

EXPLANATORY STATEMENT

ORDINANCE NO. 1, 2015

Jervis Bay Territory Emergency Management Ordinance 2015

Overview and Background

The purpose of this Ordinance is to provide a legislative framework for emergency management in the Jervis Bay Territory. The Ordinance establishes the Jervis Bay Territory Emergency Management Committee and requires the preparation of a Jervis Bay Territory Emergency Management Plan. It sets out the powers of the Minister, police and other emergency service officers during emergencies and states of emergency, and provides for the management of rescue operations in the Jervis Bay Territory.

The Jervis Bay Territory was surrendered by NSW, and accepted by the Commonwealth through the *Jervis Bay Territory Acceptance Act 1915* (the Acceptance Act). The Governor-General has made this Ordinance in accordance with the power granted to him under subsection 4F(1) of the *Jervis Bay Territory Acceptance Act 1915*, to make Ordinances for the peace, order and good government of the Jervis Bay Territory. The *Jervis Bay Territory Emergency Management Ordinance 2015* provides the legislative basis for the management of emergencies in the Jervis Bay Territory. This Ordinance is based on the New South Wales (NSW) *State Emergency and Rescue Management Act 1989*, with modifications to reflect the Jervis Bay Territory's legal, geographical and administrative position.

This Ordinance has been based on the NSW legislation for two principal reasons: because some emergency management services in the Jervis Bay Territory are provided under contract by NSW organisations, and because harmonising emergency management regimes between NSW and the Jervis Bay Territory will facilitate the cross-border provision of services and ensure residents and visitors to the Jervis Bay Territory continue to enjoy similar protections to their NSW neighbours.

This Ordinance empowers the Minister responsible for the Jervis Bay Territory to delegate his or her powers under the Ordinance, except the powers to declare a state of emergency and to make rules under the Ordinance. The Ordinance also empowers the Minister to delegate his or her power of delegation to a member of the Departmental Senior Executive Service (SES), to delegate powers to emergency services officers and members of emergency management organisations.

The *Jervis Bay Territory Emergency Management Ordinance 2015* establishes by legislation the Jervis Bay Territory Emergency Management Committee, and gives it responsibility for planning emergency responses, co-ordinating training in emergency management and rescue, and reporting to the Minister concerning emergency management in the Jervis Bay Territory. This Ordinance provides legal protection for the Minister, members of the Jervis Bay Emergency Management Committee, and emergency management officers for acts or

omissions done in good faith in exercising their functions and performing their duties under this Ordinance.

HMAS Creswell, the Royal Australian Navy College, is located in the Jervis Bay Territory. Due to national security considerations, this Ordinance requires consultation with the Senior Australian Defence Force Officer at *HMAS Creswell* or a person authorised by the Senior Australian Defence Force Officer, prior to carrying out a function that relates to or affects Defence land or Defence property.

The Secretary of the Department of Defence, the Chief of the Defence Force, the Senior Australian Defence Force Officer at *HMAS Creswell* or a person authorised by the Senior Australian Defence Force Officer may waive the obligation to consult. The obligation to consult is also waived in some circumstances when there is an imminent threat to life. For example, prior to entering Defence land to control or suppress a fire, a fire fighting authority would be required to consult with the Senior Australian Defence Force Officer at *HMAS Creswell* or their authorised person regarding entry to and actions taken on Defence land, unless there was an imminent threat to life, or one of the senior officers named above had waived the requirement for consultation.

The *Jervis Bay Territory Emergency Management Ordinance 2015* empowers the Minister to declare states of emergency for the Jervis Bay Territory.

The criminal law to be applied to offences in this Ordinance is the *Criminal Code 2002* of the Australian Capital Territory.

Pursuant to section 4G of the *Jervis Bay Territory Acceptance Act 1915*, this Ordinance is a disallowable instrument and as such section 42 of the *Legislative Instruments Act 2003* applies. This Ordinance will commence on the day after it is registered on the Federal Register of Legislative Instruments.

Statement of Compatibility with Human Rights

The *Jervis Bay Territory Emergency Management Ordinance 2015* has been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. This Ordinance is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The following paragraphs provide an assessment of the compatibility of this Ordinance with human rights and freedoms.

States of Emergency

This Ordinance empowers the Minister to declare states of emergency for a limited period in relation to particular emergency events. If the Minister is satisfied that an emergency constitutes a significant and widespread danger to people, animals or property in the Jervis Bay Territory, the Minister may, by order in writing, declare that a state of emergency exists in the whole, or in any specified part or parts, of the Territory in relation to that emergency. The maximum period for each declaration of

a state of emergency is 30 days. Article 4.1 of the *International Covenant on Civil and Political Rights* (ICCPR) provides that during officially-declared states of emergency States “may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.” This Ordinance does not differentiate on the grounds so listed in the Covenant and is, therefore, compatible with the objectives, aims and provisions, including Article 4, of the ICCPR.

The right to liberty

The *Jervis Bay Territory Emergency Management Ordinance 2015* engages the right to liberty, including protection from arbitrary arrest and detention, by virtue of the fact that this Ordinance contains criminal offences for which a person found guilty may face imprisonment. However, Article 9.1 of the ICCPR provides an exception for imprisonment for offences “...on such grounds and in accordance with such procedure as are established by law.” The General Comments of the Human Rights Committee, established under the ICCPR, note that: “Liberty of person is not absolute. Article 9 recognizes that sometimes deprivation of liberty is justified, for example, in the enforcement of criminal laws for the protection of the rights of others.” The ratio of term of imprisonment to penalty units for criminal offences is consistent with that prescribed by section 4B of the *Crimes Act 1914* (Cth) and the *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*. Under this Ordinance, only the police have powers of arrest, and any person so arrested would be subjected to the criminal justice system. Therefore, this Ordinance is compatible with this human right.

Freedom of movement

The *Jervis Bay Territory Emergency Management Ordinance 2015* engages this human right in relation to restricting the movement of persons within the Jervis Bay Territory.

During a declared state of emergency, the Minister may direct, or authorise an emergency services officer to direct, a person to do any or all of the following: to leave premises and to move out of an emergency area or any part of an emergency area; to take any children or adults who are in the person’s care and move them outside the emergency area or any part of the emergency area; and not to enter the emergency area or any part of the emergency area. Under this Ordinance, reasonable force necessary in the circumstances may be used.

The Minister may, for the purpose of protecting persons or animals from injury or death, or protecting property in a state of emergency, direct, or authorise an emergency services officer to direct, that roads, lanes, footpaths or open spaces used by the public are to be closed, provided these are in an emergency area or any part of

an emergency area. The Ordinance gives similar powers of evacuation and road closure to police officers during emergencies which are not declared states of emergency.

These provisions of the Jervis Bay Territory *Emergency Management Ordinance 2015* may affect the right to freedom of movement. However, these provisions are consistent with the objectives, aims and provisions of the ICCPR, and in particular Article 12.3, which allows the right to liberty of movement to be restricted where in accordance with domestic law and when necessary to protect public health and public order, and with Article 4 of the ICCPR which allows some rights to be abridged during emergency situations.

Arbitrary or unlawful interference with a person's home

The *Jervis Bay Territory Emergency Management Ordinance 2015* engages the human right protecting individuals from arbitrary or unlawful interference with a person's home. In circumstances where persons or animals are at risk of injury or death or property needs to be protected, and a state of emergency exists, the Minister may direct, or authorise an emergency services officer to direct, entry, including forcible entry, to premises; and the pulling down, destruction or shoring up of any wall or premises that have been damaged or rendered insecure in an emergency area or any part of an emergency area. The Ordinance gives police officers similar powers during emergencies which are not declared states of emergency.

These powers are limited to certain individuals under defined circumstances and are consistent with the objectives, aims and provisions of the ICCPR, including Article 4, which allows the prohibition on interference with a person's home to be restricted when in accordance with domestic law and necessary to protect national security and public order.

Although the powers to enter premises and seize property in the Ordinance are broad, their inclusion in this Ordinance is justified on the basis that their use during emergencies or states of emergency may be necessary to protect life and property. These powers replace equivalent powers in Australian Capital Territory (ACT) legislation which currently applies in the Jervis Bay Territory (the *Emergencies Act 2004*, section 160A), and are very similar to powers contained in the equivalent NSW legislation (the *State Emergency and Rescue Management Act 1989*).

In addition, there are safeguards within the legislation to ensure that these powers are only used in emergency situations and with proper authorisation. These include requirements for consent by property owners, or, in the absence of consent, written authorisation from the Minister or his or her delegate, or a senior police officer. Finally, these powers, as well as being exercised only in very limited circumstances, are exercised for the safety of the individuals concerned and their communities.

Peaceful assembly

The powers granted to the Minister under this Ordinance, relating to evacuating persons or closing streets to traffic, may engage the right to peaceful assembly. During a state of emergency, the Minister may, for the purpose of protecting persons or animals from injury or death, or to protect property, direct, or authorise an emergency services officer to direct, the closure of streets, roads, lanes or footpaths, or of any public or private place in an emergency area or any part of an emergency area. The Ordinance gives police officers similar powers during emergencies which are not declared states of emergency.

Article 21 of the ICCPR provides exceptions to this right, provided they are imposed in conformity with the law and are necessary in a democratic society in the interests of public safety, public order, or public health. This Ordinance, therefore, is consistent with this human right. The Ordinance provides further protection for this right at section 6, limiting the operation of its powers to situations other than ending industrial disputes and controlling riots or other civil disturbances, unless the riot or civil disturbance flows from the emergency and occurs during a state of emergency.

Consultation

In preparing the *Jervis Bay Territory Emergency Management Ordinance 2015* the Department of Infrastructure and Regional Development undertook extensive consultation with a number of Commonwealth and NSW agencies and organisations which are involved with and/or affected by this Ordinance.

The consultation process included convening a teleconference with members of the non-statutory Jervis Bay Territory Emergency Management Committee to discuss emergency management procedures and policies, and to identify options to improve delivery of emergency management services in the Jervis Bay Territory. The Jervis Bay Territory Emergency Management Committee currently comprises a representative from each of the following agencies and organisations:

- Australian Federal Police;
- Department of Defence (Navy – *HMAS Creswell*);
- Department of Infrastructure and Regional Development (Jervis Bay Territory Administration);
- Director of National Parks (Booderee National Park);
- Jervis Bay Territory Rural Fire Service;
- NSW Ambulance Service;
- Shoalhaven City Council – Emergency Management Committee; and
- Wreck Bay Aboriginal Community Council.

The Attorney-General's Department, the Australian Antarctic Division, Australian Government Solicitor, Australian Public Service Commission, Department of Finance, Emergency Management Australia, NSW Ministry for Police and Emergency Services, NSW

Rural Fire Service, and the Remuneration Tribunal Secretariat were also consulted during the making of this Ordinance.

Throughout the consultation process, drafts of the Ordinance were provided by email to members of the Jervis Bay Territory Emergency Management Committee and officers in relevant departments and organisations for comment. Following circulation of the final draft, no agencies or organisations consulted raised any objections to the content of the Ordinance.

Detailed description of the Ordinance

Part 1 – Preliminary

Section 1 Explanation – *Name*

This is the formal section titling the Ordinance.

Section 2 Explanation – *Commencement*

The date of commencement is the day after the Ordinance is registered on the Federal Register of Legislative Instruments.

Section 3 Explanation – *Authority*

This section explains that this Ordinance is made under the authority of the *Jervis Bay Territory Acceptance Act 1915*.

Section 4 Explanation – *Definitions*

This section defines key terms used in the Ordinance, including ‘Defence land’, ‘emergency’, ‘emergency operation’, ‘emergency services officer’, ‘emergency services organisation’, and ‘rescue’. The definitions of ‘emergency services organisation insignia’ and ‘senior police officer’ enable further details to be prescribed by the Rules. This will allow any specific instances of emergency services organisation insignia not covered by the current definition to be included in the definition; and will enable the Minister to prescribe that members of police forces other than the Australian Federal Police and the New South Wales Police Force are senior police officers for the purposes of the Ordinance, should their assistance be required in an emergency.

Section 5 Explanation – *References to function*

This section explains that a reference to a function in the Ordinance also includes a reference to a power, authority or duty, and that reference to the exercise of a function includes a reference to the performance of a duty.

Section 6 Explanation – *Limitation on operation – industrial disputes and civil disturbances*

This section limits the operation of the Ordinance by specifying that the Ordinance cannot authorise actions which are aimed at ending an industrial dispute or controlling a riot (or other civil disturbance), unless the riot or civil disturbance results from and occurs during a state of emergency.

Section 7 Explanation – *Ordinance binds the Crown*

This section states that this Ordinance is intended to bind the Crown in the right of the Commonwealth. There is a presumption that legislation does not bind the Crown unless there is a specific provision in legislation, or it is necessarily implied that the legislation should do so. The section also states that the Crown is not liable to be prosecuted for an offence.

Section 8 Explanation – *Minister’s responsibilities*

This section sets out the responsibilities of the Minister under this Ordinance. These responsibilities include ensuring that government agencies take measures to prepare for, respond to and assist in recovery from emergencies; co-ordinating government agencies in taking those measures; and approving the Jervis Bay Territory Emergency Management Plan, and any amendments to the Plan.

The section gives the Minister control and direction of the Jervis Bay Territory Emergency Management Committee and the Local Emergency Operations Controller as they exercise their functions under this Ordinance.

Section 9 Explanation – *Delegation by Minister*

The Minister’s powers and functions under this Ordinance may be delegated to people, for example, to Departmental officers or emergency services officers. The Minister may delegate the majority of his or her powers or functions to any person; however, the Minister cannot delegate the powers to declare a state of emergency, or to make statutory rules under this Ordinance.

The power to delegate to ‘any person’ contained in subsection 9(1) is broadly expressed, for two reasons. Firstly, to enable the Minister to delegate functions to the most appropriate person in response to the circumstances of a particular emergency. Emergency services in the Jervis Bay Territory are provided by a range of organisations, depending on the nature and complexity of the emergency. These organisations include, but are not limited to, the Australian Federal Police, Jervis Bay Territory volunteer fire brigades, NSW Rural Fire Service, Fire and Rescue NSW, the NSW State Emergency Service, the NSW Ambulance Service, the Booderee National Park, the Wreck Bay Aboriginal Community Council and the Department of Defence. These organisations are diverse and are not readily described as a class.

Secondly, the power is expressed in this way for consistency with NSW legislation. One of the key objectives of the Ordinance was consistency with emergency management legislation in NSW, to facilitate the seamless provision of emergency services across the Jervis Bay Territory - NSW border. The *State Emergency and Rescue Management Act 1989* (NSW), at subsection 10(4), enables the NSW Minister responsible for Emergency Services to delegate the majority of his or her powers to the State Emergency Operations Controller, the State Emergency Recovery Controller, or ‘other person’.

Subsection 9(2) of the *Jervis Bay Territory Emergency Management Ordinance 2015* allows the Minister to delegate powers or functions, including the power to delegate, to a member of

the Senior Executive Service (SES) within the Department responsible for Territories. The SES employee may then sub-delegate the power or function to an emergency services officer, or a member of an emergency services organisation.

The section also states that the *Acts Interpretation Act 1901* sections 34AA, 34AB, and 34A apply to the sub-delegation of powers and functions in the same way as they apply to the delegation of powers and functions. This means that powers which have been sub-delegated cannot be delegated further; that sub-delegations may be made to a position and exercised by whoever is in that position at a particular point in time; and that the person exercising the sub-delegated power or function can do so according to their opinion, belief or state of mind, if this is relevant to the exercise of the power, or the performance of the function or duty.

Part 2 – Emergency Management

Division 1 – Emergency Management Committee

Section 10 Explanation – *Jervis Bay Territory Emergency Management Committee*

This section establishes the Jervis Bay Territory Emergency Management Committee, sets out the membership of the Committee, and provides that the Chair of the Committee is to be the representative of the Department responsible for Territories. Members must be appointed in writing by the Minister or his or her delegate, and serve on the Committee under terms and conditions determined by the Minister.

In addition to the Departmental representative, the membership of the Committee is drawn from organisations responsible for emergency management and major stakeholders in the Jervis Bay Territory: the Australian Federal Police, and nominated representatives of the Director of National Parks, the Wreck Bay Aboriginal Community Council, the Department of Defence, Shoalhaven City Council, NSW Rural Fire Service, Jervis Bay Territory Rural Fire Service, Fire and Rescue NSW, Ambulance Service of NSW, NSW State Emergency Service, and NSW Police.

The Minister may also nominate any other person to be a member of the Committee. If a person to be nominated by the Minister is an employee or officer of a State government or a State authority, the person must be nominated by the State or by the authority before the Minister can appoint them.

The members of the Committee, other than the representative of the Australian Federal Police, are required to be people who can plan and commit the resources of the agencies they represent, in relation to the response and recovery stages of an emergency.

Section 11 Explanation – *Functions of Emergency Management Committee*

This section sets out the functions of the Jervis Bay Territory Emergency Management Committee. The committee has a number of key functions, including advising the Minister about emergency management policy and practice in the Jervis Bay Territory; and preparing and reviewing the Jervis Bay Territory Emergency Management Plan. The Committee must ensure that this Plan is consistent with emergency management plans made in adjacent local government districts in NSW and with the Australian Government Disaster Response Plan.

The Committee's functions also include facilitating and participating in training exercises with emergency and rescue management organisations in NSW; assisting the Local Emergency Operations Controller; reporting to the Minister each year about the Committee's activities; and performing any other functions conferred by the Minister.

Division 2 – Local Emergency Operations Controller

Section 12 Explanation – *Local Emergency Operations Controller*

This section establishes the position of Local Emergency Operations Controller for the Jervis Bay Territory and specifies that the position is to be occupied by the officer in charge of the Australian Federal Police in the Territory.

Section 13 Explanation – *Responsibilities and functions of Local Emergency Operations Controller*

This section sets out the role to be played by the Local Emergency Operations Controller. He or she has primary responsibility for directing, controlling and coordinating responses to and recovery from emergencies in the Jervis Bay Territory.

The section empowers the Local Emergency Operations Controller to take control of an emergency affecting the Territory if two conditions are met: firstly, if the Local Emergency Operations Controller is satisfied that taking control of the emergency is necessary in the circumstances of the case; and secondly, that the combat agency (that is, the agency responsible for the management of that type of emergency) or the Minister has requested the Local Emergency Operations Controller to do so. The Local Emergency Operations Controller may also issue directions to agencies, or carry out functions specified by the combat agency for the purposes of controlling the response to an emergency, if requested to do so by the combat agency.

The Local Emergency Operations Controller is able to exercise his or her functions during states of emergency and at other times; but if a state of emergency is in force, he or she must act pursuant to the sections of the Ordinance (contained in Division 4) relating to states of emergency. The Local Emergency Operations Controller may exercise his or her functions under section 13 whether a state of emergency is in force in the Territory or not.

Division 3 – Emergency Management Plan

Section 14 Explanation – *Emergency Management Plan*

This section requires the preparation of the Jervis Bay Territory Emergency Management Plan, which is intended to ensure a co-ordinated response to emergencies by emergency management agencies operating in the Jervis Bay Territory. The plan will be prepared by the Jervis Bay Territory Emergency Management Committee and approved by the Minister.

The Emergency Management Plan is a document which identifies the types of emergencies which may occur in the Jervis Bay Territory and their relative likelihood, and the agency responsible for controlling the response to each type of emergency. The Plan provides for the co-ordination of operations between agencies within the Jervis Bay Territory and agencies operating outside the Territory, specifies the tasks each agency is to perform, and sets out the

responsibilities of the Minister, the Local Emergency Operations Controller, and the Emergency Management Committee in relation to emergencies and states of emergency. The Plan also provides for consultation with the Department of Defence in relation to the management of emergencies on Defence land within the Jervis Bay Territory.

The Chair of the Emergency Management Committee must publish the Emergency Management Plan, and give copies of it to each emergency services organisation. Until a new Emergency Management Plan is made under this Ordinance, the existing Jervis Bay Territory Emergency Management Plan 2013-2015 will operate as the Emergency Management Plan. This section requires that the Emergency Management Plan be reviewed once every three years after the date on which it is approved by the Minister. If the plan is amended, it must be re-submitted to the Minister for approval before the amendments will be effective.

Division 4 – State of Emergency

Subdivision A – Declaration of state of emergency

Section 15 Explanation – *Declaration of state of emergency*

The Minister may declare a state of emergency in the Jervis Bay Territory if certain conditions are met. Before declaring a state of emergency, the Minister must be satisfied that the emergency endangers the safety or health of persons or animals in the Territory to a significant and widespread extent, or threatens to do so. Alternatively, the Minister must be satisfied that the emergency is destroying or damaging property in the Territory, or threatening to do so. If either of these conditions is fulfilled, the Minister can declare a state of emergency in the Territory, or part of the Territory. The Minister must consider whether a state of emergency has been declared in the surrounding local government districts of NSW in deciding whether to declare a state of emergency.

A declaration of state of emergency must be in writing, and must specify for how long the declaration will be in force. The state of emergency must not be in force for more than 30 days.

Section 16 Explanation – *Publication of declaration*

This section requires the Minister to ensure that declarations of states of emergency are broadcast by television or radio in the Jervis Bay Territory, and published in the Commonwealth Government *Gazette* as soon as possible after they have been made. The same requirements apply when a state of emergency is revoked.

Section 17 Explanation – *Duration of state of emergency*

A state of emergency takes effect immediately, once it is declared, and remains in force for the length of time specified in the declaration, unless the declaration is revoked before this time. Declaring a state of emergency does not prevent the declaration of further states of emergency in the Territory, whether in relation to the same emergency or to different emergencies.

Subdivision B – Powers that may be exercised during state of emergency

Section 18 Explanation – *Limitation on Minister’s powers*

This section specifies that the Minister, or an emergency services officer operating under the Minister’s authority, may only exercise the powers and functions set out in this Subdivision of the Ordinance while a state of emergency is in force, and in relation to the particular emergency on which the state of emergency is based.

Section 19 Explanation – *Power to direct evacuation*

This section gives the Minister the power to direct, or to authorise an emergency services officer to direct, someone to leave premises (defined in section 4), and move out of an emergency area, to take children or adults in the person’s care and move them out of an emergency area, or not to enter an emergency area. If a person will not comply with the direction, the emergency services officer may do anything reasonably necessary to ensure that the direction is complied with, including using any force which is reasonably necessary in the circumstances. This section only applies during declared states of emergency.

The section also makes special provision in relation to the evacuation of Defence land, which is defined in section 4 as land in the Jervis Bay Territory which is occupied or used by the Department of Defence or the Australian Defence Force. In practice this section refers to *HMAS Creswell* naval base (encompassing the Royal Australian Naval College), to the Bherwerre Ridge Communications Facility, and to the Jervis Bay Territory Range Facility.

A person seeking to direct that Defence land be evacuated must be satisfied that the Senior Australian Defence Force Officer at *HMAS Creswell*, or a person authorised by the Senior Australian Defence Force Officer, has been consulted, unless the requirement to consult has been waived by either the Secretary of the Department of Defence, the Chief of the Defence Force, the Senior Australian Defence Force Officer at *HMAS Creswell*, or a person authorised by the Senior Australian Defence Force Officer to waive the consultation requirement.

Rules made under this Ordinance may limit the situations and the way in which powers under this section can be used. The rules can only be used to limit the use of these powers, not to expand them.

Section 20 Explanation – *Powers to take other safety measures*

This section empowers the Minister to take safety measures in order to protect persons or animals from injury or death, or to protect property, in relation to an emergency. The Minister can direct, or can authorise an emergency services officer to direct, that roads or public spaces be closed, walls or premises which are damaged or insecure be destroyed or taken down, or that supplies of water, gas, liquids, solids, grains or powders be shut off. The Minister may also direct that supplies of gas or electricity to premises in an emergency area be shut off; and that anything in the emergency area which might pose a danger to life or property, or interfere with the response to the emergency may be taken possession of, removed, or destroyed. The supplier of any of the above substances may be required by an emergency services officer to immediately send a ‘competent person’ to carry out the Minister’s or the emergency services officer’s direction to shut off the supply of any of those

substances. The supplier will not be liable for damages caused by interruption of the supply of the substance if it is done in accordance with a direction.

This section creates an offence of failing to comply with a direction of the Minister or an authorised emergency services officer made under this section. The penalty for failing to comply is fifty penalty units.

As in the previous section, special requirements relate to Defence land within the Jervis Bay Territory. Before a direction is made under section 20(1), the person making the direction must be satisfied that the Senior Australian Defence Force Officer at *HMAS Creswell*, or a person authorised by that Senior Australian Defence Force Officer, has been consulted. However, this requirement for consultation may be waived if there are circumstances in which the Minister or the emergency services officer making the direction considers that there is an imminent threat to life, or the consultation requirement has been waived by the Secretary of the Department of Defence, the Chief of the Defence Force, the Senior Australian Defence Force Officer at *HMAS Creswell*, or a person authorised by the Senior Australian Defence Force Officer.

The rules may prescribe the way in which, and the circumstances under which powers under this section may be utilised. The rules can only be used to limit the use of these powers, not to expand them. The powers of entry and forced entry to premises, set out in sections 21 and 22 below, enable orders made under section 20 to be carried out.

Section 21 Explanation – *Power to enter premises*

This section authorises a person to enter premises if they are complying with a direction made under section 20(1), and sets out the requirements for exercising the power to enter premises. ‘Premises’ are defined broadly in section 4 to include land, a building, vehicle, vessel or aircraft, or a part of any of the above.

The person entering premises must give the owner or occupier reasonable written notice of the intention to enter premises, except in three situations:

- where the owner consents;
- where the premises are open to the public, or access to only the public part of the premises is required; or
- where entry is required urgently, and the Minister or emergency services officer has authorised the entry without notice, either in that particular case, or for that kind of situation.

When the person enters premises, they must do as little damage as possible.

Although this section appears to confer broad powers on ‘a person’ to enter premises, the section has been framed in this way to allow the Minister, his or her delegate, or an emergency services officer to direct the most appropriate person to undertake the entry to premises during an emergency. It is possible that the appropriate person to enter premises to

carry out an order might not be a police officer nor an emergency services worker, but, for example, a worker from the relevant electricity or gas company.

There are also a number of limitations on the use of this power: entry to premises under this section can only take place to comply with a direction made by the Minister or an emergency services officer under section 20(1); there must be written notice of the entry or written authorisation from the Minister or the emergency services officer, or consent of the owner; and the powers in this Subdivision of the Ordinance, including those in sections 20 and 21, can only be exercised during a declared state of emergency (section 18).

Similarly to the above sections, entry to premises on Defence land may only be undertaken after consultation with the Senior Australian Defence Force Officer at *HMAS Creswell* or a person authorised by them, unless the person authorising the entry believes there is an imminent threat to life, or the consultation requirement has been waived by the Secretary of the Department of Defence, the Chief of the Defence Force, the Senior Australian Defence Force Officer at *HMAS Creswell*, or a person authorised by the Senior Australian Defence Force Officer.

The *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* (the Guide) states that entry to premises can be authorised only by consent or under a warrant, except in exceptional circumstances (section 8.6, p86). The Senate Standing Committee on the Scrutiny of Bills has included ‘situations of emergency’ in the list of such exceptional circumstances¹. The *Guide* states that where these powers are provided for, senior executive authorisation should be required and reporting requirements should be imposed.

The powers of entry set out in this section and section 22 are included in the *Jervis Bay Territory Emergency Management Ordinance* on the basis that their use, during situations of emergency or states of emergency, may be necessary and appropriate. These powers are similar to powers in ACT legislation which previously applied in the Jervis Bay Territory (the *Emergencies Act 2004*, section 160A), and are drawn from the equivalent NSW legislation (the *State Emergency and Rescue Management Act 1989*). There are safeguards within the legislation to ensure that these powers are only used in emergency situations and with proper authorisation, such as requirements for consent by property owners, or written authorisation from the Minister in the absence of consent. These powers, as well as being exercised only in very limited circumstances, are exercised for the safety of the individuals concerned and their communities.

The second reading speech of the NSW *State Emergency Legislation Amendment Act 1995* introduced similar powers of entry to and use of property to that Act. It outlined a number of situations in which powers to enter premises were needed and were not available during emergencies. During the Newcastle earthquake, gas, water and electricity services needed to be shut off or disconnected, and damaged or insecure buildings needed to be shored up or

¹ Report 4/2000 *Inquiry into Entry and Search Provisions in Commonwealth Legislation*, paras 1.36 and 1.44, available at http://www.aph.gov.au/~media/Committees/Senate/committee/scrutiny/completed_inquiries/2000/pdf/b04.pdf

demolished. These actions could only take place because of the good will of private sector owners or operators who agreed to the disconnection, but emergency service personnel had no power to enforce compliance. The powers conferred by sections 20, 21, 22 and 23 of this Ordinance are intended to ensure that the Minister and his or her delegates, and emergency management officers, are able to take appropriate action during an emergency to prevent injury, loss of life and damage to property.

Section 22 Explanation – *Use of force to enter premises*

This section allows a person to use reasonable force to enter premises if the Minister has authorised the use of force in writing either in the particular case, or in circumstances which are present in the particular case. If force is used to enter premises, the person using force must advise the Minister, his or her delegate or the emergency services officer that force was used. The Minister, or his or her delegate, must then notify any other appropriate authorities about the use of force.

As in section 21 above, this section confers coercive powers on ‘a person’ for the purpose of allowing emergency service officers and the Minister or their delegate to respond to unforeseen contingencies in an emergency situation, and to direct the most appropriate person to undertake the entry.

There are safeguards on the use of this power of forced entry to premises: the entry must be undertaken under section 21, in pursuance of a direction under section 20(1), it may only be undertaken with written authorisation, all forced entries must be notified to the person who authorised the entry, and forced entry to premises under this section may only be undertaken during a state of emergency.

Section 23 Explanation – *Power to take possession of property*

This section gives the Minister or an emergency services officer the power to take possession of and to use a person’s property for the purposes of responding to an emergency. If a person’s property is taken or used in this way, the section provides that the person is entitled to reasonable compensation. The amount of reasonable compensation is determined by the Minister, and if the person is not satisfied with the amount of compensation offered, they can apply to the Administrative Appeals Tribunal for a review of the amount of compensation.

If, however, the property in question is property belonging to, or usually under the control of, the Department of Defence or the Australian Defence Force, the Senior Australian Defence Force Officer at *HMAS Creswell* (or a person authorised by the Senior Australian Defence Force Officer) must be consulted before the property can be taken or used. This requirement for consultation can be waived by the Secretary of the Department of Defence, the Chief of the Defence Force, the Senior Australian Defence Force Officer at *HMAS Creswell*, or a person authorised by the Senior Australian Defence Force Officer.

Section 24 Explanation – *Obstructing Minister or authorised person*

This section creates an offence of obstructing the Minister or an emergency services officer in the exercise of a power or function under this Division of the legislation, which deals with

states of emergency. The penalty for doing so is imprisonment for ten months, fifty penalty units, or both.

Part 3 – Rescue Management

Section 25 Explanation – *Police to coordinate rescue operation*

This section sets out the responsibilities of parties to a rescue operation for co-ordination and direction of the operation. It provides that in general, the Australian Federal Police will be responsible for coordinating rescue operations and determining the priorities of the agencies involved. This section does not apply, however, if the control of the rescue operation is given by law to a person or agency other than the Australian Federal Police.

Section 26 Explanation – *Notification of rescue incidents to police*

This section requires an emergency services organisation (other than the Australian Federal Police) which becomes aware of an incident which requires, or is likely to require, a person to be rescued, to notify a member or special member of the Australian Federal Police about the incident. This requirement does not apply if the Australian Federal Police have already been notified of the incident.

Section 27 Explanation – *Arrangements for interstate cooperation in rescue*

This section gives the Minister the power to make arrangements with an agency that manages or controls an interstate rescue unit for the unit to carry out rescue operations in the Jervis Bay Territory. It also allows for arrangements whereby a rescue unit based in the Jervis Bay Territory may be authorised to carry out rescue operations outside the Jervis Bay Territory.

Section 28 Explanation – *Offence to obstruct rescue unit*

This section creates the offence of obstructing a rescue unit. If a person obstructs or hinders a member of a rescue unit which is undertaking activities connected to a rescue operation, or in response to an emergency, they will be guilty of an offence and liable for a penalty of imprisonment for 10 months, payment of 50 penalty units, or both.

Part 4 – Employment protection for volunteer emergency workers

The objective of this Part of the legislation is to provide protection for volunteer emergency workers who are absent from their place of employment in order to respond to emergencies. This Part is intended to offer similar protection to the provisions in Part 3A of the NSW *State Emergency and Rescue Management Act 1989*. These provisions were enacted following severe bushfires in NSW in early 1994, during which a number of volunteer firefighters were reportedly threatened by their employers with loss of pay or dismissal. The provisions were based on the employment protection provisions which protected the employment of jurors.

Section 29 Explanation – *Definition – employer and employee*

This section defines which workers and employers are included in the definitions of ‘employer’ and ‘employee’. This section includes the following employment relationships: employer/employee, contractor-type relationships, bailor/bailee relationships (such as when a person operates a taxi for its owner), transporting passengers in a hire vehicle, and contracts of carriage (where, for example, one person has a contract with another for transporting goods by motor vehicle or bicycle).

Section 30 Explanation – *Protection from victimisation*

This section creates an offence of victimising an employee for being absent from work due to taking part in an emergency operation. This victimisation could include dismissal or termination from work; altering the employee’s position at work, to their detriment; or otherwise injuring the employee in their employment with, or engagement by the employer. This section only applies in relation to emergency operations which are declared, by a legislative instrument made by the Minister, to be subject to Part 4 of this Ordinance (see section 31 below). A person who victimises their employee is liable to a penalty of 30 penalty units.

Section 31 Explanation – *Emergency operations to which this Part applies*

This section allows the Minister to declare that an emergency operation is an operation to which this Part of the legislation applies. This is carried out by making a written instrument, published on the Federal Register of Legislative Instruments, stating that a particular operation or all operations carried out in relation to a specific emergency are operations to which this Part applies. In considering whether to make such a determination, the Minister must consider how long the emergency is likely to last.

The Minister may make an instrument under this section for situations where a state of emergency has been declared, or where no state of emergency has been declared.

Section 32 Explanation – *Part does not affect other remedies*

This section makes clear that Part 4 of the *Jervis Bay Territory Emergency Management Ordinance 2015* does not affect any other rights or remedies which employees (or former employees) may have under other legislation.

Section 33 Explanation – *No contracting out*

This section means that an employee cannot be prevented from accessing their rights to protection from victimisation or remedies under this Part of the legislation because they are a party to an agreement which appears to affect these rights. This applies to agreements which the employee has entered into either before or after this Ordinance begins operation.

Section 34 Explanation – *Industrial dispute does not prevent operation of Part*

This section clarifies that this Part will operate even if the victimisation of an employee has led to an industrial dispute, despite the provisions of section 6 of this Ordinance, which limits the operation of the Ordinance in relation to industrial disputes.

Part 5 – Police powers during emergencies

This Part sets out the powers of police during emergencies (as defined by section 4 of the Ordinance) which are not declared states of emergency. The powers exercised by police under this Part are similar to those exercised by the Minister and by emergency service officers during states of emergency, set out in Part 2, Division 4, Subdivision B.

Section 35 Explanation– *Police powers to direct evacuation*

This section gives senior police officers the power to direct, or authorise other police officers to direct, the evacuation of a danger area. The senior police officer must be satisfied that there are reasonable grounds to conduct the evacuation, to protect persons from injury or death from an emergency which is occurring, or is about to occur. A ‘danger area’ is defined by section 4 as an area specified by a senior police officer as an area affected by an emergency.

A senior police officer, or another officer authorised by a senior police officer, may direct people to leave particular premises, to take children or adults in people’s care and move them out of the danger area, or not to go into a danger area.

This section also allows senior police officers, or other police officers authorised by them, to direct people who may have been exposed to chemical, biological or radiological contamination to remain in a specific place, be kept away from other people, or submit to decontamination.

If the land to be evacuated is Defence land, the officer directing the evacuation must be satisfied that the Senior Australian Defence Force Officer at *HMAS Creswell*, or a person authorised by the Senior Australian Defence Force Officer, has been consulted before the Defence land can be evacuated. The requirement for consultation may be waived, however, by the Secretary of the Department of Defence, the Chief of the Defence Force, the Senior Australian Defence Force Officer at *HMAS Creswell*, or a person authorised by the Senior Australian Defence Force Officer.

If a person does not obey a direction given under this section, the police are authorised to take action to make sure that the direction is complied with, including using reasonable force. Rules may be made which limit the way in which powers under this section may be used, and the circumstances in which they can be used. The rules can only be used to limit the use of these powers, not to expand them.

Section 36 Explanation – *Police powers to take other safety measures*

This section enables senior police officers, or other officers acting under their authorisation, to make a number of directions in order to protect persons or animals from injury or death, or to protect property, in a situation where there is an actual or imminent emergency.

In these circumstances, the senior police officer or authorised police officer may direct that roads, streets, lanes, footpaths or other public places be closed; that vehicles be removed; that public or private places be closed; that walls, premises, or parts of these be taken down or shored up; that the supply of any gas, liquid, solid, grain, powder or other substance be shut off; that a supply of gas or electricity be shut off; that any thing which might be dangerous to life or property or might interfere with the response to the emergency be removed, destroyed or taken possession of; and they may prevent anyone from removing or interfering with anything in a danger area.

If the supply of one of the substances listed above (such as gas, electricity, or powder or grain) must be cut off, the supplier of the substance may be required to send a ‘competent person’ to do this. If the supply of one of these substances is shut off temporarily at the direction of a senior police officer or an authorised police officer, the supplier will not be liable for damages for the interruption to supply.

If the senior police officer proposes to make any of the directions in section 36(1) in relation to Defence land, the senior police officer must be satisfied that the Senior Australian Defence Force Officer at *HMAS Creswell*, or a person authorised by the Senior Australian Defence Force Officer, has been consulted. This requirement, however, may be waived in two situations: either if there is an imminent threat to life, or if the consultation requirement has been waived by the Secretary of the Department of Defence, the Chief of the Defence Force, the Senior Australian Defence Force Officer at *HMAS Creswell*, or a person authorised by the Senior Australian Defence Force Officer.

The section creates an offence of failing to comply with a direction from a senior police officer or an authorised police officer, with a penalty of 50 penalty units.

The rules may provide more detail about the circumstances and the way in which powers under this section may be exercised. The rules can only be used to limit the use of these powers, not to expand them. The powers of entry and forced entry under sections 37 and 38 below enable directions made under section 36 to be carried out.

Section 37 Explanation – *Police power to enter premises*

This section sets out the powers and requirements for the police to enter premises during an emergency which is not a declared state of emergency.

It provides that a police officer may enter premises in order to comply with a direction made under the previous section in two situations: firstly, if they give the owner reasonable written notice of their intent to enter the premises; or secondly, without notice provided certain conditions are met. These conditions are:

- Consent of the owner or occupier; or
- If the premises are open to the public, or part of the premises are open to the public, and the entry is to the public part of the premises; or

- Entry is urgently required, and the entry without notice has been authorised in writing by a senior police officer, either in that particular case, or for that general situation.

The power for police to enter premises in this section is included in the Ordinance to enable the police to respond to emergencies in an appropriate manner, while respecting the rights of property owners and maintaining appropriate accountability mechanisms for those entering premises. The power to enter premises here is limited by the conditions set out above, requiring either consent, or written authorisation from a senior police officer, unless the premises or part of the premises are open to the public.

The Senate Scrutiny of Bills Committee has listed ‘situations of emergency’ as one of the situations in which entry without consent or warrant may be permissible², and the powers in this section may only be used in emergencies, as defined by the Ordinance. In addition, the powers set out in sections 37 and 38 of this Ordinance may only be exercised by police officers, as defined by the Ordinance, must be exercised with written authority, and must be exercised with care: police officers are required by this section to ‘do as little damage as possible’ when entering the premises.

If the police officer proposes to enter Defence land, the officer must be satisfied that the Senior Australian Defence Force Officer at *HMAS Creswell*, or a person authorised by the Senior Australian Defence Force Officer, has been consulted. This requirement, however, may be waived in two situations: either if there is an imminent threat to life, or if the consultation requirement has been waived by the Secretary of the Department of Defence, the Chief of the Defence Force, the Senior Australian Defence Force Officer at *HMAS Creswell*, or a person authorised by the Senior Australian Defence Force Officer.

Section 38 Explanation – *Use of force to enter premises*

This section sets out conditions under which police officers can use reasonable force to gain entry to premises. They can only use force to enter premises if a senior officer or authorised officer who made the direction has authorised the use of force in writing. That authorisation must permit the use of force in that particular case, or in circumstances present in the particular case.

The section also requires the police officer to report to the senior police officer or authorised officer who made the direction under section 36, of the use of force to enter premises. In turn, the senior police officer must tell the Australian Federal Police Commissioner about the incident.

Section 39 Explanation – *Police officer to produce warrant card if required*

This section sets out the final requirements for entering premises under this Part of the Ordinance. It provides that a police officer who is entering premises under section 37 to

² Report 4/2000 *Inquiry into Entry and Search Provisions in Commonwealth Legislation*, paras 1.36 and 1.44, available at http://www.aph.gov.au/~media/Committees/Senate/committee/scrutiny/completed_inquiries/2000/pdf/b04.pdf

comply with a direction made under section 36, must produce their police identification if the owner of the premises requires them to do so.

The *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* states that officers exercising entry or search powers must identify themselves to the occupier of the premises except in exceptional circumstances, and this section is intended to comply with this requirement.

Part 6 - Miscellaneous

Section 40 Explanation – *Damage to property*

This section deals with liability for damage to property which may be caused by a police officer, the Minister (or his or her delegate), or an authorised emergency services officer, taking action during an emergency.

The damage must have been caused by someone acting to protect a person or animal from injury or death, or property from damage, either during an emergency, or in a situation in which a hazardous material escapes or is likely to escape. ‘Hazardous material’ is defined in section 4 above.

If damage is caused to property by powers exercised or actions taken in good faith, by, or at the direction of, the Minister or an authorised emergency services officer under section 20, or a senior or authorised police officer under section 36, then the property damage will be treated, for the purposes of insurance, as if the emergency event itself caused the damage. The same is true of the exercise of powers under section 21 and section 37.

The section also provides that agreements which attempt to modify or nullify the effect of this section have no legal effect.

Section 41 Explanation – *Offences relating to emergency services organisations*

This section creates several offences: impersonating an emergency services officer, manufacturing or selling emergency services insignia without authorisation, and using or displaying emergency services insignia with the intention of deceiving people, and without authorisation. To do any of these things attracts a penalty of 50 penalty units.

‘Emergency services organisation insignia’ are defined by section 4 as items, or parts of items relating to an emergency services organisation, or which would be recognised as being used by an emergency services officer. This might include uniforms or parts of uniforms, badges, emblems or logos, and they might be genuine items, or reasonable imitations of items. The rules may prescribe items for the purposes of this definition.

‘Emergency services organisation officer’ is defined by section 4 to include employees, volunteers, and members of emergency services organisations, other than the Australian Federal Police. ‘Sell’ is also broadly defined by section 4 to include hiring, exchanging, and offering to sell material.

Subsection 41(4) provides that these actions will not constitute an offence if a person undertakes any of these activities for the purposes of entertainment. In this section, the burden of proof is placed on the defendant because the defendant is best placed to give evidence as to their intention at the time when the act occurred. This would appear to be a situation in which the relevant facts (concerning the intention to entertain) are likely to be within the knowledge of the defendant, and in which it could be difficult for the prosecution to prove the defendant's state of mind. In these circumstances, the Senate Standing Committee for the Scrutiny of Bills has indicated that the burden of proof may be imposed on a defendant³.

The section does not cover impersonation of Australian Federal Police officers or misuse of Australian Federal Police insignia, as these matters are already dealt with by section 63 of the *Australian Federal Police Act 1979* (Cth), which applies in the Jervis Bay Territory. Impersonation of a NSW Police officer, however, is included in this offence, as NSW Police may operate in the Jervis Bay Territory, wearing their NSW Police uniforms. This may be as special members of the Australian Federal Police, as authorised by this Ordinance, or as authorised by another Jervis Bay Territory Ordinance.

Section 42 Explanation – *Protection from liability*

This section operates to protect the Minister (and his or her delegate) and other people who have powers, functions, or duties under this Ordinance, from civil or criminal liability, for acts or omissions done in good faith while exercising powers or performing functions under this Ordinance. The section also protects the Commonwealth, the Crown in any other capacity, and people managing or assisting with rescue operations or emergencies, including volunteers, from actions for damages for things done or omitted in good faith under the Jervis Bay Territory Emergency Management Plan, during a rescue operation or in response to an emergency. Both authorised and casual volunteers are protected by this section, and these terms are defined in the definitions section of the Ordinance (section 4).

The defences offered by this section have been included in the Ordinance so that emergency service workers, the Minister, and those managing emergency and rescue operations, are protected from civil or criminal liability for acts or omissions made in the legitimate exercise of their functions under the Ordinance. The circumstances under which decisions are made in relation to emergency management under this Ordinance may be rapidly changing, and information available to decision-makers may be incomplete. The Minister and emergency service officers may act according to their best judgement and their experience during an emergency, but in a way which may later appear to have been mistaken.

Although the ambit of sub-section (2) appears broad, in that it offers legal protection to 'a person', rather than to a police officer, the Minister, or an emergency service worker, it should be noted that the coercive powers conferred by the Ordinance are mainly exercised by,

³ Senate Standing Committee for the Scrutiny of Bills, Report 4/2010, p 134, available at http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Bills/Reports/2010/~media/Committees/Senate/committee/scrutiny/bills/2010/pdf/b04.ashx .

or under the direction of the Minister (or his or her delegates), emergency service workers, or police officers. The operation of section 42 is limited by the need for its subject to have acted or omitted to act in the performance or exercise of a power, function or duty under the Ordinance, so the protections offered by the section are limited to those persons who are authorised to act under the Ordinance. The section also operates to protect the purported exercise of functions or powers under the Ordinance.

The burden of proving that they were acting in good faith is placed on the defendant by this section, because the defendant is best placed to give evidence as to their state of mind at the time when the act, omission or performance of a function occurred. This would appear to be a situation in which the relevant facts (concerning the exercise of powers in good faith) are peculiarly within the knowledge of the defendant, and in which it would be particularly difficult for the prosecution to prove the defendant's state of mind. In such circumstances, the Senate Standing Committee for the Scrutiny of Bills has indicated that imposing the burden of proof on a defendant may be appropriate⁴.

Section 43 Explanation – *Compensation for acquisition of property*

This section provides that if the Ordinance operates in a way which would constitute an acquisition of property for the purposes of section 51(xxxi) of the *Constitution* without just terms, then the person from whom property has been acquired is entitled to seek a reasonable amount of compensation from the Commonwealth. If the person and the Commonwealth cannot agree on the amount of compensation, the person may seek compensation through the court system.

This section is intended to ensure that the Ordinance is in conformity with the Commonwealth's legislative power (as set out in section 51(xxxi) of the *Constitution*), which requires that if property is acquired by the operation of a Commonwealth law, the acquisition must be on just terms.

Section 44 Explanation – *Review of ordinance*

This section requires the Minister (or his or her delegate) to review the Ordinance every four years after the Ordinance commences, and in conducting the review, to take into account the *Environment Protection and Biodiversity Conservation Act 1999* and regulations made under that Act, the *Jervis Bay Territory Rural Fires Ordinance 2014*, relevant legislation in NSW, and the Booderee National Park Management Plan. This is intended to ensure that future changes to the Ordinance are consistent with other relevant legislation in force in the Territory and in the surrounding areas of NSW.

Section 45 Explanation – *Ordinance not to limit other laws*

This section clarifies that this Ordinance will not affect the operation of any other law, unless this is specifically provided for in the Ordinance.

⁴ Senate Standing Committee for the Scrutiny of Bills, Report 4/2010, p 134, available at http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Bills/Reports/2010/~//media/Committees/Senate/committee/scrutiny/bills/2010/pdf/b04.ashx.

Section 46 Explanation - *Proof of certain matters not required*

This section sets out matters relating to emergency management or rescue organisations for which proof is not required in legal proceedings, unless evidence is produced to the contrary. These matters include the composition of the Emergency Management Committee, the presence of a quorum at a meeting of the Emergency Management Committee, the holding of office by a member of the Emergency Management Committee, and a resolution of the Emergency Management Committee.

Section 47 Explanation - *Proceedings for offences*

This section prescribes that proceedings for offences contained in this Ordinance are to be dealt with by the ACT Magistrates Court.

Section 48 Explanation – *Rules*

The section enables the Minister, by legislative instrument, to make rules which prescribe matters which the Ordinance requires or allows to be prescribed, or which are necessary or convenient for carrying out or giving effect to the Ordinance. The section makes clear that the rules may not create an offence or impose a penalty, provide for powers to arrest or detain a person, to enter or search premises, seize property, or impose a tax. The rules may not directly amend this Ordinance.

Schedule 1 – Jervis Bay Territory Emergency Management Committee

Clause 1 Explanation –*Deputies of members*

This clause allows members of the Emergency Management Committee to appoint deputies who may act in their place and perform their functions on the Committee as if they were a member. The member may revoke the appointment of their deputy at any time.

Clause 2 Explanation – *Vacancy in position*

This clause allows for the replacement of members of the Emergency Management Committee. The office of a member becomes vacant if a member dies, the agency which nominated the member cancels the member's nomination (unless the member was appointed by the Minister, or is the senior AFP officer in the Jervis Bay Territory), the member resigns by giving notice in writing to the Minister, the member no longer works for the organisation named in Section 10(2) of the Ordinance above, or the member's appointment is terminated by the Minister. The clause states that if the office of a member becomes vacant, a person should be appointed to fill the vacancy under section 10 of the Ordinance.

Clause 3 Explanation – *General procedure*

This clause allows for the making of rules (made under section 51) which would prescribe procedures to be followed for calling meetings of the Emergency Management Committee, or

during meetings of the Committee. The Committee may determine its own procedures for these matters, provided they are consistent with any procedures determined in the rules.

Clause 4 Explanation – *Quorum*

This clause provides that a quorum for the Emergency Management Committee is 5 members of the Committee. A quorum is the minimum number of members of the Committee who must be present at a meeting in order for the Committee to be properly constituted.

Clause 5 Explanation – *Presiding member*

This clause who will preside at meetings of the Emergency Management Committee. Section 10(4) of the Ordinance provides that the representative of the Department with responsibility for the Jervis Bay Territory will be the Chair of the Committee, and this clause provides that the Chair of the Committee will be the presiding member if they are present at the meeting. If the Chair is not present, and the Committee has appointed a Deputy Chair, who is present, the Deputy Chair will be the presiding member. Otherwise, the Committee members at the meeting may elect a member to chair the meeting.

Clause 6 Explanation – *Voting*

This clause sets out the procedure for reaching decisions by the Emergency Management Committee. It provides that decisions supported by a majority of votes of the Committee are the decision of the Committee. The person who is presiding at a Committee meeting has a deliberative vote, which means that they may vote on Committee decisions taken when they are presiding over a Committee meeting. If Committee members vote on a matter and their votes are evenly divided, the person presiding is also given a second vote which they may use to resolve the question.

Clause 7 Explanation - *Subcommittees*

This clause allows the Emergency Management Committee to set up subcommittees to help it with the exercise of its functions. The subcommittees may include members who are not members of the Emergency Management Committee. The procedures for calling or holding meetings of the subcommittee will be determined by the main Committee or, subject to any determination by the Committee, by the subcommittee.