

## EXPLANATORY STATEMENT

Issued by the authority of the Assistant Minister for Regional Development and Territories,  
Parliamentary Secretary to the Deputy Prime Minister and Minister for Infrastructure,  
Transport and Regional Development

### ***Jervis Bay Territory Emergency Management Amendment (2020 Measures No. 1) Ordinance 2020***

The *Jervis Bay Territory Acceptance Act 1915* (the Act) provides for the acceptance of the Jervis Bay Territory, surrendered by New South Wales (NSW) to the Commonwealth. Subsection 4F(1) of the Act provides that the Governor-General may make Ordinances for the peace, order and good government of the Jervis Bay Territory.

The *Jervis Bay Territory Emergency Management Ordinance 2015* (the Principal Ordinance) provides the legislative basis for the management of emergencies in the Jervis Bay Territory. The Principal Ordinance is based on the *State Emergency and Rescue Management Act 1989* (NSW) (SERM Act), with modifications to reflect the Jervis Bay Territory's legal, geographical and administrative circumstances.

The *Jervis Bay Territory Emergency Management Amendment (2020 Measures No. 1) Ordinance 2020* (the amendment Ordinance) makes a number of minor amendments to the Principal Ordinance in line with similar changes to NSW emergency management legislation.

The need for consistency with NSW emergency management legislation is for two reasons: some emergency management services in the Jervis Bay Territory are provided under contract by NSW organisations, including the NSW Rural Fire Service; and secondly, harmonising emergency management regimes facilitates the cross-border provision of services and ensures Jervis Bay Territory residents and visitors continue to enjoy similar protections to their NSW neighbours.

The *Emergency Services Legislation Amendment Act 2018 (NSW)* (the ESLA Act) made a number of changes to the SERM Act on which the Principal Ordinance is based. The amendment Ordinance reflects appropriate amendments made by the ESLA Act and adopts the same language where possible.

#### Consultation

The Department of Infrastructure, Transport, Cities and Regional Development (the Department) consulted with Emergency Management Australia (Department of Home Affairs), the Director, Parks (Department of Environment and Energy) and the NSW and Australian Capital Territory (ACT) Governments. The Department also consulted members of the Jervis Bay Territory Emergency Management Committee, which includes representatives from HMAS Creswell (Department of Defence). Comments were also sought from the Jervis Bay Territory community via a community bulletin.

Details of the amendment Ordinance are set out in the Attachment.

The amendment Ordinance is a legislative instrument for the purposes of the *Legislation Act 2003*.

The amendment Ordinance commences on the day after it is registered on the Federal Register of Legislation.

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### ***Jervis Bay Territory Emergency Management Amendment (2020 Measures No. 1) Ordinance 2020***

The *Jervis Bay Territory Emergency Management Amendment (2020 Measures No. 1) Ordinance 2020* (the amendment Ordinance) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Legislative Instrument**

The Australian Government has committed to providing Jervis Bay Territory with a level of services comparable to those enjoyed by Australians in other similar-sized communities. The amendment Ordinance contributes to delivering this commitment by making a number of minor amendments to the *Jervis Bay Territory Emergency Management Ordinance 2015* (the Principal Ordinance) in line with similar changes to NSW emergency management legislation.

The need for consistency with NSW emergency management legislation is for two reasons: some emergency management services in the Jervis Bay Territory are provided under contract by NSW organisations, including the NSW Rural Fire Service, and because harmonising emergency management regimes facilitates the cross-border provision of services and ensures Jervis Bay Territory residents and visitors continue to enjoy similar protections to their NSW neighbours.

The *Emergency Services Legislation Amendment Act 2018 (NSW)* (the ESLA Act) made a number of changes to the *State Emergency and Rescue Management Act 1989* (NSW) on which the Principal Ordinance is based. The amendment Ordinance reflects appropriate amendments made by the ESLA Act and adopts the same language where possible.

#### **Human rights implications**

The amendment Ordinance does not engage any of the applicable rights or freedoms.

#### **Conclusion**

The amendment Ordinance is compatible with human rights as it does not raise any human rights issues.

**Assistant Minister for Regional Development and Territories, Parliamentary Secretary  
to the Deputy Prime Minister and Minister for Infrastructure,  
Transport and Regional Development  
The Hon Nola Marino MP**

**Jervis Bay Territory Emergency Management Amendment (2020 Measures No. 1) Ordinance 2020**

**Section 1 – Name**

This section provides that the title of the amendment Ordinance is the *Jervis Bay Territory Emergency Management Amendment (2020 Measures No. 1) Ordinance 2020*.

**Section 2 – Commencement**

This section provides that the amendment Ordinance commences on the day after it is registered on the Federal Register of Legislation.

**Section 3 – Authority**

This section provides that the amendment Ordinance is made under the *Jervis Bay Territory Acceptance Act 1915*.

**Section 4 – Schedules**

This section provides that each instrument that is specified in a Schedule to the amendment Ordinance is amended or repealed as set out in the applicable terms in the Schedule concerned, and any other item in a Schedule to this amendment Ordinance has effect according to its terms.

**Schedule 1 – Amendments**

**Item 1 – Section 4 (subparagraph (a)(ii) of the definition of emergency)**

Item 1 omits ‘and’ and substitutes ‘or’ into the definition of emergency.

**Item 2 – Section 4 (at the end of paragraph (a) of the definition of *emergency*)**

Item 2 inserts a new category of ‘emergency’ to be consistent with the corresponding definition in the SERM Act.

**Item 3 – Section 4 (paragraph (e) of the definition of *emergency services officer*)**

Item 3 omits ‘unit controller’, substitutes ‘unit commander’ to reflect current usage in the NSW Rural Fire Service, which provides services in the Jervis Bay Territory.

**Item 4 - Section 4 (after paragraph (g) of the definition of *emergency services organisation*)**

Item 4 inserts:

- (ga) Surf Life Saving New South Wales;
- (gb) Volunteer Marine Rescue NSW;

to reflect the equivalent provision, i.e. section 3, of the SERM Act. Further, two other organisations listed in the SERM Act are not included, i.e. the NSW Volunteer Rescue Association Inc. (as there is no equivalent organisation in the Jervis Bay Territory) and ‘an agency that manages or controls an accredited rescue unit’ (as this is a term specific to the SERM Act).

**Item 5 – Section 4**

Item 5 inserts a reference to ‘operation notice time’ in relation to the new definition in subsection 30(3).

### **Item 6 – After paragraph 15(1)(b)**

Item 6 inserts:

- or (c) is causing a failure of, or a disruption to, an essential service or infrastructure to a significant and widespread extent;

to reflect the equivalent definition of ‘emergency’ in section 4 of the SERM Act.

### **Item 7 – Subsection 26(2)**

Item 7 amends section 26(2) to extend the exceptions to the obligation to comply with subsection 26(1) regarding notification of rescue incidents to the police. The new exception applies if the organisation is Surf Life Saving New South Wales and the incident only requires, or is likely to only require, surf life-saving. This mirrors section 51(2) of the SERM Act.

### **Item 8 – Section 29 (paragraph (d) of the definitions of *employer* and *employee*)**

Item 8 updates legislative references.

### **Item 9 – Paragraph 30(1)(a)**

Item 9 is consequential to the amendment in Item 10 which inserts the new definition of ‘operation notice time’.

### **Item 10 – At the end of section 30**

Item 10 inserts a new definition, ‘operation notice time’ which clarifies when the first element of the offence in section 30 begins. It is defined to mean the earlier of the circumstances in subparagraph 30(3)(a) or (b):

- (a) where the declaration of a state of emergency is broadcast or published in relation to an emergency operation in which the employee is taking part; or
- (b) at the commencement of an instrument directing that the employment protections apply to the emergency operation in which the employee is taking part. This means that the protection will apply from the day after the day on which the instrument is registered.

The amendment is intended to ensure that employees, who participate in an emergency operation as a member (including as a volunteer member) of an emergency services organisation, are protected from victimisation. The amendment provides similar employment protections to those in NSW while taking into account that NSW does not have the same requirements for registration of legislative instruments.

The protections in the Jervis Bay Territory apply to participation in operations that may have commenced before the relevant administrative arrangements are effected, while not offending the presumption against retrospective application of laws. While the emergency operation may have occurred before an instrument under section 31 commenced, the protections apply on commencement of the instrument.

### **Item 11 - Section 31 (after the heading)**

Item 11 inserts the heading ‘*Emergency operations to which Part applies*’ and three new subsections in section 31:

- a new subsection 31(1A) which ensures that Part 4 applies to:

- an emergency operation covered by an instrument under subsection 31(1), regardless of whether or not a state of emergency has been declared; or
  - if a state of emergency has been declared, an emergency operation carried out in connection with that emergency subject to proposed subsection 31(1B);
- a new subsection 31(1B) which clarifies when Part 4 applies in the case of a state of emergency. Part 4 applies from the start of the emergency operation (whether before or after the state of emergency is declared) and ends at the end of the state of emergency or if and as declared by an instrument under proposed subsection 31(1C). The intention is to ensure that an employee who participates in an operation at the start of the operation will be protected against victimisation which occurs after the start of the state of emergency;
  - a new subsection 31(1C) under the heading ‘*Declaration of a day when Part ceases to apply*’ which provides that, in the case of a state of emergency, the Minister may, by notifiable instrument, declare a day when the emergency operation ends in relation to the state of emergency, that is no earlier than the day after the notifiable instrument is registered. A Note clarifies that the declared day may be before or after the end of the period in which the state of emergency is in force.

#### **Item 12 - Subsection 31(1)**

Item 12 inserts a new subheading, ‘*Direction that Part applies*’.

#### **Item 13 – After subsection 31(1)**

Item 13 inserts a new subsection 31(2A) to clarify that if an instrument under subsection 31(1) covers an emergency operation that began before the instrument commenced, Part 4 may apply to the operation from a specified day no earlier than the day when the operation began.

Similarly to the proposed amendments in subsection 31(1B), the intention is to ensure that an employee who participates in an operation at the start of the operation, before an instrument is made under subsection 30(1), will be protected against victimisation after the start of the emergency operation. The proposed amendments to subsection 30(1) clarify that the offence of victimisation does not apply retrospectively to acts which occur before the operation notice time. The employment protections only apply prospectively, from the time that the instrument takes effect, i.e. from the date of registration.

#### **Item 14 - Subsection 44(1)**

Item 14 omits ‘4 year period after that date’, and substitutes ‘10 year period after the completion of the previous review under this section’.

#### **Item 15 - At the end of subsection 44(1)**

Item 15 inserts a note to inform that a review was first completed under this section in 2019.