



ACT DEPARTMENT OF JUSTICE  
& COMMUNITY SAFETY

2004

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

EMERGENCIES REGULATIONS 2004

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EXPLANATORY STATEMENT

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

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**Performance Assessment**

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Office of the Minister for Police and  
Emergency Services

## EMERGENCIES REGULATIONS 2004

### Outline

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

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

The Act establishes the Emergency Services Authority. The authority is responsible for the overall strategic direction and management of the four services (the Fire Brigade, Ambulance Service, Rural Fire Service and the State Emergency Service). The Act also consolidates all emergency legislation, provides for different declarations in an emergency or impending emergency, and substantially rewrites the provisions of the *Bushfire Act 1936*, including providing for the ACT Bushfire Council as an advisory body.

The Emergencies Regulations (the Regulations) give effect to the Act. The Regulations exempt fires from a total fire ban. This regulation is based on regulation 6 of the *Bushfire Regulations 1938*. The Regulations also include two offences from the *Bushfire Regulations 1938* relating to steam engines and internal-combustion engines.

The Regulations also provide for attendance by members of the Fire Brigade at certain public events. This is based on regulation 5 of the *Fire Brigade Regulations 1958*.

The Regulations also list contributions that are defined as exempt contributions under schedule 1 of the Act dealing with the Ambulance levy. This regulation is based on regulation 4 of the *Emergency Management Regulations 1999*.

The Regulations also deal with a number of transitional matters.

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

Offences incorporating strict liability elements are carefully considered when developing legislation and generally arise in a regulatory context where for reasons such as public safety or protection of the public revenue, the public interest in ensuring that regulatory schemes are observed requires the sanction of criminal penalties. As these offences are primarily aimed at conduct on the less serious side of the criminal spectrum, the maximum penalty would rarely exceed six months imprisonment.

## Regulation Notes

**Regulation 1 – Name of regulations** – provides that the regulations are the Emergencies Regulations 2004.

**Regulation 2 – Commencement** – provides that the regulations commence on the day section 3 of the *Emergencies Act 2004* commences.

**Regulation 3 – Notes** – provides that the notes included in the Regulations are explanatory.

**Regulation 4 – Offences against regulations – application of Criminal Code etc** – provides that other legislation applies to the offences in these Regulations.

**Regulation 5 – Prescribed fires – Act, s116(3)(d)** – lists the types of fire that are exempt from a total fire ban. This regulation is based on regulation 6 of the repealed *Bushfire Regulations 1938*. The types of fire that are exempt are fires in factories, fires for repairing or maintaining services, fires used to cook food or heat liquid using a gas or electric heating appliance and for hot air balloons. All of the exemptions include criteria that must be met for the exemptions to apply.

**Regulation 6 – Steam engines** – provides offences of failing to install and maintain effective spark arrestors and sound ashpans in steam engines, failing to extinguish live coals that have dropped from a steam engine and failing to take adequate steps to stop live coals from dropping from a steam engine. These offences are based on offences in the repealed *Bushfire Regulations 1938*. The maximum penalty for these offences is 20 penalty units if committed within the bushfire season and 10 penalty units if committed at any other time.

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

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

**Regulation 7 – Internal-combustion engines** – provides an offence of using an internal combustion engine that is not fitted with an effective spark arrestor. This offence is based on an offence in the repealed *Bushfire Regulations 1938*. The maximum penalty for this offence is 20 penalty units if committed within the bushfire season and 10 penalty units if committed at any other time.

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

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

**Regulation 8 – Attendance by fire brigade members at public events** – provides for members of the Fire Brigade to attend public meetings or public entertainment. This would occur when the Chief Officer (Fire Brigade) considers that, because of the nature of the event, a Fire Brigade presence is warranted. For example, Fire Brigade attendance may be warranted for a theatre production where fireworks are used on stage.

This regulation is based on regulation 5 of the repealed *Fire Brigade Regulations 1958*.

**Regulation 9 – Exempt contributions – Act, sch 1, s 2(a)** – list contributions that are defined as exempt contributions under schedule 1 of the Act dealing with the Ambulance levy. The exemptions apply for persons holding a Commonwealth Health Care card, pensioner concession card or pharmaceutical benefits concession card. The exemptions also apply to service pensioners and people permanently living outside of the Territory. This regulation is based on regulation 4 of the repealed *Emergency Management Regulations 1999*.

**Regulation 10 – Modification of Act, ch 11 – Act, s215(2)** – provides that chapter 11 of the *Emergencies Act 2004* is modified by adding the transition regulations set out in the schedule to these regulations. This regulation and the schedule expire on 30 June 2005.

The transitional regulations in the schedule provide for the continuation of the emergency plan prepared under the repealed *Emergency Management Act 1999*, the fuel management plans under the repealed *Bushfire Act 1936* and the continued approval of an ambulance fund under the repealed *Emergency Management Act 1999*.