

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

EMERGENCY MANAGEMENT BILL 1998

EXPLANATORY MEMORANDUM

**Circulated by the Authority of the
Minister for Justice and Community Safety
Gary Humphries**

EMERGENCY MANAGEMENT BILL 1998

OUTLINE

The ACT lacks the necessary legislative structure to adequately plan for and respond to emergencies outside normal daily operations, which require a coordinated response in the ACT or in the ACT Region. Emergencies may take a wide range of forms ranging from low level multi-jurisdictional incident coordination, major motor vehicle accidents; failure of essential services; animal or human disease; major fire; earthquake and civil defence.

The overriding objective of this Bill is to make provision for the organisation and co-ordinated management and planning to ensure a comprehensive approach to prevention of; preparedness for; flexible response to and efficient recovery from emergencies in their various forms. The types of emergencies falling within the ambit of the Bill are not however intended to include civil or industrial unrest.

The Bill authorises the Chief Minister to declare a state of emergency where an event has occurred or is imminent that requires a significant and coordinated response by agencies and organisations. As part of the declaration a Territory Controller is appointed for the period of the emergency and charged with the responsibility of managing the emergency in accordance with the Territory's Emergency Plan. The Territory Controller, as a matter of necessity, is able to use extraordinary powers to reduce risk to life and property, and to coordinate the immediate recovery operations to restore the Territory to its pre-emergency situation as soon as possible.

The Bill also achieves a number of other necessary objectives.

- The Bill will establish the ACT Emergency Service to provide assistance and support to agencies and organisations in emergencies and in other situations of need. As a part of this objective the Bill will formally prescribe that Service's role, operational responsibility and structure.
- The Bill will establish the ACT Ambulance Service and specify its function as the provision ambulance services to the community.
- The Bill also recognises the need for and seeks to formalise Commonwealth, interstate and regional co-operation and arrangements in relation to emergencies.

Key elements of the Bill are:

- to provide for a formal structure for emergency management by the assigning of responsibilities to an Executive Director;

- to provide for a formal structure for emergency management by the creation of an Emergency Management Committee, consisting of paramount officers in emergency management and other appropriate persons, to liaise between relevant organisations; to endorse plans relating to emergency management; to advise and to support the Executive Director in emergency management planning;
- to provide for a formal structure for emergency management by the creation of an Emergency Plan to be prepared and maintained by the Minister;
- to provide for Commonwealth and inter-state co-operation on emergency management matters;
- to provide for the management of declared emergencies by the declaration of a state of emergency by the Chief Minister and the appointment of a Territory Controller to perform his or her functions and powers with a power of delegation, and with the performance of the Territory Controller's functions being subject to Ministerial direction;
- to provide for the management of declared emergencies by the appointment by the Territory Controller of a Management Executive to consult with the Territory Controller;
- to provide for the management of declared emergencies by the Territory Controller directing an agency head to perform a task;
- for the Executive Director to assist in recovery from other emergencies;
- for the provision of compensation by the Territory to persons suffering loss as a result of the exercise of the Territory Controller's powers in a declared emergency;
- for the establishment of the ACT Emergency Service and the appointment of a Director and other members;
- for the establishment and maintenance of an operating manual by the Director relating to the organisation and operating procedures of the ACT Emergency Service;
- for the Director to direct members of the ACT Emergency Service and casual volunteers and for the Director to delegate his or her powers to a member of an agency;
- for the formal establishment of the ACT Ambulance Service and the creation of an office in the public service of the Chief Officer;
- for the Chief Officer to exercise his or her powers subject to the directions of the Executive Director and for the Chief Officer to direct members of the ACT Ambulance Service; casual volunteers and a person or agency acting on behalf of the Ambulance Service;
- for the Chief Officer to exercise his or her power subject to a power of delegation to members of the ACT Ambulance Service;

- for the imposition and collection of an ambulance levy and fees from health benefits organisations and fees from the public;
- for the establishment of an ambulance fund or approval for a person to operate an ambulance fund to allow contributors to receive ambulance services at no cost;
- for the approval of ambulance services and of ambulances;
- for the creation of penalties for offences against the Bill;
- for the creation of a trust fund for holding emergency relief money received by the Territory;
- for the prevention of victimisation by employers of employees who are members of a Territory Service; and
- the power to make Regulations.

DETAILS OF THE BILL

PART 1 - PRELIMINARY

Clause 1 & 2-Short Title and Commencement

Clause 1 and 2 are formal requirements. Clause 1 refers to the short title of the Bill. Clause 2 states that the date of commencement of Clauses 1 and 2 of the Bill is the date of notification of the Bill in the Gazette. The remaining clauses commence on the date, or dates, fixed by the Minister by notice in the Gazette. Clause 2 also provides that if a provision other than Clauses 1 and 2 has not commenced within 6 months of the initial notification of the commencement of Clauses 1 and 2 in the Gazette, that provision commences on the first day after the end of the 6 month period.

Clause 3 - Interpretation

Clause 3 is the interpretation clause setting out the meaning of important terms used throughout the Bill. Not all terms used in the Bill are defined. Some simply have their dictionary definition. Some are terms of common usage in the provision of emergency services. Some have meanings provided by the Courts in establishing common law. Others are terms used in many Acts and are defined in the *Interpretation Act 1967*.

The definitions are:

- **Agency** means a Territory or a Commonwealth or a State agency.
- **Ambulance Service** means the ACT Ambulance Service.
- **Casual volunteer** has two meanings:
 - (a) a person who assists members of a Territory Service to carry out an activity at the request, or with the consent, of the person in charge of the activity which forms part of an operation; or

- (b) a person who at that person's own initiative and without remuneration or reward assists members of a Territory Service participating in an operation

The following classes of persons are expressly excluded from the definition of casual volunteer:

- (c) a member of a Territory Service; or
- (d) a member of a support unit or a specialist person operating in the Territory under an arrangement for Commonwealth and/or interstate co-operation.

- **Chief Officer** means the Chief Officer of the ACT Ambulance Service
- **Commonwealth or State agency** means.
 - (a) a Commonwealth or State department;
 - (b) a body established for a public purpose by or under a Commonwealth or State Act; or
 - (c) the holder of a Commonwealth or State statutory office including staff required to assist the office holder but does not include a Territory corporation.
- **Controller** means the Territory Controller appointed in relation to a declared emergency.
- **Declared emergency** has two strands:
 - (a) an emergency or likely emergency within or outside the Territory constituting a significant danger to life, property or the environment in the Territory or where there has been a significant disruption of essential services in the Territory; and
 - (b) the Chief Minister has declared a state of emergency under the Act
- **Determined fee** means the fee determined by the Minister for the purposes of the Bill.
- **Director** means the Director of the ACT Emergency Service
- **Emergency** means an actual or imminent event that requires a significant and coordinated response. The definition provides examples that are not meant to be exhaustive such as fire, flood, storm, earthquake, explosion, accident or epidemic or animal disease.
- **Emergency area** means the whole of the Territory or the part of the Territory included in the Chief Minister's declaration of a state of emergency.
- **Emergency management** means the comprehensive coordination of resources of agencies, organisations and other persons in relation to emergencies and emergency risks by the establishment of plans, structures and arrangements to facilitate prevention, preparedness, response and recovery.
- **Emergency period** means the period of time between the declaration and revocation of a state of emergency

- **Emergency risks** includes, but is not limited to, the following risks giving rise to an emergency:
 - (a) civil defence requirements associated with warlike action. This type of emergency risk is not intended to apply to civil or other forms of political opposition by members of the Australian or Territory public to Government, government institutions or other persons, bodies or organisations.
 - (b) mass gatherings of people at sporting or other events;
 - (c) a significant disruption of essential services;
 - (d) technological problems including the widespread simultaneous failure of computers.
- **Emergency Service** means the ACT Emergency Service.
- **Executive Director** means the Executive Director responsible for emergency management.
- **Executive head** means a person with day-to-day control of an agency or organisation.
- **Land** includes water.
- **Loss** in relation to a person includes injury or damage and reasonable expenses incurred.
- **Management Committee** means the Emergency Management Committee.
- **Manual** in relation to the Emergency Service means the operations manual.
- **Organisation** means a corporate or unincorporated society, body or group of people but does not include an agency.
- **Public Sector Management Act** means the *Public Sector Management Act 1994*;
- **Recovery operations** mean assistance, during or after an emergency period, to assist persons or communities to achieve effective functioning.
- **Response operations** mean measures taken to protect life or property during an emergency period.
- **Specialist person** means a person skilled to deal with an aspect of an emergency.
- **State** includes another Territory.
- **Structure** includes industrial plant and equipment.
- **Support unit** means a unit forming part of an agency or organisation consisting of persons and associated equipment (such as ambulance officers and an ambulance) with functions consisting of or including responding to an event such as fire, flood, storm, earthquake, explosion, accident, epidemic or animal disease.

- **Territory agency means:**
 - (a) an administrative unit;
 - (b) an incorporated or unincorporated body established for a public purpose by or under an Act;
 - (c) a Territory corporation; or
 - (d) a statutory office and assistant staff.

- **Territory corporation means:**
 - (a) a Territory owned corporation within the meaning of the *Territory Owned Corporations Act 1990*. These corporations are specified in Schedule 1 of that Act and at present consist of ACTEW Corporation Limited, ACTTAB Limited, CanDeliver Limited, and Totalcare Industries Limited; or
 - (b) any other corporation established under the *Corporations Law* with the directors or a majority of directors appointed by a Minister or by a Territory authority or instrumentality.

- **Territory Service** means the ACT Emergency Service or the ACT Ambulance Service.

- **Vehicle** is intended to have a wide meaning including an aircraft, boat and train.

- A reference to the head of the Emergency Service means the Director of the ACT Emergency Service.

- A reference to the head of the Ambulance Service means the Chief Officer of the ACT Ambulance Service.

- A reference to the head of a Territory agency is a reference to the person with day-to-day control of the agency;

- A reference to a member of an agency shall be taken to include a reference to a person employed by or in an agency.

PART II - EMERGENCY MANAGEMENT

Division 1 - Executive Director

Clause 4 - Office

Clause 4 creates an office of Executive Director in the Public Service. The Executive Director shall be a public servant performing duties which include performing the functions of Executive Director.

Clause 5 - Functions

Clause 5 sets out the functions of Executive Director. The Executive Director is responsible for emergency management. The Clause provides content for this function by directing that the Executive Director shall prepare for emergencies by

performing a range of duties set out in that Clause as part of emergency management. The Clause also directs the Executive Director to establish such committees as he or she thinks necessary to assist in the performance of the functions of Executive Director.

The types of emergency management functions include such things as being responsible for the preparation and maintenance of the Emergency Plan and its sub-plans. The types of committees include the Emergency Management Committee, sub-plan committees, and committees to develop ways to reduce vulnerability to the effects of emergencies.

Clause 6 - Additional Powers

Clause 6 provides the Executive Director with a general power to do all things necessary or convenient in connection with the performance of his or her functions.

Division 2 - Emergency Management Committee

Clause 7 - Establishment

Clause 7 establishes the Emergency Management Committee. The members of the Committee are to consist of the office holders from time to time of eight paramount positions in the provision of emergency services. Including the Executive Director and the Territory Controller if that office is occupied by a person who is not on the Committee in another capacity. The Minister may also appoint other persons to the Committee.

Clause 8 - Functions

Clause 8 sets out the functions of the Emergency Management Committee. The Committee's primary function is to provide for liaison between agencies, organisations and other persons in relation to emergency management. Other functions are provision of advice in relation to emergency management matters; and support for the Executive Director in emergency management planning. The Committee is given directions as to objectives to be achieved in the performance of its primary function.

Clause 9 - Chairperson

Clause 9 appoints the Executive Director as Chairperson of the Emergency Management Committee. In the absence of the Executive Director, the members at the meeting shall appoint a Chairperson from those members present.

Clause 10 - Meetings

Clause 10 makes provision for basic procedural matters in relation to the calling of and procedure at meetings of the Emergency Management Committee.

Division 3 - Emergency Plan

Clause 11 - Emergency Plan

Clause 11 provides that the Minister shall prepare and maintain an Emergency Plan for the Territory to provide a basis for emergency management and coordination of

available resources The Emergency Plan and amendments of the Emergency Plan shall be in writing

Clause 11 directs the Emergency Management Committee to monitor the scope and effectiveness of the Emergency Plan. The Committee may recommend amendments to the Emergency Plan to the Minister who may prepare the amendments

The Emergency Plan is the principle document that outlines the agreed arrangement for a coordinated effort to manage an emergency event, or potential event, within the Territory The Emergency Plan, and its sub-plans, is designed to anticipate future situations and requirements, and to provide effective and coordinated counter-measures

Division 4 - Commonwealth and Inter-State co-operation

Clause 12 - Interpretation

Clause 12 defines:

- **arrangement** to means, for the purposes of this Division, by reference to an arrangement entered into under Clause 14.
- **emergency services** means, for the purposes of this division, services required to respond to an event such as fire, flood, storm, earthquake, explosion, accident, epidemic or animal disease

Clause 13 - Arrangements for co-operation

Clause 13 provides that the Chief Executive, after using his or her best endeavours to consult with the corresponding agency, may make, vary or revoke an arrangement with a Commonwealth or State agency to facilitate co-operation:

- (a) in emergency management; or
- (b) in the day-to-day operations of a Territory agency involving the provision of emergency services outside the Territory by the agency or alternatively the provision of emergency services within the Territory by a Commonwealth or State agency.

The Clause does however have a savings provision that failure by the Chief Executive to use his or her best endeavours to first consult does not affect the validity of an arrangement. There is also a transitional power to expressly revoke in such an arrangement an existing agreement relating to co-operation entered into between the Territory or a Territory agency with the Commonwealth or a State agency, prior to the commencement of Clause 13.

The nature of emergencies can often require the support and assistance of resources and personnel from other States and Territories. For example, the Sydney bushfires of 1994 and 1997, the Thredbo landslip of 1998; the Wollongong flash floods of 1998; the Sydney exotic animal disease outbreak of 1998; Newcastle earthquake; Auckland and Brisbane power failures; and many other such events of recent times All of these events required assistance of some kind from other States and/or counties

For the States and the Commonwealth, or agencies of the States and Commonwealth, to provide support to each other requires a process that provides

formal agreement about the nature, extent and conditions of the co-operative arrangement. For consistency and coordination purposes the Chief Executive is the person required to facilitate such co-operation through formal agreements.

Clause 14 - Arrangements etc in writing

Clause 14 is intended to ensure there is evidence of such arrangements etc by providing that an arrangement or a variation or revocation of an arrangement shall be in writing.

Clause 15 - Arrangements relating to resources

Clause 15 designates lines of authority in relation to the performance of arrangements by providing that the arrangement may make provision for the Territory Controller to determine resources required from outside the Territory for an emergency within the Territory and to request the other part to supply those resources. The Clause also provides that the arrangement may provide for the Chief Executive to determine and co-ordinate the deployment of Territory resources to an emergency outside the Territory

Based on the outcome of State and Commonwealth co-operative arrangements the Territory Controller will manage the resources provided from outside the Territory, or by the Commonwealth, to control a declared emergency. However, if another State or the Commonwealth request Territory resources to assist them, such deployment must be managed. The Chief Executive is the person who will be the point of contact for resource requests and will coordinate, to the best advantage of the Territory, the deployment of Territory resources in accordance with any co-operative arrangement. The Chief Executive may provide in an arrangement, for the head of a Territory agency to deploy the resources of the agency to an emergency outside the Territory.

Clause 16 - Nominated officers

Clause 16 authorises the Chief Executive to nominate a public employee for a period of not more than seven days to give directions to a member of a support team or a specialist person operating in the Territory under an arrangement. Such nominations may be renewed.

Clause 17 - Members of support units and specialist persons subject to directions

Clause 17 imposes a duty upon members of support units and specialist persons operating in the Territory under an arrangement to comply with the directions of a nominated person under Clause 17.

Clause 18 - Recognition of Inter-State qualifications

Clause 18 seeks to overcome the problem of recognition in the Territory of corresponding interstate qualifications of specialist persons undertaking activities in the Territory under an arrangement. Providing those qualifications are recognised in the State of residence of that specialist person, the specialist person for the purpose of undertaking those activities under an arrangement shall be deemed to hold the qualification required by the law of the Territory. In the event of emergencies, the provision of inter-state assistance or specialist expertise should not be hampered by registration requirements.

PART III - MANAGEMENT OF EMERGENCIES

Division 1 - Declared emergencies

Clause 19 - Application

Clause 19 defines the extent of operation of Part III of the Bill by providing that Part III does not authorise action to end an industrial dispute or to deal with a riot or other form of civil disturbance. It does not exclude action to deal with an emergency resulting from those situations.

Clause 20 - Declaration of state of emergency

Clause 20 authorises the Chief Minister to declare in writing that a state of emergency exists in the Territory or in a specified part of the Territory if the Chief Minister is satisfied that the following pre-conditions are satisfied:

- (a) an emergency has occurred; is occurring; or is likely to occur; and
- (b) the emergency is, or would be, of such a scale, or of such a nature:
 - (1) as to constitute a significant danger to the health or safety of persons in the Territory, property in the Territory or the environment of the Territory;
 - (2) as to cause a significant disruption of essential services in the Territory.

The Clause provides a guideline to the Chief Minister as to what is required for the Chief Minister to be satisfied that an emergency is likely to occur. The cause of the declaration of a state of emergency may be outside the Territory.

Clause 21 - Publication of Declaration

Clause 21 requires the Chief Minister to cause notice of a declaration or revocation of a declaration of a state of emergency to be broadcast by a television or radio station in the Territory and to publish the notice in the Gazette. This is to be done as soon as possible.

Clause 22 - Territory Controller

Clause 22 authorises the Minister to appoint a person experienced in emergency management to be the Territory Controller for the period of the state of emergency. The Statutory Appointments Act 1994 does not apply in relation to such an appointment.

Clause 23 - Dormant appointment of Controller

Clause 23 authorises the Minister to appoint a person experienced in emergency management before the declaration of a state of emergency. When a person holds office in this capacity immediately before the declaration of an emergency this person is appointed the Territory Controller for the declared emergency. Where a second person is appointed Controller whilst another person holds office, the person appointed under this Clause does not occupy the office of Controller whilst the appointment of the person as Controller under Clause 22 continues in force. This period includes any period during which another person holds office under Clause 22 where the term of office of the successor commences immediately after the end of that appointment. This provision also applies to later appointments in the same manner.

Clause 24 - Functions of Controller

Clause 24 specifies the functions of the Controller during a declared emergency. The Controller shall:

- (a) manage the response to, and recovery from the emergency by ensuring appropriate deployment of resources;
- (b) co-ordinate other resources to manage the emergency;
- (c) ensure implementation of appropriate emergency management;
- (d) advise the Minister;
- (e) undertake other appropriate activities in co-operation with other persons;
- (f) perform any other functions under any Act, subordinate law or common law duty.

The Clause directs the Controller to perform the Controller's functions, so far as practicable, in accordance with the Emergency Plan.

Clause 25 - Management Executive

Clause 25 requires the Controller to appoint a Management Executive as soon as practicable after the Controller's appointment so that the Controller exercises his or her powers in the performance of the Controller's functions in consultation with the Management Executive. The Management Executive shall consist of the Executive Director, the Chief Police Officer referred to in Clause 7(2)(g); the Chief Officer of the Fire Brigade; the Chief Fire Control Officer of the Bushfire Service; the Chief Officer of the Ambulance Service; the Director of the ACT Emergency Service and other appropriate persons to assist in management of the emergency. The clause contains a savings provision that prevents failure to consult from affecting the validity of the exercise of the Controller's power.

Clause 26 - Management of emergencies

Clause 26 authorises the Controller to direct an executive head to undertake response or recovery operations for the purpose of managing a declared emergency. The Controller shall not however require the executive head to undertake the directed operation in a particular manner.

Clause 27 - Emergency Powers

Clause 27 sets out the tasks that the Controller may in writing authorise a member of an agency or a member of an organisation to perform in order to manage a declared emergency. This system of authorisations involves a diverse range of activities. It is not intended that these authorisations affect any independent authorisations that the member of the agency may have independently of this Clause.

A large proportion of emergency matters are outside the normal pattern of life and general operational capability of response agencies. While a number of such matters can be predicted with reasonable accuracy, because of events that have occurred elsewhere, many others forms of emergency impacts will be unforeseen. To deal effectively with emergencies therefore requires a series of extraordinary powers that permit the immediate taking of actions that normally would not be regarded as appropriate for day to day management of the Territory. The ability to take such action is essential if the protection of life and property is to be regarded as paramount during a declared emergency.

The Clause contains an interpretation provision "Owner" of property includes the occupant or person apparently in charge of the property.

Clause 27 makes it an offence to contravene certain directions under this Clause

Clause 28 - Obstruction

This Clause makes it an offence to obstruct, without reasonable excuse, a person authorised under Clause 27 in the course of that person's duties during response or recovery operations.

Clause 29 - Power to remove persons obstructing response or recovery operations.

This Clause is ancillary to Clause 28 above. The Clause provides the Controller with a power of removal of persons to such place as the Controller thinks proper. The Controller must believe on reasonable grounds that the person is obstructing or threatening to obstruct response or recovery operations. In exercising this power the Controller may only use such force as is necessary and reasonable in the circumstances. The Clause provides, to avoid uncertainty, that detention of a person is only authorised for the purpose of removal of that person.

Clause 30 - Power to require name and place of residence.

Clause 30 provides authority for the Controller or a public employee authorised by the Controller to request a person to provide his or her name and/or address providing the following conditions are satisfied:

- (a) the authorised person has reason to believe that an offence has been or may have been committed against the Bill;
- (b) the authorised person believes on reasonable grounds that the person may be able to assist in inquiries,
- (c) the name and/or address of the person is unknown; and
- (d) the person is informed of the reason for the request.

The authorised person is required as soon as possible after the request to make a written record of the grounds for the belief.

There are certain exemptions from this provision.

It is an offence not to comply with the request or give a name or address that is materially false.

Clause 31 - Provision of information

Clause 31 directs the Controller to provide the Minister with such information relating to the Controller's activities, as the Minister requires.

Clause 32 - Ministerial Directions

Clause 32 provides that the Minister may give general or specific written directions to the Controller in relation to the performance of the Controller's functions and the Controller shall give effect to the Minister's directions.

Clause 33 - Deployment of resources outside the Territory

Clause 33 prohibits the head of a Territory agency, during a declared emergency inside the Territory, from deploying resources of the agency outside the Territory, in relation to an emergency outside the Territory, without the approval of the Controller.

Clause 34 - Additional powers.

Clause 34 confers upon the Controller, in relation to the performance of the Controller's functions, a general power to do all things necessary or convenient.

Division 2 - Other emergencies

Clause 35 - Application

Clause 35 states that this Division applies to emergencies other than emergencies where a declaration of a state of emergency is in force.

Clause 36 - Role of Executive Director

Clause 36 sets out the role of the Executive Director in assisting the Territory community to recover from the effects of an emergency. The Executive Director shall:

- (a) support the activities of agencies;
- (b) ensure the establishment of persons within the community to act as contacts in conjunction with welfare agencies or organisations;
- (c) establish priorities for the short term recovery of the Territory city infrastructure in conjunction with relevant agencies or organisations; and
- (d) assist in conjunction with relevant organisations in the re-establishment of city infrastructure in accordance with the priorities established under (c) above.

PART IV - COMPENSATION

Clause 37 - Right to compensation

Clause 37 establishes a legal right to be paid just compensation by the Territory for loss suffered in relation to an emergency because of the exercise of powers under Clause 27 in relation to an emergency. This right to compensation does not apply:

- (a) where the loss would have occurred anyway;
- (b) to the extent that money is recovered or recoverable under an insurance policy; or
- (c) to the extent that contributory negligence or other conduct of the person contributed to the loss.

Clause 38 - Claims

This Clause sets out the basic requirements for a claim for compensation under Clause 37. A claim for compensation shall:

- (a) be in writing;

- (b) set out particulars of the claim including the grounds for the claim; particulars of loss; and the amount of compensation claimed, and
- (c) be lodged with the Chief Executive

Clause 39 - Acceptance or rejection of the claim

Clause 39 provides that where the Minister is satisfied that the claimant is entitled to compensation, the Minister shall accept the claim by written notice of acceptance. The notice shall contain an offer of compensation and an explanation of how the offer was assessed.

Where the Minister is satisfied that the claimant is not entitled to compensation, the Minister shall give written notice of rejection setting out the reasons for rejection of the claim.

Clause 40 - Acceptance or rejection of compensation offered

Clause 40 provides that a claimant may accept or reject an offer of compensation by written notice to the Chief Executive.

Clause 41 - Payment

Clause 41 provides that on acceptance of an offer of compensation, the Territory shall pay that amount to the Claimant.

Clause 42-Role of court

Clause 42 recognises the role of the Courts in determining just compensation where the operation of Part IV of the Bill does not produce this result

PART V - THE ACT EMERGENCY SERVICE

Clause 43 - Interpretation

This provision merely defines **volunteer member** for the purposes of Part V of the Bill as a person appointed under Clause 50(1).

Clause 44 - Establishment

Clause 44 establishes the ACT Emergency Service as a branch in the administrative unit under the control of the Chief Executive. The Emergency Service consists of the Director, members holding an office in the administrative branch and volunteer members. Its organisation and structure are set out in the Operations Manual.

Clause 45 - Functions of Emergency Service

Clause 45 sets out the functions of the Emergency Service. These functions are:

- (a) to undertake assistance operations in relation to an emergency and in relation to storms, floods and searches for missing persons;
- (b) to provide support for community organisations where the Director considers the support is relevant to training of members of the Emergency Service;
- (c) to undertake any other operation that the Director considers is of benefit to the community;

- (d) to undertake any prescribed operation to provide assistance to another agency or organisation or any prescribed operation that is not the function of another agency.

Clause 46 - Director

Clause 46 creates an office of Director of the Emergency Service in the Public Service. The Director shall be a public servant performing duties which include performing the functions of Director of the Emergency Service.

Clause 47 - Functions of Director

Clause 57 states the functions of the Director of the Emergency Service. These functions are:

- (a) to manage the Emergency Service;
- (b) to develop standards relating to equipment;
- (c) to develop procedures for the delivery of services in the performance of Emergency Service's functions under Clause 47.

Clause 48 - Operations Manual

Clause 48 provides that the Minister shall prepare an operations manual relating to the organisation and operating procedures of the Emergency Service. The Manual and amendments of the Manual shall be in writing.

The Manual:

- shall provide for an organisation - where a member is normally part of an operational unit; and where each unit is to include commander and leader positions;
- shall provide for - training of members, powers and duties of commanders, leaders and other members;
- may require or permit a member to provide for a matter; and
- the Manual shall be made available for inspection by the public at the office of the Director during business hours.

The Director shall administer and from time to time review the Manual. The Director may recommend amendments of the Manual. The Minister may prepare amendments of the Manual.

Clause 49 - Direction of members and casual volunteers

Clause 49 provides that subject to the *Public Sector Management Act*, the Director shall direct members of the Emergency Service and casual volunteers participating in Emergency Service operations. Exercise of these powers is subject to the directions of the Chief Executive and is to be in accordance with the Manual.

Clause 50 - Appointment of volunteer members

Clause 50 provides that the Director may by writing, appoint a person to be a member of the Emergency Service. Where the person is a volunteer member, the

Director shall first have regard to any recommendations of the unit commander of the unit to which the person is to be appointed. The Director may revoke an appointment of a volunteer member at any time. A member may resign in writing addressed to the Director.

Clause 51 - Delegation

Clause 51 provides that the Director, by instrument, may delegate all or any of the Director's powers under the Bill to a member of the Emergency Service.

Clause 52 - Additional powers

This Clause provides that the Director has power to do all things, which are necessary or convenient to be done in connection with the performance of the Director's functions.

PART VI – THE ACT AMBULANCE SERVICE

Division 1 – Preliminary

Clause 53 - Interpretation

Clause 53 is the interpretation clause setting out the meaning of important terms used for the purposes of Part VI. In addition to the comments made in relation to meanings of terms in Clause 3, some terms used in this Part have meanings provided by other Acts or provisions of Acts which have been incorporated by reference into this Part of the Bill.

The definitions are:

- **Ambulance fund** means a fund established or approved under Clause 68 of the Bill;
- **Ambulance levy** means the levy imposed by Clause 62 of the Bill;
- **Ambulance services** means:
 - (a) the provision of medical treatment;
 - (b) the provision of pre-hospital care; and
 - (c) the transport;
 - (d) of persons who are injured or suffer from a medical condition;
- **Basic health benefits** means the benefits payable to contributors of the health benefits fund in accordance with the basic private table or basic table of the organisation conducting the fund.
- **Basic private table** or **basic table** has the same meaning in relation to a health benefits organisation as a registered health benefits organisation under the *National Health Act 1953* of the Commonwealth.
- **Chief Officer** means the office of Chief Officer of the ACT Ambulance Service established under Clause 56 of the Bill.

- **Contributor to a health benefits fund conducted by a health benefits organisation means:**
 - (a) a contributor to that fund in accordance with the rules of the organisation;
 - (b) a person whose contributions are paid by another person to the fund.
- **Exempt contributions** are contributions paid by a prescribed class of contributors to a health benefit fund for their entitlement to basic health benefits from that fund.
- **Health benefits fund** means a fund conducted by a health benefits organisation used to make payments to contributors for:
 - (a) accommodation in hospitals;
 - (b) surgical, therapeutic or other procedures, treatments or services in hospital for medical or health purposes.
- **Health benefits organisation** means an organisation carrying on business in the Territory of providing health benefits to contributors of a health benefits fund conducted by that organisation.
- **Medical treatment means:**
 - (a) assessment and examination;
 - (b) rendering of first aid;
 - (c) institution of medical procedures;
 - (d) administration of medication; or
 - (e) medical advice.

Describes the range of activities that a member may undertake in providing assistance to a person who is injured or suffering from a medical condition.
- **Member** means an office holder or a person engaged to perform the duties of an office holder in the ACT Ambulance Service.
- **Reference month** means the month in column 2 opposite the month in column 1 of the Schedule.

Clause 53(2) provides context for "carry on business in the Territory of providing health benefits to contributors" in the above definition of health benefits organisation. For the purposes of Part VI of the Bill an organisation carries on business in this manner:

- (a) if for the purposes of enrolment of contributors to a health benefits fund or for payment of benefits to contributors -
 - (1) the organisation uses premises in the Territory; or
 - (2) it uses the services of a servant or agent in the Territory; or
- (b) any of the contributors to a health benefits fund are resident in the Territory.

Division 2 - Establishment and operation

Clause 54 - Establishment

Clause 54 provides that the Chief Executive shall create a branch in the administrative unit under the Chief Executive's control to be known as the ACT Ambulance Service consisting of the Chief Officer and other members. The Chief Officer in writing determines the organisation and structure of the ACT Ambulance Service.

Clause 55 - Functions

Clause 55 provides that the function of the ACT Ambulance Service is to provide ambulance services. Ambulance services are defined in Clause 53 as including the provision of medical treatment; the provision of pre-hospital care; and the transport; of persons who are injured or suffer from a medical condition.

Clause 56 - Chief Officer

Clause 56 makes provision for the creation and maintenance by the Chief Executive of a statutory office in the Public Service of Chief Officer of the ACT Ambulance Service with duties which include performing the functions of Chief Officer

Clause 57-Functions of Chief Officer

Clause 57 specifies the functions of the Chief Officer. These functions are:

- (a) to manage the ACT Ambulance Service;
- (b) to develop standards and authorise protocols for medical treatment:
 - (1) provided by the ACT Ambulance Service; or by
 - (2) a person or agency on behalf of the Ambulance Service.
- (c) to provide advise in relation to the provision of ambulance services.

Clause 58 - Direction of members, volunteers etc

Clause 58 provides the Chief Officer with powers of direction extending beyond the power to direct members of the ACT Ambulance Service. This Clause provides for the Chief Officer to direct:

- (a) members of the Ambulance Service;
- (b) casual volunteers participating in operations undertaken by the Ambulance Service;
- (c) a person or agency acting on behalf of the Ambulance Service.

This Clause allows the Chief Officer to direct members, casual volunteers, persons or agencies who are acting on behalf of the Ambulance Service, to ensure the standards and protocols of the Ambulance Service are met.

Exercise of these powers by the Chief Officer is subject to the directions of the Chief Executive except in relation to a direction as to medical treatment.

Clause 59 - Powers of Chief Officer

Clause 59 provides that for the purpose of performing the ACT Ambulance Service's function of providing ambulance services, the Chief Officer may exercise the following powers to:

- (a) enter land, a building, structure or vehicle using necessary and reasonable force;
- (b) turn off, disconnect or shut down any motor or equipment;
- (c) open any receptacle or dismantle any equipment using necessary and reasonable force;
- (d) bring any apparatus or equipment onto land, or into a building, structure or vehicle;
- (e) remove, dismantle, demolish or destroy any structure or vehicle;
- (f) remove or destroy any animal, substance or vegetation;
- (g) control, shut off, close off or cut off any supply of fuel, gas electricity or water;
- (h) direct a person to take all reasonable measures to assist the member of the ACT Ambulance Service;
- (i) give directions to regulate or prohibit the movement of persons, animals or vehicles; and
- (j) revoke or vary a direction given under Clause 59.

Describes the powers the Chief Officer may exercise to ensure the provision of adequate ambulance services to the public. In particular the powers enable actions to be taken in situations where a person is injured or is suffering a medical condition and their well being may be further compromised or their life threatened by not taking such action.

Division 3 - Ambulance levy

Clause 60 - Incorporation of *Taxation (Administration) Act*

Clause 60 incorporates the *Taxation (Administration) Act 1987* into the *Emergency Management Bill 1998* by reference to that Act. This Act of 100 sections provides for the administration of various Acts relating to the imposition and collection of Territory taxes, duties and fees. Included in the tax laws is the *Ambulance Service Levy Act 1990*, which will be repealed by Clause 80(1) of the *Emergency Management Bill 1998* when the Bill comes into force. Clause 80(2) of the Bill substitutes *Emergency Management Act 1998* for *Ambulance Service Levy Act 1990*.

Clause 61 - Administration

Clause 61 provides that the Commissioner for Australian Capital Territory Revenue appointed under Section 5 of the *Taxation (Administration) Act 1987* is responsible for the general administration of Division 3 of the *Emergency Management Bill 1998*.

Clause 62-Liability for ambulance levy

Clause 62 provides that a health benefits organisation is liable to pay a monthly levy, which is determined in accordance with Division 3 of the *Emergency Management Bill 1998*.

Clause 63-Calculation of ambulance levy

Clause 63(1) provides the formula for calculation of the ambulance levy payable monthly by a health benefits organisation.

Clause 63(2) is an interpretation provision, which seeks to clarify the meanings of contributors at the single rate and contributors at the family rate for the purpose of understanding the meaning of the formula in Clause 63(1) of the Bill

Clause 63(3) provides health benefits organisation with a discretionary power to determine a reasonable amount for the ambulance levy payable by it when it cannot determine the amount accurately.

Clause 63(4) provides that the Minister shall by notice in the *Gazette* fix an amount properly reflecting the adjusted prescribed rate when a notice is published of the prescribed rate adjusted in accordance with Section 5 Schedule 2 to the *Health Insurance Levies Act 1982* of New South Wales. Clause 63(5) is an interpretation provision specifying the alternative starting dates for notices under Clause 63(4)

Clause 63(6) is also an interpretation provision defining "relevant amount" for the purposes of Clause 63(1) of the Bill.

Clause 64 - Returns

Clause 64 makes provision for administrative arrangements for and contents of monthly returns in relation to the ambulance levy lodged with the Commissioner for Australian Capital Territory Revenue by a health benefit organisation.

Clause 65 - Records

Clause 65 prescribes the records that a health benefits organisation is required to maintain in relation to the monthly returns for the purpose of payment of the ambulance levy.

Clause 66 - Cessation of operations by health benefits organisation

Clause 66 makes provision for administrative arrangements for the lodgment of monthly returns and payment of the ambulance levy payable by a health benefits organisation that ceases to carry on business in the Territory.

Division 4 - Miscellaneous

Clause 67 - Fees

Clause 67(1) provides that a person who receives a particular type of ambulance service from the ACT Ambulance Service shall pay the determined fee. Clause 67(2) provides that the Ambulance Service has power to charge the determined fee where the person is provided ambulance services and did not request or consent to the provision of an ambulance service. This circumstance regularly occurs where a third party requests the response of an ambulance to a person who is injured or who has collapsed. The only exemptions under Clause 67(3) is where the person was at the time a contributor to a health benefits fund conducted by a health benefits organisation or to an ambulance fund as provided for under Clause 68.

Clause 67(4) is a savings provision to prevent Clause 67(3) from possibly affecting the operation of the *Workers Compensation Act 1951* or Part V of the *Motor Traffic Act 1936* making provision for compulsory third party insurance of motor vehicles.

Clause 68 - Ambulance Fund

Clause 68 provides the Chief Officer with power to establish an ambulance fund or to approve an ambulance fund for the purpose of allowing contributors to receive ambulance services at no cost or at a reduced cost.

Clause 69 - Delegation

Clause 69 confers upon the Chief Officer a power of delegation in writing of the Chief Officer's powers to a member of an agency.

Clause 70 - Additional powers

Clause 70 confers upon the Chief Officer the power to do all things necessary or convenient to be done in connection with the performance of the Chief Officer's functions.

Clause 71 - Approval of ambulance services

Clause 71 prohibits a person from operating an ambulance service without the approval of the Minister. It also enables an application to be made by a person to, the Minister, to operate an ambulance service. In considering an application for approval the Minister is directed to have regard to the prescribed criteria. An approval may be subject to conditions determined by the Minister. The ACT Ambulance Service is approved for the purposes of the Clause.

PART VII - MISCELLANEOUS

Clause 72 - Emergency relief funds

Clause 72 provides that emergency relief money received directly or indirectly from the public, whether by public appeal or not, shall be held by the Territory in trust administered by the Chief Executive and maintained under Section 51 *Financial Management Act 1996*. Money in the account shall only be applied for the relief of persons suffering loss as a result of an emergency within or outside the Territory. No money in the account may be used to meet administrative costs of administering the trust. Money received for relief of persons suffering loss in a particular emergency may be applied to other emergencies.

Where the Chief Executive is satisfied that a person has been overcompensated from the trust account as a result of damages or compensation received from another source, the Chief Executive may require repayment of part or all the amount received. Written notice is to be addressed to the last known address of that person. The person receiving the notice is liable to pay the amount stated in the notice as a debt due to the Territory within the period specified in the notice. This period shall not be less than 1 month from the date of postage of the notice. Moneys recovered are to be credited to and held in trust in the account as if it was emergency relief money.

Clause 73 - Gifts and donations

Clause 73 provides that a gift, devise or bequest of money or other property which purports to be made:

- (a) to, or for the purposes of a Territory Service;
- (b) for the purposes of providing or maintaining-
 - (i) the services of the Territory services; or
 - (ii) equipment or training for the Territory Service, or
- (c) to the Territory, directly or indirectly for the above purposes;

is to be treated as a gift, devise or bequest to the Territory to be held by the Territory in trust and administered by the Chief Executive.

The Clause provides the Chief Executive with power to agree to carry out any condition to which the gift, devise or bequest is subject and directs the Chief Executive to carry out the condition, so far as practicable, in its administration. Where the Executive is satisfied that a condition is or has become inappropriate, impracticable or impossible to observe, the Executive by instrument published in the Gazette has the power to vary the terms of the condition to make the condition appropriate or practicable to observe. The effect of this provision is to remove the necessity of an application to the Supreme Court for directions in such situations.

Clause 74 - Evidence

Clause 74 is an evidentiary provision. The head of a Territory Service may issue a certificate certifying that the person named in the certificate was a member of the Emergency Service or was a casual volunteer taking part in operations conducted by the Service on a stated day. The certificate is evidence of the matters certified.

The Clause stipulates that a person takes part in operations conducted by the Territory only when the person is effectively devoting his or her time by being available for the operation in accordance with arrangements with the Service. A person need not be actively engaged in operations at the time. Travel to and being on stand-by at or near the place the place of the operations and rest during operations are part of taking part in operations.

Clause 75-Victimisation

Clause 75 provides that it is an offence for an employer to victimise an employee for being absent from employment in order to take part in operations as a member of a Territory Service or as a casual volunteer. An employer victimises an employee if the employer:

- (a) dismisses or terminates the employment or engagement of the employee;
- (b) alters the employee's position in employment or circumstances of engagement by the employer to the employee's prejudice;
- (c) otherwise injures the employee in employment.

The head of the Territory Service has power to release the employee from participation in operations conducted by the Service if satisfied that the employee's participation would cause significant hardship to the employer's business.

Clause 76 - Review by Tribunal

This Clause confers a right of application to the Administrative Appeals Tribunal for a review of a decision by the Minister under Clause 39(1) relating to the amount of an offer of compensation or under Clause 39(2) rejecting a claim for compensation.

Clause 76 confers a right of application to the Tribunal for a review of the decision of the Chief Executive under Clause 72(6) determining the amount to be repaid to the trust account as a result of overcompensation from the account.

Clause 76 confers a right of application to the Tribunal for a review of the decision of the Minister under Clause 71(1) to refuse approval to operate an ambulance service.

Clause 76 also provides that notices under Clause 39(1), 39(2) or 72(6) are to be in accordance with the requirements of the Code of Practice in force under Section 25B(1) of the *Administrative Appeals Tribunal Act 1989*.

Clause 77 - Exclusion of Liability

Clause 77 seeks to exclude liability including vicarious liability of the Territory or other employer or contractor for any act or omission in good faith in the exercise or purported exercise of any power conferred by the Bill except as provided in Part IV.

Clause 78 - Determined fees

Clause 78 provides that the Minister may determine fees for the purposes of this Bill by notice in writing published in the *Gazette*.

Clause 79 - Regulations

Clause 79 provides that the Executive may make regulations for the purposes of this Bill. The Regulations may require the Minister or a public employee to provide for a matter.

Clause 80 - Repeal and consequential amendment

Clause 80 repeals the *Ambulance Service Levy Act 1990* and the *Ambulance Service Levy (Amendment) Act 1992* and makes an amendment consequential upon commencement of this Bill to the *Taxation (Administration) Act 1987* in relation to Clause 60 incorporating this Act into the Bill.

Clause 81 - Transitional

Clause 81 makes transitional provisions upon the commencement of the Bill. These provisions are:

- (a) The Minister shall prepare an Operations Manual to be administered under Clause 50;
- (b) The ACT Ambulance Service shall be taken to be the successor of the ambulance service established and conducted under the *Ambulance Service Levy Act 1990*;
- (c) An amount fixed under Section 8(4) *Ambulance Service Levy Act 1990* immediately before the commencement of this Bill shall be taken to have been fixed under Clause 65(4) of the Bill;

- (d) The ambulance fund currently operated under an arrangement by the Territory with NIB Health Funds Limited shall be taken to be an approved ambulance fund under Clause 70.

Schedule

This Schedule is referred to in Clause 53(1) under "reference month."