

1998
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Justice and Community Safety)

Emergency Management Bill 1998

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1998
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Justice and Community Safety)

Emergency Management Bill 1998

A BILL

FOR

An Act relating to emergencies and for related purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

PART I—PRELIMINARY

1. Short title

5 This Act may be cited as the *Emergency Management Act 1998*.

2. Commencement

(1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

10 (2) The remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the *Gazette*.

(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

3. Interpretation

(1) In this Act, unless the contrary intention appears—

“agency”, means a Territory agency or a Commonwealth or State agency;

5 “Ambulance Service” means the ACT Ambulance Service provided for under subsection 54 (1);

“casual volunteer” means a person (whether or not a resident of the Territory) who—

10 (a) at the request, or with the consent, of the person in charge of an activity forming part of an operation in which a Territory Service is participating, assists members of the Territory Service in carrying out the activity without remuneration or reward; or

15 (b) on his or her own initiative and without remuneration or reward, assists members of a Territory Service participating in an operation;

but does not include—

(c) a member of a Territory Service; or

20 (d) a member of a support unit, or a specialist person, operating in the Territory under an arrangement entered into under Division 4 of Part II;

“Chief Fire Control Officer” means the Chief Fire Control Officer appointed under the *Bushfire Act 1936*;

25 “Chief Police Officer” means the police officer who is for the time being responsible to the Commissioner of Police for the day-to-day administration and control of police services in the Territory;

“Commonwealth or State agency” means—

(a) a department of State of the Commonwealth or a State;

30 (b) a body, whether incorporated or not, established for a public purpose by or under an Act of the Commonwealth or a State; or

(c) the holder of an office established by an Act of the Commonwealth or a State;

35 and includes, in relation to an office referred to in paragraph (c), the staff required to assist the office holder but does not include a Territory corporation;

“Controller”, in relation to a declared emergency, means the Territory Controller appointed under subsection 22 (1) in respect of that emergency;

- “declared emergency” means an emergency in respect of which a declaration is made under section 20;
- 5 “determined fee” means the fee determined by the Minister under section 78 for the purposes of the provision in which the expression occurs;
- “Director” means the Director of the Emergency Service provided for under section 46;
- 10 “emergency” means an event (such as fire, flood, storm, earthquake, explosion, accident, epidemic or animal disease), actual or imminent, which requires a significant and co-ordinated response;
- “emergency area”, in relation to a declared emergency, means—
- (a) the Territory; or
 - (b) where the declaration of the emergency is expressed to relate only to a part of the Territory—that part;
- 15 “emergency management” means the establishment of plans, structures and arrangements so as to co-ordinate the resources of agencies, and organisations and other persons in a comprehensive approach to facilitate prevention, preparedness, response and recovery in relation to emergencies or emergency risks;
- 20 “emergency period”, in relation to a declared emergency, means the period between the declaration of the emergency and the revocation of the declaration;
- “Emergency Plan” means the Emergency Plan prepared under subsection 11 (1), as amended and in force from time to time;
- 25 “emergency risk” includes the risk of an emergency arising from—
- (a) civil defence requirements associated with warlike action;
 - (b) mass gatherings of people at sporting and other events;
 - (c) a significant disruption of essential services; or
 - 30 (d) technological problems including the widespread simultaneous failure of computers;
- “Emergency Service” means the ACT Emergency Service established by subsection 44 (1);
- “Executive Director” means the Executive Director provided for under section 4;
- 35 “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 suffered, and expenses reasonably incurred, by the person,

“Management Committee” means the Emergency Management Committee established by subsection 7 (1);

5 “Manual”, in relation to the Emergency Service, means the operations manual prepared under subsection 48 (1), as amended and in force from time to time;

“organisation” means a society, body or group of persons, whether corporate or unincorporate but does not include an agency;

10 “Public Sector Management Act” means the *Public Sector Management Act 1994*;

“recovery operations” means measures taken under this Act during or after an emergency period for the purpose, as far as practicable, of assisting persons and communities to achieve an effective level of functioning;

15 “response operations” means measures taken under this Act during an emergency period to protect life or property;

20 “specialist person” means a person who possesses a skill appropriate for dealing with an aspect of an emergency whether or not that skill corresponds to a recognised field of expertise;

“State” includes another Territory;

“structure” includes industrial plant and equipment;

25 “support unit” means a unit (however described) forming part of an agency or organisation being a unit consisting of 1 or more persons and associated equipment (such as ambulance officers and an ambulance) the functions of which consist of, or include, responding to an event such as fire, flood, storm, earthquake, explosion, accident, epidemic or animal disease;

“Territory agency” means—

- 30 (a) an administrative unit;
- (b) a body, whether incorporated or not, established for a public purpose by or under an Act;
- (c) a Territory corporation; or
- (d) the holder of an office established by an Act;

35 and includes, in relation to an office referred to in paragraph (d), the staff required to assist the office holder;

“Territory corporation” means—

- (a) a Territory owned corporation within the meaning of the *Territory Owned Corporations Act 1990*; or
- (b) any other corporation established under the *Corporations Law* being a corporation the directors of which, or a majority of the directors of which, are appointed by a Minister or a Territory authority or instrumentality;

“Territory Service” means—

- (a) the Emergency Service; or
- (b) the Ambulance Service;

“vehicle” includes an aircraft, a boat and a train.

(2) In this Act, a reference to the head of a Territory Service shall be taken to be a reference to—

- (a) in the case of the Emergency Service—the Director; and
- (b) in the case of the Ambulance Service—the Chief Officer of the Ambulance Service.

(3) In this Act, a reference to the head of a Territory agency shall be taken to be a reference to the person with day-to-day control of the agency.

(4) In this Act, 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

4. Office

(1) There shall be an Executive Director.

(2) The Chief Executive shall create and maintain an office in the Public Service the duties of which include performing the functions of the Executive Director.

(3) The Executive Director shall be the public servant for the time being performing the duties of the Public Service office referred to in subsection (2).

5. Functions

(1) The Executive Director is responsible for emergency management.

(2) Without limiting the generality of subsection (1), the Executive Director shall prepare for emergencies by—

- (a) conducting education programs and vulnerability analyses;

- (b) establishing, and monitoring the continuing effectiveness of, protocols and communication networks;
- (c) maintaining, in such a manner as to be readily accessible, formal records of emergency management arrangements with other jurisdictions and with organisations;
- (d) assisting in the development of preparedness plans relating to organisations; and
- (e) co-ordinating public information regarding emergency management.
- (3) Without limiting the generality of subsection (1), the Executive Director shall establish such committees as he or she thinks necessary to assist in the performance of the functions of the Executive Director.

6. Additional powers

The Executive Director has power to do all things necessary or convenient to be done in connection with the performance of his or her functions.

Division 2—Emergency Management Committee

7. Establishment

- (1) The Emergency Management Committee is established.
- (2) The Management Committee shall consist of—
- (a) the Executive Director;
 - (b) where the office of Controller is occupied by virtue of an appointment under subsection 22 (1) or 23 (1)—the Controller;
 - (c) the Chief Officer within the meaning of the *Fire Brigade Act 1957*;
 - (d) the Chief Fire Control Officer;
 - (e) the Chief Officer of the Ambulance Service;
 - (f) the Director;
 - (g) the Chief Police Officer;
 - (h) the Chief Health Officer provided for under the *Public Health Act 1997*; and
 - (i) such other persons as the Minister may, in writing, appoint from time to time.

8. Functions

- (1) The primary function of the Management Committee is to provide for liaison between relevant agencies, organisations and other persons in relation to emergency management.

(2) In performing the function under subsection (1) the Management Committee shall seek to—

- (a) enhance emergency management capabilities;
- (b) reduce community vulnerability to the effects of emergencies; and
- 5 (c) improve awareness and training to deal with emergency management matters.

(3) The Management Committee shall also have the following functions:

- (a) provide advice on emergency management;
- (b) support the Executive Director in emergency management.

10 **9. Chairperson**

(1) Subject to subsection (2), the Executive Director shall be Chairperson of the Management Committee.

(2) In the absence of the Executive Director, the members present shall elect a chairperson from among their number.

15 **10. Meetings**

(1) The Chairperson shall, from time to time, convene meetings of the Management Committee.

(2) At a meeting of the Management Committee, 6 members or half the number of members, whichever is the greater, constitute a quorum.

20 (3) Subject to subsection (2), the Management Committee shall determine the procedure to be followed in connection with a meeting of the Management Committee.

(4) The Management Committee may hold a meeting by means of instantaneous communication.

25 (5) In subsection (4)—

“instantaneous communication” means communication by means of telephone, television or any other device which permits instantaneous audio communication with or without instantaneous visual communication.

30 ***Division 3—Emergency Plan***

11. Emergency Plan

(1) The Minister shall prepare and maintain an Emergency Plan for the Territory to provide a basis for—

- (a) emergency management;
- 35 (b) co-ordination of emergency service agencies;

- (c) co-ordination of agencies, organisations and other persons; and
 - (d) co-ordination of Territory agencies with agencies of the Commonwealth and the States.
- 5 (2) The Emergency Plan, and amendments of the Emergency Plan, shall be in writing.
- (3) The Management Committee shall monitor—
- (a) the scope of the Emergency Plan in respect of the range of emergencies to which it relates; and
 - 10 (b) the effectiveness of the Emergency Plan in relation to each of those types of emergencies
- (4) The Management Committee may recommend amendments of the Emergency Plan to the Minister.
- (5) The Minister may prepare amendments of the Emergency Plan.

15 ***Division 4—Commonwealth and inter-State
co-operation***

12. Interpretation

In this Division, unless the contrary intention appears—

“arrangement” means an arrangement entered into under subsection 13 (1);

20 “emergency services” means services required to respond to an event such as fire, flood, storm, earthquake, explosion, accident, epidemic or animal disease.

13. Arrangements for co-operation

- 25 (1) The Chief Executive, on behalf of the Territory, may make an arrangement with a Commonwealth or State agency to facilitate co-operation—
- (a) in emergency management; or
 - 30 (b) in the day-to-day operations of a Territory agency where those operations involve the provision of emergency services outside the Territory or the provision of emergency services within the Territory by a Commonwealth or State agency.
- (2) The Chief Executive, on behalf of the Territory, may arrange with a Commonwealth or State agency to vary or revoke an arrangement.
- 35 (3) Before entering into an arrangement, or a variation or revocation of an arrangement, with a Commonwealth or State agency, the Chief Executive shall use his or her best endeavours to consult with the corresponding Territory agency.

(4) Failure to comply with subsection (3) does not affect the validity of an arrangement.

5 (5) An arrangement with a Commonwealth or State agency may be expressed to revoke an agreement relating to co-operation in respect of a matter referred to in paragraph (1) (a) or (b) being an agreement that was entered into on behalf of the Territory or a Territory agency with the Commonwealth or State agency before the commencement of this section.

14. Arrangements etc. in writing

10 An arrangement, or a variation or revocation of an arrangement, shall be in writing.

15. Arrangements relating to resources

15 (1) Without limiting the generality of subsection 13 (1), an arrangement may provide for the Controller, on behalf of the Territory, to determine the nature and amount of resources (if any) required from outside the Territory to deal with an emergency within the Territory and to request the other party to the arrangement to provide those resources to the Territory accordingly.

20 (2) Without limiting the generality of subsection 13 (1), an arrangement may provide for the Chief Executive, on behalf of the Territory, to determine and co-ordinate the deployment of Territory resources in relation to an emergency outside the Territory.

16. Nominated officers

(1) The Chief Executive may, by writing, nominate a public employee to give directions for the purposes of section 17.

25 (2) A nomination under subsection (1) may not be expressed to operate for more than 7 days but may be renewed from time to time.

17. Members of support units and specialist persons subject to directions

30 A member of a support unit, or a specialist person, operating in the Territory under an arrangement shall comply with a direction given by a nominee under subsection 16 (1).

18. Recognition of inter-State qualifications

Where—

- 35 (a) a specialist person ordinarily resident in a State is to undertake activities in the Territory under an arrangement;
- (b) but for this section, those activities are activities that by a law of the Territory may only be undertaken by a person who is qualified by reason of registration, enrolment, membership of an

organisation or the holding of a degree, diploma, certificate or other award required by that law; and

- 5 (c) the person is the holder of a corresponding qualification recognised by the law of that State as a requirement of persons undertaking those activities in that State,

the person shall, for the purpose of undertaking those activities under the arrangement, be taken to hold the qualification required by that law of the Territory.

PART III—MANAGEMENT OF EMERGENCIES

Division 1—Declared emergencies

19. Application

This Part does not authorise the taking of measures directed at—

- (a) bringing an industrial dispute to an end; or
(b) dealing with a riot or other civil disturbance.

20. Declaration of state of emergency

(1) Where the Chief Minister is satisfied that—

- (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—

- (i) 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; or
(ii) as to cause a significant disruption of essential services in the Territory;

the Chief Minister may, by writing, declare that a state of emergency exists.

(2) In this section, a reference to an emergency that is likely to occur shall be taken to be a reference to—

- (a) an event that has occurred or is occurring; or
(b) a circumstance that exists;

which the Chief Minister is satisfied gives rise to the likelihood of an emergency.

(3) In this section, a reference to an emergency, event, or circumstance shall be taken to include a reference to an emergency, event, or circumstance whether within or outside the Territory.

(4) A declaration may be expressed to relate only to a part of the Territory specified in the declaration.

21. Publication of declaration

5 As soon as practicable after making or revoking a declaration of a state of emergency, the Chief Minister shall—

- (a) cause notice of the declaration or revocation to be broadcast by a television or radio station in the Territory; and
- (b) cause a copy of the declaration or revocation to be published in the *Gazette*.

10 **22. Territory Controller**

(1) The Minister may, by writing, appoint a person to be the Territory Controller in respect of a declared emergency.

(2) A person shall not be appointed under subsection (1) unless the person has experience in emergency management.

15 (3) An appointment under subsection (1) shall be taken to be revoked when the declaration is revoked.

(4) Subsection (3) does not limit the power, from time to time, to revoke an appointment before a declaration is revoked or the power, from time to time, to appoint another person.

20 (5) The *Statutory Appointments Act 1994* does not apply in relation to an appointment under subsection (1).

23. Dormant appointment of Controller

(1) Subject to this section, the Minister may, by writing, appoint a person to be the Controller.

25 (2) A person shall not be appointed under subsection (1) unless the person is qualified as required by subsection 22 (2).

30 (3) Subject to subsection (4), where immediately before a declaration is made under section 20, a person holds office as Controller by virtue of an appointment under subsection (1), the person shall be taken to have been appointed to be the Controller under subsection 22 (1) in respect of the emergency to which the declaration relates.

(4) Where—

- (a) a person is appointed under subsection (1) while another person holds office by virtue of an appointment under subsection 22 (1);
or
- (b) a person is appointed under subsection 22 (1) while another person holds office by virtue of an appointment under subsection (1);

the person appointed under subsection (1) shall be taken not to occupy the office of Controller during the period while the appointment under subsection 22 (1) continues in force

5 (5) The reference in subsection (4) to the period while the appointment under subsection 22 (1) continues in force shall be taken to include any period during which another person (in this subsection called the "successor") holds office under subsection 22 (1) where the term of office of the successor commences immediately after the expiration of that appointment or a later appointment under subsection 22 (1) which
10 immediately succeeds that appointment or a later appointment.

24. Functions of Controller

(1) The Controller shall, in respect of a declared emergency—

- 15 (a) manage the response to, and the recovery from, the emergency by ensuring that agencies, organisations and other persons committed to dealing with the emergency are appropriately deployed;
- (b) co-ordinate the disposition of other resources to manage the emergency;
- (c) ensure that appropriate emergency management is implemented;
- (d) provide advice to the Minister about the emergency;
- 20 (e) undertake activities in co-operation with other persons which the Controller considers appropriate for the purpose of discharging his or her other functions, and
- (f) perform any other functions conferred on the Controller by this Act or any other law.

25 (2) As far as practicable, the Controller shall perform his or her functions in accordance with the Emergency Plan.

25. Management Executive

(1) As soon as practicable after his or her appointment, the Controller shall establish a Management Executive to ensure that although the
30 Controller retains responsibility for the performance of his or her functions, the Controller shall, as far as practicable, exercise his or her powers in consultation with the Management Executive.

(2) The Management Executive shall consist of—

- 35 (a) the Executive Director;
- (b) the Chief Officer within the meaning of the *Fire Brigade Act 1957*,
- (c) the Chief Fire Control Officer;
- (d) the Chief Officer of the Ambulance Service;
- (e) the Director;
- (f) the Chief Police Officer; and

(g) such other persons as the Controller considers to be appropriate to assist in management of the emergency.

(3) A member of the Management Executive may nominate another person to represent him or her at a meeting of the Management Executive.

5 (4) Failure by the Controller to consult with the Management Executive in respect of the exercise of a power does not affect the validity of the exercise of the power.

26. Management of emergencies

10 (1) For the purpose of managing a declared emergency, the Controller may direct an executive head to undertake response or recovery operations.

(2) A direction under subsection (1), shall not require an executive head to undertake an operation in a particular manner.

27. Emergency powers

15 (1) Notwithstanding the provisions of any other law, for the purpose of managing a declared emergency, the Controller, by instrument, may authorise a member of an agency or a member of an organisation—

- (a) to direct the movement of persons, animals or vehicles within, into or around the emergency area;
- 20 (b) to give directions to regulate or prohibit the movement of persons, animals or vehicles within, into or around the emergency area;
- (c) to enter land, a building, structure or vehicle within the emergency area using such force as is necessary and reasonable in the circumstances;
- (d) to excavate land or form tunnels;
- 25 (e) to construct earthworks, erect barriers or temporary structures;
- (f) to turn off, disconnect or shut down any motor or equipment;
- (g) to open any receptacle, or dismantle any equipment, using such force as is necessary and reasonable in the circumstances;
- 30 (h) to bring any apparatus or equipment onto land or into a building, structure or vehicle;
- (i) to evacuate persons or animals from the emergency area, or part of the emergency area, to such place as the Controller thinks fit;
- (j) to contain any animal or substance within the emergency area;
- (k) to control, use, close off or block any drainage facility within the emergency area;
- 35 (l) to control, shut off or disconnect any supply of fuel, gas, electricity or water;

- (m) to appropriate, acquire or abstract from, any supply of fuel, gas, electricity or water and use any such supply;
- (n) to take possession of any land, building, structure, vehicle, animal, substance or other thing;
- 5 (o) to direct the owner of any property, by notice in writing to the owner, to place the property under the control, or at the disposal, of the Controller;
- (p) to remove, dismantle, demolish or destroy any building, structure or vehicle within the emergency area;
- 10 (q) to remove or destroy any animal, substance or vegetation within the emergency area; and
- (r) to maintain, restore, or prevent disruption of, essential services.

(2) An executive head of an agency or organisation who has been authorised to exercise a power under subsection (1) may authorise a member
15 of the agency or organisation to exercise that power.

(3) An executive head may revoke an authorisation under subsection (2).

(4) Where an authorisation is expressed to authorise the holder of a specified office or position, the authorisation shall be taken to authorise any
20 person from time to time holding, occupying or performing the duties of, that office or position.

(5) An authorisation may be expressed to be subject to such limitations and conditions (if any) as are specified in the authorisation.

(6) Where an authorisation provides for a person to exercise a power of the Controller and the exercise of the power by the Controller is dependent
25 upon the opinion, belief or state of mind of the Controller, that power may be exercised by the person in relation to a matter upon the opinion, belief or state of mind of the person in relation to that matter.

(7) A power exercised by a person under an authorisation shall, for all
30 purposes, be taken to have been exercised by the Controller.

(8) Where a person ceases to hold the office of Controller or the position of executive head of an agency or organisation, an authorisation in force immediately before the cessation—

(a) shall, on and after that cessation, be taken to be given by the
35 person's successor in that office or position and shall then, subject to paragraph (b), otherwise have effect according to its tenor; and

(b) may, by writing, be varied or revoked by that successor.

(9) An authorisation does not affect any power which the person may be authorised to exercise apart from this section.

(10) An authorisation given in respect of a declared emergency shall be taken to be revoked when the declaration is revoked.

(11) A person shall not, without reasonable excuse, contravene a direction under paragraph (1) (a), (b) or (o).

5 Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

(12) In this section—

“authorisation” means an authorisation under subsection (1) or (2);

10 “owner”, in relation to property, includes the occupant or person apparently in charge of the property.

28. Obstruction

15 A person shall not, without reasonable excuse, obstruct a person authorised under section 27 in the course of his or her duties during response or recovery operations.

Penalty:

- (a) if the offender is a natural person—2,000 penalty units or imprisonment for 1 year, or both;
- (b) if the offender is a body corporate—10,000 penalty units.

20 29. Power to remove persons obstructing response or recovery operations

25 (1) Where the Controller believes on reasonable grounds that a person is obstructing or threatening to obstruct response or recovery operations during an emergency period, the Controller may remove the person to such a place as he or she thinks proper.

(2) In exercising his or her powers under subsection (1), the Controller may use such force as is necessary and reasonable in the circumstances.

(3) Subsection (1) shall not be taken to authorise the detention of a person except for the purpose of the removal.

30 30. Power to require name and place of residence

(1) In this section—

“authorised person” means—

- (a) the Controller; or
- (b) a person authorised under subsection (2).

(2) The Controller, by writing, may authorise a public employee for the purposes of this section.

(3) Where during an emergency period—

- 5 (a) an authorised person has reason to believe that an offence against this Act (other than an offence against subsection (4)) has been or may have been committed;
- (b) the authorised person believes on reasonable grounds that a person may be able to assist him or her in inquiries in relation to that offence; and
- 10 (c) the name or address (or both) of the person is unknown to the authorised person;

the authorised person—

- (d) may request the person to provide his or her name or address (or both) to the authorised person; and
- 15 (e) if making such a request—shall inform the person of the reason for the request.

(4) If an authorised person makes a request of a person under subsection (3), the person shall not, without reasonable excuse—

- (a) refuse or fail to comply with the request; or
- 20 (b) give a name or address that is false in a material particular.

(5) As soon as possible after making such a request, an authorised person shall make a written record of the grounds for his or her belief.

Penalty: 5 penalty units.

31. Provision of information

25 The Controller shall furnish to the Minister such information relating to his or her operations as the Minister requires.

32. Ministerial directions

(1) The Minister may give written directions to the Controller in relation to the performance of his or her functions, either generally or in relation to a particular matter.

30

(2) The Controller shall give effect to any such direction.

33. Deployment of resources outside the Territory

During a declared emergency, the head of a Territory agency shall not deploy the resources of the agency outside the Territory, in relation to an emergency outside the Territory, without the approval of the Controller.

35

34. Additional powers

The Controller has power to do all things necessary or convenient to be done in connection with the performance of his or her functions.

Division 2—Other emergencies

5 **35. Application**

This Division applies to an emergency other than a declared emergency.

36. Role of Executive Director

10 The Executive Director shall assist in recovery from the effects of an emergency by—

- (a) supporting the activities of agencies, organisations and other persons working in the area of recovery and welfare in their roles of assisting the community to recover from the emergency;
- 15 (b) ensuring the establishment of persons within the community to act as contacts in conjunction with welfare agencies or organisations; and
- (c) in conjunction with relevant agencies or organisations—
 - (i) establishing priorities for the short term recovery of city infrastructure; and
 - 20 (ii) assisting in the re-establishment of city infrastructure in accordance with those priorities.

PART IV—COMPENSATION

37. Right to compensation

25 (1) Subject to this section, a person who suffers loss because of the exercise of a power under section 27 in relation to an emergency is entitled to be paid such amount of compensation by the Territory as will justly compensate the person.

(2) Compensation is not payable to a person under this Part in respect of a loss to the extent—

- 30 (a) of any amount recovered or recoverable by the person under a policy of insurance; or
- (b) that the conduct of the person contributed to the loss.

(3) Compensation is not payable to a person under this Part in respect of a loss if the loss would have arisen in any event as a result of the
35 emergency.

38. Claims

A claim for compensation shall—

- (a) be in writing;
- 5 (b) set out particulars of the claimant's loss, the amount of compensation claimed and the grounds for the claim of that amount; and
- (c) be lodged with the Chief Executive.

39. Acceptance or rejection of claim

10 (1) Where the Minister is satisfied that a claimant is entitled to compensation under section 37, the Minister shall accept the claim by giving written notice of acceptance to the claimant setting out—

- (a) an offer to the claimant of the amount of compensation to which the Minister considers the claimant is entitled; and
- (b) an explanation of how that amount was assessed.

15 (2) Where the Minister is satisfied that a claimant is not entitled to compensation under section 37, the Minister shall reject the claim by giving written notice of rejection to the claimant setting out the reasons for the rejection.

40. Acceptance or rejection of compensation offered

20 A claimant to whom an offer has been made under subsection 39 (1) may—

- (a) accept the offer; or
- (b) reject the offer;

by giving written notice to that effect to the Chief Executive.

25 **41. Payment**

Where a claimant accepts an offer of an amount of compensation, the Territory shall pay the amount to the claimant.

42. Role of court

30 In any case where a court of competent jurisdiction is of the opinion that the application of any provision of this Part in relation to a claim for compensation would result in the payment of compensation which would not justly compensate the person, the court may determine such an amount for that compensation as, in its opinion, is necessary to ensure just compensation.

PART V—THE ACT EMERGENCY SERVICE

43. Interpretation

In this Part, unless the contrary intention appears—

“volunteer member” means a person appointed under subsection 50 (1).

5 **44. Establishment**

(1) The Chief Executive shall create a branch in the administrative unit under his or her control to be known as the ACT Emergency Service.

(2) The Emergency Service consists of—

- (a) the Director;
- 10 (b) members who hold an office in the branch referred to in subsection (1); and
- (c) volunteer members.

(3) The Emergency Service has the organisation and structure set out in the Manual.

15 **45. Functions of Emergency Service**

The functions of the Emergency Service are—

- (a) to undertake assistance operations in relation to an emergency and in relation to storms, floods and searches for missing persons;
- 20 (b) to provide support for community organisations where the Director considers that the support to be provided would be relevant to the training of members of the Emergency Service;
- (c) to undertake any other operation which the Director considers would be of benefit to the community; and
- (d) to undertake any prescribed operation being an operation—
 - 25 (i) to provide assistance to another agency or organisation; or
 - (ii) that is not the function of another agency or organisation.

46. Director

(1) There shall be a Director of the Emergency Service.

30 (2) The Chief Executive shall create and maintain an office in the Public Service the duties of which include performing the functions of the Director of the Emergency Service.

(3) The Director shall be the public servant for the time being performing the duties of the Public Service office referred to in subsection (2).

47. Functions of Director

35 The functions of the Director are—

- (a) to manage the Emergency Service;
- (b) to develop standards relating to equipment; and
- (c) to develop procedures relating to service delivery.

48. Operations Manual

- 5 (1) The Minister shall prepare an operations manual relating to the organisation and operating procedures of the Emergency Service.
- (2) The Manual, and amendments of the Manual, shall be in writing.
- (3) Without limiting the generality of subsection (1), the Manual shall provide for—
- 10 (a) the Emergency Service to be organised so that, as a general rule, a member is normally part of an operational unit; and
- (b) each unit to include commander and leader positions.
- (4) Without limiting the generality of subsection (1), the Manual shall make provision for and in relation to—
- 15 (a) the training of members; and
- (b) the powers and duties of members including commanders and leaders.
- (5) The Manual may make provision for a matter by requiring or permitting a member to provide for that matter.
- 20 (6) The Director shall administer and from time to time review the Manual.
- (7) The Director may recommend amendments of the Manual.
- (8) The Minister may prepare amendments of the Manual.
- (9) The Director shall make the Manual available for inspection by the public at the office of the Director when that office is open for business.
- 25

49. Direction of members and casual volunteers

- (1) Subject to the Public Sector Management Act, the Director shall direct—
- 30 (a) members of the Emergency Service; and
- (b) casual volunteers participating in operations undertaken by the Emergency Service.
- (2) The Director shall exercise his or her powers under subsection (1) subject to the directions of the Chief Executive and in accordance with the Manual.

50. Appointment of volunteer members

(1) Subject to this section, the Director may, by writing, appoint a person to be a member of the Emergency Service.

5 (2) In appointing a person under subsection (1), the Director shall have regard to any recommendations of the commander of the unit to which the person is to be appointed.

(3) The Director may revoke the appointment of a volunteer member at any time.

10 (4) A volunteer member may resign his or her appointment by writing addressed to the Director.

51. Delegation

The Director may, by instrument, delegate all or any of his or her powers under this Act to a member of the Emergency Service.

52. Additional powers

15 The Director has power to do all things necessary or convenient to be done in connection with the performance of his or her functions.

PART VI—THE ACT AMBULANCE SERVICE

Division 1—Preliminary

53. Interpretation

20 (1) In this Part, unless the contrary intention appears—

“ambulance fund” means a fund established or approved under section 68;

“ambulance levy” means the levy imposed by virtue of section 62;

25 “ambulance services” means the provision of medical treatment and pre-hospital patient care to, and the transport of, persons who are injured or otherwise suffering from a medical condition;

30 “basic health benefits” means the benefits payable by a health benefits organisation in accordance with the basic private table or basic table of the organisation to contributors of the health benefits fund conducted by the organisation;

“basic private table” or “basic table” has the same meaning in relation to a health benefits organisation as it has under the *National Health Act 1953* of the Commonwealth in relation to a registered health benefits organisation within the meaning of that Act;

“Chief Officer” means the Chief Officer of the Ambulance Service provided for under section 56;

“contributor”, in relation to a health benefits fund conducted by a health benefits organisation, means—

- 5 (a) a person who is a contributor to that fund in accordance with the rules of the organisation; and
- (b) a person on whose behalf contributions are paid to that fund;

10 “exempt contributions” means contributions paid into a health benefits fund conducted by a health benefits organisation, by contributors included in a prescribed class of persons, for the purpose of securing entitlement to basic health benefits;

15 “health benefits fund” means a fund conducted by a health benefits organisation from which the organisation makes payments to contributors for—

- (a) accommodation in hospitals; and
- (b) surgical, therapeutic or other medical or health treatments, services or procedures in hospitals;

20 “health benefits organisation” means an organisation that carries on business in the Territory of providing health benefits to contributors of a health benefits fund conducted by the organisation;

25 “medical treatment” means assessment and examination, the rendering of first aid, the institution of medical procedures, the administration of medication, or the provision of medical advice;

 “member” means the holder of an office in the branch referred to in subsection 54 (1) or a person who has been engaged to perform the duties of such an office;

30 “reference month”, in relation to a month corresponding to a month specified in column 1 of the Schedule, means the month specified in column 2 of the Schedule opposite the month specified in column 1.

(2) For the purposes of this Part, an organisation is to be taken to carry on business in the Territory of providing health benefits to contributors if—

- 35 (a) for the purposes of, or purposes related to, the enrolment of contributors to a health benefits fund conducted by it or the payment of benefits to such contributors—
- (i) it uses premises in the Territory; or

- (ii) it uses, in the Territory, the services of a servant or an agent; or
- (b) any of the contributors to a health benefits fund conducted by it are resident in the Territory.

5

Division 2—Establishment and operation

54. Establishment

- (1) The Chief Executive shall create a branch in the administrative unit under his or her control to be known as the ACT Ambulance Service.
- (2) The Ambulance Service consists of the Chief Officer and other members.
- (3) The Ambulance Service has the organisation and structure determined by the Chief Officer in writing.

10

55. Functions

The function of the Ambulance Service is to provide ambulance services.

15

56. Chief Officer

- (1) There shall be a Chief Officer of the Ambulance Service.
- (2) The Chief Executive shall create and maintain an office in the Public Service the duties of which include performing the functions of the Chief Officer of the Ambulance Service.
- (3) The Chief Officer shall be the public servant for the time being performing the duties of the Public Service office referred to in subsection (2).

20

57. Functions of Chief Officer

- The functions of the Chief Officer are—
- (a) to manage the Ambulance Service;
 - (b) to develop standards, and authorise protocols, for medical treatment provided by the Ambulance Service or by a person or agency acting on behalf of the Ambulance Service; and
 - (c) to provide advice in relation to the provision of the ambulance services.

25

30

58. Direction of members, volunteers etc.

- (1) Subject to the Public Sector Management Act, the Chief Officer shall direct—
 - (a) members of the Ambulance Service;

35

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

5 (2) Without limiting the generality of subsection (1), a direction may relate to the provision of medical treatment

(3) The Chief Officer shall exercise his or her powers under subsection (1) subject to the directions of the Chief Executive except in relation to a direction referred to in subsection (2).

59. Powers of Chief Officer

10 For the purpose of providing ambulance services, the Chief Officer may—

- (a) enter land, a building, structure or vehicle using such force as is necessary and reasonable in the circumstances;
- (b) turn off, disconnect or shut down any motor or equipment;
- 15 (c) open any receptacle, or dismantle any equipment, using such force as is necessary and reasonable in the circumstances;
- (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;
- 20 (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;
- 25 (i) give directions to regulate or prohibit the movement of persons, animals or vehicles; and
- (j) revoke or vary a direction given under this section.

Division 3—Ambulance levy

60. Incorporation of Taxation (Administration) Act

30 The *Taxation (Administration) Act 1987* is incorporated and shall be read as one with this Division.

61. Administration

The Commissioner has the general administration of this Division.

62. Liability for ambulance levy

35 A health benefits organisation is liable to pay in relation to each month the levy determined in accordance with this Division.

63. Calculation of ambulance levy

(1) The ambulance levy payable by a health benefits organisation in relation to a month shall be calculated in accordance with the formula—

$$(S + 2F) \times RA \times \frac{D}{7}$$

5 where—

S is the number of contributors (other than contributors whose contributions are exempt contributions) who, at the beginning of the reference month, were contributing to the organisation at the single rate;

10 F is the number of contributors (other than contributors whose contributions are exempt contributions) who, at the beginning of the reference month, were contributing to the organisation at the family rate;

RA is the relevant amount;

15 D is the number of days in the reference month in relation to that month.

(2) In subsection (1)—

(a) a reference to contributors at the single rate is a reference to contributors for benefits in respect of themselves; and

20 (b) a reference to contributors at the family rate is a reference to contributors other than contributors referred to in paragraph (a).

(3) Where a health benefits organisation is not able to determine accurately a matter that is required to be determined for the purpose of calculating the amount of the ambulance levy payable by it, the organisation may make such a determination of the matter as it considers reasonable in the circumstances of the case.

(4) Where, in accordance with clause 5 of Schedule 2 to the *Health Insurance Levies Act 1982* of the State of New South Wales, a notice is published of the prescribed rate within the meaning of that Act as adjusted in accordance with that Schedule, the Minister shall, by notice in the *Gazette*,
30 fix an amount that properly reflects that prescribed rate as so adjusted.

(5) A notice under subsection (4) takes effect—

(a) on the day on which the notice is published in the *Gazette*; or

35 (b) where the notice specifies a later day for that purpose—on the day so specified.

(6) In this section—

“relevant amount” means—

- (a) such amount as the Minister from time to time fixes under subsection (4); or
- (b) where no such amount is fixed—49 cents.

64. Returns

5 (1) A health benefits organisation shall, on or before the 15th day of each month, lodge with the Commissioner a return in relation to that month.

(2) A return shall be in writing, in a form approved by the Commissioner, and shall specify—

- 10 (a) the total amount of contributions paid into the health benefits fund conducted by the organisation by contributors of the fund, in the reference month applicable to the month to which the return relates, for the purpose of securing entitlement to basic health benefits;
- (b) the total amount of exempt contributions paid into that fund in that reference month; and
- 15 (c) the amount of the weekly contribution, based on the single rate, that was, as at the 15th day of that reference month, required to be paid into that fund by a contributor for that purpose.

65. Records

20 A health benefits organisation shall, in connection with a return lodged by it under section 64 in relation to a month, maintain a record of—

- (a) the name and address of each contributor of the health benefits fund conducted by the organisation by whom a contribution was paid in the reference month applicable to that month;
- (b) the amount of the contribution;
- 25 (c) the name of each person entitled to receive health benefits from the organisation by virtue of that contribution;
- (d) the period to which that contribution relates; and
- (e) any other matter relating to the payment of the ambulance levy to which that return relates that the Commissioner, by notice in writing given to the organisation, specifies.
- 30

66. Cessation of operations by health benefits organisation

(1) Where a health benefits organisation ceases to carry on business in the Territory of providing health benefits to contributors, it—

- 35 (a) is liable to pay the levy determined in accordance with this section; and
- (b) shall, on or before the 15th day of the month in relation to which the levy is payable, lodge with the Commissioner a return in relation to that month.

- (2) The levy payable by an organisation by virtue of subsection (1)—
- (a) is payable—
 - (i) where the organisation ceased to carry on business before the 15th day of a month—in relation to that month; and
 - 5 (ii) where the organisation ceased to carry on business on or after the 15th day of a month—in relation to the next succeeding month; and
 - (b) shall be calculated in accordance with the formula referred to in subsection 63 (1).
- 10 (3) Subsection 64 (2) applies in relation to a return under paragraph (1) (b) in the same manner as it applies in relation to a return under subsection 64 (1).
- (4) In the application of—
- 15 (a) subsection 64 (2) in relation to a return required to be lodged by an organisation under paragraph (1) (b) in relation to a month (in this subsection called the “payment month”); and
 - (b) the formula referred to in subsection 63 (1) in relation to the levy payable by the organisation under this section in relation to the payment month;
- 20 all contributions paid into the health benefits fund conducted by the organisation that have not previously been required to be taken into account as contributions paid in respect of a reference month for the purpose of calculating the ambulance levy payable by the organisation shall be taken to have been paid into that fund in the reference month applicable to the
- 25 payment month.

Division 4—Miscellaneous

67. Fees

- (1) A person to whom a particular type of ambulance service is provided by the Ambulance Service shall pay the determined fee.
- 30 (2) A person is liable to pay the fee determined for a service despite the fact that the person did not request or consent to the service.
- (3) A person is not liable to pay the fee determined for a service if, at the time the service was provided, the person was a contributor to—
- 35 (a) a health benefits fund conducted by a health benefits organisation; or
 - (b) an ambulance fund.
- (4) Subsection (1) does not affect the operation of—
- (a) the *Workers’ Compensation Act 1951*; or

(b) Part V of the *Motor Traffic Act 1936*.

68. Ambulance Fund

The Chief Officer may, by writing, establish an ambulance fund, or approve a person to operate an ambulance fund, for the purpose of enabling contributors to the fund to receive ambulance services at no cost or at a reduced rate.

69. Delegation

The Chief Officer may, by instrument, delegate all or any of his or her powers under this Act to a member of an agency.

70. Additional powers

The Chief Officer has power to do all things necessary or convenient to be done in connection with the performance of his or her functions.

71. Approval of ambulance services

(1) A person shall not, without the approval of the Minister in writing, operate an ambulance service.

Penalty:

- (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;
- (b) if the offender is a body corporate—250 penalty units.

(2) In considering an application for approval, the Minister shall have regard to the criteria prescribed for the purposes of this subsection.

(3) An application for approval shall be accompanied by the determined fee.

(4) An approval under subsection (1) may be expressed to be subject to renewal under this section after a period specified by the Minister in the approval.

(5) An approval under subsection (1) may be expressed to be subject to conditions determined by the Minister.

(6) The Ambulance Service shall be taken to have been approved under subsection (1).

(7) A medical practitioner shall not be taken to contravene subsection (1) by reason only that the practitioner provides—

- (a) medical treatment; or
- (b) pre-hospital patient care;

to a patient in the course of, or as an incident of, conducting his or her medical practice.

(8) In this section—

“approval” includes renewal of an approval;

“medical practitioner” means a person—

- 5
- (a) who is registered under the *Medical Practitioners Act 1930*;
or
 - (b) who is deemed to be registered under that Act by virtue of section 25 of the *Mutual Recognition Act 1992* of the Commonwealth.

PART VII—MISCELLANEOUS

10 **72. Emergency relief funds**

(1) In this section—

“account” means the account referred to in subsection (3);

“emergency” includes an emergency outside the Territory;

15 “emergency relief money” means money for the relief of persons who suffer loss in consequence of an emergency.

(2) Emergency relief money received by the Territory—

(a) from members of the public; or

(b) from a person who has received the money from members of the public;

20 whether or not in response to a public appeal, shall be held by the Territory in trust, and administered by the Chief Executive, in accordance with this section.

25 (3) A trust bank account shall be maintained under section 51 of the *Financial Management Act 1996* to hold emergency relief money received by the Territory.

(4) Subject to this section, money in the account shall only be applied for the relief of persons who suffer loss in consequence of an emergency.

30 (5) Money in the account received, or apparently received, for the relief of persons who suffer loss in consequence of a particular emergency may be applied for the relief of persons who suffer loss in consequence of another emergency.

(6) Where the Chief Executive is satisfied that a person has been overcompensated for loss in consequence of an emergency by reason of being paid—

35 (a) money from the account; and

(b) damages or compensation from another source;

the Chief Executive may, by notice in writing posted to the last known address of the person, require the person to pay an amount determined by the Chief Executive being all or part of the money referred to in paragraph

5 (a).

(7) A person who receives a notice referred to in subsection (6) is liable to pay to the Territory, as a debt due to the Territory, the amount specified in the notice within the period specified in the notice (being a period of not less than 1 month from the day on which the notice is posted).

10 (8) An amount paid in accordance with a notice under subsection (6) shall be credited to the account and held on trust as if it were emergency relief money.

(9) No money in the account may be used to defray the administrative costs of administering the trust.

15 **73. Gifts and donations**

(1) A gift, devise or bequest of money or any other property purporting to be made—

(a) to, or for the purposes of, a Territory Service (however described);

(b) for the purposes of providing or maintaining—

20 (i) the services of the Territory Service; or

(ii) equipment or training for the Territory Service; or

(c) to the Territory for the purposes of, or in relation to, any of the matters referred to in paragraph (a) or (b);

25 shall be taken to be a gift, devise or bequest to the Territory to be held by the Territory in trust, and administered by the Chief Executive.

(2) Subject to subsection (3), where a gift, devise or bequest of money or any other property is expressed to be subject to a condition, the Chief Executive may agree to carry out the condition and the condition shall be observed, as far as practicable, in the administration of that gift, devise or

30 bequest.

(3) Where the Executive is satisfied that a condition attached to a gift, devise or bequest is inappropriate, impracticable or impossible to observe, or has become inappropriate, impracticable or impossible to observe, the Executive, by instrument published in the *Gazette* may vary the terms of the condition to the extent necessary to make it appropriate and practicable to

35 observe.

74. Evidence

- 5 (1) The head of a Territory Service may issue a certificate to the effect that a person specified in the certificate was a member of the Service, or was a casual volunteer, taking part in operations conducted by the Service on a day specified in the certificate.
- (2) The head of a Territory Service may, in a certificate issued under subsection (1), specify the type of operations conducted by the Service.
- (3) In any proceedings, a certificate is evidence of the matters certified.
- 10 (4) For the purposes of subsection (1), a person shall be considered to be taking part in operations conducted by a Territory Service only when the person is effectively devoting his or her time to those operations by making himself or herself available for those operations (even if not actively engaged in those operations at the time) in accordance with arrangements made with the Service.
- 15 (5) For the purposes of subsection (1), travel to or from the place where operations are being conducted, being on standby at or near that place and rest during those operations (in accordance with arrangements made with a Territory Service) constitute taking part in those operations.

75. Victimisation

- 20 (1) An employer shall not victimise an employee of the employer for being absent from employment if the absence was due to the employee taking part in operations as a voluntary member of a Territory Service or a casual volunteer.

Penalty:

- 25 (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;
- (b) if the offender is a body corporate—250 penalty units.
- (2) For the purposes of subsection (1), an employer shall be taken to victimise an employee if the employer—
- 30 (a) dismisses the employee from employment with the employer or terminates the engagement of the employee by the employer;
- (b) alters the employee's position in his or her employment with the employer, or alters the circumstances of the employee's engagement by the employer, to the employee's prejudice; or
- 35 (c) otherwise injures the employee in his or her employment with, or engagement by, the employer.
- (3) Where the head of a Territory Service is satisfied that—

- (a) a person (in this subsection called the “employee”) is ordinarily employed by another person (in this subsection called the “employer”); and
- 5 (b) the participation of the employee in operations conducted by the Service would cause significant hardship to the business of the employer;

the head of the Service shall release the employee from participation in those operations.

76. Review by Tribunal

- 10 (1) Application may be made to the Administrative Appeals Tribunal for review of a decision of the Minister—
- (a) under subsection 39 (1) as to the amount of compensation;
- (b) under subsection 39 (2) to reject a claim for compensation; or
- 15 (c) under subsection 71 (1) to refuse approval to operate an ambulance service.
- (2) Application may be made to the Administrative Appeals Tribunal for review of a decision of the Chief Executive under subsection 72 (6) as to the amount to be paid.
- 20 (3) A notice under subsection 39 (1) or (2) or 72 (6) shall be in accordance with the requirements of the Code of Practice in force under subsection 25B (1) of the *Administrative Appeals Tribunal Act 1989*.

77. Exclusion of liability

- 25 (1) Except as provided in Part IV, a person is not liable to an action, suit or proceeding in relation to any act done or omitted to be done in good faith in the exercise or purported exercise of any power conferred by or under this Act.
- (2) Subsection (1) also applies to vicarious liability.

78. Determined fees

30 The Minister may, by notice in writing published in the *Gazette*, determine fees for the purposes of this Act.

79. Regulations

- (1) The Executive may make regulations for the purposes of this Act.
- (2) The Regulations may make provision for a matter by requiring or permitting the Minister or a public employee to provide for that matter.

35 80. Repeal and consequential amendment

- (1) The *Ambulance Service Levy Act 1990* and the *Ambulance Service Levy (Amendment) Act 1992* are repealed.

(2) The *Taxation (Administration) Act 1987* is amended by omitting paragraph 3 (aa) and substituting the following paragraph:

“(aa) the *Emergency Management Act 1998*.”

81. Transitional

5 (1) The Ambulance Service shall be taken to be the successor of the ambulance service established and conducted under the *Ambulance Service Levy Act 1990*.

10 (2) An amount fixed under subsection 8 (4) of the *Ambulance Service Levy Act 1990* immediately before the commencement of this Act shall be taken to have been fixed under subsection 63 (4).

(3) NIB Health Funds Limited shall be taken to have been approved under section 68.

SCHEDULE

Subsection 53 (1)

15	Payment month	Reference month
	January.	October—previous year
	February	November—previous year
	March	December—previous year
20	April....	January—same year
	May..	February—same year
	June.....	March—same year
	July.....	April—same year
	August	May—same year
25	September.....	June—same year
	October	July—same year
	November.....	August—same year
	December.....	September—same year

NOTE

Penalty units

See section 33AA of the *Interpretation Act 1967*