

2009

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Mr Brendan Smyth)

Emergencies (ESA) Amendment Bill 2009

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Emergencies (ESA) Amendment Bill 2009

A Bill for

An Act to amend the *Emergencies Act 2004*, and for other purposes

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

1 **1 Name of Act**

2 This Act is the *Emergencies (ESA) Amendment Act 2009*.

3 **2 Commencement**

4 This Act commences on 1 July 2010.

5 *Note* The naming and commencement provisions automatically commence on
6 the notification day (see Legislation Act, s 75 (1)).

7 **3 Legislation amended**

8 This Act amends the *Emergencies Act 2004*.

9 *Note* This Act also amends the following legislation (see sch 1):

- 10 • *Dangerous Substances (Explosives) Regulation 2004*
- 11 • *Emergencies Regulation 2004*
- 12 • *Financial Management Act 1996*
- 13 • *Fuels Control Act 1979*
- 14 • *Legislation Act 2001*
- 15 • *Planning and Development Regulation 2008*.

16 **4 Objects of Act**
17 **Section 3 (c)**

18 *omit*

19 commissioner

20 *substitute*

21 authority

5 Chapter 2*substitute***Chapter 2 Emergency services authority****Part 2.1 Establishment of authority and governing board**

Note The emergency services authority is a corporation regulated by the *Financial Management Act 1996* (the FMA), pt 9 as well as this establishing Act.

The FMA, pt 9 deals, for example, with the corporate status of territory authorities and the make-up and responsibility of governing boards.

7 Establishment of authority

- (1) The ACT Emergency Services Authority is established.
- (2) The authority is a corporation.

Note For the legal capacity and powers of the authority (for example, to enter into contracts, own and dispose of property, sue and be sued) see the *Financial Management Act 1996*, s 74.

8 Establishment of governing board

The authority has a governing board.

Note An appointment of a governing board member is an appointment under this section (see *Financial Management Act 1996*, s 78 (5) (b)).

9 Governing board members

- (1) The governing board of the authority consists of the following members:
 - (a) the chief officer (ambulance service);
 - (b) the chief officer (fire brigade);

- 1 (c) the chief officer (rural fire service);
2 (d) the chief officer (SES);
3 (e) the chief police officer;
4 (f) 2 people appointed by the Minister.

- 5 (2) The Minister must not appoint a person unless satisfied that the
6 person has the experience and skills to provide expertise in
7 emergency management.

8 *Note* For the making of appointments generally, see the Legislation Act,
9 pt 19.3.

- 10 (3) The Minister must appoint 1 of the appointed members as chair of
11 the governing board of the authority.

12 *Note 1* The chair of the governing board is appointed by the Minister under the
13 *Financial Management Act 1996*, s 79.

14 *Note 2* The chief executive officer of the authority is also a member of the
15 governing board (see *Financial Management Act 1996*, s 80 (4)). The
16 chief executive officer is a non-voting member (see s 10 (2)).

17 **10 Chief executive officer of authority**

- 18 (1) The chief executive officer of the authority must be a public servant.

19 *Note 1* The chief executive officer is appointed under the *Financial*
20 *Management Act 1996*, s 80 (3).

21 *Note 2* The chief executive officer manages the day-to-day operations of the
22 authority. For the CEO's functions, see the *Financial Management*
23 *Act 1996*, s 84.

- 24 (2) The chief executive officer is a non-voting member of the governing
25 board.

1 **Part 2.2 Functions of authority**

2 **11 Authority functions**

3 (1) The authority has the following functions:

4 (a) policy development for the emergency services;

5 (b) high-level management of the emergency services.

6 *Note* A chief officer of an emergency service is responsible for the general
7 management and control of the service (see s 28 (3) (a), s 29 (3) (a),
8 s 30 (3) (a) and s 31 (3) (a)).

9 (2) The authority has any function given to the authority under this Act
10 and any other territory law.

11 (3) In the exercise of its functions, the authority must—

12 (a) develop and maintain a strategic and policy framework across
13 the emergency services; and

14 (b) develop and implement a framework of sound corporate
15 governance across the emergency services; and

16 (c) ensure that appropriate strategic administrative and other
17 support services are provided to the emergency services; and

18 (d) ensure that appropriate strategic and business plans are
19 developed, maintained and implemented across the emergency
20 services; and

21 (e) provide for effective allocation of resources within the
22 emergency services; and

23 (f) ensure that each emergency service has appropriate systems
24 and practices in place—

25 (i) to provide for effective management and planning; and

26 (ii) to monitor management performance against plans and
27 targets and to take corrective action as necessary; and

- 1 (g) ensure that each emergency service maintains appropriate risk
2 management systems and practices; and
- 3 (h) ensure that each emergency service regularly reviews, and
4 revises as necessary, its plans, structures, systems, targets and
5 practices to address changing circumstances and to improve the
6 provision of emergency services and business practices; and
- 7 (i) ensure that each emergency service meets its statutory
8 responsibilities and complies with this Act and any other
9 relevant territory law; and
- 10 (j) ensure the observance of high ethical standards within the
11 emergency services; and
- 12 (k) foster and support career development opportunities and
13 personal development opportunities for members; and
- 14 (l) support and encourage participation in the emergency services
15 by volunteer members; and
- 16 (m) recognise outstanding achievements of people involved in the
17 provision of emergency services or who take action or assist at
18 the scene of an emergency or who otherwise support the
19 objectives or activities of the emergency services; and
- 20 (n) ensure that there is effective consultation with the community
21 in relation to the operation of this Act; and
- 22 (o) disseminate knowledge about emergency services to improve
23 community safety; and
- 24 (p) undertake public education programs to promote awareness of
25 emergency services functions and activities; and
- 26 (q) undertake programs to educate the public on their personal
27 preparedness and responsibilities in emergency situations; and

- 1 (r) recognise the diverse needs of the community including people
2 with special needs; and
- 3 **Example—people with special needs**
4 1 the frail aged
5 2 people with a disability
6 3 people in hospital
- 7 *Note* An example is part of the Act, is not exhaustive and may extend,
8 but does not limit, the meaning of the provision in which it
9 appears (see Legislation Act, s 126 and s 132).
- 10 (s) provide regular reports to the Minister on the activities and
11 performance of the emergency services; and
- 12 (t) give the Minister reports or advice about the operation of this
13 Act and the provision of emergency services under this Act.

14 **12 Emergency coordination**

15 The authority must ensure that—

- 16 (a) an emergency coordination centre is established and
17 maintained for the ACT; and
- 18 (b) common planning, administrative and logistic support is
19 provided for the emergency services (including common
20 communications and emergency coordination centres).

21 **Example**

22 common risk management planning

23 *Note* An example is part of the Act, is not exhaustive and may extend,
24 but does not limit, the meaning of the provision in which it
25 appears (see Legislation Act, s 126 and s 132).

26 **13 Authority to advise Minister**

27 The authority must advise the Minister on the overall capability and
28 preparedness of the emergency services including prevention
29 activities by the services.

1 **14 Asking bushfire council's advice**

- 2 (1) The authority must ask for, and consider, the bushfire council's
3 advice before exercising a function relating to bushfires prescribed
4 under the regulations.
- 5 (2) The authority may ask for the bushfire council's advice in relation to
6 the exercise of any other function relating to bushfires.

7 **15 Authority may make guidelines**

8 (1) The authority may, in writing, make guidelines for the organisation
9 and operation of the authority and the strategic operation of each of
10 the emergency services (the *authority guidelines*).

11 (2) The authority guidelines are a notifiable instrument except to the
12 extent that the authority considers it is in the public interest that it
13 not be notifiable.

14 *Note* A notifiable instrument must be notified under the Legislation Act.

15 (3) Any part of the authority guidelines that is not notified under the
16 Legislation Act must be given to the appropriate Legislative
17 Assembly committee.

18 (4) The authority guidelines may make provision in relation to—
19 (a) areas of the emergency services to be operated jointly; and
20 (b) operation of joint areas of the emergency services; and
21 (c) planning and conduct of joint operations of the emergency
22 services; and

(d) anything else in relation to the organisation and operation of the authority, and the strategic organisation and operation of each of the emergency services, that the authority considers appropriate.

Examples

- 1 guidelines for the operation of a joint communications area for the services
- 2 guidelines for joint operations
- 3 guidelines for joint response to a major building collapse
- 4 guidelines for ending appointments of volunteer members (including application of the rules of natural justice)

Note 1 An Act that authorises the making of a statutory instrument (eg guidelines) also authorises an instrument to be made with respect to any matter required or permitted to be prescribed under the authorising law or that is necessary or convenient to be prescribed for carrying out or giving effect to the authorising law (see Legislation Act, s 44).

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(5) The authority guidelines may apply, adopt or incorporate a law or instrument as in force from time to time.

Note The text of an applied, adopted or incorporated law or instrument, whether applied as in force from time to time or at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (5) or (6) is not disapplied (see s 47 (7)).

(6) The chief officer of an emergency service may recommend amendments of the authority guidelines to the authority.

(7) For this section:

appropriate Legislative Assembly committee means the standing committee of the Legislative Assembly nominated, in writing, by the Speaker.

1 **16 Delegations by authority**

2 The authority may delegate the authority's functions under this Act
3 or another Territory law to a public servant or a member of an
4 emergency service.

5 *Note* For the making of delegations and the exercise of delegated functions,
6 see the Legislation Act, pt 19.4.

7 **Part 2.3 Operations of authority**

8 **17 Authority to comply with directions**

9 The authority must comply with any directions given to the
10 authority under this Act or another Territory law.

11 *Note* The authority may be given directions by the Minister under s 6J.

12 **18 Ministerial directions to authority**

13 (1) The Minister may give a written direction to the authority about the
14 exercise of its functions.

15 (2) Before giving a direction, the Minister must—

16 (a) tell the authority about the proposed direction; and

17 (b) give the authority reasonable opportunity to comment on the
18 proposed direction; and

19 (c) consider any comment made by the authority.

20 (3) The Minister must—

21 (a) present a copy of a direction to the Legislative Assembly
22 within 6 sitting days after the day it is given to the authority;
23 and

- 1 (b) if the copy would not be presented to the Legislative Assembly
2 under paragraph (a) within 14 days after the day it is given to
3 the authority—give copies of the direction to the Speaker for
4 the members of the Legislative Assembly within the 14 days.
- 5 (4) If subsection (3) is not complied with, the direction is taken to have
6 been revoked at the end of the period within which the copy of the
7 direction should have been presented or given to the Speaker.
- 8 (5) A direction is a notifiable instrument.
- 9 *Note* A notifiable instrument must be notified under the Legislation Act.

10 **19 Reports by authority to Minister**

- 11 (1) The authority must give the Minister a report, or information about
12 its operations, required by the Minister.
- 13 (2) A report under this section must be prepared in the form (if any) that
14 the Minister requires.
- 15 (3) This section is in addition to any other provision about the giving of
16 reports or information by the authority.

17 **20 Authority's annual report**

- 18 A report prepared by the authority under the *Annual Reports*
19 *(Government Agencies) Act 2004* for a financial year must include—
- 20 (a) a copy of any direction given to the authority under this Act or
21 another Territory law during the year; and
- 22 (b) a statement by the authority about action taken during the year
23 to give effect to any direction given to the authority (whether
24 before or during the year).

- 1 **6 Chief officer—ambulance service**
2 **Section 28 (1)**
- 3 *omit*
4 chief executive may, after consulting the commissioner,
5 *substitute*
6 Executive must, after appropriate consultation
- 7 **7 Section 28 (1), note 2**
- 8 *omit*
- 9 **8 Section 28 (2)**
- 10 *omit*
11 chief executive
12 *substitute*
13 Executive
- 14 **9 Chief officer—fire brigade**
15 **Section 29 (1)**
- 16 *omit*
17 chief executive may, after consulting the commissioner,
18 *substitute*
19 Executive must, after appropriate consultation,
- 20 **10 Section 29 (1), note 2**
- 21 *omit*

1 **11 Section 29 (2)**

2 *omit*

3 chief executive

4 *substitute*

5 Executive

6 **12 Chief officer—rural fire service**
7 **Section 30 (1)**

8 *omit*

9 chief executive may, after consulting with the bushfire council and
10 the commissioner,

11 *substitute*

12 Executive must, after appropriate consultation, including with the
13 bushfire council,

14 **13 Section 30 (1), note 2**

15 *omit*

16 **14 Section 30 (2)**

17 *omit*

18 chief executive

19 *substitute*

20 Executive

1 **15 Chief officer—SES**
2 **Section 31 (1)**

3 *omit*
4 chief executive may, after consulting the commissioner,
5 *substitute*
6 Executive must, after appropriate consultation,

7 **16 Section 31 (1), note 2**

8 *omit*

9 **17 Section 31 (2)**

10 *omit*
11 chief executive
12 *substitute*
13 Executive

14 **18 Deputy chief officers**
15 **Section 32 (1)**

16 *omit*
17 chief executive may, after consulting the commissioner,
18 *substitute*
19 authority must, after appropriate consultation,

1 **19 Section 32 (2) and (4)**

2 *omit*

3 chief executive

4 *substitute*

5 authority

6 **20 General powers of chief officers**
7 **Section 34 (2)**

8 *omit*

9 commissioner's guidelines

10 *substitute*

11 authority guidelines

12 **21 Directions by chief officer to service members**
13 **Section 35 (3)**

14 *omit*

15 commissioner and the commissioner's guidelines

16 *substitute*

17 authority and the authority guidelines

18 **22 Chief officers to advise commissioner**
19 **Section 36**

20 *omit*

21 commissioner

22 *substitute*

23 authority

1 **23 Appointment of volunteer members**
2 **Section 59B (2)**

3 *omit*
4 commissioner's guidelines
5 *substitute*
6 authority guidelines

7 **24 Volunteer appointments in accordance with guidelines**
8 **Section 59C (1) and (4)**

9 *omit*
10 commissioner's guidelines
11 *substitute*
12 authority guidelines

13 **25 Decision about approval**
14 **Section 62 (2)**

15 *omit*
16 commissioner
17 *substitute*
18 authority

19 **26 Sections 71 to 73**

20 *omit*
21 commissioner
22 *substitute*
23 authority

1 **27 Assessment of resources and capabilities**
2 **Section 76**

3 *omit*
4 commissioner
5 *substitute*
6 authority

7 **28 Directions by commissioner to owner of land**
8 **Section 82**

9 *omit*
10 commissioner
11 *substitute*
12 authority

13 **29 Section 114 etc**

14 *omit*
15 commissioner
16 *substitute*
17 authority
18 *in*
19 • section 114
20 • section 115
21 • section 117
22 • section 118
23 • section 119
24 • section 123

1 **30** **Lighting fires for burning off**
2 **Section 123 (4)**

3 *omit*
4 commissioner's
5 *substitute*
6 authority's

7 **31** **Section 124 and 130**

8 *omit*
9 commissioner
10 *substitute*
11 authority

12 **32** **Chief executive to give support to bushfire council**
13 **Section 131**

14 *omit*
15 chief executive
16 *substitute*
17 authority

18 **33** **Section 142 (1) (a) etc**

19 *omit*
20 commissioner
21 *substitute*
22 authority
23 *in*
24 • section 142 (1) (a)

- 1 • section 143 (3) (b)
- 2 • section 149 (3)
- 3 • section 174
- 4 • section 177
- 5 • section 179 (1)
- 6 • section 184
- 7 • section 197 (1)

8 **34 Protection of officials from liability**
9 **New section 198 (1) (ca)**

10 *insert*

11 (ca) any other member of the staff of the authority; or

12 **35 Approved forms**
13 **Section 200 (1) and (2)**

14 *omit*

15 commissioner

16 *substitute*

17 authority

18 **36 Dictionary, new definitions of *authority* and *authority***
19 ***guidelines***

20 *insert*

21 ***authority*** means the ACT Emergency Services Authority
22 established under section 7.

23 ***authority guidelines***—see section 15.

1 **Schedule 1 Consequential amendments**

2 (see s 3)

3 **Part 1.1 Dangerous Substances**
4 **(Explosives) Regulation 2004**

5 **[1.1] Schedule 2, section 2.1 (4)**

6 *omit*

7 emergency services commissioner

8 *substitute*

9 emergency services authority

10 **[1.2] Dictionary, note 2**

11 *omit*

- 12
 - emergency services commissioner

13 *substitute*

- 14
 - emergency services authority

15 **Part 1.2 Emergencies Regulation 2004**

16 **[1.3] Section 5 (1) (b) (i)**

17 *omit*

18 emergency services commissioner

19 *substitute*

20 emergency services authority

1 **Part 1.3** **Financial Management Act 1996**

2 **[1.4] Sections 54 (1) and 76 (2)**

3 *insert*

- 4 • Emergency Services Authority

5 **Part 1.4** **Fuels Control Act 1979**

6 **[1.5] Section 12**

7 *omit*

8 emergency services commissioner

9 *substitute*

10 emergency services authority

11 **[1.6] Section 12A**

12 *omit*

13 emergency services commissioner

14 *substitute*

15 emergency services authority

16 **[1.7] Section 17 (c)**

17 *omit*

18 emergency services commissioner

19 *substitute*

20 emergency services authority

1 **[1.8] Dictionary, note 2**

2 *omit*

- 3 • emergency services commissioner

4 *substitute*

- 5 • emergency services authority

6 **Part 1.5 Legislation Act 2001**

7 **[1.9] Dictionary, part 1, new definition of *emergency services***
8 ***authority***

9 *insert*

10 *emergency services authority* means the ACT Emergency Services
11 Authority under the *Emergencies Act 2004*.

12 **Part 1.6 Planning and Development**
13 **Regulation 2008**

14 **[1.10] Section 26 (1) (d)**

15 *substitute*

16 (d) the emergency services authority;

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2009.

2 Notification

Notified under the Legislation Act on 2009.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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