

**Version No. 012**  
**Victoria State Emergency Service Act 2005**  
**No. 51 of 2005**

Version incorporating amendments as at 19 October 2010

**TABLE OF PROVISIONS**

<i>Section</i>	<i>Page</i>
<b>PART 1—PRELIMINARY</b>	<b>1</b>
1 Purpose	1
2 Commencement	1
3 Definitions	2
<b>PART 2—VICTORIA STATE EMERGENCY SERVICE AUTHORITY</b>	<b>5</b>
4 Victoria State Emergency Service Authority	5
5 Functions	5
6 Duties of the Authority	7
7 General powers of Authority	8
8 Accountability of Authority	8
9 Board of Directors	9
10 Appointment of Directors	9
11 Term of appointment	9
12 Remuneration and allowances	10
13 Application of <b>Public Administration Act 2004</b>	10
14 Vacancies	10
15 Acting Directors	11
16 Membership of Board not office or place of profit	11
17 Decisions not affected by certain matters	12
18 Immunity of Directors	12
19 Meetings of the Board	13
20 Participation in meetings by telephone or other means	13
21 Resolutions without meetings	14
22 Conflicts of interest	15
23 Power of delegation	16
24 Chief Executive Officer	16
25 Acting Chief Executive Officer	17
26 Delegation of powers of Chief Executive Officer	17
27 Delegation	17

<i>Section</i>	<i>Page</i>
<b>PART 3—VICTORIA STATE EMERGENCY SERVICE</b>	<b>18</b>
28 Victoria State Emergency Service	18
29 Director of Operations	18
30 Staff	19
31 Delegation	19
32 Powers and duties of Director of Operations	20
33 Register	20
34 Registered units	20
35 Controllers of registered units	21
36 Probationary members	22
37 Registered members	22
38 Examination or medical evidence	23
39 DISPLAN roles of the Authority	23
40 Traffic management power	24
41 Power of Authority to authorise registered units to perform functions outside Victoria	25
42 Immunity of Service members	26
43 Insurance policies	27
44 Offence of wilful damage or interference with property	27
45 Offence to obstruct, hinder or interfere	27
46 Offences relating to impersonation	27
<b>PART 4—COMPENSATION</b>	<b>29</b>
47 Compensation for injury during emergency service	29
48 Compensation otherwise payable	31
49 Compensation for loss of or damage to property during emergency service	32
50 Jurisdiction	33
51 Victorian WorkCover Authority to represent Crown	33
52 Payments	34
53 Entitlement where damages otherwise payable	34
54 Fraudulent claims	35
<b>PART 5—MISCELLANEOUS</b>	<b>36</b>
55 Regulations	36
56 Repeal	38
57 Transitional provisions	38
58 <i>Repealed</i>	40
<b>PARTS 6–8—<i>Repealed</i></b>	<b>40</b>
59–75 <i>Repealed</i>	40

<i>Section</i>	<i>Page</i>
<b>ENDNOTES</b>	<b>41</b>
1. General Information	41
2. Table of Amendments	42
3. Explanatory Details	43

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**The Parliament of Victoria enacts as follows:**

**PART 1—PRELIMINARY**

**1 Purpose**

The purpose of this Act is to—

- (a) establish the Victoria State Emergency Service Authority to manage the Victoria State Emergency Service;
- (b) re-enact the **Victoria State Emergency Service Act 1987** with amendments to improve the operation and effectiveness of the Victoria State Emergency Service;
- (c) amend the **Country Fire Authority Act 1958** and the **Metropolitan Fire Brigades Act 1958** to improve the transparency and equity of funding arrangements;
- (d) repeal the **Victoria State Emergency Service Act 1987** and make consequential amendments to certain other Acts.

**2 Commencement**

- (1) Section 1 and this section come into operation on the day after the day on which this Act receives the Royal Assent.
- (2) The remaining provisions of this Act come into operation on a day or days to be proclaimed.

- (3) If a provision referred to in subsection (2) does not come into operation before 1 July 2006, it comes into operation on that day.

### 3 Definitions

In this Act—

**agency** means a government agency or a non-government agency;

**Authority** means the Victoria State Emergency Service Authority established under section 4;

**Board** means the Board of the Authority constituted under section 9;

**Chief Executive Officer** means the Chief Executive Officer appointed under section 24 and the Acting Chief Executive Officer while acting as the Acting Chief Executive Officer;

**civil defence** means the performance of humanitarian tasks intended to protect the civil population of Victoria against the dangers of, and to help it recover from, the immediate effects of a war-like act;

**controller**, in relation to a registered unit, means the chief officer, however designated, of the registered unit;

**Director** means a Director of the Board under section 9 and an acting Director while acting as a Director;

**Director of Operations** means the Director of Operations appointed under section 29;

**DISPLAN** means the State emergency response plan referred to in section 10 of the **Emergency Management Act 1986**;

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*emergency* has the same meaning as in the  
**Emergency Management Act 1986**;

*emergency management* has the same meaning as  
in section 4(1) of the **Emergency  
Management Act 1986**;

*emergency operations* means the preparation for  
and conduct of response roles under  
DISPLAN and the State emergency recovery  
plan;

*Government agency* means—

- (a) any body corporate or unincorporate  
constituted by or under any Act for a  
public purpose; and
- (b) any member or officer or employee of a  
body referred to in paragraph (a); and
- (c) any person in the service of the Crown  
in the right of the State of Victoria upon  
whom any function, power, duty or  
responsibility is conferred by or under  
any Act;

*non-government agency* means a voluntary  
organisation or any other person or body  
other than a government agency;

*prevention*, in relation to an emergency, has the  
same meaning as in section 4A of the  
**Emergency Management Act 1986**;

*probationary member* means a volunteer  
registered as a probationary member under  
section 36;

*recovery*, in relation to an emergency, has the  
same meaning as in section 4A of the  
**Emergency Management Act 1986**;

*register* means the register kept under section 33;

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***registered member*** means a person registered as a member of the Service under section 37;

***registered unit*** means a group of persons registered as a unit under section 34;

***response***, in relation to an emergency, has the same meaning as in section 4A of the **Emergency Management Act 1986**;

***Service*** means the Victoria State Emergency Service;

***Service member*** means a person referred to in section 28(2);

***State emergency recovery plan*** means the State emergency recovery plan referred to in section 17A of the **Emergency Management Act 1986**;

***Victorian waters*** means any inland or coastal waters open to or used by the public;

***Victorian WorkCover Authority*** means the Victorian WorkCover Authority established under the **Accident Compensation Act 1985**;

***volunteer emergency worker*** has the same meaning as in section 4(1) of the **Emergency Management Act 1986**.

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**PART 2—VICTORIA STATE EMERGENCY SERVICE  
AUTHORITY**

**4 Victoria State Emergency Service Authority**

- (1) There is established a body corporate called the Victoria State Emergency Service Authority.
- (2) The Authority—
  - (a) has perpetual succession;
  - (b) has an official seal;
  - (c) may sue and be sued in its corporate name;
  - (d) is capable of taking, purchasing, leasing, holding, selling, exchanging and disposing of real and personal property for the purposes of this Act;
  - (e) may do and suffer all acts and things which a body corporate may by law do and suffer and which are necessary or convenient for the purposes of this Act.
- (3) The official seal of the Authority must be kept in such custody as the Authority directs and must not be used except as authorised by the Board.

**5 Functions**

- (1) The functions of the Authority are—
  - (a) emergency management planning including—
    - (i) assisting municipal councils in relation to the performance and exercise of their duties and responsibilities under the **Emergency Management Act 1986**;
    - (ii) auditing municipal emergency management plans in accordance with the **Emergency Management Act 1986**;



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- (b) emergency response including—
- (i) responding to floods, earthquakes and storms and their effects;
  - (ii) providing rescue services;
- (c) emergency support including—
- (i) assisting other agencies and organisations in relation to the performance and exercise of their duties and responsibilities under the **Emergency Management Act 1986**;
  - (ii) acting in accordance with emergency management arrangements under the **Emergency Management Act 1986**;
  - (iii) assisting search and rescue for persons lost on land or in Victorian waters;
- (d) other authorised emergency activities including—
- (i) co-ordinating and engaging in other emergency activities for the purposes of this Act;
  - (ii) participating in civil defence activities;
  - (iii) engaging in any other emergency activities for the purpose of carrying out any other functions conferred on the Authority by or under any other Act.
- (2) The functions of the Authority do not include engaging in or preparing for armed combat.
- (3) The Authority may enter into an agreement with any person to provide other property protection or loss mitigation services for the prevention of, or to deal with the effects of, any emergency or hazard.
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- (4) The Authority must use its best endeavours to carry out its functions in accordance with the standards prepared by the Emergency Services Commissioner under Part 4A of the **Emergency Management Act 1986**.
  - (5) The Authority must, at the expiration of each three month period, report on the action it has taken during the preceding three months to comply with the standards prepared by the Emergency Services Commissioner under Part 4A of the **Emergency Management Act 1986**.

## **6 Duties of the Authority**

- (1) The Authority must administer and direct the Service in the performance of its functions.
  - (2) The Authority—
    - (a) may provide advice to the Minister generally in relation to the administration of this Act and the Service;
    - (b) must, if so required by the Minister, provide advice to the Minister in relation to matters specifically referred to the Authority by the Minister.
  - (3) Without limiting the generality of subsection (1), the Authority may—
    - (a) provide advice and assistance to municipal councils in relation to the performance and exercise of their duties and responsibilities under the **Emergency Management Act 1986**;
    - (b) provide advice and assistance to, and promote awareness and understanding among, government and non-government agencies in relation to emergency management;
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- (c) facilitate and participate in exercises to support emergency management arrangements.

### **7 General powers of Authority**

- (1) Subject to this Act, the Authority has the power to do all things necessary or convenient to be done for or in connection with the performance of its functions and duties.
- (2) Without limiting or derogating from the generality of the powers of the Authority under this Act, the powers of the Authority include the power to—
  - (a) enter into agreements or arrangements with any person or body for the provision of goods or services to the Authority;
  - (b) do all things necessary or convenient to give effect to any agreements or arrangements entered into by the Authority including power to appoint any person or body as the Authority's agent for that purpose.

### **8 Accountability of Authority**

- (1) The Authority is subject to the general direction and control of the Minister in the performance of its functions and the exercise of its powers.
- (2) The Minister may give written directions to the Authority.
- (3) The Minister may require the Authority to provide to the Minister—
  - (a) financial information specified by the Minister;
  - (b) a corporate plan;
  - (c) a report on matters specified by the Minister.

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- (4) The Minister may specify the manner and form and the period within which information required under subsection (3) is to be provided.

**9 Board of Directors**

- (1) There is to be a Board of Directors of the Authority consisting of up to 7 Directors appointed by the Governor in Council.
- (2) The Board—
- (a) is responsible for the management of the affairs of the Authority;
  - (b) may exercise the powers of the Authority.

**10 Appointment of Directors**

- (1) Directors are to be appointed having regard to their—
- (a) knowledge of, or experience in, commercial, technical, operational or financial matters;
  - (b) understanding of volunteer issues;
  - (c) expertise in any other field relevant to the performance of the functions of the Authority.
- (2) The Governor in Council must appoint—
- (a) one of the Directors to be the Chairperson of the Board; and
  - (b) another of the Directors to be the Deputy Chairperson of the Board.

**11 Term of appointment**

- (1) Subject to this Act, a Director holds office for the period, not exceeding 3 years, specified in the instrument of his or her appointment.
- (2) A Director is eligible for reappointment.

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- (3) The instrument of appointment may specify terms and conditions of appointment not inconsistent with this Act or the regulations.
  - (4) A Director may be removed from office by the Governor in Council.

## **12 Remuneration and allowances**

- (1) A Director (other than an employee of the public service) is entitled to receive—
  - (a) remuneration; and
  - (b) travelling or other allowances—as are fixed by the Governor in Council.
- (2) If a Director is a member of the Legislative Council or the Legislative Assembly, the Director is not entitled to the payment of any remuneration or allowances under this Act.

## **13 Application of Public Administration Act 2004**

The **Public Administration Act 2004** (other than Part 3 of that Act) applies to a Director in respect of the office of Director.

## **14 Vacancies**

- (1) A Director may resign from the Board by letter signed by the Director and delivered to the Minister.
- (2) The office of a Director becomes vacant if the Director—
  - (a) without the approval of the Board, fails to attend 3 consecutive meetings of the Board;  
or
  - (b) becomes bankrupt; or

S. 13  
substituted by  
No. 80/2006  
s. 26(Sch.  
item 108).

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- (c) is convicted in Victoria of an offence punishable on first conviction with imprisonment for a term of 12 months or more or is elsewhere convicted of an offence which, if committed in Victoria, would be so punishable; or
  - (d) becomes permanently incapable of performing the duties of office.

### **15 Acting Directors**

- (1) If a Director is unable to perform the duties of his or her office, the Governor in Council may appoint a person to act in the place of the Director during the period of inability.
- (2) An acting appointment is to be for any term and on any conditions determined by the Governor in Council.
- (3) The Governor in Council may at any time terminate an acting appointment.
- (4) An acting Director has all the powers and functions and may perform the duties of the Director for whom he or she is acting.
- (5) An acting Director is entitled to receive any remuneration or travelling or other allowances fixed from time to time by the Governor in Council in respect of that acting Director.

### **16 Membership of Board not office or place of profit**

A Director must not, in respect of the office of Director, be taken to hold an office or place of profit under the Crown which would—

- (a) prevent the Director sitting or voting as a member of the Legislative Council or the Legislative Assembly;

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- (b) make void the Director's election to the Legislative Council or the Legislative Assembly;
  - (c) prevent the Director continuing to be a member of the Legislative Council or the Legislative Assembly;
  - (d) subject the Director to liability to a penalty under the **Constitution Act 1975**.

### **17 Decisions not affected by certain matters**

An act or decision of the Board is not invalid only because—

- (a) of a defect or irregularity in the appointment of a Director or acting Director; or
- (b) of a vacancy in its membership; or
- (c) the occasion for the appointment of an acting Director has ceased to exist.

### **18 Immunity of Directors**

- (1) A Director is not personally liable for anything done or omitted to be done in good faith—
  - (a) in the exercise of a power or the discharge of a duty under this Act or the regulations; or
  - (b) in the reasonable belief that the act or omission was in the exercise of a power or the discharge of a duty under this Act or the regulations.
- (2) Any liability resulting from an act or omission that would but for subsection (1) attach to a Director attaches instead to the Authority.

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## **19 Meetings of the Board**

- (1) Meetings of the Board must be held at the times and places determined by the Board.
- (2) The Chairperson or, in the absence of the Chairperson, the Deputy Chairperson, must preside at a meeting of the Board at which he or she is present.
- (3) If neither the Chairperson nor the Deputy Chairperson is present at a meeting, the Directors present may elect one of their number to preside at the meeting.
- (4) A majority of the Directors in office at the time constitutes a quorum for meetings of the Board.
- (5) The functions of the Board may be performed at a meeting at which there is a quorum.
- (6) At a meeting, a decision of the Board is the decision of the majority of Directors present and voting at the meeting.
- (7) If voting is equal at a meeting of the Board, the person presiding at the meeting has a casting vote as well as a deliberative vote.
- (8) The Board must ensure that minutes are kept of each meeting.
- (9) Subject to this Act, the Board may regulate its own proceedings.

## **20 Participation in meetings by telephone or other means**

- (1) The Board may permit Directors to participate in a particular meeting, or all meetings, by—
  - (a) telephone; or
  - (b) closed-circuit television; or
  - (c) any other means of communication.



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- (2) A Director who participates in a meeting under a permission under subsection (1) is deemed to be present at the meeting.

## **21 Resolutions without meetings**

- (1) If—
- (a) the Board has taken reasonable steps to give notice to each Director setting out the terms of a proposed resolution; and
  - (b) a majority of the Directors sign a document containing a statement that they are in favour of the resolution in the terms set out in the document—

a resolution in those terms is deemed to have been passed at a meeting of the Board held on the day on which the document is signed or, if the Directors referred to in paragraph (b) do not sign it on the same day, on the day on which the last of those Directors signs the document.

- (2) For the purposes of subsection (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by one or more Directors, are deemed to constitute one document.
- (3) If a resolution is deemed by this section to have been passed at a meeting of the Board, each Director must as soon as practicable be advised of the matter and given a copy of the resolution.
- (4) The Directors referred to in subsection (1)(b) must not include a member who, because of section 22, is not entitled to vote on the resolution.

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## 22 Conflicts of interest

- (1) Whenever the Board is to make a decision on a matter at a meeting, each Director present at the meeting must, before the matter is considered, declare any direct or indirect pecuniary interest that he or she has in the matter.

Penalty: 5 penalty units.

- (2) The Board or the Chairperson must cause the declaration to be tabled at that meeting or at the next meeting of the Board and the person presiding at that meeting must cause the declaration to be recorded in the minutes of the meeting.
- (3) A Director who has a conflict of interest in a matter—
- (a) must not be present during any deliberations on the matter, unless a full declaration of the interest has been made and the Board directs otherwise; and
  - (b) is not entitled to vote on the matter.
- (4) A Director who has a conflict of interest in a matter must not be present during any deliberations leading to a direction, or take part in making a direction under subsection (3)(a).
- (5) If a Director votes on a matter in contravention of subsection (3)(b), his or her vote must be disallowed.
- (6) For the purposes of this section, a Director is not to be regarded as having a conflict of interest—
- (a) in a matter relating to the supply of goods or services to the Director if the goods or services are, or are to be, available to members of the public on the same terms and conditions; or

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- (b) in a contract or arrangement only because that contract or arrangement may benefit a company or other body in which the Director has a beneficial interest that does not exceed \$2000 or 1% of the total nominal value of beneficial interests in the company or body, whichever is the lesser.

### **23 Power of delegation**

The Authority may, by an instrument under its official seal, delegate to the Chairperson, a Director or any employee or class of employees of the Authority any function, duty or power of the Authority under this Act or the regulations or under any other Act or regulations, other than this power of delegation.

### **24 Chief Executive Officer**

- (1) The Authority must, with the approval of the Minister, appoint a person as Chief Executive Officer of the Authority.
  - (2) The Chief Executive Officer holds office for the period, not exceeding 5 years, specified in the instrument of his or her appointment.
  - (3) The Chief Executive Officer is responsible to the Board for the carrying out of the Authority's functions.
  - (4) The Chief Executive Officer must comply with the directions of the Board.
  - (5) A person appointed to be the Chief Executive Officer who was, immediately before that appointment, an officer within the meaning of the **State Superannuation Act 1988** continues, subject to that Act, to be an officer within the meaning of that Act while holding the office of Chief Executive Officer.
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## **25 Acting Chief Executive Officer**

- (1) The Authority must appoint a person to be the Acting Chief Executive Officer of the Authority—
  - (a) while the office of Chief Executive Officer is vacant; or
  - (b) during any period when the Chief Executive Officer is unable, by reason of illness or absence, to perform the functions of that office.
- (2) The Acting Chief Executive Officer has all the powers and functions and may perform the duties of the Chief Executive Officer while he or she is acting.
- (3) A person appointed to be the Acting Chief Executive Officer who was, immediately before that appointment, an officer within the meaning of the **State Superannuation Act 1988** continues, subject to that Act, to be an officer within the meaning of that Act while holding the office of Acting Chief Executive Officer.

## **26 Delegation of powers of Chief Executive Officer**

The Chief Executive Officer may, by instrument, delegate to any person by name or to the holder of an office or position approved by the Authority, any responsibility, power, authority, duty or function conferred on the Chief Executive Officer under this Act or the regulations, except this power of delegation.

## **27 Delegation**

The Minister may by instrument delegate to any person any power or function of the Minister under this Act other than this power of delegation.

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**PART 3—VICTORIA STATE EMERGENCY SERVICE**

**28 Victoria State Emergency Service**

- (1) The Victoria State Emergency Service established under section 4 of the **Victoria State Emergency Service Act 1987** continues to exist under this Act.
- (2) The Service consists of—
  - (a) the Director of Operations;
  - (b) the persons employed or deemed to have been employed under section 30;
  - (c) registered members and probationary members.

**29 Director of Operations**

- (1) The Authority in consultation with the Chief Executive Officer must appoint a person as Director of Operations.
- (2) The Director of Operations holds office for the period, not exceeding 5 years, specified in the instrument of his or her appointment.
- (3) The Director of Operations is responsible to the Chief Executive Officer in exercising or performing his or her powers or duties under this Act or the regulations or any other Act.
- (4) A person appointed to be the Director of Operations who was, immediately before that appointment, an officer within the meaning of the **State Superannuation Act 1988** continues, subject to that Act, to be an officer within the meaning of that Act while holding the office of Director of Operations.

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### 30 Staff

- (1) The Authority may—
  - (a) employ any persons that it considers necessary to assist the Authority in carrying out its functions under this Act or any other Act; and
  - (b) transfer, promote, suspend or remove any employee.
- (2) The appointment of a new employee is subject to a probation period of 3 months.
- (3) A person employed under this section is to be employed on the same terms and conditions as would have applied if the person were a member of staff employed under the **Public Administration Act 2004** in accordance with section 7 of the **Victoria State Emergency Service Act 1987** as in force immediately before the commencement of section 56 until or unless any of those terms and conditions are varied by the Australian Industrial Relations Commission.
- (4) A person who becomes an employee of the Authority under this section who was, immediately before that appointment, an officer within the meaning of the **State Superannuation Act 1988** continues, subject to that Act, to be an officer within the meaning of that Act while he or she is an employee of the Authority.

### 31 Delegation

The Director of Operations may, by instrument, delegate to any employee in the Service any power or duty of the Director of Operations under this Act or the regulations or any other Act, other than this power of delegation.

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### **32 Powers and duties of Director of Operations**

The Director of Operations may—

- (a) encourage and facilitate the formation of registered units of the Service;
- (b) review the operation of existing registered units of the Service;
- (c) direct the emergency operations activities of registered units;
- (d) organise and conduct exercises and training for registered units.

### **33 Register**

- (1) For the purposes of this Act, the Director of Operations must establish and keep a register of members, probationary members and units.
- (2) Subject to this Act and the regulations, the register must be kept in the form and manner determined by the Director of Operations.

### **34 Registered units**

- (1) An application for the registration of a group of persons as a unit of the Service may be made to the Director of Operations by—
  - (a) a municipal council; or
  - (b) if 2 or more municipal councils appoint a principal municipal council under section 19 of the **Emergency Management Act 1986**, the principal municipal council.
- (2) The Director of Operations may approve or refuse an application under subsection (1).

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- (3) If it appears to the Director of Operations, after consultation with a DISPLAN co-ordinator appointed under section 13 of the **Emergency Management Act 1986**, that there is a need for the establishment of a registered unit, the Director of Operations may establish the unit.
  - (4) The Director of Operations may with the approval of the Authority—
    - (a) cancel the registration of a registered unit; or
    - (b) amalgamate a registered unit with another registered unit.
  - (5) If the registration of a registered unit is cancelled or a registered unit is amalgamated under subsection (4), all equipment in the inventory of that unit which has been donated, or purchased with funds donated, by members of the public—
    - (a) becomes the property of the Authority;
    - (b) may be disposed of by the Authority in any manner which the Authority considers appropriate.

### **35 Controllers of registered units**

- (1) The Director of Operations must appoint a controller for each registered unit on the terms and for the period determined by the Director of Operations.
- (2) The Director of Operations may, with the approval of the Authority, remove the controller of a registered unit from office after consultation with the relevant municipal council.



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- (3) The controller of a registered unit must—
- (a) inform the Director of Operations as soon as practicable of any change to the particulars recorded in the Register in relation to the unit or its members; and
  - (b) comply with any directions issued by the Director of Operations under section 32(c).

### **36 Probationary members**

- (1) A person may apply to the controller of a registered unit to become a probationary member of the Service.
- (2) A controller of a registered unit must forward an application under this section to the Director of Operations as soon as practicable after receipt.
- (3) The Director of Operations may approve or refuse an application for probationary membership.
- (4) If the Director of Operations approves an application, the Director of Operations must register the applicant as a probationary member of the Service.

### **37 Registered members**

- (1) A probationary member may—
  - (a) three months after registration as a probationary member; and
  - (b) after satisfying any condition as may be specified by the Director of Operations—apply to the Director of Operations to become a registered member of the Service.
- (2) The Director of Operations may approve or refuse an application for membership.

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- (3) If the Director of Operations approves an application under this section, the Director of Operations must register the applicant as a member of the Service.

**38 Examination or medical evidence**

- (1) The Director of Operations may require a controller or a registered member or a probationary member—
- (a) to undergo a practical or written examination; or
  - (b) to produce medical evidence—
- to demonstrate the level of proficiency or fitness of the controller or member in the skills, standards or qualifications required of a registered member.
- (2) If a controller or registered member or probationary member does not produce medical evidence required by the Director of Operations under subsection (1), the Director of Operations may—
- (a) suspend the registration as a member or probationary member of that controller, registered member or probationary member until he or she produces medical evidence to demonstrate the level of fitness required of a registered member; or
  - (b) cancel the registration as a member or probationary member of that controller, registered member or probationary member.

**39 DISPLAN roles of the Authority**

A registered unit must not discharge a function under DISPLAN without the prior consent of the Director of Operations.

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#### **40 Traffic management power**

- (1) This section applies if a traffic emergency has occurred and at the time that authorised emergency workers respond—
  - (a) no member of the police force is in attendance at the traffic emergency and the most senior of the authorised emergency workers is of the opinion that it is necessary to direct traffic in the area; or
  - (b) the most senior officer of the police force in attendance at the traffic emergency is of the opinion that there are insufficient police officers in attendance to safely direct traffic and the assistance of authorised emergency workers is required to direct traffic in the area.
- (2) If this section applies, an authorised emergency worker may, subject to subsection (6), give reasonable traffic directions to the driver of a vehicle within the immediate area of the traffic emergency.
- (3) A person who fails without reasonable excuse to obey a direction given under subsection (2) is guilty of an offence.  
Penalty: 5 penalty units.
- (4) If subsection (1)(a) applies, the power conferred by subsection (2) must only be exercised until a member of the police force is in attendance at the traffic emergency.
- (5) If subsection (1)(b) applies, the power conferred by subsection (2) must only be exercised at the direction of any member of the police force in attendance at the traffic emergency.

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(6) An authorised emergency worker can not give a direction under subsection (2) if it is inconsistent with any direction or instruction given by any person in the exercise of the powers conferred under the **Road Management Act 2004** on a road authority within the meaning of that Act.

(7) In this section—

*authorised emergency worker* means a Service member who has undergone relevant training to enable that Service member to exercise powers under this section;

*traffic emergency* means an emergency involving—

- (a) a transport accident; or
- (b) a flood or storm damage which is causing a serious threat to the safety of road users; or
- (c) if subsection (1)(b) applies, any other circumstances which in the opinion of the most senior officer of the police force in attendance could cause a serious threat to the safety of road users.

#### **41 Power of Authority to authorise registered units to perform functions outside Victoria**

(1) If the Authority receives from any person or any body established by or under any Act or law of any other State or of a Territory of the Commonwealth for emergency response or support, a request for assistance in responding to an emergency in a place outside Victoria or in protecting life or property under threat in that emergency in that place, the Authority may authorise registered units of the Service to—

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- (a) attend at that place; and
  - (b) provide assistance in responding to that emergency or in protecting life or property under threat in that emergency in that place, subject to the direction and control of the person or body requesting the assistance and having authority in that place.
- (2) For the purposes of this Act, any registered unit of the Service carrying out any function under the authority of this section is to be taken to be acting in the course of emergency service.

#### **42 Immunity of Service members**

- (1) This section applies to a Service member or a volunteer emergency worker.
- (2) A Service member or a volunteer emergency worker is not personally liable for any thing done or omitted to be done in good faith—
  - (a) in the exercise of a power or the discharge of a duty under this Act or the regulations; or
  - (b) in the reasonable belief that the act or omission was in the exercise of a power or the discharge of a duty under this Act or the regulations.
- (3) Any liability resulting from an act or omission that would but for subsection (2) attach to a Service member or a volunteer emergency worker attaches to the Authority.

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**43 Insurance policies**

Any damage to property caused by a Service member or a volunteer emergency worker during an emergency in the exercise of any power or the performance of any duty conferred or imposed by or under this Act is deemed to be damage caused by the emergency which gave rise to the involvement of the Service within the meaning of any policy of insurance covering the property so damaged notwithstanding any clause or condition to the contrary in the policy.

**44 Offence of wilful damage or interference with property**

A person must not wilfully damage or interfere with any apparatus or other property of the Authority or of a registered unit.

Penalty: 10 penalty units.

**45 Offence to obstruct, hinder or interfere**

A person must not, during an emergency, obstruct, hinder or in any way interfere with a Service member performing functions under this Act.

Penalty: 10 penalty units.

**46 Offences relating to impersonation**

A person must not—

- (a) use any name, title or description to imply an association with the Service, without the authority of the Chief Executive Officer; or
- (b) represent that the person is associated with the Service unless such an association exists; or
- (c) impersonate an employee of the Service or a registered member; or

- (d) use any insignia described or set out in the regulations in any manner contrary to the manner set out in the regulations without the written authority of the Chief Executive Officer.

Penalty: 20 penalty units.

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**PART 4—COMPENSATION**

**47 Compensation for injury during emergency service**

- (1) If a registered member or probationary member suffers personal injury arising out of or in the course of emergency service, compensation is to be paid in accordance with this Part.
  - (2) An injury is deemed to arise out of or in the course of a registered member's or probationary member's emergency service if the injury occurs while the member is—
    - (a) engaging in any authorised activity in or outside Victoria as a registered member or probationary member; or
    - (b) training or practising for any such activity; or
    - (c) travelling to or from any place where any such activity is to be or has been engaged in.
  - (3) For the purposes only of this Part, the person to whom or for whose benefit compensation is payable are those persons to whom or for whose benefit compensation would be payable under the **Accident Compensation Act 1985** if—
    - (a) the registered member or probationary member suffering personal injury arising out of or in the course of emergency service were a worker within the meaning of that Act; and
    - (b) the personal injury were caused in the person's employment arising out of or in the course of the employment.
  - (4) A claim for compensation under this section must be made to the Victorian WorkCover Authority in accordance with this Part.
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- (5) All matters relating to compensation must be determined in accordance with this Part by the Victorian WorkCover Authority, the County Court or the Magistrates' Court, as the case requires.
- (6) In making a determination in relation to any matter referred to in subsection (3), the Victorian WorkCover Authority, the County Court or the Magistrates' Court must, as far as practicable, be guided by reference to the applicable provisions of the **Accident Compensation Act 1985** governing the corresponding matter in that Act.
- (7) A registered member or probationary member is not debarred from compensation in respect of personal injury caused to the member in the course of emergency service by reason only that the member was not, at the relevant time, a worker within the meaning of **Accident Compensation Act 1985**.
- (8) For the purpose of assessing compensation, the average weekly earnings of a registered member or probationary member is to be computed by the Victorian WorkCover Authority, the County Court or the Magistrates' Court—
- (a) by reference to his or her employment by any employer or employers during the relevant period before the accident; or
  - (b) if he or she was not then working under a contract of service, on any basis that, in the opinion of the Authority, the County Court or the Magistrates' Court, is best calculated to give the appropriate compensation for his or her loss of earning capacity—

but so that any relevant maximum limits imposed by the **Accident Compensation Act 1985** are not exceeded.

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- (9) If compensation is paid under this Part, the payment has the same legal effects as follow from the payment of compensation under the **Accident Compensation Act 1985**.
- (10) For the purposes of enabling the return to work of a registered member or probationary member, the Victorian WorkCover Authority may—
- (a) plan the worker's return to work;
  - (b) approve a provider of occupational rehabilitation services for the purposes of planning the worker's return to work under paragraph (a);
  - (c) provide alternative assistance or programs to the worker or in respect of the employment of the worker.
- (11) Any costs and expenses incurred as a result of subsection (10) are to be paid by the Victorian WorkCover Authority under section 52(2) as if the costs and expenses were a payment of compensation and section 52(3) applies accordingly.

S. 47(10)(a)  
amended by  
No. 9/2010  
s. 141(a) (as  
amended by  
No. 80/2010  
s. 159(o)).

S. 47(10)(b)  
amended by  
No. 9/2010  
s. 141(b).

#### **48 Compensation otherwise payable**

If a person is entitled to compensation in respect of personal injury otherwise than in accordance with this Part, there is payable to that person the amount, if any, by which the amount of compensation in respect of the injury determined under this Part exceeds the amount to which the person is entitled.

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**49 Compensation for loss of or damage to property during emergency service**

- (1) Compensation is payable under this Part if a registered member or probationary member suffers loss of or damage to property belonging to the member or in the possession or control of the member while—
  - (a) engaging in any authorised activity in or outside Victoria as a registered member or probationary member; or
  - (b) training or practising for any such activity; or
  - (c) travelling to or from any place where any such activity is to be or has been engaged in.
- (2) If a registered member or probationary member is entitled to compensation under subsection (1) for loss of or damage to property, the member may apply to the Chief Executive Officer for compensation.
- (3) The Chief Executive Officer may authorise payment of compensation as the Chief Executive Officer considers reasonable in the circumstances to the owner of the property or to any person interested in it.
- (4) A person whose interests are affected by a decision of the Chief Executive Officer under this section may apply to the Victorian Civil and Administrative Tribunal for review of the decision.

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- (5) An application for review must be made within 28 days after the later of—
- (a) the day on which the decision is made;
  - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 47(5) of that Act that a statement of reasons will not be given.

#### **50 Jurisdiction**

If any question or matter arises under this Part (other than section 49), the County Court and the Magistrates' Court have, under this Act, the same jurisdiction to hear and determine the question or matter as if it were a question or matter arising under the **Accident Compensation Act 1985** and that Act applies with the necessary adaptations and modifications.

#### **51 Victorian WorkCover Authority to represent Crown**

In all proceedings under this Part, the Victorian WorkCover Authority represents the Crown and has the same powers, rights and authorities as the Authority has under the **Accident Compensation Act 1985** in regard to the corresponding matter relating to a worker under that Act.

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## 52 Payments

- (1) The Victorian WorkCover Authority is entitled to the reimbursement of its reasonable costs and expenses incurred in representing the Crown under section 51.
- (2) The Victorian WorkCover Authority must make any payment of compensation under this Part (other than section 49) out of the WorkCover Authority Fund under the **Accident Compensation Act 1985**.
- (3) There is to be paid into the WorkCover Authority Fund out of the Consolidated Fund, which is to the necessary extent appropriated accordingly—
  - (a) the amounts to be reimbursed under subsection (1); and
  - (b) the amount of any payments under subsection (2).
- (4) There is to be paid out of the Consolidated Fund which is hereby to the necessary extent appropriated accordingly—
  - (a) the amount of any payment of compensation under section 49; and
  - (b) any other expenses incurred in the administration of this Part.

## 53 Entitlement where damages otherwise payable

- (1) A person is not entitled to recover, in respect of personal injury or loss of or damage to property, both compensation under this Part and damages.
- (2) If a person recovers both compensation and damages the amount of the compensation may be recovered from the person by the Minister in a court of competent jurisdiction as a debt due by that person to the Crown.

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- (3) If—
- (a) compensation has been paid under this Part;  
and
  - (b) the personal injury or loss of or damage to property in respect of which it was paid was caused under circumstances creating a liability in some person other than the registered member, probationary member or casual emergency worker to pay damages in respect of the personal injury, loss or damage—

the Minister may take proceedings against that person in a court of competent jurisdiction to recover—

- (c) the amount of compensation; or
- (d) the amount of the damages—

whichever is less.

#### **54 Fraudulent claims**

A person must not in or in connection with any claim for compensation under this Part, wilfully make any false or misleading statement to or otherwise wilfully mislead or attempt to mislead the Minister, the Victorian WorkCover Authority, the County Court, the Magistrates' Court or any other person.

Penalty: 10 penalty units.

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**PART 5—MISCELLANEOUS**

**55 Regulations**

- (1) The Governor in Council may make regulations for or with respect to—
- (a) the registration of units;
  - (b) the registration of members and probationary members and the cancellation of such registration;
  - (c) the training, qualifications and fitness of registered members;
  - (d) the discipline and good conduct of registered members and probationary members;
  - (e) the means of identification of registered members;
  - (f) the insignia and uniforms to be worn by employees of the Service and registered members;
  - (g) the use of the insignia of the Service;
  - (h) prescribing conditions of issue and use of property issued to registered units;
  - (i) the conduct of courses of instruction for members of the public;
  - (j) prescribing fees or charges to be paid to the Authority for services provided under this Act, other than services relating to an emergency;

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- (k) prescribing fees or charges for road rescue services provided to any person and the charging of those fees and charges to the Transport Accident Commission;
  - (l) prescribing fees or charges that may be charged under an agreement under section 5(3);
  - (m) generally prescribing any other matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) Without derogating from the generality of subsection (1)(d), the regulations made under that subsection may provide for—
- (a) the conferring of power on the Authority to remove or suspend registered members and probationary members;
  - (b) the enforcement of penalties by the Authority;
  - (c) the empowering of unit controllers and employees of the Service to lay charges against registered members and probationary members;
  - (d) the right of any registered member or probationary member to apply to the Victorian Civil and Administrative Tribunal for review of a decision of the Authority.
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See:  
Act No.  
57/1987.  
Reprint No. 2  
as at  
22 April 1999  
and  
amending  
Act Nos  
48/2000 and  
108/2004.  
LawToday:  
www.  
legislation.  
vic.gov.au

## 56 Repeal

- (1) The **Victoria State Emergency Service Act 1987** is **repealed**.
- (2) Except as in this Act expressly or by necessary implication provided, all persons, things and circumstances appointed or created by or under the **Victoria State Emergency Service Act 1987** immediately before the commencement of this section shall under and subject to this Act continue to have the same status, operation and effect as they respectively would have had if this section had not come into operation.
- (3) On and after the commencement of this section, any reference in any Act (other than this Act), regulation, subordinate instrument or other document whatsoever to—
  - (a) the Director of the Service is to be construed as a reference to the Director of Operations, unless the contrary intention appears;
  - (b) the **Victoria State Emergency Service Act 1987** is to be construed as a reference to this Act, unless the contrary intention appears.
- (4) Nothing in this section or section 57 limits or otherwise affects the operation of the **Interpretation of Legislation Act 1984**.

## 57 Transitional provisions

- (1) Despite section 5 of the **Subordinate Legislation Act 1994**, the Victoria State Emergency Service Regulations 1995, S.R. No. 17/1995, as in force immediately before the commencement of section 56, continue on and after that commencement as though they had been made under this Act until the earlier of—

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- (a) the day on which they are revoked by regulations made under this Act; or
- (b) the day which is the first anniversary of that commencement.
- (2) Staff employed under the **Public Administration Act 2004** in accordance with section 7 of the **Victoria State Emergency Service Act 1987** as in force immediately before the commencement of section 56 are immediately after that commencement deemed to continue to be employed under section 30 on the same terms and conditions as they had before that commencement until or unless any of those terms and conditions are varied by the Australian Industrial Relations Commission.
- (3) A member of staff employed under the **Public Administration Act 2004** in accordance with section 7 of the **Victoria State Emergency Service Act 1987** as in force immediately before the commencement of section 56 who was, immediately before that commencement, an officer within the meaning of the **State Superannuation Act 1988** continues, subject to that Act, to be an officer within the meaning of that Act while continuing to be a member of staff employed under section 30.
- (4) Any vacancy existing in a position created under the **Public Administration Act 2004** in accordance with section 7 of the **Victoria State Emergency Service Act 1987** as in force immediately before the commencement of section 56, which has not been filled as at that commencement is to be filled in accordance with section 30.
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s. 57

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(5) Part 3 of the **Victoria State Emergency Service Act 1987** as in force before the commencement of section 56 continues to apply on and after that commencement in respect of a personal injury (including death) or loss of or damage to property arising before that commencement to which that Part applied.

S. 58  
repealed by  
No. 28/2007  
s. 3(Sch.  
item 69).

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Pts 6–8  
(Headings  
and ss 59–75)  
repealed by  
No. 28/2007  
s. 3(Sch.  
item 69).

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## ENDNOTES

### 1. General Information

*Minister's second reading speech—*

*Legislative Assembly: 26 May 2005*

*Legislative Council: 16 August 2005*

The long title for the Bill for this Act was "to establish the Victoria State Emergency Service Authority, to re-enact with amendments the **Victoria State Emergency Service Act 1987**, to amend the **Country Fire Authority Act 1958** and the **Metropolitan Fire Brigades Act 1958**, to make consequential amendments to certain other Acts and for other purposes."

The **Victoria State Emergency Service Act 2005** was assented to on 24 August 2005 and came into operation as follows:

Sections 1 and 2 on 25 August 2005: section 2(1); sections 3–58 on 1 November 2005: Government Gazette 20 October 2005 page 2308; sections 59–75 on 1 July 2006: section 2(3).

Victoria State Emergency Service Act 2005  
No. 51 of 2005

Endnotes

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## 2. Table of Amendments

This Version incorporates amendments made to the **Victoria State Emergency Service Act 2005** by Acts and subordinate instruments.

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**Public Sector Acts (Further Workplace Protection and Other Matters) Act 2006, No. 80/2006**

*Assent Date:* 10.10.06  
*Commencement Date:* S. 26(Sch. item 108) on 11.10.06: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Victoria State Emergency Service Act 2005**

**Statute Law Revision Act 2007, No. 28/2007**

*Assent Date:* 26.6.07  
*Commencement Date:* S. 3(Sch. item 69) on 27.6.07: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Victoria State Emergency Service Act 2005**

**Accident Compensation Amendment Act 2010, No. 9/2010** (as amended by No. 80/2010)

*Assent Date:* 23.3.10  
*Commencement Date:* S. 141 on 1.7.10: s. 2(8)  
*Current State:* This information relates only to the provision/s amending the **Victoria State Emergency Service Act 2005**

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**3. Explanatory Details**

No entries at date of publication.