

Legislative Council—No 97A

As reported with amendments, report adopted, Standing Orders suspended and passed remaining stages, 4 June 2009

South Australia

Statutes Amendment (Public Health Incidents and Emergencies) Bill 2009

A BILL FOR

An Act to amend the *Electricity Act 1996*, the *Emergency Management Act 2004*, the *Essential Services Act 1981*, the *Fire and Emergency Services Act 2005*, the *Gas Act 1997*, the *Public and Environmental Health Act 1987* and the *Summary Offences Act 1953*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Statutes Amendment (Public Health Incidents and Emergencies) Act 2009*.

5 2—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Electricity Act 1996*

3—Amendment of section 54—Emergency legislation not affected

10 Section 54—delete "or *Fire and Emergency Services Act 2005*" and substitute:
, *Fire and Emergency Services Act 2005* or Part 4A of the *Public and Environmental Health Act 1987*

Part 3—Amendment of *Emergency Management Act 2004*

4—Amendment of section 3—Interpretation

15 (1) Section 3—after the definition of *authorised officer* insert:

Chief Medical Officer has the same meaning as in the *Public and Environmental Health Act 1987*;

(2) Section 3, definition of *emergency*—delete the definition and substitute:

20 *emergency* means an event (whether occurring in the State, outside the State or in and outside the State) that causes, or threatens to cause—

- (a) the death of, or injury or other damage to the health of, any person;
or
- (b) the destruction of, or damage to, any property; or
- (c) a disruption to essential services or to services usually enjoyed by the
25 community; or
- (d) harm to the environment, or to flora or fauna;

Note—

This is not limited to naturally occurring events (such as earthquakes, floods or storms) but would, for example, include fires, explosions, accidents, epidemics, pandemics, emissions of poisons, radiation or other hazardous agents, hijacks, sieges, riots, acts of terrorism and hostilities directed by an enemy against Australia.

5—Amendment of section 17—Authorised officers

Section 17—after subsection (1) insert:

- (1a) An appointment under subsection (1) may be subject to conditions specified by the State Co-ordinator.

6—Amendment of section 23—Major emergencies

- (1) Section 23(2)(b) and (c)—delete paragraphs (b) and (c) and substitute:

- (b) remains in force for the period specified in the declaration (which must not exceed 14 days) and for such further periods (which may be of any length) as may be approved by the Governor.

- (2) Section 23—after subsection (2) insert:

- (3) The State Co-ordinator may, at any time, revoke a declaration under this section.

7—Amendment of section 24—Disasters

- (1) Section 24(2)(b)—delete paragraph (b) and substitute:

- (b) remains in force for the period specified in the declaration (which must not exceed 30 days) and for such further periods (which may be of any length) as may be approved by resolution of both Houses of Parliament.

- (2) Section 24(3)—delete subsection (3)

8—Insertion of section 24A

After section 24 insert:

24A—Public health incidents and emergencies

An emergency may be declared to be an identified major incident, a major emergency or a disaster whether or not the emergency has previously been declared to be a public health incident or a public health emergency under the *Public and Environmental Health Act 1987*.

9—Amendment of section 25—Powers of State Co-ordinator and authorised officers

- (1) Section 25(2)(c)—delete paragraph (c) and substitute:

- (ba) remove or destroy, or order the removal or destruction of, any building, structure, vehicle, vegetation, animal or other thing;
(bb) carry out, or cause to be carried out, excavation or other earthworks;

- (c) construct, or cause to be constructed, barriers, buildings or other structures;
- (2) Section 25(2)—after paragraph (fa) insert:
- (fb) direct a person to remain isolated or segregated from other persons or to take other measures to prevent the transmission of a disease or condition to other persons;
- (fc) direct a person to undergo medical observation, examination (including diagnostic procedures) or treatment (including preventative treatment);
- (3) Section 25(2)(h)—delete "shut off or disconnected" and substitute:
connected, reconnected, disconnected or shut off
- (4) Section 25(2)—after paragraph (k) insert:
- (ka) require a person to furnish such information as may be reasonably required in the circumstances (other than information that may be required to be furnished under section 6 of the *Essential Services Act 1981*);
- (5) Section 25—after subsection (2) insert:
- (3) In addition, if, after considering the advice of the Chief Medical Officer, the State Co-ordinator is of the opinion that the scope of an emergency is of such a magnitude that demand for medical goods or services cannot be met without contravening the laws of the State, the State Co-ordinator may, despite those laws, authorise authorised officers, or authorised officers of a particular class, to provide, or direct the provision of, such goods or services or a particular class of such goods or services on such conditions as the State Co-ordinator thinks appropriate.

10—Amendment of section 26—Supply of gas or electricity

Section 26—delete "shut off or disconnect" and substitute:
connect, reconnect, disconnect or shut off

11—Insertion of section 26A

After section 26 insert:

26A—Modification of Controlled Substances Act

- (1) The Minister may, by notice in the Gazette, modify the operation of section 18, 26 or 31 of the *Controlled Substances Act 1984* for the duration of the declaration of an identified major incident, a major emergency or a disaster if satisfied that it is necessary to do so in order to meet—
- (a) the demand for drugs for medical purposes arising from the incident, emergency or disaster; or

(b) the ordinary demand for drugs for medical purposes despite interruptions to medical services or supplies or other difficulties arising from the incident, emergency or disaster.

(2) The Minister may, by subsequent notice in the Gazette, vary or revoke a notice under subsection (1).

(3) Before a notice is made under this section, the Minister must consult with the Minister responsible for the administration of the *Controlled Substances Act 1984*.

12—Insertion of section 31A

After section 31 insert:

31A—Confidentiality

If a person, in the course of the administration or enforcement of this Act, obtains—

(a) medical information relating to another; or

(b) information the disclosure of which would involve the disclosure of information relating to the personal affairs of another,

the person must not intentionally disclose that information unless—

(c) the disclosure is made in the course of the administration or enforcement of this Act; or

(d) the disclosure is made with the consent of the other person; or

(e) the disclosure is required by a court or tribunal constituted by law.

Maximum penalty: \$5 000.

Part 4—Amendment of *Essential Services Act 1981*

13—Amendment of section 6—Power to require information

(1) Section 6(3)—after paragraph (c) insert:

(ca) the administration of Part 4A of the *Public and Environmental Health Act 1987*; or

(2) Section 6(6)(a)—after subparagraph (iii) insert:

(iiia) the administration of Part 4A of the *Public and Environmental Health Act 1987*; or

Part 5—Amendment of *Fire and Emergency Services Act 2005*

14—Amendment of section 3—Interpretation

Section 3(1), definition of *emergency*—after "event" insert:

(whether occurring in the State, outside the State or in and outside the State)

15—Amendment of section 42—Powers

(1) Section 42(2)(c)—delete paragraph (c) and substitute:

(c) remove or destroy, or order the removal or destruction of, any building, structure, vehicle, vegetation, animal or other thing;

5 (ca) carry out, or cause to be carried out, excavation or other earthworks;

(cb) construct, or cause to be constructed, barriers, buildings or other structures;

(cc) subject a place or thing to a decontamination procedure;

(2) Section 42(2)—after paragraph (f) insert:

10 (fa) direct a person to submit to a decontamination procedure;

(3) Section 42(2)(h)—delete "shut off or disconnected" and substitute:

connected, reconnected, disconnected or shut off

16—Amendment of section 44—Supply of gas or electricity

Section 44—delete "shut off or disconnect" and substitute:

15 connect, reconnect, disconnect or shut off

17—Amendment of section 97—Powers

(1) Section 97(2)(c)—delete paragraph (c) and substitute:

(c) remove or destroy, or order the removal or destruction of, any building, structure, vehicle, vegetation, animal or other thing;

20 (ca) carry out, or cause to be carried out, excavation or other earthworks;

(cb) construct, or cause to be constructed, barriers, buildings or other structures;

(cc) subject a place or thing to a decontamination procedure;

(2) Section 97(2)—after paragraph (f) insert:

25 (fa) direct a person to submit to a decontamination procedure;

(3) Section 97(2)(h)—delete "shut off or disconnected" and substitute:

connected, reconnected, disconnected or shut off

18—Amendment of section 99—Supply of gas or electricity

Section 99—delete "shut off or disconnect" and substitute:

30 connect, reconnect, disconnect or shut off

19—Amendment of section 108—Functions and powers

Section 108(1)—after paragraph (b) insert:

- 5 (ba) to assist the Chief Executive within the meaning of the *Public and Environmental Health Act 1987*, in accordance with the Public Health Emergency Management Plan, in carrying out prevention, preparedness, response or recovery operations under Part 4A of that Act;

20—Amendment of section 118—Powers

(1) Section 118(2)(c)—delete paragraph (c) and substitute:

- 10 (c) remove or destroy, or order the removal or destruction of, any building, structure, vehicle, vegetation, animal or other thing;
- (ca) carry out, or cause to be carried out, excavation or other earthworks;
- (cb) construct, or cause to be constructed, barriers, buildings or other structures;
- 15 (cc) subject a place or thing to a decontamination procedure;

(2) Section 118(2)—after paragraph (f) insert:

- (fa) direct a person to submit to a decontamination procedure;

(3) Section 118(2)(h)—delete "shut off or disconnected" and substitute:

connected, reconnected, disconnected or shut off

21—Amendment of section 119—Supply of gas or electricity

Section 119—delete "shut off or disconnect" and substitute:

connect, reconnect, disconnect or shut off

Part 6—Amendment of *Gas Act 1997*

22—Amendment of section 54—Emergency legislation not affected

25 Section 54—delete "or *Fire and Emergency Services Act 2005*" and substitute:

, *Fire and Emergency Services Act 2005* or Part 4A of the *Public and Environmental Health Act 1987*

Part 7—Amendment of *Health Care Act 2008*

23—Amendment of section 51—Functions and powers of SAAS

30 Section 51(2)—delete subsection (2) and substitute:

- (2) SAAS may, if—
- (a) an identified major incident, a major emergency or a disaster is declared under the *Emergency Management Act 2004*; or
- 35 (b) a public health incident or a public health emergency is declared under the *Public and Environmental Health Act 1987*,

direct a person holding a restricted ambulance service licence to assist with the provision of response and recovery operations in such a manner as the SAAS sees fit.

Part 8—Amendment of *Public and Environmental Health Act 1987*

24—Amendment of section 3—Interpretation

- (1) Section 3(1)—after the definition of *Chief Executive* insert:

Chief Medical Officer means the Chief Medical Officer of the Department and includes a person for the time being acting in that position;

- (2) Section 3(1)—after the definition of *director* insert:

emergency has the same meaning as in the *Emergency Management Act 2004*;

emergency officer means a police officer or a person holding an appointment as an emergency officer under section 7A;

- (3) Section 3(1)—after the definition of *premises* insert:

public health emergency—see section 37B;

public health incident—see section 37A;

Public Health Emergency Management Plan means a plan (or a series of plans) prepared by the Chief Executive and approved by the Minister comprising strategies to be administered by the Department for the prevention of emergencies in this State and for ensuring adequate preparation for emergencies in this State, including strategies for the containment of emergencies, response and recovery operations and the orderly and efficient deployment of resources and services in connection with response and recovery operations;

Note—

It is contemplated that the Public Health Emergency Management Plan will form part of, or be recognised in, the State Emergency Management Plan prepared under the *Emergency Management Act 2004*.

- (4) Section 3(1)—after the definition of *public place* insert:

recovery operations has the same meaning as in the *Emergency Management Act 2004*;

- (5) Section 3(1)—after the definition of *refuse* insert:

response operations has the same meaning as in the *Emergency Management Act 2004*;

State Co-ordinator means the person holding or acting in the position of State Co-ordinator under the *Emergency Management Act 2004*;

25—Insertion of section 7A

After section 7 insert:

7A—Emergency officers

- 5
- (1) The Chief Executive may appoint, individually or by class, such persons to be emergency officers for the purposes of this Act as the Chief Executive thinks fit.
- (2) An appointment under subsection (1) may be subject to conditions specified by the Chief Executive.
- 10
- (3) An emergency officer, other than a police officer, must be issued with an identity card in a form approved by the Chief Executive—
- (a) containing the person's name and a photograph of the person; and
- (b) stating that the person is an emergency officer for the purposes of this Act.
- 15
- (4) An emergency officer must, at the request of a person in relation to whom the officer intends to exercise any powers under this Act, produce for the inspection of the person—
- (a) in the case of an emergency officer who is a police officer and is not in uniform—his or her certificate of authority; or
- 20
- (b) in the case of an emergency officer who is not a police officer—his or her identity card.
- (5) An emergency officer appointed under this Act must, on ceasing to be an emergency officer for any reason, surrender his or her identity card and any insignia or special apparel or equipment issued to the emergency officer for the purposes of this Act to the Chief Executive or a person nominated by the Chief Executive.
- 25

Penalty: Division 8 fine.

26—Insertion of Part 4A

After Part 4 insert:

Part 4A—Management of emergencies

37A—Public health incidents

- 35
- (1) If it appears to the Chief Executive that the nature or scale of an emergency that has occurred, is occurring or is about to occur, is such that it should be declared to be a public health incident, the Chief Executive may, with the approval of the Minister, declare the emergency to be a public health incident.
- (2) A declaration under this section—
- (a) may be made orally (but if made orally must, as soon as is reasonably practicable, be reduced to writing and a copy provided to the Minister); and
- 40

(b) subject to this section, remains in force while response operations are being carried out in relation to the emergency (but not for a period exceeding 12 hours).

(3) The Chief Executive may, at any time, revoke a declaration under this section.

37B—Public health emergencies

(1) If it appears to the Chief Executive that an emergency has occurred, is occurring or is about to occur, the Chief Executive may, with the approval of the Minister, declare the emergency to be a public health emergency (whether or not the emergency has previously been declared to be a public health incident under section 37A).

(2) A declaration under this section—

(a) must be in writing and published in a manner and form determined by the Minister; and

(b) remains in force for a period specified in the declaration (which must not exceed 14 days) and for such further periods (which may be of any length) as may be approved by the Governor.

(3) The Chief Executive may, at any time, revoke a declaration under this section.

37C—Making and revocation of declarations

(1) The Public Health Emergency Management Plan may contain guidelines setting out circumstances in which an emergency should be declared to be a public health incident or to be a public health emergency.

(2) Before making a declaration under this Part, the Chief Executive must consult with—

(a) the Chief Medical Officer; and

(b) the State Co-ordinator.

(3) The Chief Executive must revoke a declaration under this Part at the request of the State Co-ordinator.

37D—Powers and functions of Chief Executive

(1) On the declaration of a public health incident or public health emergency, and while that declaration remains in force, the Chief Executive must take any necessary action to implement the Public Health Emergency Management Plan and cause such response and recovery operations to be carried out as he or she thinks appropriate.

(2) The Chief Executive must provide information relating to a public health incident or public health emergency to the State Co-ordinator in accordance with any requirements of the State Co-ordinator.

37E—Application of Emergency Management Act

- 5
- (1) On the declaration of a public health incident or public health emergency, the following provisions of the *Emergency Management Act 2004* apply in relation to the emergency as if those provisions formed part of this Act but subject to the modifications specified in subsection (2) and any other prescribed modifications:
- 10
- (a) Part 4 Division 4 (Powers that may be exercised in relation to declared emergencies) except section 25(1) and (2)(n);
 - (b) Part 4 Division 5 (Recovery operations);
 - (c) Part 5 (Offences);
 - (d) Part 6 (Miscellaneous) except sections 37 and 38;
 - (e) definitions in section 3 of terms used in the above provisions.
- 15
- (2) The provisions of the *Emergency Management Act 2004* applied under subsection (1) are modified as follows:
- 20
- (a) a reference to the Minister is to be read as a reference to the Minister responsible for the administration of this Act;
 - (b) a reference to the State Co-ordinator is to be read as a reference to the Chief Executive;
 - (c) a reference to an authorised officer is to be read as a reference to an emergency officer;
 - (d) a reference to the State Emergency Management Plan is to be read as a reference to the Public Health Emergency Management Plan;
 - (e) a reference to an identified major incident is to be read as a reference to a public health incident;
 - (f) a reference to a major emergency is to be read as a reference to a public health emergency;
 - (g) a reference to a declaration is to be read as a reference to a declaration under this Part;
 - (h) a reference to this Act (meaning the *Emergency Management Act 2004*) is to be read as a reference to this Part;
 - (i) a reference to section 25(1) of the *Emergency Management Act 2004* is to be read as a reference to section 37D(1) of this Act;
 - (j) section 25(2)(m) is to be read as if it did not include the words in brackets.
- 25
- 30
- 35

27—Amendment of section 47—Regulations

Section 47(2)—after paragraph (f) insert:

- 5 (fa) provide for such matters as are necessary in consequence of conditions directly or indirectly caused by an emergency declared to be a public health incident or public health emergency under this Act;

Part 9—Amendment of *Summary Offences Act 1953*

28—Amendment of section 83B—Dangerous areas

Section 83B(11)—delete subsection (11) and substitute:

- 10 (11) A declaration may not be made under this section in relation to circumstances arising in an emergency for which a declaration under the *Emergency Management Act 2004* or Part 4A of the *Public and Environmental Health Act 1987* is in force.