



Jervis Bay Territory Emergency Management Ordinance 2015

Ordinance No. 1, 2015

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd),
Governor-General of the Commonwealth of Australia, acting with the
advice of the Federal Executive Council, make the following Ordinance.

Dated 28 May 2015

Peter Cosgrove
Governor-General

By His Excellency's Command

Jamie Briggs
Assistant Minister for Infrastructure and Regional Development

OPC60106 - D

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Part 1—Preliminary

1 Name

This is the *Jervis Bay Territory Emergency Management Ordinance 2015*.

2 Commencement

- (1) Each provision of this Ordinance specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Ordinance	The day after this Ordinance is registered.	2 June 2015

Note: This table relates only to the provisions of this Ordinance as originally made. It will not be amended to deal with any later amendments of this Ordinance.

- (2) Any information in column 3 of the table is not part of this Ordinance. Information may be inserted in this column, or information in it may be edited, in any published version of this Ordinance.

3 Authority

This Ordinance is made under the *Jervis Bay Territory Acceptance Act 1915*.

4 Definitions

In this Ordinance:

AFP means the Australian Federal Police.

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authorised emergency services officer: see subsection 20(1).

authorised police officer: see subsections 35(1) and (2) and 36(1).

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

casual volunteer means a person who assists, on his or her own initiative, in a rescue operation in circumstances in which the assistance is reasonably given.

combat agency: see paragraph 14(4)(b).

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

danger area means an area specified by a senior police officer as an area affected by an emergency.

declaration of a state of emergency means a declaration made by the Minister under section 15.

Defence Department means the Department of State that deals with defence and that is administered by the Minister administering section 1 of the *Defence Act 1903*.

Defence land means land in the Territory that is occupied by, or being used by, the Defence Department or the Australian Defence Force.

Director of National Parks means the Director of National Parks referred to in section 514A of the *Environment Protection and Biodiversity Conservation Act 1999*.

emergency means an emergency due to an actual or imminent event:

- (a) that:
 - (i) endangers, or threatens to endanger, the safety or health of persons or animals in the Territory; or

- (ii) destroys or damages, or threatens to destroy or damage, property in the Territory, including any part of the environment of the Territory; and
- (b) that requires a significant and coordinated response.

emergency area means:

- (a) the area specified in a declaration of a state of emergency as the area in which a state of emergency exists; or
- (b) if no area is specified—the whole of the Territory.

Emergency Management Committee means the Jervis Bay Territory Emergency Management Committee established by section 10.

emergency operation means an operation engaged in by an emergency services organisation in response to an emergency.

emergency services officer means any of the following:

- (a) a member of the Emergency Management Committee;
- (b) a member or special member of the AFP;
- (c) an officer (however described) of the police force of New South Wales;
- (d) an officer or member of the Jervis Bay Territory Rural Fire Service;
- (e) an officer of the State Emergency Service of New South Wales at or above the position of unit controller;
- (f) an officer or member of Fire and Rescue NSW;
- (g) an officer or member of the NSW Rural Fire Service;
- (h) a member of the Ambulance Service of New South Wales at or above the rank of station officer;
- (i) a member of any other emergency services organisation operating in the Territory under an agreement with the Commonwealth, or on an ad hoc basis during an emergency.

emergency services organisation means any of the following organisations:

- (a) the AFP;
- (b) the police force of New South Wales;
- (c) the Jervis Bay Territory Rural Fire Service;

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- (d) Fire and Rescue NSW;
- (e) the NSW Rural Fire Service;
- (f) the State Emergency Service of New South Wales;
- (g) the Ambulance Service of New South Wales;
- (h) any other emergency service operating in the Territory under an agreement with the Commonwealth, or on an ad hoc basis during an emergency.

emergency services organisation insignia means:

- (a) an item that is generally recognised as pertaining to an emergency services organisation or as being used by an emergency services officer; or
- (b) a part of an item mentioned in paragraph (a); or
- (c) a reasonable imitation of an item, or part of an item, mentioned in paragraph (a); or
- (d) a thing prescribed by the rules for this paragraph.

Note: Examples of items for paragraph (a) include uniforms, emblems and logos.

emergency services organisation officer includes an employee, member, volunteer or any other person who exercises functions for or on behalf of an emergency services organisation.

environment includes:

- (a) the physical characteristics of the Territory; and
- (b) plants, native animals and marine life; and
- (c) natural and physical resources.

Environment Department means the Department administered by the Minister administering the *Environment Protection and Biodiversity Conservation Act 1999*.

hazardous material means anything that, when produced, stored, moved, used or otherwise dealt with without adequate safeguards to prevent the thing from escaping, may cause injury, death to persons or animals, or damage to property.

interstate rescue unit means a rescue unit established and operating outside the Territory.

JBT Emergency Management Plan: see section 14.

Local Emergency Operations Controller: see section 12.

police officer means:

- (a) a member or special member of the AFP; or
- (b) an officer (however described) of the police force of New South Wales.

premises includes any of the following:

- (a) land;
- (b) a place, building, vehicle, vessel or aircraft;
- (c) a part of land or a part of a place, building, vehicle, vessel or aircraft.

preparation, in relation to an emergency, includes the making of arrangements or plans to deal with the emergency or the effects of the emergency.

prevention includes:

- (a) the identification of hazards that may arise from an occurrence or event that is, or may become, an emergency; and
- (b) the assessment of potential threats to life and property that may arise from an occurrence or event that is, or may become, an emergency; and
- (c) the taking of measures to reduce potential loss to life or property that may arise from an occurrence or event that is, or may become, an emergency.

recovery, in relation to an emergency, includes the process of returning a community affected by the emergency to its proper level of functioning after the emergency.

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

rescue unit means a group of persons that carries out rescue operations for the protection of the public or a section of the public.

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

rules means rules made under section 48.

sell includes any of the following:

- (a) exchange;
- (b) let on hire;
- (c) offer, expose, possess, send or deliver for sale, exchange or hire.

senior police officer means:

- (a) a member or special member of the AFP of or above the rank of sergeant; or
- (b) an officer (however described) of the police force of New South Wales of or above the rank of sergeant; or
- (c) a police officer in a class prescribed by the rules for this paragraph.

state of emergency means a state of emergency declared under section 15.

this Ordinance includes the rules.

5 References to function

In this Ordinance:

- (a) a reference to a function includes a reference to a power, authority or duty; and
- (b) a reference to the exercise of a function includes, if the function is a duty, a reference to the performance of the duty.

6 Limitation on operation—industrial disputes and civil disturbances

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

- (a) bringing an industrial dispute to an end; or

- (b) controlling a riot or other civil disturbance, other than a riot or civil disturbance resulting from, and occurring during, a state of emergency.

7 Ordinance binds the Crown

- (1) This Ordinance binds the Crown in each of its capacities.
- (2) This Ordinance does not make the Crown liable to be prosecuted for an offence.

8 Minister's responsibilities

- (1) The Minister is responsible for the following matters:
 - (a) ensuring that adequate measures are taken by government agencies to prevent, prepare for, respond to and assist people and communities to recover from, emergencies;
 - (b) coordinating the activities of government agencies in taking those measures;
 - (c) approving the JBT Emergency Management Plan.
- (2) The following entities are subject to the control and direction of the Minister in the exercise of their functions under this Ordinance:
 - (a) the Emergency Management Committee;
 - (b) the Local Emergency Operations Controller.

9 Delegation by Minister

- (1) The Minister may, in writing, delegate his or her powers under this Ordinance (other than sections 15 and 48) to any person.
- (2) If the Minister delegates a power or function to an SES employee of the Department, the SES employee may, by writing, sub-delegate the power or function to:
 - (a) an emergency services officer; or
 - (b) a member of an emergency services organisation.
- (3) Sections 34AA, 34AB and 34A of the *Acts Interpretation Act 1901* apply to a sub-delegation by an SES employee in a corresponding way to the way in which they apply to a delegation.

Part 2—Emergency Management

Division 1—Emergency Management Committee

10 Jervis Bay Territory Emergency Management Committee

- (1) There is established by this subsection a Jervis Bay Territory Emergency Management Committee.
- (2) The Committee consists of the following members appointed, in writing, by the Minister:
 - (a) a nominated representative of the Department;
 - (b) the officer in charge of the AFP in the Territory;
 - (c) a nominated representative of the Director of National Parks;
 - (d) a nominated representative of the Wreck Bay Aboriginal Community Council;
 - (e) a nominated representative of the Defence Department;
 - (f) a nominated representative of the Shoalhaven City Council;
 - (g) a nominated representative of the Jervis Bay Territory Rural Fire Service;
 - (h) a nominated representative of the NSW Rural Fire Service;
 - (i) a nominated representative of Fire and Rescue NSW;
 - (j) a nominated representative of the Ambulance Service of New South Wales;
 - (k) a nominated representative of the State Emergency Service of New South Wales;
 - (l) a nominated representative of the police force of New South Wales;
 - (m) such other persons (if any) as the Minister considers appropriate.
- (3) The Minister must not appoint, under paragraph (2)(m), a person who is an officer or employee of a State, or of an authority of a State, unless the State or authority (as the case may be) has nominated the person for the appointment.
- (4) The representative of the Department is the Chair of the Committee.

- (5) A person nominated for the purposes of paragraph (2)(a), (c), (d), (e), (f), (g), (h), (i), (j), (k) or (l) must have authority to plan and commit the resources of the agency or body the person represents in relation to the response and recovery stages of an emergency.
- (6) A member of the Committee holds office on the terms and conditions (if any) determined by the Minister.
- (7) Schedule 1 sets out arrangements relating to the members and the procedures of the Committee.

11 Functions of Emergency Management Committee

The Emergency Management Committee has the following functions:

- (a) advising the Minister in relation to emergency management policy and practice for the Territory;
- (b) reviewing, monitoring and developing emergency management policy and practice for the Territory;
- (c) preparing and reviewing the JBT Emergency Management Plan;
- (d) ensuring the JBT Emergency Management Plan is consistent with:
 - (i) any local emergency management plans made for local government areas of New South Wales surrounding the Territory; and
 - (ii) the Australian Government Disaster Response Plan (COMDISPLAN); and
 - (iii) the Booderee National Park Management Plan;
- (e) giving effect to and carrying out emergency management policy and practice in the Territory;
- (f) reviewing emergency management plans and policies made by other bodies for the Territory;
- (g) coordinating emergency management training in the Territory and developing, conducting and evaluating training exercises;
- (h) facilitating and participating in cross-border training exercises in emergency management and rescue with local

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Division 1 Emergency Management Committee

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government areas of New South Wales surrounding the Territory;

- (i) assisting the Local Emergency Operations Controller;
- (j) facilitating emergency management in the Territory through coordination and cooperation of agencies;
- (k) reporting to the Minister in writing each year about the Committee's activities;
- (l) any additional functions conferred on the Committee by the Minister.

Division 2—Local Emergency Operations Controller

12 Local Emergency Operations Controller

- (1) There is to be a Local Emergency Operations Controller for the Territory.
- (2) The position of the Local Emergency Operations Controller is to be held by the officer in charge of the AFP in the Territory.

13 Responsibilities and functions of Local Emergency Operations Controller

- (1) The Local Emergency Operations Controller has primary responsibility for the overall direction, control and coordination of the response to, and recovery from, an emergency.
- (2) In carrying out this responsibility, the Local Emergency Operations Controller may do any of the following:
 - (a) take control of an emergency affecting the Territory, even if another agency is the combat agency for that emergency, if:
 - (i) the Local Emergency Operations Controller is satisfied that taking control of the emergency is necessary in the circumstances of the case; and
 - (ii) the Local Emergency Operations Controller has been requested to do so by the combat agency, or the Minister has directed the Local Emergency Operations Controller to do so;
 - (b) issue directions to agencies;
 - (c) at the request of a combat agency, carry out functions specified by the combat agency for the purposes of controlling the response to the emergency.
- (3) The Local Emergency Operations Controller may exercise his or her functions under this section even if a state of emergency is not in force in the Territory.
- (4) However, if a state of emergency is in force in the Territory, the Local Emergency Operations Controller must exercise his or her

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functions under this section in accordance with the requirements of this Ordinance that apply when a state of emergency is in force.

Division 3—Emergency Management Plan

14 Jervis Bay Territory Emergency Management Plan

- (1) There is to be a Jervis Bay Territory Emergency Management Plan (the *JBT Emergency Management Plan*).
- (2) The purpose of the JBT Emergency Management Plan is to ensure the coordinated response to emergencies by agencies having responsibilities and functions in relation to emergencies in the Territory.
- (3) The JBT Emergency Management Plan is to be prepared by the Emergency Management Committee, and approved by the Minister.
- (4) The JBT Emergency Management Plan must, to the extent it is practicable and reasonable to do so:
 - (a) identify different kinds of emergencies that might arise in the Territory, the likelihood of their occurrence and the probable consequences of the emergencies for the Territory; and
 - (b) identify, in relation to each kind of emergency, the agency primarily responsible for controlling the response to the emergency (the *combat agency*); and
 - (c) provide for the coordination of operations between agencies operating within the Territory, and agencies operating outside the Territory supporting a combat agency, in the event of an emergency; and
 - (d) provide for consultation with the Defence Department in relation to emergency management on Defence land; and
 - (e) specify the tasks each agency is to perform in the event of an emergency; and
 - (f) identify premises to be used as the Jervis Bay Territory emergency operations centre, and any other premises that may be used in connection with that purpose; and
 - (g) specify the responsibilities of the Minister, the Local Emergency Operations Controller and the Emergency Management Committee in relation to emergencies and states of emergency.

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- (5) The Chair of the Emergency Management Committee must:
 - (a) publish the plan in a manner the Chair determines; and
 - (b) give a copy of the plan to each emergency services organisation.

- (6) The Emergency Management Committee must:
 - (a) review the JBT Emergency Management Plan once in each 3-year period after the date on which the plan is approved by the Minister; and
 - (b) if the Committee considers it is necessary to amend the plan following a review—amend the plan.

- (7) An amendment under paragraph (6)(b) is of no effect unless the amendment has been approved in writing by the Minister.

- (8) On the commencement of this Ordinance, and until the JBT Emergency Management Plan is prepared and approved under this Ordinance, the Jervis Bay Territory Emergency Plan 2013-2015, issued on 19 March 2013 and as in force on the commencement of this Ordinance, is taken to be the JBT Emergency Management Plan.

Division 4—State of emergency

Subdivision A—Declaration of state of emergency

15 Declaration of state of emergency

- (1) If the Minister is satisfied that an emergency:
 - (a) is endangering, or is threatening to endanger, the safety or health of persons or animals in the Territory to a significant and widespread extent; or
 - (b) is destroying or damaging, or threatening to destroy or damage, property in the Territory to a significant and widespread extent;the Minister may, by written instrument, declare that a state of emergency exists in the whole of the Territory or the part of the Territory specified in the instrument.
- (2) In deciding whether to declare a state of emergency, the Minister must take into account whether or not a state of emergency has been declared in a local government area surrounding the Territory, and the severity, and proximity to the Territory, of any emergency in that area.
- (3) A declaration of a state of emergency must specify the period (not exceeding 30 days) during which it is in force.

16 Publication of declaration

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

- (a) notice of the declaration or revocation is broadcast in the Territory by a television or radio station; and
- (b) a copy of the declaration or revocation is published in the Gazette.

17 Duration of state of emergency

- (1) A declaration of a state of emergency has effect immediately on being made.

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- (2) A state of emergency remains in force for the period specified in the declaration, unless the declaration is revoked before that time.
- (3) The declaration of a state of emergency does not prevent the declaration of further states of emergency in relation to the same or a different emergency.

Subdivision B—Powers that may be exercised during state of emergency

18 Limitation on Minister’s powers

The Minister, or an emergency services officer exercising a power under this Subdivision under the authority of the Minister, may only exercise powers and functions under this Division:

- (a) while a state of emergency is in force; and
- (b) in relation to the emergency on which the state of emergency is based.

19 Power to direct evacuation

- (1) The Minister may, if satisfied it is necessary or convenient to do so for the purpose of responding to an emergency, direct, or authorise an emergency services officer to direct, a person:
 - (a) to leave specified premises and move out of an emergency area or a part of an emergency area; or
 - (b) to take children or adults in the person’s care and move them out of an emergency area or part of an emergency area; or
 - (c) not to enter an emergency area or part of an emergency area.
- (2) If the person fails to comply with the direction, an emergency services officer may do all things reasonably necessary to ensure compliance with the direction, including using such force as is reasonably necessary in the circumstances.
- (3) The rules may limit the circumstances, and regulate the manner, in which powers under this section may be exercised.
- (4) Before directing the evacuation of Defence land, the person directing the evacuation must be satisfied that the Senior Australian Defence Force Officer at HMAS Creswell, or a person

authorised by the Senior Australian Defence Force Officer, has been consulted.

- (5) However, subsection (4) does not apply if the requirement to be consulted has been waived by:
- (a) the Secretary of the Defence Department; or
 - (b) the Chief of the Defence Force; or
 - (c) the Senior Australian Defence Force Officer at HMAS Creswell; or
 - (d) a person authorised by the Senior Australian Defence Force Officer to waive the requirement.

20 Powers to take other safety measures

- (1) If the Minister is satisfied that there are reasonable grounds for doing so to protect persons or animals from injury or death, or to protect property, in relation to an emergency, the Minister may direct, or authorise an emergency services officer (an ***authorised emergency services officer***) to direct, any of the following:
- (a) the closure to traffic of a street, road, lane or footpath, or another place open to or used by the public, in part or all of an emergency area;
 - (b) the closure of any other public or private place in part or all of an emergency area;
 - (c) the destruction, taking down or shoring up of a wall or premises, or part of premises, in part or all of an emergency area, that are damaged or insecure;
 - (d) the shutting off or disconnection of the supply of water or any gas, liquid, solid, grain, powder or other substance in or from a main, pipeline, container or storage facility in an emergency area or part of an emergency area;
 - (e) the shutting off or disconnection of the supply of gas or electricity to premises in an emergency area or part of an emergency area;
 - (f) the taking possession, removal or destruction of any thing in an emergency area or part of an emergency area that may be dangerous to life or property or that may interfere with the response to the emergency.

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- (2) Before making a direction under subsection (1) in relation to Defence land, the person making the direction must be satisfied that the Senior Australian Defence Force Officer at HMAS Creswell, or a person authorised by the Senior Australian Defence Force Officer, has been consulted.
- (3) However, subsection (2) does not apply if:
- (a) the direction is made in circumstances in which the person making the direction considers there is an imminent threat to life; or
 - (b) the requirement to be consulted has been waived by:
 - (i) the Secretary of the Defence Department; or
 - (ii) the Chief of the Defence Force; or
 - (iii) the Senior Australian Defence Force Officer at HMAS Creswell; or
 - (iv) a person authorised by the Senior Australian Defence Force Officer to waive the requirement.
- (4) For the purposes of a direction made under paragraph (1)(d) or (e), the Minister or an authorised emergency services officer may require the person who controls or supplies the substance or service to which the direction relates to immediately send a competent person to carry out the direction in accordance with the reasonable directions of the Minister or authorised emergency services officer.
- (5) A person who supplies a substance or service mentioned in paragraph (1)(d) or (e) is not liable for damages for any interruption of that supply because the supply is shut off or disconnected in accordance with a direction of the Minister or an authorised emergency services officer made under that paragraph.
- (6) A person commits an offence if the person fails to comply with a direction of the Minister or an authorised emergency services officer made under this section.
- Penalty: 50 penalty units.
- (7) The rules may limit the circumstances, and regulate the manner, in which powers under this section may be exercised.

21 Power to enter premises

- (1) A person may enter any premises for the purpose of complying with a direction made under subsection 20(1).
- (2) The person must give the owner or occupier of the premises reasonable written notice of the intention to enter the premises.
- (3) However, the person may enter the premises without notice if:
 - (a) entry to the premises is made with the consent of the owner or occupier of the premises; or
 - (b) the premises are open to the public or the entry is to a part of the premises open to the public; or
 - (c) entry is required urgently and the Minister or emergency services officer giving the direction has authorised, in writing, the entry without notice (either generally or in the particular case).
- (4) Before entering Defence land, the person making the entry must be satisfied that the Senior Australian Defence Force Officer at HMAS Creswell, or a person authorised by the Senior Australian Defence Force Officer, has been consulted.
- (5) However, subsection (4) does not apply if:
 - (a) the entry is made in circumstances in which the person making the entry considers there is an imminent threat to life; or
 - (b) the requirement to be consulted has been waived by:
 - (i) the Secretary of the Defence Department; or
 - (ii) the Chief of the Defence Force; or
 - (iii) the Senior Australian Defence Force Officer at HMAS Creswell; or
 - (iv) a person authorised by the Senior Australian Defence Force Officer to waive the requirement.
- (6) In entering the premises, the person must do as little damage as possible.

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22 Use of force to enter premises

- (1) A person may use reasonable force to gain entry to premises under section 21 if the Minister has authorised, in writing, the use of force:
 - (a) in the particular case; or
 - (b) in circumstances present in the particular case.
- (2) If a person (the *entering person*) uses force to enter premises under section 21, the entering person must, as soon as practicable, tell the Minister or emergency services officer who issued the direction under section 20 that the entering person used force to enter the premises.
- (3) The Minister or emergency services officer must, on being told of the use of force, tell any other persons or authorities that the Minister or emergency services officer considers appropriate about the use of the force.

23 Power to take possession of property

- (1) The Minister or an emergency services officer may, for the purposes of responding to an emergency, take possession and make use of a person's property.
- (2) Before the Minister or an emergency services officer takes possession and makes use of property belonging to, or usually under the control of, the Defence Department or the Australian Defence Force, the Minister or officer must be satisfied that the Senior Australian Defence Force Officer at HMAS Creswell, or a person authorised by the Senior Australian Defence Force Officer, has been consulted.
- (3) However, subsection (2) does not apply if the requirement to be consulted has been waived by:
 - (a) the Secretary of the Defence Department; or
 - (b) the Chief of the Defence Force; or
 - (c) the Senior Australian Defence Force Officer at HMAS Creswell; or
 - (d) a person authorised by the Senior Australian Defence Force Officer to waive the requirement.

- (4) If the Minister or an emergency services officer takes possession and makes use of a person's property under subsection (1), the person is entitled to receive a reasonable amount of compensation, as determined by the Minister, for the possession and use of the property.
- (5) The person may apply to the Administrative Appeals Tribunal for review by the Tribunal of the Minister's determination under subsection (4) in relation to compensation.

24 Obstructing Minister or emergency services officer

A person commits an offence if the person obstructs or hinders the Minister, or an emergency services officer, in the exercise by the Minister or emergency services officer of a power or function under this Division.

Penalty: Imprisonment for 10 months, or 50 penalty units, or both.

Part 3—Rescue management

25 Police to coordinate rescue operation

- (1) The AFP is responsible for coordinating rescue operations and determining the priorities of action to be taken in rescue operations.
- (2) However this section does not apply to a rescue operation if the control of the rescue operation is vested by law in an agency other than the AFP.

26 Notification of rescue incidents to police

- (1) If an emergency services organisation other than the AFP becomes aware of an incident that requires, or is likely to require, the rescue of a person, the organisation must immediately notify a member or special member of the AFP of all relevant information that the organisation is aware of concerning the incident.
- (2) However, the organisation is not required to comply with subsection (1) if the AFP has already been notified of the incident.

27 Arrangements for interstate cooperation in rescue

The Minister may make arrangements with an agency that manages or controls an interstate rescue unit for:

- (a) the interstate rescue unit to carry out rescue operations in the Territory; or
- (b) a rescue unit established and operating in the Territory to carry out rescue operations outside the Territory.

28 Obstructing rescue unit

A person commits an offence if the person obstructs or hinders a member of a rescue unit acting in connection with a rescue operation or in response to an emergency.

Penalty: Imprisonment for 10 months, or 50 penalty units, or both.

Part 4—Employment protection for volunteer emergency workers

29 Definition—employer and employee

For this Part, the circumstances in which a person is the *employer* of another person (and that person is the *employee*) include the following:

- (a) the person is the employer of the other person for the purposes of the *Fair Work Act 2009* or the *Industrial Relations Act 1996* (NSW);
- (b) the person engages the other person to carry out regular work under a contract for services and the value of the work represents a substantial proportion of the regular work carried out by the other person;
- (c) the person is the bailor under a contract of bailment within the meaning of Chapter 6 of the *Industrial Relations Act 1996* (NSW) and the other person is the bailee engaged under the contract;
- (d) the person is the holder of a licence under the *Interstate Road Transport Act 1985* or the *Passenger Transport Act 1990* (NSW), and the other person is engaged in transporting passengers in a private hire vehicle under the licence;
- (e) the person is a principal contractor under a contract of carriage within the meaning of Chapter 6 of the *Industrial Relations Act 1996* (NSW) and the other person is a contract carrier engaged under the contract.

30 Protection from victimisation

- (1) An employer commits an offence if:
 - (a) the employer victimises an employee of the employer, within the meaning given by subsection (2), for being absent; and
 - (b) the employee's absence was due to the employee taking part in an emergency operation as a member (including a volunteer member) of an emergency services organisation; and

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(c) the absence occurred while this Part applied to the emergency operation.

Penalty: 30 penalty units.

- (2) For subsection (1), an employer victimises an employee only if the employer:
- (a) dismisses the employee from employment with the employer or terminates the engagement of the employee by the employer; or
 - (b) alters the employee's position in his or her employment with the employer, or alters the circumstances of the employee's engagement by the employer, to the employee's detriment; or
 - (c) otherwise injures the employee in his or her employment with, or engagement by, the employer.

31 Emergency operations to which this Part applies

- (1) The Minister may, by legislative instrument, direct that this Part applies to:
- (a) a specified emergency operation, or class of emergency operations, carried out in connection with an emergency specified in the instrument; or
 - (b) all emergency operations carried out in connection with an emergency specified in the instrument.
- (2) In determining whether to make an instrument under subsection (1), the Minister must have regard to the possible duration of the emergency.
- (3) The Minister may make an instrument under subsection (1) whether or not a state of emergency has been declared under section 15.

32 Part does not affect other remedies

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

33 No contracting out

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

34 Industrial dispute does not prevent operation of Part

Section 6 does not limit or otherwise affect the operation of this Part merely because the victimisation of an employee involves or gives rise to an industrial dispute.

Part 5—Police powers during emergencies

35 Police powers to direct evacuation

- (1) If a senior police officer is satisfied that there are reasonable grounds for the purpose of protecting persons from injury or death threatened by an actual or imminent emergency, the officer may direct, or authorise another police officer (an *authorised police officer*) to direct, a person:
 - (a) to leave specified premises and move out of a danger area; or
 - (b) to take children or adults in the person's care and move them out of a danger area; or
 - (c) not to enter a danger area.
- (2) If a senior police officer is satisfied that there are reasonable grounds for the purpose of protecting persons from chemical, biological or radiological contamination, the officer may direct, or authorise another police officer (an *authorised police officer*) to direct, a person who may have been subjected to the contamination to do one or more of the following:
 - (a) remain in a specified area;
 - (b) be quarantined from other persons;
 - (c) submit to a decontamination procedure.
- (3) Before directing the evacuation of Defence land, the person directing the evacuation must be satisfied that the Senior Australian Defence Force Officer at HMAS Creswell, or a person authorised by the Senior Australian Defence Force Officer, has been consulted.
- (4) However, subsection (3) does not apply if the requirement to be consulted has been waived by:
 - (a) the Secretary of the Defence Department; or
 - (b) the Chief of the Defence Force; or
 - (c) the Senior Australian Defence Force Officer at HMAS Creswell; or
 - (d) a person authorised by the Senior Australian Defence Force Officer to waive the requirement.

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- (5) If a person fails to comply with a direction made under subsection (1) or (2), a police officer may do all things reasonably necessary to ensure compliance with the direction, including using such force as is reasonably necessary in the circumstances.
 - (6) The rules may limit the circumstances, and regulate the manner, in which powers under this section may be exercised.

36 Police powers to take other safety measures

- (1) If a senior police officer is satisfied there are reasonable grounds for doing so to protect persons or animals from injury or death, or to protect property threatened by an actual or imminent emergency, the officer may direct, or authorise another police officer (an *authorised police officer*) to direct, any of the following:
 - (a) the closure to traffic of a street, road, lane or footpath, or a place open to or used by the public, in a danger area or part of a danger area;
 - (b) the removal of any vehicles in a danger area or part of a danger area;
 - (c) the closure of any other public or private place in a danger area or part of a danger area;
 - (d) the destruction, taking down or shoring up of a wall or premises, or part of premises, in a danger area or part of a danger area, that are damaged or insecure;
 - (e) the shutting off or disconnection of the supply of water or any gas, liquid, solid, grain, powder or other substance in or from a main, pipeline, container or storage facility in a danger area or part of a danger area;
 - (f) the shutting off or disconnection of the supply of gas or electricity to premises in a danger area or part of a danger area;
 - (g) the taking possession, removal or destruction of any thing in a danger area or part of a danger area that may be dangerous to life or property or that may interfere with the response to the emergency;
 - (h) the protection or isolation of any thing in a danger area by preventing a person from removing or otherwise interfering with the thing.

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- (2) Before making a direction under subsection (1) in relation to Defence land, the person making the direction must be satisfied that the Senior Australian Defence Force Officer at HMAS Creswell, or a person authorised by the Senior Australian Defence Force Officer, has been consulted.
- (3) However, subsection (2) does not apply if:
 - (a) the direction is made in circumstances in which the person making the direction considers there is an imminent threat to life; or
 - (b) the requirement to be consulted has been waived by:
 - (i) the Secretary of the Defence Department; or
 - (ii) the Chief of the Defence Force; or
 - (iii) the Senior Australian Defence Force Officer at HMAS Creswell; or
 - (iv) a person authorised by the Senior Australian Defence Force Officer to waive the requirement.
- (4) For the purposes of a direction made under paragraph (1)(e) or (f), a senior police officer or authorised police officer may require the person who controls or supplies the substance or service to which the direction relates to immediately send a competent person to carry out the direction in accordance with the reasonable directions of the senior police officer or authorised police officer.
- (5) A person who supplies a substance or service mentioned in paragraph (1)(e) or (f) is not liable for damages for any interruption of that supply because the supply is shut off or disconnected in accordance with a direction of a senior police officer or authorised police officer under subsection (1).
- (6) A police officer exercising a function under a direction made under subsection (1) may do so with the aid of, or be accompanied by, such assistants as the police officer considers necessary.
- (7) A person commits an offence if the person fails to comply with a direction of a senior police officer, or authorised police officer, made under this section.

Penalty: 50 penalty units.

- (8) The rules may limit the circumstances, and regulate the manner, in which powers under this section may be exercised.

37 Police power to enter premises

- (1) A police officer may enter any premises for the purpose of complying with a direction made under subsection 36(1).
- (2) The police officer must give the owner or occupier of the premises reasonable written notice of the intention to enter the premises.
- (3) However, the police officer may enter the premises without notice if:
- (a) entry to the premises is made with the consent of the owner or occupier of the premises; or
 - (b) the premises are open to the public or the entry is to a part of the premises open to the public; or
 - (c) entry is required urgently and the senior police officer or authorised police officer making the direction has authorised, in writing, the entry without notice (either generally or in the particular case).
- (4) Before entering Defence land, the person making the entry must be satisfied that the Senior Australian Defence Force Officer at HMAS Creswell, or a person authorised by the Senior Australian Defence Force Officer, has been consulted.
- (5) However, a person is not required to comply with subsection (4) if:
- (a) the entry is made by the person in circumstances in which the person considers there is an imminent threat to life; or
 - (b) the requirement to be consulted has been waived by:
 - (i) the Secretary of the Defence Department; or
 - (ii) the Chief of the Defence Force; or
 - (iii) the Senior Australian Defence Force Officer at HMAS Creswell; or
 - (iv) a person authorised by the Senior Australian Defence Force Officer to waive the requirement in subsection (4).

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- (6) In entering the premises, and complying with the direction made under section 36, the police officer must do as little damage as possible.

38 Use of force to enter premises

- (1) A police officer may use reasonable force to gain entry to premises under section 37 to comply with a direction made under section 36 if the senior police officer or authorised police officer who made the direction has authorised, in writing, the use of force:
- (a) in the particular case; or
 - (b) in circumstances present in the particular case.
- (2) If a police officer uses force to enter premises under section 37, the police officer must, as soon as practicable, tell the senior police officer or authorised police officer who made the direction under section 36 that the police officer used force to enter the premises.
- (3) The senior police officer or authorised police officer must, on being told of the use of force, tell the Commissioner of the AFP about the use of the force.

39 Police officer to produce warrant card if required

A police officer must not enter premises under section 37, or take action on premises in compliance with a direction made under section 36, unless the police officer produces his or her police identification if requested to do so by the owner or occupier of the premises.

Part 6—Miscellaneous

40 Damage to property

- (1) This section applies in relation to damage to property caused by the exercise of a power, or taking of an action, to protect:
- (a) a person or animal from injury or death; or
 - (b) property from damage;
- in circumstances in which the person, animal or property is endangered by:
- (c) an event that constitutes an emergency; or
 - (d) the escape or likely escape of a hazardous material as the result of an event that constitutes an emergency.

Note: Examples of events that constitute an emergency include fires, floods, storms or explosions.

- (2) The damage is taken, for the purposes of a policy of insurance that covers the property, to be damage by the event that constituted the emergency, if the damage is caused by:
- (a) the exercise in good faith of:
 - (i) a power under section 20 by the Minister or an authorised emergency services officer during a state of emergency; or
 - (ii) a power under section 21; or
 - (iii) a power under section 36 by a senior police officer or authorised police officer at an actual or imminent emergency; or
 - (iv) a power under section 37; or
 - (b) an action taken in good faith by a person acting on and in accordance with a direction made under:
 - (i) section 20 by the Minister or an authorised emergency services officer during a state of emergency; or
 - (ii) section 36 by a senior police officer or authorised police officer at an actual or imminent emergency.

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

41 Offences relating to emergency services organisations

- (1) A person commits an offence if:
- (a) the person manufactures or sells emergency services organisation insignia; and
 - (b) the emergency services organisation to which the insignia relates has not authorised the manufacture or sale.

Penalty: 50 penalty units.

- (2) A person commits an offence if the person:
- (a) uses or displays emergency services organisation insignia (other than emergency services organisation insignia pertaining to the AFP) with an intention to deceive; and
 - (b) the emergency services organisation to which the insignia relates has not authorised the use or display.

Penalty: 50 penalty units.

- (3) A person commits an offence if the person impersonates an emergency services organisation officer (other than a member or special member of the AFP) with an intention to deceive.

Penalty: 50 penalty units.

- (4) Subsections (1), (2) and (3) do not apply if the person's conduct is for the purposes of entertainment.

42 Protection from liability

Civil and criminal liability

- (1) The Minister is not liable to an action or other proceeding, whether civil or criminal, for or in relation to an act done, or omitted to be done, in good faith in the performance or exercise, or the purported performance or exercise, of any function, duty or power under this Ordinance.

- (2) A person who has a function, duty or power under this Ordinance is not liable to an action or other proceeding, whether civil or criminal, for or in relation to an act done, or omitted to be done, in good faith in the performance or exercise, or the purported performance or exercise, by the person, of a function, duty or power under this Ordinance.

Action for damages

- (3) None of the following is liable to an action or other proceeding for damages for or in relation to an act done, or omitted to be done, under the JBT Emergency Management Plan, or in good faith in response to, or otherwise in connection with, a rescue operation or emergency:
- (a) the Commonwealth;
 - (b) the Crown in any other capacity;
 - (c) a person managing, or assisting with, the rescue operation or emergency, including as an authorised volunteer or a casual volunteer.

43 Compensation for acquisition of property

- (1) If the operation of this Ordinance would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph), the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

44 Review of Ordinance

- (1) The Minister must review this Ordinance within 4 years after the Ordinance commences and at least once in every 4 year period after that date.
- (2) A review of this Ordinance must take into account:

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- (a) the *Environment Protection and Biodiversity Conservation Act 1999* and any regulations made under that Act; and
- (b) the *Jervis Bay Territory Rural Fires Ordinance 2014*; and
- (c) any other legislation applying in the Territory; and
- (d) any relevant legislation of New South Wales; and
- (e) the Booderee National Park Management Plan.

Note: The Booderee National Park Management Plan could in 2015 be viewed on the Environment Department's website (<http://www.environment.gov.au>).

45 Ordinance not to limit other laws

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

46 Proof of certain matters not required

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

- (a) the constitution of the Emergency Management Committee; or
- (b) a resolution of the Emergency Management Committee; or
- (c) the holding of office by a member of the Emergency Management Committee; or
- (d) the presence of a quorum at a meeting of the Emergency Management Committee.

47 Proceedings for offences

Proceedings for offences against this Ordinance are to be dealt with summarily before the ACT Magistrates Court.

48 Rules

- (1) The Minister may, by legislative instrument, make rules prescribing matters:
 - (a) required or permitted by this Ordinance to be prescribed by the rules; or

- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance.
- (2) To avoid doubt, the rules may not do the following:
 - (a) create an offence or civil penalty;
 - (b) provide powers of:
 - (i) arrest or detention; or
 - (ii) entry, search or seizure;
 - (c) impose a tax;
 - (d) directly amend the text of this Ordinance.

Schedule 1—Jervis Bay Territory Emergency Management Committee

Note: See section 10.

1 Deputies of members

- (1) A member of the Emergency Management Committee may, from time to time, appoint a person to be the member's deputy, and the member may revoke the appointment at any time.
- (2) If a member of the Committee is absent, the member's deputy (if any):
 - (a) may act in the place of the member; and
 - (b) when acting:
 - (i) has all the functions of the member other than the function mentioned in subclause (1); and
 - (ii) is to be taken to be a member of the Committee.

2 Vacancy in position

- (1) The office of a member of the Emergency Management Committee becomes vacant if:
 - (a) the member dies; or
 - (b) for a member other than a member appointed under paragraph 10(2)(b) or (m)—the agency or body the member represented cancels the nomination of the member; or
 - (c) the member resigns the office by giving the Minister a written resignation; or
 - (d) the member ceases to be eligible to be a member under section 10; or
 - (e) for a member appointed under paragraph 10(2)(m)—the appointment of the member is terminated by the Minister.
- (2) If the office of a member of the Committee becomes vacant, a person is to be appointed to fill the vacancy in accordance with section 10.

3 General procedure

- (1) The rules may prescribe the procedure for calling or conducting meetings of the Emergency Management Committee.
- (2) Subject to any rules, the Committee may determine the procedure for calling and conducting meetings of the Committee.

4 Quorum

The quorum for a meeting of the Emergency Management Committee is 5 members of the Committee.

5 Presiding member

The following person is to preside at a meeting of the Emergency Management Committee:

- (a) if the Chair is present at the meeting—the Chair;
- (b) if the Chair is not present and a Deputy Chair has been appointed and is present—the Deputy Chair;
- (c) in any other case—a member of the Committee elected by the members present at the meeting to chair the meeting.

6 Voting

- (1) A decision supported by a majority of the votes cast at a meeting of the Emergency Management Committee at which a quorum is present is the decision of the Committee.
- (2) The person presiding at a meeting of the Committee has a deliberative vote and, in the event of an equality of votes, has a second vote.

7 Subcommittees

- (1) The Emergency Management Committee may establish subcommittees to assist the Committee with the exercise of its functions.
- (2) A member of a subcommittee may be, but is not required to be, a member of the Committee.

Schedule 1 Jervis Bay Territory Emergency Management Committee

Clause 7

- (3) The procedure for calling or conducting meetings of a subcommittee is to be determined by the Committee or, subject to any determination by the Committee, by the subcommittee.