

South Australia

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ESSENTIAL SERVICES ACT 1981

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

*This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at 7 **October 2001**.*

ESSENTIAL SERVICES ACT 1981

being

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

as amended by

Essential Services (Miscellaneous) Amendment Act 2001 No. 4 of 2001 [Assented to 5 April 2001]¹

¹ Came into operation 7 October 2001: *Gaz.* 4 October 2001, p. 4340.

NOTE:

- Asterisks indicate repeal or deletion of text.
- For the legislative history of the Act see Appendix.

SUMMARY OF PROVISIONS

1. Short title
2. Interpretation
3. Declaration of periods of emergency
4. Directions in relation to proclaimed essential services
5. Minister may take over, etc., the provision of essential services
6. Power to require information
7. Profiteering
- 7A. Authorised officers
8. Offence to intimidate, etc., person performing duties in essential service during period of emergency
9. Exemptions
10. Delegation
- 10A. Continuing offence
- 10B. Offence by body corporate
- 10C. General defence
11. Evidentiary provisions
12. Proceedings for offences against this Act
13. Regulations

APPENDIX LEGISLATIVE HISTORY

The Parliament of South Australia enacts 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, the Governor 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.

(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; or
- (b) extend a period of emergency by such other period or periods as may be authorised by a resolution of both Houses of Parliament; or
- (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 may 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 authorised 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, the Minister 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 may be given under this section unless it relates to the provision or use of proclaimed essential services.

(4) A direction under this section may be given to a person—

(a) by personally serving a copy of the direction, or a document setting out the terms of the direction, on the person; or

(b) by posting a copy of the direction, or a document setting out the terms of the direction, to the person; or

(c) by transmitting by facsimile transmission a copy of the direction, or a document setting out the terms of the direction, to a facsimile number or the facsimile numbers provided by the person (in which case the notice or document will be taken to have been given to the person at the time of transmission); or

(d) by publishing the terms of the direction in a newspaper—

(i) that is distributed throughout the State, if the direction is of general application according to place;

(ii) that is distributed in a particular place, if the application of the direction is limited to that place; or

(e) by publishing the terms of the direction in a manner determined by the Minister.

(5) A person who intentionally or recklessly contravenes a direction given to the person under this section is guilty of an offence.

Maximum penalty: If the offence is committed by a body corporate—\$120 000.
 If the offence is committed by a natural person—\$20 000.

(5a) A person who contravenes a direction given to the person under this section is guilty of an offence.

Maximum penalty: If the offence is committed by a body corporate—\$20 000.
 If the offence is committed by a natural person—\$5 000.

(5b) If in proceedings for an offence against subsection (5) the court is not satisfied that the defendant is guilty of the offence charged but is satisfied that the defendant is guilty of an offence against subsection (5a), the court may find the defendant guilty of the latter offence.

(6) A direction under this section—

(a) does 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 or she may recover the amount of those expenses from the Minister as a debt.

(8) A person to whom a direction is given under this section incurs no civil or criminal liability for an act or omission of the person in compliance with the direction.

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, the Minister 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 the Minister thinks fit; and

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

(3) The Minister may, with the consent of the Governor, apply money from the Consolidated Account for the purpose of satisfying liabilities incurred by the Minister in the exercise of 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) may be served on a person—

- (a) by personally serving the instrument, or a copy of the instrument, on the person; or
- (b) by posting the instrument, or a copy of the instrument, to the person; or
- (c) by transmitting by facsimile transmission the instrument, or a copy of the instrument, to a facsimile number or the facsimile numbers provided by the person (in which case the instrument will be taken to have been served on the person at the time of transmission).

(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 the person's property to which the requisition relates, the person is guilty of an offence.

Maximum penalty: If the offence is committed by a body corporate—\$10 000.
 If the offence is committed by a natural person—\$1 250.

(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 must be returned to the owner and the Minister is 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 or her property.

Power to require information

6. (1) The Minister may, by notice in writing, require any person who is, in the Minister's 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) may be given to a person—

- (a) by personally serving the notice, or a copy of the notice, on the person; or
- (b) by posting the notice, or a copy of the notice, to the person; or
- (c) by transmitting by facsimile transmission the notice, or a copy of the notice, to a facsimile number or the facsimile numbers provided by the person (in which case the notice will be taken to have been given to the person at the time of transmission).

- (3) Any information sought under subsection (1) must be relevant or incidental to—
- (a) the administration of this Act; or
 - (b) the administration of the *State Disaster Act 1980*; or
 - (c) the administration of the *State Emergency Service Act 1987*; or
 - (d) a detailed assessment, which may be carried out by the Minister at any time, of the risks of disruption to the provision or use of the essential service to which the notice given under subsection (1) relates.

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

Maximum penalty: If the offence is committed by a body corporate—\$10 000.
 If the offence is committed by a natural person—\$1 250.

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

(6) The Minister or any other person who acquires confidential information as a result of a requirement under subsection (1) must not disclose the information except—

- (a) to a body or person who is authorised to engage in—
 - (i) the administration of this Act; or
 - (ii) the administration of the *State Disaster Act 1980*; or
 - (iii) the administration of the *State Emergency Service Act 1987*; or
 - (iv) a detailed assessment of the risks of disruption to the provision or use of the essential service to which the notice given under subsection (1) relates,

where the disclosure of the information is necessary for the body or person to engage in the administration or assessment; or

- (b) as otherwise required in the proper performance of official functions or duties; or
- (c) as authorised by the person to whom the duty of confidentiality is owed; or
- (d) as required by a court or other lawfully constituted authority; or
- (e) where the Minister is of the opinion that the disclosure of the information is in the public interest.

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;
- (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 is guilty of an offence.

Maximum penalty: \$10 000 or imprisonment for 6 months.

Authorised officers

7A. (1) During a period of emergency—

- (a) an authorised officer appointed under a prescribed Act may, for the purposes of the administration or enforcement of this Act, exercise powers granted to the authorised officer by the prescribed Act as if the powers were being exercised for the purposes of the administration or enforcement of the prescribed Act; and
- (b) for that purpose, the prescribed Act is to apply subject to modifications prescribed by regulation.

(2) In this section—

"**prescribed Act**" in relation to a period of emergency means an Act declared by regulation to be a prescribed Act in relation to an essential service in respect of which the period of emergency applies.

(3) Nothing in this section limits any power, authority or function that a member of the police force may have in relation to the administration or enforcement of this Act.

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 is guilty of an offence.

Maximum penalty: \$5 000.

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 who intentionally or recklessly contravenes a condition of an exemption granted to the person under this section is guilty of an offence.

Maximum penalty: If the offence is committed by a body corporate—\$120 000.
 If the offence is committed by a natural person—\$20 000.

(4a) A person who contravenes a condition of an exemption granted to the person under this section is guilty of an offence.

Maximum penalty: If the offence is committed by a body corporate—\$20 000.
 If the offence is committed by a natural person—\$5 000.

(4b) If in proceedings for an offence against subsection (4) the court is not satisfied that the defendant is guilty of the offence charged but is satisfied that the defendant is guilty of an offence against subsection (4a), the court may find the defendant guilty of the latter offence.

(5) Notice of an exemption granted under this section, and of the variation or revocation of any such exemption, must 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 any of the Minister's powers under this Act to any other person or persons.

(2) No delegation may 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.

Continuing offence

10A. (1) A person convicted of an offence against a provision of this Act in respect of a continuing act or omission—

(a) is liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continued of not more than one-fifth of the maximum penalty prescribed for that offence; and

(b) is, if the act or omission continues after the conviction, guilty of a further offence against the provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continued after the conviction of not more than one-fifth of the maximum penalty prescribed for the offence.

(2) If an offence consists of an omission to do something that is required to be done, the omission will be taken to continue for as long as the thing required to be done remains undone after the end of the period for compliance with the requirement.

Offence by body corporate

10B. If a body corporate commits an offence against this Act, a director of the body corporate is guilty of an offence and liable to the same penalty as may be imposed for the principal offence when committed by a natural person.

General defence

10C. It is a defence to a charge of an offence against this Act if it is proved that the alleged offence did not result from any failure on the defendant's part to take all reasonable and practicable measures to prevent the commission of the offence or offences of the same or a similar nature.

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; and
 - (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,

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

Proceedings for offences against this Act

12. * * * * *

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

(3) An apparently genuine document purporting to be signed by the Attorney-General authorising the commencement of proceedings under this Act must be accepted in legal proceedings, in the absence of proof to the contrary, as proof of the authorisation.

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.

APPENDIX

LEGISLATIVE HISTORY

Section 3(1) and (3):	amended by 4, 2001, s. 8 (Sched.)
Section 4(1) and (3):	amended by 4, 2001, s. 8 (Sched.)
Section 4(4) and (5):	substituted by 4, 2001, s. 3(a)
Section 4(5a) and (5b):	inserted by 4, 2001, s. 3(a)
Section 4(6) and (7):	amended by 4, 2001, s. 8 (Sched.)
Section 4(8):	inserted by 4, 2001, s. 3(b)
Section 5(1) - (3):	amended by 4, 2001, s. 8 (Sched.)
Section 5(5):	substituted by 4, 2001, s. 8 (Sched.)
Section 5(6) and (8):	amended by 4, 2001, s. 8 (Sched.)
Section 6(1):	amended by 4, 2001, s. 8 (Sched.)
Section 6(2):	substituted by 4, 2001, s. 8 (Sched.)
Section 6(3):	substituted by 4, 2001, s. 4(a)
Section 6(4) and (5):	amended by 4, 2001, s. 8 (Sched.)
Section 6(6):	inserted by 4, 2001, s. 4(b)
Section 7(3):	amended by 4, 2001, s. 8 (Sched.)
Section 7A:	inserted by 4, 2001, s. 5
Section 8:	amended by 4, 2001, s. 8 (Sched.)
Section 9(4):	substituted by 4, 2001, s. 6
Section 9(4a) and (4b):	inserted by 4, 2001, s. 6
Section 9(5):	amended by 4, 2001, s. 8 (Sched.)
Section 10(1) and (2):	amended by 4, 2001, s. 8 (Sched.)
Sections 10A - 10C:	inserted by 4, 2001, s. 7
Section 11:	amended by 4, 2001, s. 8 (Sched.)
Section 12(1):	repealed by 4, 2001, s. 8 (Sched.)
Section 12(2):	amended by 4, 2001, s. 8 (Sched.)
Section 12(3):	substituted by 4, 2001, s. 8 (Sched.)