **24M Advance payment by insurance companies**

- (1) An insurance company must, in each financial year, make an advance payment to the Director-General pending an assessment under section 24F.
- (2) The advance payment is to be an amount equal to the percentage fixed by the Minister in respect of that year of the total amount of the premiums subject to contribution under subsection (4) received by or due to the company during the financial year that ended one year before the financial year for which the advance payment is due.
- (3) The percentage fixed by the Minister is to be the percentage that will provide the total amount to be contributed under this Part by all insurance companies in respect of all regions in the financial year for which the contribution is required.
- (4) The amount of the premiums under any class of policies of insurance specified in Schedule 2 that is to be subject to contribution under this section is as indicated in that Schedule in respect of that class of policies of insurance.
- (5) If the Minister is satisfied that at least two-thirds of the insurance companies liable to contribute under this section desire that Schedule 2 be amended in a certain manner, and the Director-General recommends the amendment, the Minister may by notice

published in the Gazette, amend that Schedule accordingly.

- (6) Any such amendment takes effect from 1 July, or such other date following publication of the notice as the Minister directs in the notice.

#### **24N Definition of “total amount of the premiums”**

For the purposes of this Division:

**total amount of the premiums** includes any brokerage or commission paid or due to be paid or allowed on:

- (a) any such premium, or
- (b) any bonuses or return premiums allowed in respect of any policy of insurance the subject of any such premium, or
- (c) such part of the premiums received by or due to the company as is paid or due to be paid by way of reinsurance by the company to any other insurance company in New South Wales,

but does not include stamp duty payable in respect of any policy of insurance the subject of any such premium.

#### **24O Adjustments**

- (1) If an insurance company submits a return under this Division in a financial year, the Director-General is to notify the company of the required contribution in relation to the company for that year assessed in accordance with the following formula:

$$\text{required contribution} = \frac{a \times b}{c}$$

where:

**a** is the total amount of premiums subject to contribution specified in the return made by the company,

**b** is the total amount to be contributed under this Division by all insurance companies in respect of the year to which the return relates,

**c** is the total amount of all premiums subject to contribution specified in returns under this Division made by all insurance companies in respect of that year.

- (2) If the required contribution assessed in relation to an insurance company for a financial year is greater than the advance payment required to be made under this Division by the company for that financial year, the company must, not later than 31 December in the financial year in which the assessment is made or such later day as may be approved by the Director-General, pay to the Director-General the amount of

the difference between the advance payment and the assessed amount.

- (3) If the required contribution is assessed for a financial year in which the company did not make an advance payment under this Division, the company must, not later than 31 December in the financial year in which the assessment is made or such later day as may be approved by the Director-General, pay the amount assessed to the Director-General.
- (4) If the required contribution assessed for a financial year is less than the amount of the advance payment required to be made under this Division by the company for that financial year, the Director-General is to credit the amount of the difference against:
  - (a) any instalments that remain to be paid in respect of the advance payment for the financial year in which the assessment is made, and
  - (b) any instalments that will be required to be paid in respect of the advance payment to be made during the following financial year,

in such manner as the Director-General may determine and, if any balance is outstanding at the end of the financial year referred to in paragraph (b), the Director-General is to pay the amount outstanding to the company not later than the next 30 June.

- (5) If an insurance company:
  - (a) is entitled to a credit referred to in subsection (4) in respect of an advance payment under this Division, and
  - (b) did not receive, and was not entitled to receive, in the financial year in which the advance payment was made, any premium in respect of which it would have been required by this Division to submit a return, and
  - (c) the liabilities of the company in relation to the contributions under this Part have been discharged,

the Director-General must, as soon as practicable, pay to the company the amount of the credit or, as the case may be, the balance outstanding.

#### **24P Liability of owner where foreign insurer involved**

- (1) This section applies to a person who is the owner of property in respect of which an insurance company has received a premium referred to in section 24N if the insurance company is not authorised under a law of the Commonwealth or of a State or Territory to carry on insurance business.
- (2) The Director-General may notify a person to whom this section applies that the person is to be responsible for the contributions required to be paid by the insurance company under this Part because of premiums received by the company in respect of

the person's property, and in such a case:

- (a) the person must pay to the Director-General any amounts that would otherwise be payable by the company under this Part in respect of those premiums, and
- (b) the provisions of this Division are to apply to the person as if the person were the insurance company that received those premiums, subject to any modification of those provisions required by the regulations.

- (3) An owner who fails to pay such an amount within 30 days after it falls due is guilty of an offence.

Maximum penalty: 10 penalty units.

- (4) The amount of such a payment may be deducted from any premium recoverable in the State by or on behalf of the company on the issue or renewal of any insurance policy on the property or may be recovered from the company as a debt by the person making the payment.
- (5) This section applies whether the premium concerned was received in or outside the State.

#### **24Q Returns by insurance companies**

- (1) An insurance company must during September in each financial year, or at such other time during the financial year as the Director-General may notify in the Gazette, submit to the Director-General:
  - (a) a return in the approved form showing the total amount of premiums received by or due to the company for the previous financial year in respect of the insurance against loss of or damage to any property in the State under the classes of policies specified in Schedule 2, and
  - (b) a certificate in the approved form from an auditor.
- (2) An insurance company that ceases to receive, and to be entitled to receive, any premiums in respect of which it would have been required by this section to submit a return must, within 30 days, notify the Director-General accordingly in writing.
- (3) If a notification under subsection (2) is received by the Director-General:
  - (a) before 31 March in a financial year—the company is not discharged from its liability to pay any unpaid instalments of its advance payment under section 24M for that year, or
  - (b) on or after 31 March in a financial year—the company is not discharged from its liability to pay any unpaid instalments of its advance payment for that year or its advance payment for the next financial year.



- (4) An insurance company is guilty of an offence if it:
- (a) fails to lodge a return or notify the Director-General as required by this section, or
  - (b) lodges a return under this section that is false or misleading in a material particular.

Maximum penalty (subsection (4)):

- (a) under paragraph (a)—1 penalty unit for each day the default continues, or
- (b) under paragraph (b)—20 penalty units.

#### **24R Returns by owners of property**

- (1) If an insurance company not authorised under a law of the Commonwealth or of a State or Territory to carry on insurance business holds a risk in respect of property within an area to which this Act applies, the owner of the property must during September in each year, or at such other time as the Director-General may direct and notify in the Gazette, furnish a return to the Director-General.
- (2) The return must show the amount of the premiums paid by the owner in respect of the property to the company during the previous financial year or such other period as the Director-General may direct.
- (3) A person who fails to lodge a return as required by this section is guilty of an offence.  
Maximum penalty: 20 penalty units.

#### **24S Audit of accounts of insurance companies**

- (1) At the request of the Minister, the Auditor-General may examine and audit, or cause to be examined and audited, the accounts (and any books and documents relating to the accounts) of any insurance company liable to pay contributions under this Part.
- (2) The examination and audit is to be in respect of matters relating to or arising out of the provisions of this Part.
- (3) The Auditor-General is to forward a report on the audit to the Minister as soon as practicable after it is completed.
- (4) It is an offence for a person:
  - (a) to obstruct the Auditor-General, or any person acting on behalf of the Auditor-General, when exercising functions under this section, or
  - (b) to fail, without lawful excuse when requested to do so for the purposes of this section by the Auditor-General or a person so acting, to produce any account, book or record in the person's possession or under the person's control, or

- (c) to fail to answer any question asked by the Auditor-General or a person so acting, for the purposes of this section.

Maximum penalty: 50 penalty units.

## **Division 7 Miscellaneous**

### **24T Application of the Fund**

- (1) Money to the credit of the Fund may be applied by the Treasurer in or towards State Emergency Service expenditure incurred under the authority of this Act.
- (2) The Treasurer may pay such money out of the Fund on the certificate of the Minister.

### **24U Management of unspent funds**

Any money remaining to the credit of the State Emergency Service at the end of a financial year, other than money that is required to be paid into the Fund, is to be paid into the Service's operating account.

### **24V Disposal by councils of equipment purchased from Fund**

- (1) A council must not sell or dispose of any equipment purchased or constructed wholly or partly from money to the credit of the Fund without the written consent of the Director-General.
- (2) There is to be paid to the credit of the Fund:
- (a) if the whole of the cost of the purchase or construction of any equipment was met by money to the credit of the Fund:
- (i) an amount equal to the proceeds of sale of any such equipment, and
- (ii) any amount recovered (whether under a policy of insurance or otherwise) in respect of the damage to, or destruction or loss of, any such equipment, and
- (b) if a part only of the cost of the purchase or construction of any equipment was met by money to the credit of the Fund—an amount that bears to the amount that would be required by this subsection to be paid if the whole of that cost had been met by money to the credit of the Fund the same proportion as that part of the cost bears to the whole of that cost.

## **Part 6 Miscellaneous**

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

- (1) A matter or thing done by:
- (a) a member of the State Emergency Service, including a member of an SES unit, or

(b) an emergency officer, or

(c) a casual volunteer,

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

(2) In this section:

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

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

(1) Any damage to property caused by the exercise in good faith of functions under section 22A (1) by:

(a) the Director-General or a senior emergency officer authorised by the Director-General during an emergency to which Part 5 applies, or

(b) a person acting on and in accordance with a direction given by the Director-General or a senior emergency officer authorised by the Director-General under section 22A (1) during an emergency to which Part 5 applies, is taken to be damage by the happening that constitutes the emergency (being flood, storm or other risk, contingency or event) for the purposes of any policy of insurance against the risk, contingency or event concerning an act or omission that covers the property.

(2) This section applies only in respect of damage to property caused in the exercise of a function to protect persons from injury or death or property from damage if those persons are, or the property is, endangered by the happening that constitutes the emergency or endangered by the escape or likely escape of hazardous material as the result of that happening.

(3) Any provision, stipulation, covenant or condition in any agreement that negatives, limits or modifies or purports to negative, limit or modify the operation of this section is void and of no effect.

(4) In this section, **hazardous material** means anything that, when produced, stored, moved, used or otherwise dealt with without adequate safeguards to prevent it from escaping, may cause injury or death or damage to property.

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

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

## **27 Service of documents**

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

## **28 Proceedings for offences**

Proceedings for an offence against this Act or the regulations are to be dealt with summarily before the Local Court.

## **28A Donations of financial or material support**

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

## **29 Regulations**

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

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

Schedule 1 has effect.

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

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

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

## Schedule 1 Savings, transitional and other provisions

(Section 30)

### Part 1 General

#### 1 Savings and transitional regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

*State Emergency Service Amendment Act 2005*

*State Revenue and Other Legislation Amendment (Budget Measures) Act 2008*,  
but only to the extent that it amends this Act

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

### Part 2 Provisions consequent on this Act

#### 2 Superseded references

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

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

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

The repeal of the *State Emergency Services and Civil Defence Act 1972* does not affect the appointment of the person holding office as the Director or as the Deputy Director of

the State Emergency Service at the time of that repeal or of other staff under the *Public Sector Management Act 1988*.

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

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

#### **5 Division of State**

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

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

#### **6 Definition**

In this Part:

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

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

A reference in any other Act, or in any instrument, to an S.E.S. unit is taken to be a reference to an SES unit.

#### **8 Continuation of regions and office of region controllers**

- (1) A division established under this Act (as in force immediately before the commencement of the amending Act) is taken to be a region established under section 14.
- (2) A reference in any other Act, or in any instrument, to a division (within the meaning of this Act as in force immediately before the commencement of the amending Act) is taken to be a reference to a region.
- (3) A reference in any other Act, or in any instrument, to a division controller (within the meaning of this Act as in force immediately before the commencement of the amending Act) is taken to be a reference to a region controller.
- (4) A person holding office as a division controller under this Act (as in force immediately before the commencement of the amending Act):
  - (a) is taken to be a region controller appointed under section 16, as substituted by the amending Act, and

(b) continues to hold office as a region controller.

(5) It does not matter that a person referred to in subclause (4) is not a member of staff of the State Emergency Service.

#### **9 Continuation of office of unit controllers**

A person holding office as a unit controller immediately before the repeal of the *State Emergency Service Regulation 2001* continues to hold office as a unit controller for the balance of his or her term of office or until the person's appointment is revoked in accordance with this Act, whichever occurs first.

#### **10 Continuation of office of deputy controllers**

A person holding office as a deputy to a division controller, local controller or unit controller immediately before the repeal of the *State Emergency Service Regulation 2001* continues to hold that office for the balance of his or her term of office or until the person's appointment is revoked in accordance with this Act, whichever occurs first.

### **Part 4 Provisions consequent on State Revenue and Other Legislation Amendment (Budget Measures) Act 2008**

#### **11 Insurance contributions**

- (1) In this clause, **amending Act** means the *State Revenue and Other Legislation Amendment (Budget Measures) Act 2008*.
- (2) For the purposes of calculating the advance payments under section 24M, as inserted by the amending Act, and the adjustments to be made under section 24O, as so inserted, in respect of an insurance company for the first financial year commencing on 1 July 2009:
  - (a) the Minister may have regard to the total amount of premiums received by or due to the company during the previous financial year, as disclosed under Part 5 of the *Rural Fires Act 1997*, and
  - (b) any return furnished by an insurance company or person under that Part during the previous financial year may be taken into account for the purposes of those sections as if it were a return furnished under Part 5A of this Act, as inserted by the amending Act.
- (3) This clause is subject to the regulations.

### **Schedule 2 Contributions of insurance companies**

(Section 24M (4))

**Column 1**

**Column 2**

<b>Classes of policies of insurance</b>	<b>Amount of premiums subject to contribution</b>
(1) Any insurance of property and including consequential loss but not including any insurance of a class specified in items (2)–(8)	80%
(2) Houseowners and householders, however designated (buildings or contents or both)	50%
(3) Personal combined on personal jewellery and clothing, personal effects and works of art	10%
(4) Motor vehicle and motor cycle	2.5%
(5) Marine and baggage—any insurance confined to maritime perils or confined to risks involving transportation on land or in the air, and including storage incidental to the transportation by sea, land or air, but not including other Static Risks which are to be declared under item (1)	1%
<b>Note—</b>	
Static Risks includes all movements of goods and/or stock and/or material associated with processing or storage operations at any situation.	
(6) (a) Combined fire and hail on growing crops	1%
(b) Livestock	1%
(7) Aviation hull	Nil
(8) Any insurance solely covering:	
(a) Loss by theft	Nil
(b) Plate glass	Nil
(c) Machinery—confined to mechanical breakdown and/or consequential loss arising from mechanical breakdown	Nil
(d) Explosion or collapse of boiler and pressure vessels—confined to damage other than by fire	Nil