

SOUTH AUSTRALIA

ESSENTIAL SERVICES ACT, 1981

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ESSENTIAL SERVICES ACT, 1981

being

Essential Services Act, 1981, No. 75 of 1981
[Assented to 19 November 1981]

N.B. The amendments effected to this Act by the *Essential Services (Miscellaneous) Amendment Act 2001* have not been brought into operation.

An Act to protect the community against the interruption or dislocation of essential services.

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

Short title

1. This Act may be cited as the *Essential Services Act, 1981*.

Interpretation

2. In this Act, unless the contrary intention appears—

"essential service" means a service (whether provided by a public or private undertaking) without which the safety, health or welfare of the community or a section of the community would be endangered or seriously prejudiced:

"owner" of property includes a person in lawful possession of the property:

"period of emergency" means a period declared by proclamation under this Act to be a period of emergency:

"proclaimed essential service" means an essential service declared by proclamation under this Act to be an essential service in respect of which a period of emergency applies:

"the provision" of an essential service includes the operation, or maintenance of an essential service; and "to provide" has a corresponding meaning:

"to sell" means—

(a) in relation to goods—to sell, or to offer or expose for sale;

and

(b) in relation to services—to contract to provide the services, or to offer to provide the services under contract; and "sale" has a corresponding meaning:

"service" includes the production, distribution and supply of goods.

Declaration of periods of emergency

3. (1) Where, in the opinion of the Governor, circumstances have arisen, or are likely to arise, that have caused, or are likely to cause, interruption or dislocation of essential services in the State, he may, by proclamation—

(a) declare a period (commencing on the date of the proclamation, or some specified later date, and extending for not more than seven days) to be a period of emergency for the purposes of this Act;

and

(b) declare that specified essential services are the essential services in respect of which the period of emergency applies.

3.

(2) The Governor may, by proclamation—

- (a) extend a period of emergency for successive periods (each not to exceed seven days) but not so that the total period exceeds fourteen days;
- (b) extend a period of emergency by such other period or periods as may be authorized by a resolution of both Houses of Parliament;
- (c) vary a declaration under subsection (1)(b) by expanding or reducing the range of essential services to which the declaration applies;

or

- (d) revoke a proclamation under this section.

(3) Where a period of emergency expires, no subsequent period shall be declared to be a period of emergency unless—

- (a) that subsequent period commences fourteen days or more after the expiration of the former period of emergency;

or

- (b) the declaration is authorized by a resolution of both Houses of Parliament.

Directions in relation to proclaimed essential services

4. (1) If, during a period of emergency, it is, in the opinion of the Minister, in the public interest to do so, he may give directions in relation to the provision or use of proclaimed essential services.

(2) A direction under this section—

- (a) may relate to proclaimed essential services generally, or to a particular proclaimed essential service;
- (b) may be given to a specified person, or class of persons, or members of the public generally;
- (c) may be expressed to be of general application or limited according to time, place or circumstances;
- (d) may impose a restriction or prohibition (which may be absolute or conditional);
- (e) may deal with matters incidental or ancillary to the provision or use of proclaimed essential services.

(3) No direction shall be given under this section unless it relates to the provision or use of proclaimed essential services.

4.

(4) A direction under this section—

(a) shall be made in writing;

and

(b) shall be regarded as having been duly given to the person or persons to whom it is addressed if—

(i) a copy of the direction, or a document setting out the terms of the direction, is served personally or by post on the person or persons to whom it is addressed;

(ii) the terms of the direction are communicated to the person or persons to whom it is addressed by telegram or telex;

or

(iii) the terms of the direction are published in a manner determined by the Minister.

(5) Where a person to whom a direction is given under this section contravenes or fails to comply with the direction, he shall be guilty of an offence.

Penalty: Where the convicted person is a body corporate—ten thousand dollars; where the convicted person is a natural person—one thousand dollars.

(6) A direction under this section—

(a) shall not operate after the expiration of the period of emergency in relation to which it was made;

and

(b) may be revoked by the Minister at any time.

(7) Where—

(a) a direction is given under this section to a particular person, or class of persons;

and

(b) that person, or a person of that class, incurs expenses in complying with the direction,

he may recover the amount of those expenses from the Minister as a debt.

Minister may take over, etc., the provision of essential services

5. (1) If, during a period of emergency, it is, in the opinion of the Minister, in the public interest to do so, he may—

(a) provide, or assist in the provision of, a proclaimed essential service;

or

(b) provide, or assist in the provision of, a service in substitution for a proclaimed essential service.

(2) For the purpose of providing, or assisting in the provision of, a service under subsection (1), the Minister may—

(a) employ at not less than award rates such persons as he thinks fit;

and

(b) enter into such contracts or arrangements as he thinks fit.

(3) The Minister may, with the consent of the Governor, apply moneys from the General Revenue for the purpose of satisfying liabilities incurred by him in the exercise of his powers under subsection (1) or (2), and this subsection is, without further appropriation, a sufficient authority for that purpose.

(4) The Minister may, by instrument in writing served upon the owner of property that is necessary to enable the Minister to exercise powers conferred by subsection (1), requisition that property.

(5) An instrument of requisition under subsection (4) shall be regarded as having been duly served on the owner of property to which it relates if—

(a) the instrument, or a copy of the instrument, is served personally or by post on the owner;

or

(b) the terms of the instrument are communicated to the owner by telegram or telex.

(6) Where a person to whom a requisition under subsection (4) is addressed refuses or fails to make available for use by the Minister any of his property to which the requisition relates, he shall be guilty of an offence.

Penalty: Where the convicted person is a body corporate—ten thousand dollars; where the convicted person is a natural person—one thousand dollars.

(7) Where property has been requisitioned by the Minister under this section, the Minister, or an agent of the Minister, may take the property, exercising any necessary force in order to do so, and may use the property in the exercise of powers conferred by subsection (1).

(8) At or before the end of a period of emergency, property requisitioned by the Minister shall be returned to the owner and the Minister shall be liable to compensate the owner—

(a) for damage to, or deterioration of, the property occurring while it was in the possession of the Minister;

and

(b) for loss suffered by the owner in consequence of deprivation of the use of his property.

Power to require information

6. (1) The Minister may, by notice in writing, require any person who is, in his opinion, in a position to do so to furnish information specified in the notice, relating to the provision or use of an essential service.

(2) A notice under subsection (1) shall be regarded as having been duly given to the person to whom it is addressed if—

(a) the notice, or a copy of the notice, is served personally or by post on that person;

or

(b) the terms of the notice are communicated to that person by telegram or telex.

(3) Any information sought under subsection (1) must be relevant to the administration of this Act.

(4) A person required to furnish information under subsection (1) shall, within the time allowed in the notice, furnish the information sought in the notice to the best of his knowledge, information and belief.

Penalty: Where the convicted person is a body corporate—ten thousand dollars; where the convicted person is a natural person—one thousand dollars.

(5) A person is not obliged to furnish information under this section if that information would tend to incriminate him of an offence.

Profiteering

7. (1) The Minister may, by notice published in the *Gazette*—

(a) fix maximum prices in relation to the sale of specified goods or services during a period of emergency;

or

(b) vary or revoke a notice under this section.

(2) A notice under this section—

(a) may fix differential maximum prices that vary according to factors specified in the notice;

7.

- (b) may apply to sale generally, or to specified classes of sale;
- (c) may apply throughout the State, or in specified parts of the State.

(3) A person who, during a period of emergency, sells goods or services in relation to which a maximum price is in force under this section at a price in excess of that maximum shall be guilty of an offence and liable to a penalty not exceeding ten thousand dollars, or imprisonment for six months, or both.

Offence to intimidate, etc., person performing duties in essential service during period of emergency

8. Any person who, during a period of emergency, by force or intimidation, interferes with or impedes the performance by any person of a duty related to the provision of a proclaimed essential service or the administration of this Act shall be guilty of an offence and liable to a penalty not exceeding five thousand dollars.

Exemptions

9. (1) The Minister may, by instrument in writing, grant an exemption from the provisions, or any specified provisions of this Act, or from any specified direction given under this Act in respect of—

- (a) any specified person or class of persons;
- (b) any specified part or parts of the State;
- (c) any specified class of actions.

(2) The Minister may, by instrument in writing, vary or revoke an exemption under subsection (1).

(3) An exemption under this section may be granted upon such conditions as the Minister thinks fit and specifies in the instrument of exemption.

(4) A person in whose favour an exemption under this section operates shall not contravene or fail to comply with a condition of the exemption.

Penalty: One thousand dollars.

(5) Notice of an exemption granted under this section, and of the variation or revocation of any such exemption, shall be published in the *Gazette*, or in a newspaper circulating generally throughout the State, as soon as reasonably practicable after it takes effect.

Delegation

10. (1) The Minister may, by instrument in writing, delegate his powers, or any of his powers, under this Act to any other person or persons.

(2) No delegation shall be made under this section of the power to requisition property, or to fix maximum prices in relation to the sale of goods or services.

(3) A delegation under this section is revocable at will and does not derogate from the power of the Minister to act personally in any matter.

Evidentiary provisions

11. In any proceedings for an offence against this Act, an allegation in the complaint—

- (a) that a period referred to in the complaint is or was a period of emergency;
- (b) that a service referred to in the complaint was, on a specified date, a proclaimed essential service;
- (c) that a specified direction was given under this Act—
 - (i) at a specified time;
 - (ii) in a specified manner;and
 - (iii) to a specified person, or persons of a specified class, or to members of the public generally;
- (d) that a person named in the complaint was on a specified date entitled to exercise powers referred to in the complaint by virtue of a delegation under this Act,

shall be accepted as proved in the absence of proof to the contrary.

Proceedings for offences against this Act

12. (1) Proceedings for an offence against this Act shall be disposed of summarily.

(2) Proceedings for an offence against this Act shall not be commenced without the authorization of the Attorney-General.

(3) An apparently genuine document purporting to be a certificate of the Attorney-General and to certify that he authorized the commencement of proceedings for an offence against this Act shall, in the absence of proof to the contrary, be accepted as proof of that authorization.

Regulations

13. (1) The Governor may make such regulations as are necessary or expedient for the purposes of this Act.

(2) A regulation may provide for the imposition of a penalty not exceeding five hundred dollars for breach of, or non-compliance with, the regulation.