

South Australia



ANNO QUINQUAGESIMO
ELIZABETHAE II REGINAE
A.D. 2001

ESSENTIAL SERVICES (MISCELLANEOUS) AMENDMENT ACT 2001

No. 4 of 2001

[Assented to 5 April 2001]

An Act to amend the Essential Services Act 1981.

SUMMARY OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of s. 4—Directions in relation to proclaimed essential services
4. Amendment of s. 6—Power to require information
5. Insertion of s. 7A
 - 7A. Authorised officers
6. Amendment of s. 9—Exemptions
7. Insertion of ss. 10A, 10B and 10C
 - 10A. Continuing offence
 - 10B. Offence by body corporate
 - 10C. General defence
8. Statute Law Revision Amendments

SCHEDULE

Statute Law Revision

The Parliament of South Australia enacts as follows:**Short title**

1. (1) This Act may be cited as the *Essential Services (Miscellaneous) Amendment Act 2001*.
- (2) The *Essential Services Act 1981* is referred to in this Act as "the principal Act".

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Amendment of s. 4—Directions in relation to proclaimed essential services

3. Section 4 of the principal Act is amended—

(a) by striking out subsections (4) and (5) and substituting the following subsections:

(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.;

(b) by inserting after subsection (7) the following subsection:

(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.

Amendment of s. 6—Power to require information

4. Section 6 of the principal Act is amended—

(a) by striking out subsection (3) and substituting the following subsection:

(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.;

(b) by inserting after subsection (5) the following subsection:

(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.

Insertion of s. 7A

5. The following section is inserted after section 7 of the principal Act:

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.

Amendment of s. 9—Exemptions

6. Section 9 of the principal Act is amended by striking out subsection (4) and substituting the following subsections:

(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.

Insertion of ss. 10A, 10B and 10C

7. The following sections are inserted after section 10 of the principal Act:

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.

Statute Law Revision Amendments

8. The principal Act is further amended in the manner indicated in the Schedule.

- Section 6(1) Strike out "his" and substitute "the Minister's".
- Section 6(2) Strike out this subsection and substitute the following subsection:
- (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).
- Section 6(4) Strike out "shall" and substitute "must".
- Strike out "his" and substitute "the person's".
- Strike out the penalty provision and substitute the following:
- Maximum penalty: If the offence is committed by a body corporate—\$10 000.
 If the offence is committed by a natural person—\$1 250.
- Section 6(5) Strike out "him" and substitute "the person's".
- Section 7(3) Strike out "shall be" and substitute "is".
- Strike out "and liable to a penalty not exceeding ten thousand dollars, or imprisonment for six months, or both" and insert at the foot of the subsection the following penalty provision:
- Maximum penalty: \$10 000 or imprisonment for 6 months.
- Section 8 Strike out "shall be" and substitute "is".
- Strike out "and liable to a penalty not exceeding five thousand dollars" and insert at the foot of the subsection the following penalty provision:
- Maximum penalty: \$5 000.
- Section 9(5) Strike out "shall" and substitute "must".
- Section 10(1) Strike out "his powers, or any of his powers" and substitute "any of the Minister's powers".
- Section 10(2) Strike out "shall" and substitute "may".
- Section 11 Strike out "shall" and substitute "will".
- Section 12(1) Strike out this subsection.
- Section 12(2) Strike out "shall" and substitute "must".

Section 12(3)

Strike out this subsection and substitute the following subsection:

(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.
