

**2004**

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL  
TERRITORY**

**EMERGENCIES BILL 2004**

**EXPLANATORY STATEMENT**

Circulated by authority of the  
Minister for Police and Emergency Services  
Mr Bill Wood MLA

## EMERGENCIES BILL 2004

### Outline

The Emergencies Bill 2004 (the Bill) is in response to the *Report of the McLeod Inquiry into the Operational Response to the January 2003 Bushfires in the ACT* (the McLeod Report).

The McLeod Report into the January 2003 bushfires found inefficiencies in the structure of the ACT's emergency service arrangements that frustrated emergency workers and volunteers. Taking into account the size of the Territory, the Inquiry considered it would be more efficient if all of the ACT emergency services, including assets and personnel, were contained and managed within a new authority set up outside the framework of the ACT Public Service. The Inquiry also indicated that this change would bring the various emergency service bodies closer together and would facilitate a more flexible use of equipment and personnel.

The McLeod Report also proposed a number of amendments to existing emergency legislation. Recommendation 57 provided that the *Emergency Management Act 1999* should be reviewed with the aim of preparing legislation that provides for different levels of special powers, and the capacity for escalation measures to be invoked to assist in the management of emergencies. Recommendation 58 provided that the *Bushfire Act 1936* should be reviewed and redesigned to reflect contemporary needs, and the ACT Bushfire Council's role should be re-expressed in the Act to more accurately describe a more contemporary role. Recommendation 59 provided that a fire-abatement zone should be defined surrounding the built-up area of Canberra. Recommendation 61 provided that the abatement zone should be declared a bushfire-prone area, and the requirements of the Building Code of Australia – in particular, its standards for bushfire-prone areas – should be applied to all future developments in the zone.

The Bill establishes the Emergency Services Authority. The authority is constituted by the Emergency Services Commissioner rather than a Board. An authority headed by a Board of Management would be inconsistent with the recommendations of the McLeod Report, which proposes that a Chief Executive, not a board, should head the authority and that the Chief Executive should report directly to the Minister. The 'board model' would detract from the authority that McLeod proposed be vested in the Commissioner and would complicate lines of responsibility and accountability in any operational environment which requires absolute clarity in relation to these matters. In addition, boards of management are usually utilised for entities that have a commercial focus, such as the recently established Land Development Agency Board, rather than the non-commercial focus that the Emergency Services Authority will have.

The authority will be responsible for the overall strategic direction and management of the four services (the Fire Brigade, Ambulance Service, Rural Fire Service and the State Emergency Service). Day to day performance of functions is to remain under the direct management of the Chief Officers of the services who, as members of the authority's staff, are ultimately responsible to the Commissioner for the performance of functions.

The Bill also consolidates and modernises the Acts in the Territory governing emergency services: the *Emergency Management Act 1999*, the *Bushfire Act 1936*, *Fire Brigade (Administration) Act 1974* and the *Fire Brigade Act 1957*. The benefits of consolidation include:

- providing for further integration of the services;
- enhancing accessibility to the legislation, by members of the emergency services and the community;
- assisting the removal of duplication;
- simplifying the package of legislation;
- providing an opportunity to make policy changes to the existing legislation, such as updating the functions of the Fire Brigade to include attendance at road accidents and rescues and attending to incidents involving hazardous materials; and
- providing a base for later review and improvement of the substantive content of the consolidated legislation.

The Bill provides a mechanism for firefighters to become public servants and for their employment statute, the *Fire Brigade (Administration) Act 1974*, to be repealed. This will have effect on the signing of a certified agreement, which includes the identified provisions of the *Fire Brigade (Administration) Act 1974*. Having all members of the Authority employed under the *Public Sector Management Act 1994*, will assist in creating a unified organisation, and will allow for greater mobility between the different services.

The Bill provides a new mechanism for declaring a state of alert in addition to the current provisions for declaring a state of emergency. The Bill provides that a state of alert can be declared by the Minister and a state of emergency by the Chief Minister. Further, a declaration by the Chief Minister cancels the declaration by the minister.

The purpose of a state of alert is to put the community on notice of a developing situation that, it is considered, has the potential for serious impact on the community. In a state of emergency (which includes an impending emergency) the powers of entry, people management, evacuation, etc would apply and would be exercised by the Territory Controller. The Territory Controller would be appointed by the Chief Minister and would be the person considered to be the most appropriate in the particular circumstances. The provisions for appointment of the Alternate Controller have not been transposed from the *Emergency Management Act 1999*.

The McLeod Report also suggested that the chair of the Emergency Management Committee be changed from the Chief Police Officer to the Chief Executive of the Department of Justice and Community Safety. The Emergency Management Committee is a planning body consisting of stakeholders, such as the Australian Federal Police (AFP), senior officers in the Emergency Services Bureau, Environment ACT, Chief Medical Officer and the Department of Urban Services. The Committee formulates and refines the Emergency Plan. Due to the operational nature of this Committee and the proposed change to who is the Territory Controller, the Bill provides for the Commissioner to be the chair.

As recommended in the McLeod Report, the Bill re-constitutes the Bushfire Council as an advisory body and substantially rewrites the *Bushfire Act 1936*. The Bill recognises the operational responsibilities of the Chief Officer (Rural Fire Service) and the policy role of the new authority as well as the extent to which the existing role/responsibilities of the council have failed to reflect numerous legislative and other changes that have occurred since self-government. The Bill ensures that the advice of the council is sought by the minister or the new authority in specified circumstances, and that it must be taken into account when making decisions about senior appointments, declaration of the bushfire season, the strategic bushfire management plan or rural fire fighting operations. All of the other existing statutory functions of the council have been moved to the Chief Officer (Rural Fire Service) or the new authority, as appropriate.

The Bill provides for a bushfire abatement zone. The Bushfire abatement zone will surround the urban edge of Canberra. In the zone land managers will be required to prepare an operational plan that accords with the Strategic Bushfire Management Plan. The Bill also amends the *Building Act 2004* to provide for areas to be declared bushfire-prone, and to require compliance with the standards for bushfire-prone areas in the Building Code.

The Bill includes a number of offences where strict liability applies to a specific element of the offence or to the offence. Section 23 of the *Criminal Code* provides that if a law that creates an offence provides for strict liability, there are no fault elements for the physical elements of the offence. Essentially, this means that conduct alone is sufficient to make the defendant culpable. However, if strict liability applies, the defence of mistake of fact is available where the person considered whether or not facts existed and was under a mistaken but reasonable belief about the facts. Other defences, such as intervening conduct or event (section 39), are also available.

Offences incorporating strict liability elements are carefully considered when developing legislation and generally arise in a regulatory context where for reasons such as public safety or protection of the public revenue, the public interest in ensuring that regulatory schemes are observed requires the sanction of criminal penalties. As these offences are primarily aimed at conduct on the less serious side of the criminal spectrum, the maximum penalty would rarely exceed six months imprisonment. This Bill includes a number of offences where the penalty is 100 penalty units and/or imprisonment for one year and a number of strict liability offences where imprisonment is possible. These penalties have been included due to the serious consequences of non-compliance with some requirements of this legislation. For example, leaving a fire in the open air without extinguishing it during the bushfire season may cause a bushfire.

## Clause Notes

**Clause 1 - Name of Act** – states the title of the Act, which is the Emergencies Act 2004.

**Clause 2 - Commencement** – states that the Act commences on a day fixed by the minister in a written notice. Subclauses (2) and (3) provide specific commencement provisions for the consequential amendments to the *Building Regulations 2004* and the *Nature Conservation Act 1980*. This is because these pieces of legislation or amendments to these Acts may not have commenced before the commencement of this Act.

**Clause 3 - Objects of Act** – sets out the objects of the Act. The objects are to:

- protect and preserve life, property and the environment in the ACT;
- to provide for effective emergency management;
- provide for the effective and cohesive management by the Emergency Services Authority of the State Emergency Service, the Ambulance Service, the Fire Brigade and the Rural Fire Service; and
- recognise the value to the community of all emergency service members.

**Clause 4 - Dictionary** – provides that the dictionary at the end of the Act is part of the Act. The dictionary defines key words and expressions used in the Act, and includes references to other words and expressions defined in other parts of the Act or in other legislation.

**Clause 5 - Notes** – provides that notes included in this Act are only explanatory.

**Clause 6 - Offences against Act** – application of Criminal Code etc – provides that other legislation applies in regard to the offences against this Act. For example chapter 2 of the Criminal Code applies to offences in this Act. This clause increases awareness of the Criminal Code and alerts the reader to the fact that chapter 2 of the Criminal Code, setting out the general principles of criminal responsibility, applies to this Act.

**Clause 7 - Establishment of authority** – establishes the Emergency Services Authority. The authority is a corporation. This means that the authority has a separate legal existence that is distinct from that of the Territory, members, employees or agents. It has its own property, rights and obligations. It continues to exist even though its members, employees or agents change.

A corporation does not have a physical existence and, accordingly, must act through other people. This clause provides that the Emergency Services Commissioner is the authority. This means that the functions of the corporation are exercised through the Emergency Services Commissioner.

**Clause 8 - Powers of authority** – sets out the powers of the authority. Artificial persons, such as corporations have no power, save those provided to them by statute. This clause provides that the authority has the powers of a natural person. This

includes the powers to enter into contacts, own property, to sue and be sued and to act as a trustee.

The authority also has the powers of a corporation. This would include the power to arrange for the authority to be registered or recognised in another jurisdiction.

**Clause 9 - Authority functions** – lists the functions of the authority. The authority is responsible for the overall strategic direction and management of the emergency services. The emergency services are defined in the dictionary as the Ambulance Service, Rural Fire Service, State Emergency Service and the Fire Brigade.

The authority is also responsible for community awareness and preparedness in relation to emergencies.

This clause also sets out the things that the authority must do in exercising its functions. This includes seeking to give the emergency services a strong, cohesive, strategic and operational direction and recognising the importance of all emergency service members including volunteer members.

**Clause 10 - Authority to advise Minister** – provides that the authority must advise the minister on the overall capability and preparedness of the emergency services. This includes advising the Minister on prevention activities.

**Clause 11 – Asking Bushfire Council’s advice** – provides that the authority may ask for the advice of the Bushfire Council, in relation to the exercise of any function relating to bushfires, at any time. However, this clause makes it clear that the authority must ask for the advice of the council before exercising any function prescribed in the Regulations. The legislation also provides specific occasions when the council’s advice must be sought, such as in relation to the appointment of senior officers in the Rural Fire Service.

**Clause 12 – Authority may make authority guidelines** – provides that the authority may make guidelines for the organisation and operation of the authority and the strategic operation of each of the emergency services. These guidelines are known as the *authority guidelines*. The authority guidelines may make provision for:

- areas of the emergency services that are to be operated jointly;
- operation of the joint areas;
- planning and conduct of joint operations of the emergency services; and
- any other matter relating to the organisation and operation of the authority that the authority considers appropriate.

The authority guidelines are notifiable instruments. Subclause (3) provides for the Authority to exempt parts of the guidelines from notification. For example the standards and protocols are not public documents, as the documents will contain information about how the emergency services respond to incidents. The information could be used against the emergency services by assisting criminals or terrorists in determining when and how to commit crimes or terrorist acts. Where information is exempted from notification this must be given to the appropriate Legislative Assembly Standing Committee.

This clause provides that the Chief Officer of an emergency service may recommend amendments of the authority guidelines to the authority.

**Clause 13 – Delegations by authority** – provides for the authority to delegate its functions. The authority's functions may be delegated to a public servant or to a member of the emergency services.

**Clause 14 – Authority to comply with directions** – provides that the authority must comply with any directions given to the authority under this Act or another Territory law. The following clause provides for the Minister to give directions to the authority.

**Clause 15 – Ministerial directions to authority** – provides that the Minister may give written directions to the authority about the exercise of its functions.

Subclause (2) requires the Minister, before giving a direction, to tell the authority about the proposed direction, and allow the authority an opportunity to comment on the proposed direction. The minister must consider any comments made by the authority about the proposed direction.

A copy of the direction is to be presented in the Legislative Assembly within six sitting days after it is made. If this requirement is not met, the direction is taken to have been revoked. This clause also provides that a direction is a notifiable instrument.

**Clause 16 – Reports by authority to Minister** – provides that the authority must give the minister a report, or information about its operations, if it is required by the minister, and in the form required by the minister. The requirements under this clause are in addition to any other provisions about the provision of information by the authority.

**Clause 17 - Authority's annual report** – provides that an annual report of the authority, given under the *Annual Reports (Government Agencies) Act 2004*, must include a copy of any direction given under clause 16 and a statement by the authority about action taken by it to give effect to that direction.

**Clause 18 – Appointment of commissioner** – provides that the Executive must appoint a person to be the Emergency Services Commissioner. The appointment is for a term of up to five years, although the person can be reappointed. An appointment under this section is a notifiable instrument.

**Clause 19 – Functions of commissioner** – provides that the Commissioner is to promote the objects of the Act and to ensure that the authority exercises its functions in a proper, effective and efficient way. The Commissioner may exercise other functions given under this Act or another Territory law.

**Clause 20 – Commissioner's employment conditions** – provides that the conditions of employment for the Commissioner are to be agreed between the Commissioner and the Executive, but are subject to any determination of the Remuneration Tribunal.

**Clause 21 – Ending of commissioner’s appointment** – provides for the ending of the Commissioner’s appointment. The Commissioner’s appointment is ended if the Commissioner is convicted of an offence punishable by imprisonment for at least one year. The Commissioner’s appointment may also be ended for misbehaviour, incapacity that affects the exercise of the Commissioner’s functions, bankruptcy or in accordance with the Commissioner’s employment conditions.

This clause does not deal with suspension of the Commissioner’s appointment as suspension is dealt with under section 208 of the *Legislation Act 2001*. Section 208 provides that an appointer’s power to make the appointment includes the power to suspend the appointee, or end the suspension.

**Clause 22 – Authority staff** – states that the staff of the authority are to be employed under the *Public Sector Management Act 1994*. This clause provides that a member of the emergency services is a member of the staff of the authority, however, this does not include volunteers or casual volunteers. Clause 210 also provides that this section does not apply to firefighters until they become public servants under clause 209.

This section clarifies that, regardless of the Authority’s status under the *Public Sector Management Act 1994*, the Commissioner has all the powers of a chief executive under that Act in relation to the staff of the Authority.

**Clause 23 – Agreement for use of other government staff etc** – provides that the authority may enter into an agreement with the Chief Executive of an administrative unit to make use, either full-time or part-time of the services of an officer or employee, the facilities or the equipment.

For example, the Authority may enter into an agreement with a land management agency for the agency to provide part-time firefighting resources. When the officers of the agency are exercising functions under this Act then they come under the command and control of the Authority and the relevant Chief Officer.

**Clause 24 – Appointment of volunteer members** – provides that the Chief Officer of an emergency service may appoint a person as a volunteer member of the service. The Chief Officer may also end the appointment of a volunteer member, however, this must be done in accordance with the authority guidelines. The authority guidelines provide for natural justice to apply in ending the appointment of a volunteer. Natural justice requires decision-makers to act fairly, in good faith, without bias and must give the volunteer the opportunity to state their case.

**Clause 25 – Volunteer members – appointments in accordance with guidelines** – provides for volunteer members to be appointed in accordance with the authority guidelines. The appointment may be made to an operational unit in the service and to a rank in the service. Before appointing a person to a senior rank in the Rural Fire Service the Chief Officer (Rural Fire Service) must consult with the Bushfire Council.

**Clause 26 - Casual volunteers** – permits a person in charge of an activity to ask a person to assist in an activity, without remuneration or reward. These people are known as casual volunteers.

**Clause 27 – Authority consultants** – states that the authority may engage consultants, but may not enter into a contract of employment under this clause.

**Clause 28 - Chief officer – ambulance service** – provides for the authority to appoint a public servant to be the Chief Officer of the Ambulance Service. This person is to be known as the Chief Officer (Ambulance Service).

The Chief Officer must be a person with the management, professional and technical expertise to exercise the Chief Officer's functions. The Chief Officer is responsible for:

- the general management of the Ambulance Service;
- matters relating to the professional and technical expertise of the Ambulance Service; and
- community awareness about pre-hospital medical emergencies.

**Clause 29 - Chief officer – fire brigade** – provides for the authority to appoint a public servant to be the Chief Officer of the Fire Brigade. This person is to be known as the Chief Officer (Fire Brigade).

The Chief Officer must be a person with the management, professional and technical expertise to exercise the Chief Officer's functions. The Chief Officer is responsible for:

- the general management of the Fire Brigade;
- matters relating to the professional and technical expertise of the Fire Brigade;
- operational planning including fire preparedness and control in the city area;
- fire response in the built-up areas; and
- community awareness about fire prevention and preparedness in the city area.

**Clause 30 - Chief officer – rural fire service** – provides for the authority to appoint a public servant to be the Chief Officer of the Rural Fire Service. This person is to be known as the Chief Officer (Rural Fire Service).

The Chief Officer must be a person with the management, professional and technical expertise to exercise the Chief Officer's functions. The Chief Officer is responsible for:

- the general management of the Rural Fire Service;
- matters relating to the professional and technical expertise of the Rural Fire Service;
- operational planning including fire preparedness and control outside the city area;
- fire response in the rural areas; and
- community awareness about fire prevention and preparedness outside the city area.

**Clause 31 - Chief officer – SES** – provides for the authority to appoint a public servant to be the Chief Officer of the SES. This person is to be known as the Chief Officer (SES).

The Chief Officer must be a person with the management, professional and technical expertise to exercise the Chief Officer's functions. The Chief Officer is responsible for:

- the general management of the SES;
- matters relating to the professional and technical expertise of the SES; and
- community awareness about storm, flood and civil defence preparedness.

**Clause 32 - Deputy chief officers** – provides for the authority to appoint Deputy Chief Officers. If a Deputy is appointed, then that person acts in the position of the Chief Officer during all vacancies in the position and during any period when the Chief Officer cannot exercise his or her functions. This clause does not require a Deputy to be appointed for each emergency service.

Prior to an appointment of a Deputy for the Rural Fire Service there must be consultation with the Bushfire Council.

**Clause 33 - Functions of chief officers** – states that the Chief Officer of a service has the functions given to the Chief Officer under this Act and any other Territory law. In this Act functions include the things that the Chief Officer is responsible for, such as those listed for the Chief Officer (SES) in subclause 30(3) and the functions given to their service under this Act.

**Clause 34 - General powers of chief officers** – provides a list of powers that the Chief Officers can exercise where it is necessary to protect or preserve life, property or the environment. These powers include the power to enter land, remove dismantle, demolish or destroy a structure or vehicle, disconnect any supply of fuel and use a supply of water without charge.

A power under this clause must be used, if practicable, in accordance with the authority guidelines.

**Clause 35 - Directions by chief officers to service members** – provides that in the exercise of the Chief Officers' functions a chief officer may give directions to emergency service members or any entity acting for the service. A direction is subject to any direction by the authority. This clause makes it clear that the authority cannot direct the Chief Officer (ambulance service) about the provision of medical treatment.

**Clause 36 - Chief officer to advise authority** – provides that the Chief Officer of an emergency service must advise the authority about the capability of their service.

**Clause 37 - Taking part in joint operations** – provides that the Chief Officers of the emergency services must ensure that their members are available to take part in joint operational activities.

**Clause 38 - Standards and protocols for the emergency services** – provides that the Chief Officer of an emergency service may, in writing, determine standards and protocols about anything relating to their service that is not inconsistent with the authority guidelines. For example, the standards and protocols may determine standards about a member's duties or may list training requirements or response protocols.

The standards and protocols are not public documents, as the documents will contain information about how the emergency services respond to incidents. The information could be used against the emergency services by assisting criminals or terrorists in determining when and how to commit crimes or terrorist acts.

**Clause 39 - Delegations by chief officers** – provides for the Chief Officers to delegate their functions to a public servant or a member of the emergency services.

**Clause 40 - Establishment of ambulance service** – establishes the ACT Ambulance Service. This replaces the Ambulance Service established under the *Emergency Management Act 1999*.

**Clause 41 - Functions of ambulance service** – provides that the main function of the Ambulance Service is to provide ambulance services. The Ambulance Service has any other function prescribed in the Regulations and has the function of assisting other entities in the exercise of their functions under this Act.

In exercising its functions the Ambulance Service may provide medical treatment and pre and post hospital care and may transport patients by ambulance and medical rescue aircraft.

**Clause 42 - Constitution of the ambulance service** – provides that the Ambulance Service consists of:

- the Chief Officer (Ambulance Service);
- the Deputy Chief Officer (Ambulance Service) if appointed;
- other ambulance service members; and
- any volunteer members.

**Clause 43 - Establishment of fire brigade** – establishes the ACT Fire Brigade. This replaces the Fire Brigade established under the *Fire Brigade (Administration) Act 1974*.

**Clause 44 - Functions of the fire brigade** – provides that the main function of the Fire Brigade is to protect and preserve life, property and the environment from fire in built-up areas. In exercising this function this Fire Brigade is responsible for operational planning in the city area and fire response in built-up areas. The planning in the abatement zone must be done in consultation with the Rural Fire Service.

The Fire Brigade has the following additional functions:

- to respond to and deal with hazardous material incidents;
- to respond to rescue incidents;
- to respond to chemical, biological and radiological incidents;
- to assist other entities in the exercise of their functions under this Act; and
- any other functions prescribed in the Regulations.

This clause also provides that the Fire Brigade may also respond to fires in rural areas and may provide first response to any other incident if the relevant emergency service is unavailable.

**Clause 45 - Constitution of the fire brigade** – provides that the Fire Brigade consists of:

- the Chief Officer (Fire Brigade);
- the Deputy Chief Officer (Fire Brigade) if appointed;
- other members of the Fire Brigade; and
- any volunteer members.

**Clause 46 - Ranks for fire brigade members** – provides that the Chief Officer (Fire Brigade) may give members of the Fire Brigade various ranks in accordance with the standards and protocols for the Fire Brigade.

**Clause 47 - Establishment of community fire units** – provides that the Chief Officer (Fire Brigade) may establish community fire units and the areas for which they are established.

**Clause 48 - Appointment of members of units** – provides that the Chief Officer (Fire Brigade) may appoint a person as a member of a community fire unit. An appointment of a member may be ended in accordance with the authority guidelines.

**Clause 49 - Objects and functions of community fire units** – provides that the object of a community fire unit is to assist people in the community to learn how to protect their homes and homes of others in the community from fire and use equipment for fire prevention work and firefighting.

The functions of a community fire unit are to, as authorised by the standards and protocols and in the area for which the unit is established, assist with firefighting during a fire emergency and recovery following a fire emergency.

A community fire unit must exercise its functions in accordance with the standards and protocols and under the direction of the Chief Officer (Fire Brigade).

**Clause 50 - Training and equipment for community fire units** – provides that the Chief Officer (Fire Brigade) must provide a community fire unit with training and equipment to enable the unit to exercise its functions.

**Clause 51 - Establishment of rural fire service** – establishes the ACT Rural Fire Service. This replaces the Rural Fire Service established under the *Bushfire Act 1936*.

**Clause 52 - Functions of rural fire service** – provides that the main function of the Rural Fire Service is to protect and preserve life, property and the environment from fire in rural areas. In exercising this function this Rural Fire Service is responsible for operational planning outside the city area and fire response in rural areas. The operational planning must be done in conjunction with the Fire Brigade.

This clause makes it clear that the Fire Brigade is in charge at structural fires in rural areas.

The Rural Fire Service has any other functions prescribed in the Regulations and has the function of assisting other entities in the exercise of their functions under this Act.

**Clause 53 - Constitution of rural fire service** – provides that the Rural Fire Service consists of:

- the Chief Officer (Rural Fire Service);
- the Deputy Chief Officer (Rural Fire Service) if appointed;
- other rural fire service members; and
- rural fire service volunteer members.

**Clause 54 - Rural fire brigades** – provides that the authority must, after consultation with the Bushfire Council, determine the number of rural fire brigades for the Rural Fire Service. A determination is a notifiable instrument.

This clause also provides that the authority may establish rural fire brigades.

**Clause 55 - Ranks for rural fire service members** – provides that the Chief Officer (Rural Fire Service) may give members of the Rural Fire Service various ranks in accordance with the standards and protocols for the Rural Fire Service.

**Clause 56 - Establishment of state emergency service** – establishes the ACT State Emergency Service (SES). This replaces the Emergency Service established under the *Emergency Management Act 1999*.

**Clause 57 - Functions of SES** – provides that the main function of the SES is to undertake planning and response operations for storms and floods.

The SES has the following additional functions:

- to undertake civil defence planning and civil defence operations;
- to undertake assistance operations to support other entities in relation to emergencies;
- to undertake assistance operations to support other entities in relation to searches;
- to provide support for community organisations to the extent that the Chief Officer (SES) considers it would assist the training of members of the service;
- to undertake any other operation that the Chief Officer (SES) considers would benefit the community; and
- any other functions prescribed in the Regulations.

**Clause 58 - Constitution of SES** – provides that the SES consists of:

- the Chief Officer (SES);
- the Deputy Chief Officer (SES) if appointed;
- other SES members; and
- SES volunteer members.

**Clause 59 - SES operational units** – provides that the authority must determine the number of operational units for the SES. A determination is a notifiable instrument.

This clause provides that the Chief Officer (SES) may establish operational units for the SES.

**Clause 60 - Interpretation for pt 4.5** – provides definitions for this part of *ambulance services, emergency services, firefighting services, response operation and rescue services*.

**Clause 61 - Approval of person to provide services** – provides that a person may apply to the minister for approval to provide ambulance, emergency, firefighting or rescue services. If a form is approved for this clause then this form must be used. A fee may be determined for this clause.

**Clause 62 - Decision about approval** – provides that the minister must either approve an application to provide services or refuse to do so. Prior to making this decision the minister must consult with the authority.

In deciding the application the minister must consider the public interest and the impact of the approval on community health and safety. This clause provides that the minister may impose conditions on an approval. For example a condition may be that the approved service does not wear a uniform that is similar to one of the existing services.

An approval under this clause is a notifiable instrument.

**Clause 63 - Offence to provide emergency services without approval** – provides that it is an offence to provide emergency services without the minister’s approval under clause 61. The maximum penalty for this offence is 50 penalty units and/or six months imprisonment.

This provision does not apply to a doctor providing medical treatment or care as an incident of conducting a medical practice, to an entity that provides first aid or to a Commonwealth or State agency. In addition, this provision does not apply to good Samaritans who give assistance to people needing emergency assistance.

**Clause 64 - Interstate and overseas emergency services** – provides for interstate and overseas emergency services to respond to emergencies or incidents in the ACT. This clause also explains who is in charge of operations where interstate or overseas emergency services are responding and what powers they can exercise.

**Clause 65 - What is the built-up area and a rural area** – provides for the authority to declare, in writing, an area to be built-up. Areas outside the built-up area are considered to be rural areas. Before making a declaration the authority must consult with the Chief Officer (Fire Brigade) and Chief Officer (Rural Fire Service). A declaration is a notifiable instrument.

The built-up area is the area within which the Fire Brigade is responsible for fire response. The rural area is the area within which the Rural Fire Service is responsible for fire response. The rural area is also relevant for some offences.

**Clause 66 - What is the city area?** – provides that the city area is the built up area and the land in the bushfire abatement zone.

The city area is the area within which the Fire Brigade is responsible for operational planning. Outside the city area is the area within which the Rural Fire Service is responsible for operational planning.

**Clause 67 - Fires in built-up area** – provides specific powers that can be used in responding to fires in built-up areas. This provision clarifies that a member of the Fire Brigade or a police officer may do anything that the Chief Officer (Fire Brigade) may do under this clause or clause 34 without being directed or given authority, if it is not practicable for a direction or authority to be obtained and it is necessary to protect life or property or control or extinguish fire. This provision is based on an existing provision in the *Fire Brigade Act 1957*.

**Clause 68 - Fires in rural areas** – provides specific powers that can be used in responding to fires in rural areas. This provision clarifies that a member of the Rural Fire Service, Fire Brigade or a police officer may do anything that the Chief Officer (Rural Fire Service) may do under this clause or clause 34 without being directed or given authority, if it is not practicable for a direction or authority to be obtained and it is necessary to protect life or property or control or extinguish fire.

This clause also provides that if the Chief Officer (Rural Fire Service) pulls down a fence or moves stock, he or she must as soon as practicable tell the owner and temporarily repair the fence.

**Clause 69 - Securing area at or after fire** – provides that if the Chief Officer (Fire Brigade) or Chief Officer (Rural Fire Service) needs to shore up or pull down a wall or structure to make an area safe, at or after a fire, the cost of this may be recovered from the owner by the Territory.

**Clause 70 - Definitions for pt 5.3** – provides definitions for this part of *agency* and *annual report*.

**Clause 71 - Authority may declare bushfire abatement zone** – provides that the authority may declare an area to be a bushfire abatement zone. This area must be declared following consultation with the Conservator of Flora and Fauna, and the ACT Planning and Land Authority.

A declaration is a notifiable instrument.

**Clause 72 - Strategic bushfire management plan** – provides for the Authority to make a draft strategic bushfire management plan for the ACT. This draft plan is then given to the Minister for approval. This plan must be made after consultation with the Bushfire Council.

**Clause 73 - Bushfire management plan committee** – provides that the authority may establish a committee to help the minister make and monitor the effectiveness of the strategic bushfire management plan.

**Clause 74 - Content of strategic bushfire management plan** – states that the strategic bushfire management plan must provide a basis for bushfire hazard assessment, risk analysis and hazard reduction. This clause also sets out the content

of the plan. The plan must include a summary of bushfire causes, assets vulnerable to bushfire, strategies for prevention and preparedness for bushfires, and resources needed to meet the objectives of the plan.

This clause also provides that the plan may set out requirements for owners or managers of land for the prevention of, and preparedness for, bushfires. The plan may also set out requirements for a bushfire operational plan for unleased Territory land or land in a bushfire abatement zone.

**Clause 75 - Public consultation for strategic bushfire management plan** – sets out a process for public consultation prior to the strategic bushfire management plan being made.

**Clause 76 - Assessment of resources and capabilities** – provides for the Authority to conduct an assessment of the available resources and capabilities for bushfire prevention and preparedness. The assessment must be given to the Bushfire Council and the Minister. This assessment includes assessing the resources and capabilities of Government land managers.

**Clause 77 - Effect of strategic bushfire management plan** – states that an owner of land must, as far as practicable, ensure that their land is managed in accordance with the strategic bushfire management plan and must comply with any bushfire management requirement for the land.

This clause also clarifies that the strategic bushfire management plan has no effect to the extent that it is inconsistent with a plan of management under the *Land (Planning and Environment) Act 1991*.

**Clause 78 - Bushfire operational plans – Territory land** – provides that the manager of an area of unleased Territory land or land occupied by the Territory must make a bushfire operational plan for the land. The bushfire operational plan must be in accordance with the strategic bushfire management plan. This clause also provides for the strategic bushfire management plan to exempt Territory land from requirements of this clause.

Subclause (5) clarifies that if the land falls within an abatement zone then the requirements for the operational plan for the bushfire abatement zone may be included in this plan.

**Clause 79 - Bushfire operational plans – bushfire abatement zone** – provides the owner of land in an abatement zone must give the authority a draft bushfire operational plan for the land. The bushfire operational plan must be in accordance with the strategic bushfire management plan. This clause also provides for the strategic bushfire management plan to exempt land from requirements of this clause.

**Clause 80 - Review of strategic bushfire management plan** – provides for the minister to review the strategic bushfire management plan every five years, with a 10 year outlook. The review must be in consultation with the Bushfire Council.

**Clause 81 - Directions by Minister to manager of land** – provides for the minister to give written directions to the manager of unleased Territory land or land occupied by the Territory to comply with a bushfire management requirement or a bushfire operational plan.

**Clause 82 - Directions by authority to owner of land** – provides for the authority to direct an owner of land to comply with a bushfire management requirement or a bushfire operational plan. Unless there are urgent circumstances, the authority must consult with the Conservator of Flora and Fauna before issuing a direction.

**Clause 83 - Failure to comply with direction** – provides that it is an offence to fail to comply with a direction under the previous clause. The maximum penalty for this offence is 50 penalty units.

This is a strict liability offence. Section 23 of the Criminal Code provides that if a law that creates an offence provides that the offence is one of strict liability, there are no fault elements for any of the physical elements of the offence. Essentially this means that conduct alone is sufficient to make the defendant culpable.

However, under the Criminal Code, all strict liability offences will have a specific defence of mistake of fact. Clause 23(3) of the Criminal Code makes it clear that other defences may still be available for use in strict liability offences.

**Clause 84 - Fire fuel reduction** – provides for the Chief Officer (Rural Fire Service) to light a controlled fire in a rural area for the purpose of reducing the risk of bushfire or the spread of bushfire. This must be done in accordance with the Strategic Bushfire Management Plan and the *Environment Protection Act 1997*.

**Clause 85 - Annual reports of agencies** – states that the annual report of an agency must give an account of the operations of the agency in relation to the strategic bushfire management plan and the bushfire operational plan.

**Clause 86 - Notices for premises** – provides for the Chief Officer (Fire Brigade) to issue improvement, occupancy or closure notices. Improvement, closure and occupancy notices can be issued where the Chief Officer (Fire Brigade) believes that there is a risk to public safety or to the safety of people who are likely to be on the premises.

**Clause 87 - Improvement notices** – provides that an improvement notice can state the action that an occupier of premises must take to reduce the risk to public safety or to the safety of people on the premises from fire or other hazard.

**Clause 88 - Occupancy notice** – provides that an occupancy notice directs the occupier of premises not to allow more than the stated number of people to be on the premises at any time.

**Clause 89 - Closure notice** – provides that a closure notice directs the occupier of premises to not allow anyone other than the occupier or their employees to be on the premises. A closure notice does not prohibit anyone from being on the premises to clean, maintain, repair or alter the premises.

**Clause 90 - Display of improvement notices etc** – provides that notices issued under the previous clauses must be displayed at every entrance to the premises, so that it can be read by people outside the premises.

**Clause 91 - Ending of notices for premises** – provides for notices to be ended. The notice ends when it is revoked. This clause also provides for a person who has been issued a notice to ask the Chief Officer (Fire Brigade) for the situation or circumstance that caused the notice to be given to be reinspected, with a view to revoking the notice.

The notice can be revoked following reinspection if the Chief Officer is satisfied that there are no grounds for the notice to continue, such as if there has been compliance with the notice. Furthermore, the provision contains a default revocation if reinspection does not occur within two business days after the request for reinspection is received. However, if the person who requested the reinspection is in any way responsible for the delay, the default period does not apply.

**Clause 92 - Direction to provide fire appliance at premises** – provides that the authority may give written direction for the provision or installation of a fire appliance. A fire appliance includes fire alarms, smoke detectors and fire extinguishers.

**Clause 93 - Failure to display improvement notice etc** - provides that it is an offence to fail to display a notice in accordance with clause 90. The maximum penalty for this offence is 10 penalty units.

This is a strict liability offence. Section 23 of the Criminal Code provides that if a law that creates an offence provides that the offence is one of strict liability, there are no fault elements for any of the physical elements of the offence. Essentially this means that conduct alone is sufficient to make the defendant culpable.

However, under the Criminal Code, all strict liability offences will have a specific defence of mistake of fact. Clause 23(3) of the Criminal Code makes it clear that other defences may still be available for use in strict liability offences.

**Clause 94 - Failure to comply with improvement notice etc**– provides that it is an offence to fail to take all reasonable steps to comply with an occupancy notice or a closure notice. The maximum penalty for this offence is 50 penalty units.

This is a strict liability offence. Section 23 of the Criminal Code provides that if a law that creates an offence provides that the offence is one of strict liability, there are no fault elements for any of the physical elements of the offence. Essentially this means that conduct alone is sufficient to make the defendant culpable.

However, under the Criminal Code, all strict liability offences will have a specific defence of mistake of fact. Clause 23(3) of the Criminal Code makes it clear that other defences may still be available for use in strict liability offences.

**Clause 95 - Offences about fire appliances** – sets out offences relating to fire appliances, including removing or destroying fire appliances.

**Clause 96 - Obstruction of passageway, door etc** – provides a range of offences to do with interfering with the use of fire and passageway doors.

**Clause 97 - Offence to store etc flammable material to cause danger** – provides that it is an offence to intentionally store flammable material in a way that causes a danger if there is fire or is reckless to whether the material causes a danger by fire to any life or property. This offence has a maximum penalty of 50 penalty units and/or six months imprisonment.

**Clause 98 - Definitions for pt 5.5** – provides definitions for part 5.5 of *occupier* and *person in charge*.

**Clause 99 - Appointment of inspectors** – provides for the appointment of inspectors for this Act. Inspectors are appointed by the Chief Officer (Fire Brigade) and Chief Officer (Rural Fire Service). The clause provides that the Chief Officer (Fire Brigade) and Chief Officer (Rural Fire Service) are automatically inspectors for the Act.

**Clause 100 - Appointment of investigators** – provides for the appointment of investigators for this Act. Investigators are appointed by the Chief Officer (Fire Brigade) and Chief Officer (Rural Fire Service). The clause provides that the Chief Officer (Fire Brigade) and Chief Officer (Rural Fire Service) are automatically investigators for the Act.

**Clause 101 - General powers of inspectors and investigators** – sets out the powers of inspectors and investigators. The powers include the power to examine anything, conduct tests, analyse water or soil and take photos etc. The inspectors and investigators may also require an occupier to give information, produce documents or give the inspector or investigator reasonable assistance.

**Clause 102 - Contravention of requirement by inspector or investigator** – provides for a person to take all reasonable steps to comply with a requirement of an inspector or investigator under the previous clause. Failing to take reasonable steps to comply with a requirement is an offence. The maximum penalty for this offence is 50 penalty units.

**Clause 103 - Inspector may enter land** – provides that inspectors may enter land to ensure compliance with a bushfire management requirement, bushfire operational plan or to ensure compliance with fire prevention requirements on rural land owners.

This clause provides that inspectors may not enter land without giving the owner of the land written notice stating the time and purpose of entry. This notice must be given at least 24 hours before the inspection.

**Clause 104 - Inspector may enter premises** – provides that an inspector may enter premises:

- if the inspector believes, on reasonable grounds, that there is or is likely to be a danger by fire to life or property;
- to find out whether grounds exist for an improvement notice, occupancy notice or closure notice; or
- to find out whether the premises comply with any relevant fire and safety requirements in the building code or any standard under a Territory law.

**Clause 105 - Enforcement of improvement, occupancy and closure notices** – provides that an inspector may take reasonable steps to ensure that an improvement, occupancy or a closure notice is complied with. This includes entering the premises, preventing a person from entering the premises or removing a person from the premises.

**Clause 106 - Direction to remove flammable material from premises** – provides that an inspector may give a direction to remove material that may cause a danger to life or property in the event of a fire. A direction issued under this clause must give the owner of the property at least 14 days to rectify the hazard.

**Clause 107 - Contravention of direction to remove flammable material from premises** – provides that an inspector may remove a hazard, if an owner does not remove it as directed under the previous clause.

**Clause 108 - Emergency direction to remove flammable material from premises** – provides for an inspector to issue emergency directions to an owner to remove flammable material.

**Clause 109 - Directions to comply with fire prevention obligations etc** – provides for an inspector to issue directions to comply with fire prevention obligations, bushfire management requirements or a bushfire operational plan.

This clause provides that the period for compliance with the notice is at least 14 days, unless a total fire ban is in force.

**Clause 110 - Contravention of direction** – provides that a person commits an offence if they fail to comply with a direction under the previous clause. The maximum penalty for this offence is 50 penalty units.

This is a strict liability offence. Section 23 of the Criminal Code provides that if a law that creates an offence provides that the offence is one of strict liability, there are no fault elements for any of the physical elements of the offence. Essentially this means that conduct alone is sufficient to make the defendant culpable.

However, under the Criminal Code, all strict liability offences will have a specific defence of mistake of fact. Clause 23(3) of the Criminal Code makes it clear that other defences may still be available for use in strict liability offences.

**Clause 111 - Investigator may enter land or premises** – provides that an investigator may enter land or premises for the purpose of investigating the cause or origin of a fire.

**Clause 112 - Investigation of fires** – sets out the powers that an investigator can exercise in investigating the cause or origin of a fire. The powers include searching land, taking possession of anything on the land or premises, removing anything from the land or premises.

**Clause 113 - Investigator's power to require name and address** – provides that an investigator may require a person to state the person's name and home address. This can only be required if the investigator believes that the person may be able to assist the investigator in investigating the cause of a fire.

**Clause 114 - Declaration of total fire ban** – provides for the authority to declare a total fire ban. The total fire ban may apply to all or part of the ACT.

**Clause 115 - Publication of total fire ban** – provides for the declaration of a total fire ban to be broadcast in the ACT by television or radio and published in a daily newspaper circulating in the ACT.

Subclause (2) removes any doubt that a failure to broadcast or publish the declaration does not affect the validity of the declaration.

**Clause 116 - Offence – lighting etc fire during total fire ban** – provides an offence of lighting, maintaining or using a fire or fireworks in the open air in an area where a total fire ban is in force. The maximum penalty for this offence is 50 penalty units.

Strict liability applies to whether a total fire ban is in force.

Subclause (3) makes it clear that this offence does not apply to:

- a fire lit, maintained or used for fire prevention by anyone acting under this Act;
- the maintenance of an exempt fire;
- the lighting, maintenance or use of a fire or fireworks in accordance with a permit; or
- a fire prescribed under the regulations.

**Clause 117 - Declaration of exempt fires** – provides that the authority may declare a ceremonial fire to be exempt from the total fire ban and sets out the criteria to be considered by the authority.

**Clause 118 - Fire permits** – provides for the authority to issue permits to light, maintain or use a fire or fireworks during a total fire ban. This clause also sets out the matters that the authority must have regard to in issuing a permit. The matters include the weather and the availability of the Territory's firefighting resources.

**Clause 119 - Bushfire season** – states that the *bushfire season* is the period from the beginning of October in one year to the end of March in the following year. This

clause provides that the bushfire season can be extended by the authority, following consultation with the Bushfire Council.

**Clause 120 - Fire prevention – obligations of rural land owners or managers** – sets out the obligations of rural land owners and managers. Rural land owners and managers must take reasonable steps to prevent and inhibit the outbreak and spread of fire on the land and to protect property from fire on the land or spreading from the land.

Subclause (4) provides that it is an offence for a rural land owner to breach their obligations listed in subclause (1). This offence has a maximum penalty of 100 penalty units if committed in the bushfire season and 50 penalty units if committed outside of the bushfire season.

This is a strict liability offence. Section 23 of the Criminal Code provides that if a law that creates an offence provides that the offence is one of strict liability, there are no fault elements for any of the physical elements of the offence. Essentially this means that conduct alone is sufficient to make the defendant culpable.

However, under the Criminal Code, all strict liability offences will have a specific defence of mistake of fact. Clause 23(3) of the Criminal Code makes it clear that other defences may still be available for use in strict liability offences.

**Clause 121 - Notification of fire etc – obligations of owners or occupiers of rural land** – provides obligations on the owners and occupiers of rural land. The obligations are:

- to advise the authority, an emergency service or a police officer of an outbreak of uncontrolled fire on their land or adjacent unleased Territory or Commonwealth land; and
- to take reasonable steps, considering their capacity, to extinguish fire on their own land.

Subclause (2) provides that it is an offence for a rural land owner or occupier to breach their obligations listed in subclause (1). This offence has a maximum penalty of 100 penalty units if committed in the bushfire season and 50 penalty units if committed outside of the bushfire season.

This is a strict liability offence. Section 23 of the Criminal Code provides that if a law that creates an offence provides that the offence is one of strict liability, there are no fault elements for any of the physical elements of the offence. Essentially this means that conduct alone is sufficient to make the defendant culpable.

However, under the Criminal Code, all strict liability offences will have a specific defence of mistake of fact. Clause 23(3) of the Criminal Code makes it clear that other defences may still be available for use in strict liability offences.

**Clause 122 - Using fires and appliances for cooking etc in open air** – provides for the use of electric or gas appliances to cook food or heat liquids in the open air, provided there is a three metre clearing around the appliance. This clause also provides for the use of fireplaces on unleased Territory or Commonwealth land and

the lighting of fires on unleased Territory or Commonwealth land in accordance with a permit.

This clause does not apply if a total fire ban is in force.

**Clause 123 - Lighting fires for burning off** – provides for the lighting of fires for burning off. This clause lists different requirements for burning off during the bushfire season or outside the bushfire season.

This clause does not apply if a total fire ban is in force and it does not affect the duties of a person under the *Environment Protection Act 1997*.

**Clause 124 - Permits for div 5.6.2** – provides for the issuing of permits for division 5.6.2.

**Clause 125 - Offence – lighting unauthorised fire** – provides an offence of lighting an unauthorised fire. This can be done intentionally or recklessly. This offence has a maximum penalty of 100 penalty units and/or one year imprisonment if committed in the bushfire season and 50 penalty units and/or six months imprisonment if committed outside of the bushfire season.

**Clause 126 - Offence – leaving fire without extinguishing it** – provides an offence of leaving a fire unattended. The offence only applies to a person who lit, maintained or used the fire. The offence does not apply if the person leaves the fire under the control of a responsible adult or if the fire is lit, maintained or used for fire prevention by anyone acting under this Act.

This offence has a maximum penalty of 100 penalty units if committed in the bushfire season and 50 penalty units if committed outside of the bushfire season.

This is a strict liability offence. Section 23 of the Criminal Code provides that if a law that creates an offence provides that the offence is one of strict liability, there are no fault elements for any of the physical elements of the offence. Essentially this means that conduct alone is sufficient to make the defendant culpable.

However, under the Criminal Code, all strict liability offences will have a specific defence of mistake of fact. Clause 23(3) of the Criminal Code makes it clear that other defences may still be available for use in strict liability offences.

**Clause 127 - Establishment of bushfire council** – states that the Bushfire Council is established.

**Clause 128 - Constitution of bushfire council** – provides that the Bushfire Council consists of a chairperson, a deputy chairperson and from three to 10 other members.

Subclause (2) provides that the deputy chairperson acts in the position of the chairperson during all vacancies in the position and when the chairperson cannot exercise the functions of the position.

**Clause 129 - Bushfire council members** – provides that Bushfire Council members are to be appointed by the minister, who must try to ensure that the members represent the following disciplines and areas of expertise – fire science, land management, firefighting in built-up areas and firefighting in rural areas. The minister must also try to appoint persons to represent the following interests: those of rural lessees, indigenous people and the community’s interest in the environment.

Subclause (3) provides that a person may not be appointed as a member of the council if they are:

- the Commissioner; or
- the Chief Officer of an emergency service.

Subclause (4) provides that council members may not be appointed for a term longer than four years.

**Clause 130 - Functions of bushfire council** – provides that the Bushfire Council has the function of advising the authority and the minister about matters relating to bushfires.

**Clause 131 - Authority to give support to bushfire council** – provides that the authority must provide administrative support and facilities for the Bushfire Council.

**Clause 132 - Ending of bushfire council members’ appointments** – provides that the minister may end the appointment of a council member for misbehaviour or for physical or mental incapacity (provided that incapacity affects the performance of the person’s functions as a member of the council). A member may also be dismissed if the member:

- becomes bankrupt, applies to benefit under a law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or
- is absent from three consecutive meetings of the council, unless the member is on approved leave; or
- contravenes the requirements for the disclosure of interests by council members; or
- commits an offence, in Australia or overseas, punishable by imprisonment for at least one year.

A member may also be dismissed if the minister is of the view that the member’s ability to function as a member of the council is affected by an interest disclosed.

**Clause 133 - Calling bushfire council meetings** – the council is to meet at the times and places decided by the chairperson. The chairperson must ensure that all members are given notice of meetings.

**Clause 134 - Bushfire council meetings** – sets out several requirements for the conduct of council meetings, including:

- the chairperson presides at all meetings;
- if the Act does not set out a procedure in relation to something, the council may decide its own procedure; and

- a meeting may be held by any method of communication that allows members to participate without being in each other's presence – subclause (4) makes it clear that, in those circumstances, a member is taken to be present at a meeting.

**Clause 135 - Minimum number for bushfire council meetings** – states that at least four members must be present at a Bushfire Council meeting in order for the council's business to be conducted.

**Clause 136 - Voting at bushfire council meetings** – states that questions arising at a Bushfire Council meeting may be decided by a majority of votes of the members present and voting. Subclause (2) provides that, if votes on a question are equally divided, the chairperson's decision is the decision of the council.

**Clause 137 - Bushfire council resolutions** – provides that a resolution of the Bushfire Council is valid, even if not passed at a council meeting, if notice of the resolution was given under procedures decided by the council, and if all the members agree in writing to the resolution.

**Clause 138 - Minutes of bushfire council proceedings** – provides that the Bushfire Council must keep minutes of its proceedings at meetings. Subclause (2) requires the chairperson to ensure that each meeting of the council considers the minutes of its previous meeting.

Subclause (3) requires the council to publish the minutes of its proceedings. The minutes can be published on a website.

**Clause 139 - Disclosure of interests by bushfire council members** – deals with a Bushfire Council member's duty to disclose certain interests. A council member who has a “relevant interest” in an issue that is, or will be, before the council must disclose that interest to the council - “relevant interest” is defined in subclause (4). The disclosure must be made as soon as practicable after the facts of the issue have come to that member's knowledge.

Under subclause (2) the disclosure must be recorded in the council's minutes and, unless the council decides otherwise, the member having the interest must not be present when the council considers the issue, and must not take part in making a decision on that issue.

Under subclause (3), any ‘other member’ having a relevant interest (in the issue that has been disclosed) may not take part in the council's decision under subclause (2) (on whether to allow the member who disclosed the interest to take part in the council's consideration of the issue). The ‘other member’ may not be present when the council is considering its decision under subclause (2).

**Clause 140 - Reporting of disclosed interests to Minister** – provides that the Bushfire Council chairperson must report to the minister about the disclosure of an interest under the previous clause within 14 days of that disclosure. The report must include details of the nature of the interest and any decision of the council about the disclosure.

Subclause (2) requires the chairperson to give the minister, by 31 July in each year, a statement setting out information given to the minister under this clause during the previous financial year. The minister must, within 14 days after receiving a statement, give the statement to the relevant committee of the Legislative Assembly.

**Clause 141 - Establishment of committee** – establishes the ACT Emergency Management Committee. This Committee replaces the ACT Emergency Management Committee established under the *Emergency Management Act 1999*.

**Clause 142 - Constitution of committee** – provides that the Emergency Management Committee consists of the Commissioner, the Chief Officers of the emergency services, the Chief Police Officer and the Chief Health Officer. The minister can appoint other members to the Committee, including a person representing the interests of the community, environmental interests and recovery interests.

**Clause 143 - Functions of committee** – specifies that the function of the Emergency Management Committee is to provide for liaison between entities in relation to emergency management. The Committee also advises the minister and the Chief Minister about emergency management, supports the authority and advises the minister about the emergency plan.

**Clause 144 - Calling committee meetings** – provides that the Emergency Management Committee is to meet at the times and places that the chairperson decides. This clause also provides for regular committee meetings and that the members have reasonable notice of the meetings.

**Clause 145 - Committee meetings** – provides that the Commissioner is the chair of the Emergency Management Committee.

**Clause 146 - Minimum number for committee meetings** – states that Emergency Management Committee business may be carried on at a meeting only if there are the greater of five members or half the committee members present.

**Clause 147 - Emergency plan** – provides for the development of an emergency plan for the ACT. The plan provides a basis for emergency management and coordination of emergency service agencies, entities and external agencies.

**Clause 148 - Application of div 7.3.1** – provides that this division applies to an emergency that presents a significant danger to the health or safety of people or property in the ACT or to the environment, or causes significant disruption to essential services in the ACT.

This division does not authorise the taking of action to end an industrial dispute or civil disturbance.

**Clause 149 - Declaration of state of alert** – provides for the minister to declare a state of alert. A state of alert can be declared if the minister is satisfied that an

emergency is likely to happen and the Chief Minister has not declared a state of emergency.

A state of alert will not be issued every time the Bureau of Meteorology issues a weather warning, nor every time there is a storm or bushfire in the Territory. Rather, a state of alert will be able to be issued for large-scale impending emergencies, where there is advance warning. For example, a state of alert may be issued if there is advance warning of a SARS outbreak, significant storm, dam burst or major bushfire, that presents a significant danger to the health or safety of people in the ACT or property.

**Clause 150 - Declaration of state of alert commences immediately** – provides that a state of alert commences on the minister making the declaration.

**Clause 151 - Publication of state of alert declaration** – provides that a declaration of a state of alert must be broadcast on television or radio and be notified on the Legislation Register. This clause makes it clear that a failure to broadcast or notify the declaration does not affect the validity of the declaration.

**Clause 152 - Minister to advise community during state of alert** – states that in a state of alert the minister must advise the community of any matters that the minister considers appropriate. For example, the minister may advise the community about the community's vulnerability to the effects of the emergency or may advise about preparedness for the emergency.

**Clause 153 - State of emergency ends state of alert** – provides that a declaration of a state of emergency ends the state of alert.

**Clause 154 - Declaration of state of emergency** – provides for the Chief Minister to declare a state of emergency. A state of emergency can be declared if the Chief Minister is satisfied that an emergency has happened, is happening or is likely to happen. For example, a state of emergency may be issued if there is, or is likely to be, a medical outbreak, significant storm, dam burst or major bushfire, that presents a significant danger to the health or safety of people in the ACT or property. The Chief Minister may also declare a state of emergency following an emergency, such as an earthquake, building collapse or flood.

**Clause 155 - Declaration of state of emergency commences immediately** – provides that a state of emergency commences on the Chief Minister making the declaration.

**Clause 156 - Publication of declaration of state of emergency** – provides that a declaration of a state of emergency must be broadcast on television or radio and be notified on the Legislation Register. This clause makes it clear that a failure to broadcast or notify the declaration does not affect the validity of the declaration.

**Clause 157 - Appointment of Territory Controller for declared state of emergency** – provides for the Chief Minister to appoint a Territory Controller for each state of emergency.

**Clause 158 - Functions of Territory Controller** – sets out the functions of the Territory Controller. The Territory Controller is responsible for managing the response and recovery from the emergency, to coordinate the disposition of resources to manage the emergency and to advise the Chief Minister, the minister and the community about the emergency.

**Clause 159 - Management executive for declared state of emergency** – provides for the Territory Controller to establish a management executive for a declared state of emergency. The management executive consists of the members of the Emergency Management Committee and any other members nominated by the Territory Controller. The management executive supports the Territory Controller in the exercise of his or her functions.

Subclause (4) makes it clear that the Territory Controller does not need to consult the management executive before exercising a function.

**Clause 160 - Management of declared state of emergency** – provides that in a declared state of emergency the Territory Controller can direct the head of an entity to undertake response or recovery operations. For example, the Territory Controller may direct the authority or the Australian Federal Police to undertake response operations.

**Clause 161 - Emergency powers for declared state of emergency** – provides powers that the Territory Controller may exercise in a declared state of emergency. The powers include all of the powers of the Chief Officers in clause 34 and also the power to direct the movement of people and animals and taking possession of any building or vehicle.

Subclause (4) provides that the Territory Controller may delegate a function to the head of an entity. The head of the entity may then delegate the function to a member, officer, employee or contractor of the entity.

**Clause 162 - Failure to comply with direction given under emergency powers** – provides that it is an offence to fail to comply with a direction given under the previous clause. This offence has a maximum penalty of 50 penalty units.

This is a strict liability offence. Section 23 of the Criminal Code provides that if a law that creates an offence provides that the offence is one of strict liability, there are no fault elements for any of the physical elements of the offence. Essentially this means that conduct alone is sufficient to make the defendant culpable.

However, under the Criminal Code, all strict liability offences will have a specific defence of mistake of fact. Clause 23(3) of the Criminal Code makes it clear that other defences may still be available for use in strict liability offences.

**Clause 163 - Chief Minister's directions to Territory Controller** – provides for the Chief Minister to give directions to the Territory Controller about the exercise of his or her functions.

**Clause 164 - Territory Controller to give information about controller's operations** – provides for the Territory Controller to give the Chief Minister and the minister information about the controller's operations.

**Clause 165 - Deployment of resources outside ACT in declared state of emergency** – states that in a declared state of emergency a person may not deploy Territory resources outside the ACT, without the consent of the Territory Controller.

**Clause 166 - Power to remove person obstructing response operations etc** – provides that the Territory Controller may remove a person who is obstructing or threatening to obstruct emergency operations.

Subclause (3) makes it clear that this clause does not authorise the detention of any person.

**Clause 167 - Compensation – declared state of emergency** – provides that a person who suffers loss because of an act or omission under clause 159 is entitled to be paid reasonable compensation from the Territory.

Subclause (2) clarifies that compensation is not payable to a person to the extent that they are compensated by insurance for the loss or that their own conduct contributed to the loss. Compensation is also not payable if the loss would have arisen despite the act or omission of the Territory Controller.

Subclause (4) provides that a person may apply to the minister for compensation. The application must state the particulars of the loss, the amount claimed and the basis for the amount.

**Clause 168 - Minister's decision on claim for compensation** – provides for the minister to offer compensation to a person who applied under the previous clause. This clause also provides that an application is deemed to be refused if not decided on within 28 days.

**Clause 169 - Acceptance or rejection of offer of compensation** – provides for a person to accept or reject an offer of compensation under the previous clause.

**Clause 170 - Recovery of compensation in court** – states that if there is no agreement as to the amount of compensation then the person may take action in a court of competent jurisdiction.

**Clause 171 - Application of div 7.3.2** – provides that this division applies to an emergency other than a declared state of emergency.

**Clause 172 - Authority must assist recovery for other emergencies** – provides that the authority must assist in recovery for emergencies other than a declared state of emergency.

**Clause 173 - Definitions for pt 7.4** – provides definitions for part 7.4 of *specialist person* and *support unit*.

**Clause 174 - Cooperative arrangements with Commonwealth, State or overseas agencies** – provides for the minister or the authority to enter into cooperative arrangements with other jurisdictions (including foreign countries). The arrangements are to facilitate cooperation in emergency management or the provision of emergency services.

**Clause 175 - Cooperative arrangements about resources** – provides that the cooperative arrangements, in the previous clause, may provide for the Territory Controller or the authority to decide the nature and amount of resources required or to be deployed.

**Clause 176 - Directions by authority to people operating under cooperative arrangement** – provides that a person operating in the ACT under a cooperative arrangement must comply with a direction given by the authority or the Territory Controller.

**Clause 177 - Directions by authorised person to people operating under cooperative arrangement** – provides for the authority or the Territory Controller to authorise a person to give directions to a member of a support unit or a specialist person.

**Clause 178 - Recognition of interstate qualifications** – provides for the recognition of interstate qualifications for persons acting under a cooperative arrangement.

**Clause 179 - Emergency relief funds** – provides that the Territory may establish emergency relief funds. If such a fund is established it is a charitable trust managed by the Public Trustee.

Subclause (4) provides for the fund to be used for the relief of people who suffer loss because of another emergency or for another purpose prescribed in the Regulations. Essentially, this would occur when all people who suffered loss because of the first emergency have been compensated and there is money left over. This money could be used to compensate other victims of an emergency or the regulations may provide for the money to be used for research to prevent the emergency happening again or for the money to be given to charity.

**Clause 180 - Gifts and donations** – provides for conditions on a gift to the emergency services (or for the purposes of the emergency services) to be removed. Conditions may only be removed if the conditions are inappropriate, impractical or impossible to carry out. The conditions are removed by notifiable instrument.

**Clause 181 - Victimisation of volunteers** – provides that a person commits an offence if they victimise a volunteer for being absent from employment to take part in an emergency operation. This offence has a maximum penalty of 50 penalty units and/or six months imprisonment.

**Clause 182 - Release of volunteer member from operations** – provides for the authority to release a volunteer member from taking part in emergency operations,

where the operations would cause significant hardship to the business of the volunteer's employer.

**Clause 183 - Reviewable decisions and eligible people** – provides for review of the decisions listed in schedule 2 by the Administrative Appeals Tribunal (AAT). An eligible person as listed in schedule 2 may apply for review of the decisions.

**Clause 184 - Notice of reviewable decisions** – provides for the decision-maker to advise the eligible person in writing of the decision. The advice must state that the person has the right to apply to the AAT and tell the person how an application can be made. The advice must also tell the person about the other options available under Territory law for review of the decision.

**Clause 185 - Review of decisions by AAT** – states that an eligible person may apply to the AAT for review of a reviewable decision.

**Clause 186 - Lighting a fire dangerous to premises** – provides that it is an offence to intentionally light a fire that may be dangerous to premises, without the consent of the Chief Officer (Fire Brigade). This offence has a maximum penalty of 50 penalty units and/or six months imprisonment.

**Clause 187 - Direction to leave fire area** – provides that it is an offence to disobey a direction of a firefighter or police officer to leave a fire area. This offence has a maximum penalty of 50 penalty units and/or six months imprisonment.

This is a strict liability offence. Section 23 of the Criminal Code provides that if a law that creates an offence provides that the offence is one of strict liability, there are no fault elements for any of the physical elements of the offence. Essentially this means that conduct alone is sufficient to make the defendant culpable.

However, under the Criminal Code, all strict liability offences will have a specific defence of mistake of fact. Clause 23(3) of the Criminal Code makes it clear that other defences may still be available for use in strict liability offences.

**Clause 188 - Interfering with fire appliance, hydrant, alarm etc** – provides a range of offences to do with interfering with the use of fire appliances.

The offences are strict liability offences. Section 23 of the Criminal Code provides that if a law that creates an offence provides that the offence is one of strict liability, there are no fault elements for any of the physical elements of the offence. Essentially this means that conduct alone is sufficient to make the defendant culpable.

However, under the Criminal Code, all strict liability offences will have a specific defence of mistake of fact. Clause 23(3) of the Criminal Code makes it clear that other defences may still be available for use in strict liability offences.

**Clause 189 - False alarm of fire, emergency or other incident** – provides an offence of intentionally giving a false alarm and being reckless as to whether it would cause people to fear that there is an emergency or incident or that an emergency

service would respond to the alarm. This offence has a maximum penalty of 50 penalty units and/or six months imprisonment.

**Clause 190 - Obligations of owners and occupiers** – states that any obligations on an owner of land or premises may be carried out by any of the owners. In addition, a failure by one owner to carry out obligations makes each owner liable for the failure. The same rules apply to occupiers.

**Clause 191 - Policies of insurance against fire** – states that where damage is caused to property by the exercise of a function under this Act, at or after a fire, the damage is taken to be damage by fire for the purposes of insurance policies.

**Clause 192 - Ambulance levy** – states that an ambulance levy is imposed in accordance with Schedule 1. This schedule is a restatement of the ambulance levy provisions in the *Emergency Management Act 1999*.

**Clause 193 - Ambulance fund** – provides for the Chief Officer (Ambulance Service) to approve an ambulance fund or a person to operate an ambulance fund. The purpose of an ambulance fund is to enable contributors to the fund to receive ambulance services at no cost or at a reduced rate.

**Clause 194 - Authorised person's power to require name and address** – provides for an authorised person to require a person to state their name and home address, if they believe that the person is committing or is about to commit an offence against this Act.

Subclause (3) provides that it is an offence to fail to comply with a requirement of an authorised person. This offence has a maximum penalty of 10 penalty units.

This is a strict liability offence. Section 23 of the Criminal Code provides that if a law that creates an offence provides that the offence is one of strict liability, there are no fault elements for any of the physical elements of the offence. Essentially this means that conduct alone is sufficient to make the defendant culpable.

However, under the Criminal Code, all strict liability offences will have a specific defence of mistake of fact. Clause 23(3) of the Criminal Code makes it clear that other defences may still be available for use in strict liability offences.

**Clause 195 - Identity cards** – provides for the authority to issue identity cards to each member of the emergency services, each inspector and each staff member. The identity card must state the person's name and their appointment as a member, inspector, investigator or staff member. The identity card must also include a photograph of the person, date of issue of the card and date of expiry of the card.

Subclause (3) provides that it is an offence for a person to fail to return their identity card within seven days of ceasing to be a member, inspector, investigator or staff member. This offence has a maximum penalty of one penalty unit.

This is a strict liability offence. Section 23 of the Criminal Code provides that if a law that creates an offence provides that the offence is one of strict liability, there are no fault

elements for any of the physical elements of the offence. Essentially this means that conduct alone is sufficient to make the defendant culpable.

However, under the Criminal Code, all strict liability offences will have a specific defence of mistake of fact. Clause 23(3) of the Criminal Code makes it clear that other defences may still be available for use in strict liability offences.

**Clause 196 - Protection of officials from liability** – provides that officials do not incur civil liability for an act or omission done honestly and without recklessness for this Act. The civil liability attaches to the Territory.

This clause covers the Commissioner, investigators, inspectors, all staff of the authority, members of the emergency services, volunteers and interstate and overseas persons assisting in an emergency or in responding to an incident.

This clause is based on section 8 of the *Civil Law (Wrongs) Act 2002* dealing with the liability of volunteers.

**Clause 197 - Compensation for exercise of functions etc** – provides that a person may claim compensation from the Territory if the person suffers loss because of the exercise or purported exercise of a function under this Act.

**Clause 198 - Approved forms** – provides that the authority may approve in writing any necessary forms. This clause also stipulates that where there is an approved form it must be used.

An approved form is a notifiable instrument under the *Legislation Act 2001*.

**Clause 199 - Determination of fees** – provides that the minister may determine fees for this Act. This clause makes it clear that a fee may be charged even if the person did not ask for, or consent to the provision of the service.

A determination of fees is a disallowable instrument under the *Legislation Act 2001*.

**Clause 200 - Regulation-making power** – provides the power for the Executive to make any necessary regulations for the purposes of this Act.

**Clause 201 - Legislation repealed** – lists the legislation that is repealed by this Act. The legislation repealed is the *Fire Brigade Act 1957*, *Bushfire Act 1936*, *Fire Brigade (Administration) Act 1974* and the *Emergency Management Act 1999*. This Act also repeals the regulations and instruments under these Acts.

**Clause 202 - Definitions for pt 11.2** – provides definitions for part 11.2 of *commencement day*, *former Bushfire Council* and *former Emergency Management Committee*.

**Clause 203 - Committee members** – provides that the people who were appointed to the Emergency Management Committee, under section 7(2)(h) of the *Emergency Management Act 1999*, are deemed to be members of the new Emergency

Management Committee. The appointments expire on the earlier of 12 months, or when their appointment would have otherwise expired had this Act not been enacted.

**Clause 204 - Council members** – provides that the people who were appointed to the Bushfire Council, under the *Bushfire Act 1936*, are deemed to be members of the new Bushfire Council. The appointments expire 12 months after the commencement of this part.

**Clause 205 - Vesting of assets, rights and liabilities** – provides that the assets, rights and liabilities of the former Bushfire Council vest in the authority.

Subclause (2) provides that the minister can exclude an asset from vesting in the Territory. An asset excluded by the minister vests in the Territory.

**Clause 206 - Registration of changes in ownership of certain assets** – provides for the registration of changes in ownership of assets and interests in land.

**Clause 207 - Evidentiary certificate for vested assets and liabilities** – provides for the authority to certify that an asset or liability has vested in the authority or the Territory.

**Clause 208 - Proceedings and evidence** – provides that the authority is substitute as a party for any proceedings in which the former Bushfire Council is a party.

**Clause 209 - Fire Brigade (Administration) Act** – provides a mechanism for firefighters to become public servants and for their employment statute, the *Fire Brigade (Administration) Act 1974*, to be repealed. This will occur on the signing of a certified agreement, which includes the listed provisions of the *Fire Brigade (Administration) Act 1974*. The listed provisions may be modified or removed by agreement during the certified agreement process. Having all members of the Authority employed under the *Public Sector Management Act 1994*, will assist in creating a unified organisation and will allow for greater mobility between the different services.

This clause provides for the change to occur by 1 July 2006 or a later date if prescribed by Regulations.

**Clause 210 - References to staff or authority** – provides that references to staff of the authority in section 22(1) does not include firefighters (other than the Chief Officer and Deputy Chief Officer), until the change in clause 209 occurs.

**Clause 211 - Appointment of emergency services commissioner** – provides for Peter James Dunn AO to be the Emergency Services Commissioner under clause 18(1).

**Clause 212 - References to Bushfire Act etc** – provides that references in any Act or document to the *Bushfire Act 1936*, *Emergency Management Act 1999* and the *Fire Brigade Act 1957* are deemed to be a reference to the Emergencies Act 2004. References to the Fire Commissioner in any document are deemed to be the Chief

Officer (Fire Brigade) and references to the Chief Fire Control Officer are deemed to be references to the Chief Officer (Rural Fire Service).

**Clause 213 - Transitional regulations** – provides that the Regulations may modify the transitional provisions of this Act. The Regulations cannot make changes of a policy nature or changes to the Act that are more than savings or transitional matters.

Provisions of this kind have been included in several recent pieces of legislation, including the *Legislation Act 2001*, the *Consumer and Trader Tribunal Act 2003* and the *Civil Law (Wrongs) Amendment Act 2003*.

This clause expires on the expiry date under clause 209.

**Clause 214 - Legislation amended – sch 3** – provides that this Act amends the legislation listed in schedule 3.

**Clause 215 - Expiry of ch 11** – provides that this chapter expires on the expiry date in clause 209.

**Schedule 1 – Ambulance levy** – makes provision for an ambulance levy to be imposed in accordance with the schedule. The ambulance levy is imposed on a health benefits organisation carrying on business in the ACT. The schedule is a restatement of the ambulance levy provisions in the *Emergency Management Act 1999*.

**Schedule 2 – Reviewable decisions** – sets out the decisions that are reviewable by the Administrative Appeals Tribunal (AAT). An eligible person as listed in schedule 2 may apply for review of the decisions.

**Schedule 3 – Consequential amendments** – sets out the legislation that is amended and how it is amended. Amendments are made to the:

- *Building Act 2004*;
- *Building Regulations 2004*;
- *Bushfire Act 1936*;
- *Common Boundaries Act 1981*;
- *Civil Law (Wrongs) Act 2002*;
- *Crimes Act 1900*;
- *Dangerous Substances Act 2004*;
- *Dangerous Substances (Explosives) Regulations 2004*;
- *Environment Protection Act 1997*;
- *Environment Protection Regulations 1997*;
- *Juries Act 1967*;
- *Legislation Act 2001*;
- *Liquor Act 1975*;
- *Nature Conservation Act 1980*;
- *Ombudsman Regulations 1989*;
- *Public Health Act 1997*;
- *Public Sector Management Act 1994*;
- *Radiation Act 1983*;
- *Remuneration Tribunal Act 1995*;

- *Road Transport (Safety and Traffic Management) Regulations 2000;*
- *Road Transport (Vehicle Registration) Regulations 2000;*
- *Security Industry Regulations 2003;*
- *Supervised Injecting Place Trial Act 1999;*
- *Taxation Administration Act 1999;*
- *Victims of Crime (Financial Assistance) Act 1983; and the*
- *Water Resources Act 1998.*

**Dictionary** – provides definitions for the Act.