

# State Emergency Service Act 1989 No 164

[1989-164]



New South Wales

## Status Information

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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 \(No 2\) 2012 No 95](#) (not commenced — to commence on 4.1.2013)

### 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:

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

**Consultative Council** means the SES Volunteer Joint Consultative Council.

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

**emergency officer** means the Commissioner 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) Notes included in this Act do not form part of this Act.

#### **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 Commissioner, Deputy Commissioner 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, storms and tsunamis,

- (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) to act as the combat agency for dealing with tsunamis and to co-ordinate the evacuation and welfare of affected communities,
  - (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, Fire and Rescue NSW, the NSW Rural Fire Service or the Ambulance Service of NSW 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 the State Emergency Management Plan or any state of emergency under that Act.

## **Part 3 The Commissioner and other staff of the Service**

### **9 Commissioner, Deputy Commissioner and other staff**

- (1) A Commissioner, Deputy Commissioner 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 Commissioner 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.

#### **9A Temporary assignment of staff to carry out work for Police and Emergency Services NSW**

- (1) A member of staff of the State Emergency Service may, with the concurrence of the Commissioner, be temporarily assigned by the Division Head of Police and Emergency Services NSW (***the Department***) to carry out work for the Department on a full-time or part-time basis.
- (2) The member's employment as a member of staff of the Service (including the continuity of that employment) is not affected by the temporary assignment of the member to carry out work for the Department.
- (3) Without limiting subsection (2), the member, while carrying out that work for the Department:
- (a) continues to hold his or her position in the State Emergency Service, and
  - (b) may continue to exercise the functions of that position, and
  - (c) is taken to be carrying out that work as a member of staff of the State Emergency Service.
- (4) This section does not limit the provisions of this or any other Act or law relating to the transfer to the Department (by statutory order, secondment or otherwise) of members of staff of the State Emergency Service.

#### **10 Ministerial control**

The Commissioner, Deputy Commissioner 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 Commissioner responsible for administration of Service**

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

## **12 Planning and preparation by Commissioner**

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

## **13 Delegation by Commissioner**

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

## **14 Service regions**

The Commissioner may divide the State into regions for the purposes of this Act.

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

### **15 Emergency officers**

- (1) The Commissioner is an emergency officer for the purposes of this Act.
- (2) The Commissioner 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 Commissioner may revoke an appointment under this section at any time.
- (5) The Commissioner is to arrange for suitable training to be provided to emergency officers.

### **16 Region controllers**

- (1) The Commissioner 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 Commissioner, responsible for the control and co-ordination of the activities of SES units in the relevant region.
- (3) The Commissioner 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 Commissioner 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 Commissioner 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 Commissioner 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 Commissioner 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 Commissioner within 30 days after the council is requested to do so by the Commissioner.
- (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 Commissioner.

### **17A Unit controllers**

- (1) The Commissioner 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 Commissioner, 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 Commissioner.

### **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 Commissioner 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 Commissioner may, by instrument in writing, register a group of persons as an SES unit and assign it a distinctive name.
  - (1A) The Commissioner 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 Commissioner may, by instrument in writing, revoke the registration of an association as an SES unit.

- (4) The Commissioner 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 Commissioner,
  - (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 Commissioner—apply to the Commissioner to reconsider that action, or
  - (b) if the membership was withdrawn by a region controller, local controller or unit controller—appeal to the Commissioner against that action.
- (5) On an application or an appeal being made by a person under subsection (4), the Commissioner 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 Fire and Rescue NSW 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 Regional Emergency Management Officer.

### 19 Emergencies to which Part applies

This Part applies to:

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

### 20 Commissioner to control emergencies

Subject to the [State Emergency and Rescue Management Act 1989](#), the Commissioner is to have overall control of operations in response to an emergency to which this Part applies.

### 21 Duty to recognise authority of Commissioner 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 Commissioner and emergency officers acting under the Commissioner's orders or the orders of the region controller or local controller.
- (2) It is the duty of every such member to assist the Commissioner or other emergency officer in connection with those operations.

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

- (1) The Commissioner 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 Commissioner 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 Commissioner or a senior emergency officer authorised by the Commissioner 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 Commissioner 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 Commissioner 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 Commissioner 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 Commissioner 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 Commissioner 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 Commissioner 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 Commissioner 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 Commissioner or emergency officer**

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

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

### **Part 5A Contribution to State Emergency Service costs**

#### **Division 1 Preliminary**

##### **24A Definitions**

In this Part:

**assessment notice** means:

- (a) an assessment notice given to a local council under section 24K, or
- (b) an assessment notice given to an insurance company under section 24Q.

**capital account** means the capital account established under section 24V (2) (b).

**contributors**—see section 24F.

**estimated expenditure**—see section 24B.

**financial year** means the period of 12 months starting on 1 July in a year.

**Fund** means the New South Wales State Emergency Service Fund established under section 24V (1).

**insurance company** means a person, partnership, association or underwriter that:

- (a) issues or undertakes liability under policies of insurance against loss of or damage to property situated in the State, or

- (b) receives premiums in respect of policies of insurance against loss of or damage to property situated in the State on behalf of or for transmission to a person, partnership, association or underwriter outside the State.

**recurrent expenditure account** means the recurrent expenditure account established under section 24V (2) (a).

**relevant insurance** means insurance against loss or damage to property in the State under the classes of policies specified in Schedule 2.

**SES contribution** means an amount payable under this Part for a financial year by a contributor.

**SES contribution instalments**—see section 24G.

**SES expenditure**, in relation to a financial year, means the total of:

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

## Division 2 Estimates of SES expenditure

### 24B Minister to prepare estimate of SES expenditure

- (1) Before or as soon as practicable after the end of a financial year, the Minister must:
  - (a) prepare and, subject to the Treasurer's agreement, adopt an estimate of the SES expenditure (the **estimated expenditure**) for the next financial year, and
  - (b) prepare and adopt an estimate of the amount of estimated expenditure applicable to the area of each local council for the next financial year.
- (2) In determining the amount of estimated expenditure applicable to each local council's area, the Minister may apportion the total estimated capital expenditure between relevant councils in the way the Minister thinks fit.
- (3) To assist the Minister in preparing and adopting the estimated expenditure for a financial year, the Commissioner must prepare and give to the Minister a written report and recommendations about SES expenditure for the year.
- (4) The Minister must consider the Commissioner's report and recommendations in preparing the estimates.

#### **24C Local councils to give information to Commissioner**

To enable the Minister to prepare the estimated expenditure, a local council must, at the times and in the way required by the Commissioner, give the Commissioner any of the following information required by the Commissioner:

- (a) information relating to the State Emergency Service, SES units or emergency officers,
- (b) information relating to the equipment of the State Emergency Service,
- (c) information about any other matter relating to the organisation of the State Emergency Service.

#### **24D Adjustment of estimates of recurrent expenditure**

- (1) If, for a financial year, the amount received from SES contributions is less than the estimate of recurrent expenditure included in the estimated expenditure for the financial year:
  - (a) the Minister may, with the Treasurer's agreement, decide that the whole or a part of the deficit is to be added to the estimated expenditure for the following financial year, and
  - (b) the SES contributions for the following financial year are to be increased accordingly.
- (2) If, for a financial year, the amount received from SES contributions is more than the estimate of recurrent expenditure included in the estimated expenditure for the financial year:
  - (a) the surplus is to be credited to the estimated expenditure for the following financial year, and
  - (b) the SES contributions for the following financial year are to be decreased accordingly.

### **Division 3 Imposition of SES contributions**

#### **24E Imposition of SES contributions to be paid**

- (1) SES contributions for each financial year are payable to the Commissioner.
- (2) The total amount of SES contributions to be paid for a financial year is the amount of the estimated expenditure for the financial year, adjusted as necessary under section 24D.
- (3) The Chief Executive, Emergency Management NSW or such other person as may be approved by the Minister is, on behalf of the Commissioner, authorised to collect SES contributions and bank the money that is collected before it is paid into the Fund.

#### **24F Who is liable to pay SES contributions**

- (1) The following persons (**contributors**) are liable to pay SES contributions:
  - (a) the Treasurer,
  - (b) local councils,
  - (c) insurance companies.
- (2) The total amount of SES contributions to be paid for a financial year is to be paid in the following proportions by contributors:
  - (a) the Treasurer, 14.6%,
  - (b) local councils, 11.7%,
  - (c) insurance companies, 73.7%.

#### **24G When SES contributions are to be paid**

- (1) The SES contribution payable by a contributor for a financial year must be paid in 4 instalments (each of which is a **SES contribution instalment**).
- (2) A contributor must, in accordance with an instalment notice given to the contributor by the Commissioner, pay a SES contribution instalment on or before each of the following days in a financial year:
  - (a) 1 August,
  - (b) 1 October,
  - (c) 1 January,
  - (d) 1 April.
- (3) If a local council or an insurance company fails to pay a SES contribution instalment within 30 days of it being payable, the local council or insurance company is guilty of an offence.

Maximum penalty: 50 penalty units.

#### **24H Unpaid SES contributions a debt due to the Commissioner**

A SES contribution instalment, or any part of a SES contribution instalment, not paid by a local council or an insurance company within 90 days after the day on which it was payable:

- (a) constitute a debt due and payable to the Commissioner, and
- (b) may be recovered in a court of competent jurisdiction by the Commissioner.

## **Division 4 Contributions by Treasurer**

### **24I Contributions by Treasurer**

- (1) The Treasurer may, in addition to the SES contribution payable by the Treasurer, from time to time advance money to the Fund subject to the terms and conditions decided by the Treasurer.
- (2) A SES contribution paid by the Treasurer, and any money advanced to the Fund by the Treasurer, is to be paid out of money provided by the Parliament.

## **Division 5 Contributions by local councils**

### **24J Contributions by local councils**

- (1) The amount of the SES contribution to be made by each local council is to be decided by the Minister.
- (2) Funds of a local council derived from donations and other voluntary contributions made for the purposes of this Act may not be used towards the payment of SES contributions by the local council unless approved by the Minister.
- (3) A local council or an officer of a council must, if asked by the Minister, give the Minister any document required by the Minister to decide the council's SES contribution.

### **24K Annual assessment notice**

- (1) The Commissioner must give to each local council that is required to make a SES contribution in a financial year an assessment notice for that year.
- (2) The assessment notice must state the following:
  - (a) the amount of the SES contribution payable by the local council for the financial year,
  - (b) the amount of any SES contribution instalments already paid by the local council for the financial year,
  - (c) if the amount of the SES contribution payable by the local council for the financial year is more than the total amount of the SES contribution instalments already paid by the local council for the financial year:
    - (i) the number of SES contribution instalments remaining to be paid for the financial year, and
    - (ii) the amount payable for each remaining SES contribution instalment,
  - (d) if the amount of the SES contribution payable by the local council for the financial

year is less than the total amount of the SES contribution instalments already paid by the local council for the financial year, the amount of money to be refunded to the local council.

- (3) If the assessment notice states that the amount of the SES contribution payable by the local council for the financial year is less than the SES contribution instalments already paid by the local council for that year, the Commissioner must refund the outstanding amount to the local council not later than 30 June in that year.

#### **24L Instalment notices**

- (1) The Commissioner must give to each local council that is required to make a SES contribution instalment a written notice (an **instalment notice**) that specifies:
- (a) the amount of the SES contribution instalment payable under the instalment notice, and
  - (b) the date by which the SES contribution instalment is payable.
- (2) If the instalment notice is prepared before the assessment notice for the local council for the financial year has been prepared, the SES contribution instalment payable under the instalment notice is to be determined by the Commissioner based on the SES contribution payable by the local council in the previous financial year.

#### **24M How contribution is to be funded**

The SES contribution payable by a local council is to be paid out of the council's consolidated fund.

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

#### **24N Definitions**

In this Division:

**foreign insurance company** means an insurance company not authorised under a law of the Commonwealth or of a State or Territory to carry on an insurance business.

**total amount**, in relation to premiums:

- (a) includes any brokerage or commission paid or due to be paid or allowed to be paid on:
- (i) the premiums, or
  - (ii) bonuses or return premiums allowed in respect of policies of insurance the subject of the premiums, or
  - (iii) 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 another insurance company in

the State, but

- (b) does not include duty payable under the *Duties Act 1997* in respect of policies of insurance the subject of the premiums.

#### **240 Returns by insurance companies**

- (1) An insurance company must, by 30 September in each financial year or another date specified by the Commissioner in a notice published in the Gazette, give to the Commissioner:
  - (a) a return in the form approved by the Commissioner showing the total amount of premiums received by or due to the company for the previous financial year for relevant insurance, and
  - (b) a certificate from an auditor that relates to the return and complies with subsection (2).
- (2) The certificate from the auditor must:
  - (a) be in the form approved by the Commissioner, and
  - (b) be from an auditor who is:
    - (i) a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth, or
    - (ii) a person not resident in the State who has qualifications that, in the Commissioner's opinion, are appropriate for the giving of the certificate.
- (3) An insurance company that ceases to receive, and to be entitled to receive, premiums for relevant insurance must, within 30 days of ceasing to receive and being entitled to receive the premiums, give the Commissioner written notice of that fact.
- (4) If the Commissioner receives a notice under subsection (3) from an insurance company:
  - (a) before 31 March in a financial year, the insurance company is not discharged from its liability to pay any SES contribution instalments for the financial year of which the company has already been given notice by the Commissioner, or
  - (b) on or after 31 March in a financial year, the insurance company is not discharged from its liability to pay any SES contribution instalments of which the company has already been given notice by the Commissioner.
- (5) An insurance company is guilty of an offence if it:
  - (a) fails to give the Commissioner a return or written notice as required by this section, or



(b) gives the Commissioner a return that is false or misleading in a material particular.

Maximum penalty: 20 penalty units.

#### **24P Assessments**

- (1) If an insurance company gives the Commissioner a return under section 24O for a financial year, the Commissioner must calculate the SES contribution payable by the insurance company for the year assessed in accordance with the following formula:

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

where:

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

**b** is the total amount of SES contributions payable by all insurance companies for the financial year to which the return relates.

**c** is the total amount of all premiums subject to contribution specified in returns under section 24O made by all insurance companies for the financial year.

- (2) For the purposes of subsection (1), the amount of premiums subject to contribution for an insurance company for a financial year is the amount of the proportion of premiums received by or due to the company for relevant insurance for the financial year indicated in Schedule 2.

#### **24Q Annual assessment notice**

- (1) The Commissioner must give to each insurance company that is required to make a SES contribution in a financial year an assessment notice for that year.
- (2) The assessment notice must state the following:
- (a) the amount of the SES contribution payable by the insurance company for the financial year,
  - (b) the amount of any SES contribution instalments already paid by the insurance company for the financial year,
  - (c) if the amount of the SES contribution payable by the insurance company for the financial year is more than the SES contribution instalments already paid by the company for the financial year:
    - (i) the number of SES contribution instalments remaining to be paid for the financial year, and

- (ii) the amount payable for each remaining SES contribution instalment,
  - (d) if the amount of the SES contribution payable by the insurance company for the financial year is less than the SES contribution instalments already paid by the company for the financial year, the amount of money to be refunded to the company.
- (3) If the assessment notice states that the amount of the SES contribution payable by the insurance company for the financial year is less than the SES contribution instalments already paid by the company for that year, the Commissioner must refund the outstanding amount to the company not later than 30 June in that year.

#### **24R Instalment notices**

- (1) The Commissioner must give to each insurance company that is required to make a SES contribution instalment a written notice (an **instalment notice**) that specifies:
- (a) the amount of the SES contribution instalment payable under the instalment notice, and
  - (b) the date by which the SES contribution instalment is payable.
- (2) If the instalment notice is prepared before the assessment notice for the insurance company for the financial year has been prepared, the SES contribution instalment payable under the instalment notice is to be determined by the Commissioner based on the SES contribution payable by the company in the previous financial year.

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

- (1) The Commissioner may notify a relevant owner that the owner is responsible for the SES contributions required to be paid by a foreign insurance company because of premiums received by the company in respect of the owner's property.
- (2) The relevant owner must pay to the Commissioner the SES contributions that would otherwise be payable by the foreign insurance company in respect of those premiums.
- (3) The provisions of this Division apply to the relevant owner as if the owner were the foreign insurance company that received those premiums, subject to any modification of those provisions required by the regulations.
- (4) If the relevant owner fails to pay the SES contribution within 30 days after it is due, the owner is guilty of an offence.

Maximum penalty: 10 penalty units.

- (5) The amount of a SES contribution paid under subsection (2) may be deducted from any premium recoverable in the State by or on behalf of the foreign insurance company on the issue or renewal of an insurance policy on the property or may be

recovered from the foreign insurance company as a debt by the person making the payment.

- (6) This section applies whether the premium concerned was received in or outside the State.
- (7) In this section:

**relevant owner** means a person who is the owner of property in respect of which a foreign insurance company has received a premium subject to a SES contribution.

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

- (1) If a foreign insurance company holds a risk in respect of property in the State, the owner of the property must, before the return date, give the Commissioner a written return that shows the amount of the premiums paid by the owner in respect of the property to the company during:
- (a) the previous financial year, or
  - (b) another period decided by the Commissioner.

Maximum penalty: 20 penalty units.

- (2) In this section:

**return date** means:

- (a) 30 September, or
- (b) another date decided by the Commissioner and published in a notice in the Gazette.

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

- (1) At the request of the Minister, the Auditor-General must 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 SES contributions.
- (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 to:
- (a) obstruct the Auditor-General, or any other person acting on behalf of the Auditor-General, when exercising functions under this section, or

- (b) 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 to answer any question.

Maximum penalty: 50 penalty units.

## **Division 7 Administration of Funds**

### **24V New South Wales State Emergency Service Fund**

- (1) There is to be established in the Special Deposits Account in the Treasury a New South Wales State Emergency Service Fund.
- (2) The Fund is to consist of the following accounts:
  - (a) the recurrent expenditure account,
  - (b) the capital account.
- (3) There is to be paid into the recurrent expenditure account all SES contributions and other money received under this Part, other than money that is required under subsection (4) to be paid into the capital account.
- (4) The following monies are to be paid into the capital account:
  - (a) all money appropriated by Parliament for the capital works and services of the State Emergency Service,
  - (b) any money appropriated by Parliament for the recurrent services of the State Emergency Service for the year as is necessary to cover depreciation of the State Emergency Service's assets,
  - (c) any money arising from the sale of any of the State Emergency Service's assets,
  - (d) any other money that is required to be paid into the capital account by or under this Act or any other Act.
- (5) Payments may be made from the recurrent expenditure account:
  - (a) to assist in meeting the costs of SES expenditure, and
  - (b) as otherwise directed or permitted by or under this Act or another Act.
- (6) Payments may be made from the capital account, with the Treasurer's agreement, as directed or permitted by or under this Act or another Act.

### **24W 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 capital account, is to be paid into the recurrent expenditure account.

#### **24X Disposal by local councils of equipment purchased from Fund**

- (1) A local 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 Commissioner.
- (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.

### **Division 8 Miscellaneous**

#### **24Y Amendment of Schedule 2**

- (1) If the Minister is satisfied that at least two-thirds of the insurance companies liable to pay SES contributions are seeking to have Schedule 2 amended in a particular way, and the Commissioner recommends the amendment, the Minister may by notice published on the NSW legislation website, amend the Schedule in that way.
- (2) An amendment under subsection (1) takes effect from:
  - (a) the following 1 July, or
  - (b) the date specified in the notice, being a date not earlier than the publication of the notice.

### **Part 5B SES Volunteer Joint Consultative Council**

#### **24Z Establishment of SES Volunteer Joint Consultative Council**

There is established by this Act an SES Volunteer Joint Consultative Council.

#### **24ZA Membership and procedure of Consultative Council**

- (1) The Consultative Council is to consist of 7 members as follows:

- (a) the Commissioner, who is to be the Chair of the Council,
  - (b) 3 persons, who are to be members of staff of the State Emergency Service, appointed by the Minister on the recommendation of the Commissioner,
  - (c) the President of the New South Wales State Emergency Service Volunteers Association Incorporated,
  - (d) 2 persons appointed by the Minister on the recommendation of the New South Wales State Emergency Service Volunteers Association Incorporated, one of whom is to be a volunteer officer who is a deputy to a region controller or is a local controller or unit controller.
- (2) Schedule 3 contains provisions relating to members and procedure of the Consultative Council.

#### **24ZB Functions of the Consultative Council**

- (1) The Consultative Council has the following functions:
- (a) to advise and report to the Commissioner on any matter relevant to volunteer members of SES units,
  - (b) such other functions as may be conferred or imposed on it by or under this or any other Act.
- (2) The Consultative Council may give advice and make reports whether or not the advice or reports were requested.

#### **24ZC Reporting requirement**

The following are to be included in the annual report of the State Emergency Service under the [Annual Reports \(Departments\) Act 1985](#) for each financial year:

- (a) the names of each member of the Consultative Council holding office during the financial year,
- (b) the period of the year during which the member held office,
- (c) a record of the attendance of those members at any meeting of the Consultative Council held during the financial year.

## **Part 6 Miscellaneous**

### **25 Personal liability of members of Service and Consultative Council 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, or
- (d) a member of the Consultative Council,

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 or the Consultative Council, 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 Commissioner or a senior emergency officer authorised by the Commissioner during an emergency to which Part 5 applies, or
  - (b) a person acting on and in accordance with a direction given by the Commissioner or a senior emergency officer authorised by the Commissioner 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, tsunami 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 Commissioner by leaving it at, or by sending it by post to, the office of the Commissioner.
- (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 Commissioner 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 Commissioner immediately on request by the Commissioner.

## **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

*Emergency Services Legislation Amendment (Finance) Act 2009*, but only to the extent it amends this Act.

*State Emergency Service Amendment Act 2009*

*State Emergency Service Amendment (Volunteer Consultative Council) Act 2010*

- (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.

## Part 5 Provisions consequent on enactment of State Emergency Service Amendment Act 2009

### 12 Definition

In this Part:

**amending Act** means the *State Emergency Service Amendment Act 2009*.

### Schedule 2 Contributions of insurance companies

| Column 1   | Column 2                                   |
|--|--|
| Classes of policies of insurance   | Amount of premiums subject to contribution |
| (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 |

## Schedule 3 Constitution and procedure of Consultative Council

(Section 24ZA)

### Part 1 General

#### 1 Definitions

In this Schedule:

**appointed member** means a member of the Consultative Council who is appointed by the Minister.

**Chair** means the Chair of the Consultative Council.

**member** means any member of the Consultative Council.

**staff member** means a member of the Consultative Council appointed under section 24ZA (1) (b).

**volunteer member** means a member of the Consultative Council specified in section 24ZA (1) (c) or (d).

### Part 2 Constitution

#### 2 Terms of office of appointed members

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

#### 3 Remuneration

- (1) The Chair is not entitled to be paid remuneration in respect of the duties he or she performs as Chair.
- (2) A staff member is not entitled to be paid remuneration in respect of the duties he or she performs as a member.
- (3) A volunteer member is only entitled to be paid such travelling and subsistence allowances as the Commissioner may from time to time determine in respect of the member.

#### **4 Deputies**

- (1) The Chair may, from time to time, appoint a person to be the Chair's deputy, and may revoke any such appointment.
- (2) The Chair may, from time to time, approve of a person to be the deputy of a member (on the recommendation of that member) and may appoint the approved person to be the deputy of the member, and may revoke any such appointment.
- (3) In the absence of the Chair, the Deputy Chair may, if available, act in the place of the Chair.
- (4) In the absence of a member, the member's deputy may, if available, act in the place of the member.
- (5) While acting in the place of the Chair, the Deputy Chair has all the functions of the Chair and is taken to be the Chair.
- (6) While acting in the place of a member, a person has all the functions of the member and is taken to be a member.
- (7) For the purposes of this clause, a vacancy in the office of a member is taken to be an absence of the member.

#### **5 Vacancy in office of member**

- (1) The office of a member becomes vacant if the member:
  - (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 removed from office by the Minister under this clause or by the Governor under Chapter 5 of the *Public Sector Employment and Management Act 2002*, or
  - (e) is absent from 3 consecutive meetings of the Consultative Council of which reasonable notice has been given to the member personally or by post, except on leave granted by the Chair or unless the member is excused by the Chair for having been absent from those meetings, or
  - (f) 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
  - (g) becomes a mentally incapacitated person, or
  - (h) 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 Chair vacates office as Chair if he or she:

- (a) is removed from office by the Minister under this clause, or
- (b) ceases to be a member.

(3) The President of the New South Wales State Emergency Service Volunteers Association Incorporated vacates office as a member if he or she:

- (a) is removed from office by the Minister under this clause, or
- (b) ceases to be a member.

(4) The Minister may at any time remove the Chair or any other member from office.

#### **6 Filling of vacancy in office of appointed member**

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

#### **7 Disclosure of pecuniary interests**

(1) If:

- (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Consultative Council, and
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Consultative Council.

(2) A disclosure by a member at a meeting of the Consultative Council that the member:

- (a) is a member, or is in the employment, of a specified company or other body, or
- (b) is a partner, or is in the employment, of a specified person, or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

(3) Particulars of any disclosure made under this clause must be recorded by the

Consultative Council in a book kept for the purpose and that book must be open at all reasonable hours for inspection by any person on payment of the fee determined by the Consultative Council.

- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Consultative Council otherwise determines:
  - (a) be present during any deliberation of the Consultative Council with respect to the matter, or
  - (b) take part in any decision of the Consultative Council with respect to the matter.
- (5) For the purposes of the making of a determination by the Consultative Council under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
  - (a) be present during any deliberation of the Consultative Council for the purpose of making the determination, or
  - (b) take part in the making by the Consultative Council of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Consultative Council.

## **8 Effect of certain other Acts**

- (1) Chapter 2 of the *Public Sector Employment and Management Act 2002* 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 or from accepting and retaining any remuneration payable to the person under this Act as 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.

## **Part 3 Procedure**

### **9 General procedure**

The procedure for the calling of meetings of the Consultative Council and for the conduct



of business at those meetings is, subject to this Act and the regulations, to be as determined by the Chair.

#### **10 Validity of certain acts or proceedings**

Any act or proceeding of the Consultative Council is, even though at the time when the act or proceeding was done, taken or commenced there was:

- (a) a vacancy in the office of a member of the Consultative Council, or
- (b) any defect in the appointment, or any disqualification of a member of the Consultative Council,

as valid as if the vacancy, defect or disqualification did not exist and the Consultative Council was fully and properly constituted.

#### **11 Quorum**

The quorum for a meeting of the Consultative Council is 2 staff members, 2 volunteer members and the Chair.

#### **12 Chair to be presiding member**

- (1) The Chair is to preside at a meeting of the Consultative Council.
- (2) The Chair has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

#### **13 Voting**

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

#### **14 Subcommittees**

- (1) The Consultative Council may, with the approval of the Chair, establish subcommittees to assist the Consultative Council in the exercise of its functions.
- (2) The members of a subcommittee are to be appointed by the Consultative Council and may consist of any of the following:
  - (a) staff of the State Emergency Service,
  - (b) volunteer officers and volunteer members of SES units.
- (3) The procedures for calling meetings of a subcommittee and for the conduct of those meetings are to be determined by the Consultative Council or (subject to any determination by the Consultative Council) by the subcommittee.
- (4) The Consultative Council may delegate to a subcommittee any of the functions of the

Consultative Council, other than this power of delegation.

### **15 Transaction of business outside meetings or by telephone**

- (1) The Consultative Council may, if the Chair and the President of the New South Wales State Emergency Service Volunteers Association Incorporated both think fit, transact any of its business by the circulation of papers among all the members of the Council for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Consultative Council.
- (2) The Consultative Council may, if the Chair and the President of the New South Wales State Emergency Service Volunteers Association Incorporated both think 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 Chair and each member have the same voting rights as they have at an ordinary meeting of the Consultative Council.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Consultative Council.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

### **16 Minutes**

- (1) The Consultative Council is to keep full and accurate minutes of its proceedings at meetings.
- (2) The Consultative Council is to submit a copy of the minutes of a meeting of the Council to the Minister within 14 days after the date on which the meeting is held.

### **17 First meeting**

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