

2005

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

EMERGENCIES AMENDMENT BILL 2005

EXPLANATORY STATEMENT

Circulated by authority of the
Minister for Police and Emergency Services
Mr John Hargreaves MLA

EMERGENCIES AMENDMENT BILL 2005

Outline

The Emergencies Amendment Bill 2005 (the Bill) makes a number of corrective and clarifying amendments, and a small number of minor policy related amendments, to the *Emergencies Act 2004*, the *Fuels Control Act 1979* and the *Occupational Health and Safety Act 1989*.

The Bill is the result of a first stage review of the operation of both the Act and the Emergency Services Authority (the authority) it established on 1 July 2004.

A new section 19A clarifies the power of the emergency services commissioner to delegate the specific powers of the commissioner to a public servant or a member of one of the emergency services established under the Act.

The role of the authority in strategic and operational planning is formally recognised in an amendment to section 9, while a new section 78 consolidates and extends the role of the authority in approving bushfire operational plans.

Sections 54 and 59 have been procedurally simplified, and the power to determine and name brigades and units, within the rural fire service and the state emergency service, has been transferred from the authority to the respective chief officers.

Section 12 of the *Fuels Control Act 1979* is amended by transferring the emergency power from the fuels controller, appointed under that Act, to the emergency services authority. The fuels controller must give the authority information that is necessary to manage a fuel emergency.

The Bill includes a number of minor and technical amendments, to correct or clarify the meaning of provisions.

Clause Notes

Clause 1 - Name of Act – states the title of the Act, which is the *Emergencies Amendment Act 2005*.

Clause 2 - Commencement – states that the Act commences on the day after it is notified in the legislation register.

Clause 3 - Legislation amended – states that the Act amends the *Emergencies Act 2004*. The Act also makes consequential amendments to the *Fuels Control Act 1979* and the *Occupational Health and Safety Act 1989*.

Clause 4 - Authority functions – section 9(4)(j) – inserts a new paragraph (k) to provide that the authority must, in performing its functions, participate in strategic and operational planning for emergencies. The provision is inserted to make it clear that, in addition to managing emergency services, the authority has a role in planning for emergencies.

Clause 5 - New section 19A – inserts a new section 19A (Delegation by commissioner), clarifying the commissioner's power to delegate the specific powers of the commissioner to a public servant or to a member of one of the emergency services established under the Act.

Clause 6 - Section 54 – substitutes a new section 54 (Rural fire brigades). The new provision clarifies the power of the chief officer of the rural fire service to determine the names of rural fire brigades at the same time as determining the number of brigades. The power to both determine and name brigades is now given to the chief officer. A determination under this section is a notifiable instrument.

Clause 7 - Section 59 – substitutes a new section 59 (SES operational units). The new provision clarifies the power of the chief officer of the state emergency service (SES) to determine the names of operational units for the SES at the same time as determining the number of units. The power to both determine and name units is now given to the chief officer. A determination under this section is a notifiable instrument.

Clause 8 - New section 59A – inserts into part 4.4 of the Act a new section 59A (Ranks for SES members). The amendment corrects an omission from the Act by making provision for the chief officer of the SES to give members of the SES various ranks in accordance with standards and protocols. The provision is similar to section 46, relating to the fire brigade and section 55, relating to the rural fire service.

Clause 9 - Content of strategic bushfire management plan – Section 74(3)(b) – the provision has been simplified in light of the simplifying amendments to section 78 (Bushfire operational plans – Territory land) and section 79 (Bushfire operational plans – bushfire abatement zone).

Clause 10 – Public consultation for strategic bushfire management plan –

Section 75(1)(b) – clarifies the time within which interested people may comment on a draft strategic bushfire management plan. Comments may be given at any time during a period ending at least 15 days after the end of the notification period mentioned in paragraph (a).

Clause 11 – Assessment of resources and capabilities – Section 76(1) – is amended to correct a reference to the strategic bushfire management plan. The word “bushfire” had been omitted.

Clause 12 – Section 78 and 79 – substitutes a new section 78 to replace sections 78 and 79 of the Act. Section 78(1)(a) states that section 78 applies to all managers of unleased territory land or land occupied by the Territory. A land manager to which the section applies must, under section 78(2), give the authority a draft bushfire operational plan in accordance with the strategic bushfire management plan unless the land is exempt, under the strategic bushfire management plan, from that requirement.

Section 78(1)(b) states that section 78 applies to all owners of land within the bushfire abatement zone (declared under section 71). They must give the authority a draft bushfire operational plan if the strategic bushfire management plan identifies the land as being subject to a requirement to provide such a plan, and sets out those requirements. The requirement does not apply to owners who have entered into a land management agreement that is consistent with the strategic bushfire management plan.

Under section 78(3), the authority may approve a bushfire operational plan, or approve it with amendments. If the authority does not decide within 40 business days whether to approve or refuse a plan, the plan is deemed to be approved.

Section 78(5) requires a person to review a bushfire operational plan and give the authority an updated plan at intervals of not longer than 2 years.

Clause 13 – Fire permits – Section 118(2), note – inserts a new note 2 after section 118(2) to state, in accordance with drafting practice, that a fee may be determined for this section, under section 201 of the Act.

Clause 14 – Using fire and appliances for cooking etc in open air – Section 122(4)(d) – amends section 122(4)(d) to provide more generally for the availability of a means of extinguishing a fire, when maintaining or using a fire in the open air. The new provision requires only that an “adequate means of putting out the fire” is available for use.

Clause 15 – Section 154 heading – amends the heading to section 154, which incorrectly refers to a state of emergency declared under section 156, rather than to a state of alert declared under section 151.

Clause 16 – Section 154, examples – amends the examples given for section 154. The examples now correctly refer to an emergency “that is likely to happen”, rather than an existing emergency. During a state of alert, the community is to be given regular reports about a possible or impending emergency.

Clause 17 – Emergency powers for declared state of emergency – Section 163(4) – amends an incorrect reference in, section 163(4), to “subsection (1)”. The reference should be to “subsection (2)”.

Clause 18 – Protection of officials from liability – Section 198(2), (3) and (4) – amends section 198 to clarify its intent. Section 198(2) provides that an official, defined in section 198(1), is not personally liable for anything done or omitted to be done, honestly and without recklessness, in exercising a function under the Act or in the reasonable belief that the conduct was in the exercise of a function under the Act. The substituted provision extends the protection of officers to cover reasonable belief that their conduct was in the exercise of a function under the Act.

References to “civil liability” in sections 198(2) and (3) have been changed in the substituted provisions to “personally liable” and “liability”.

A substituted section 198(4) is now more clearly not an exclusive provision. The classes of person referred to in paragraphs (a) to (d) are not intended to represent all of the possible classes of people who may be taken to be exercising a function under the Act.

Clause 19 – Schedule 2, items 3 and 4 – amends items 3 and 4 of Schedule 2 to the Act in light of the substituted section 78.

Clause 20 – Dictionary, definition of *bushfire operational plan* – substitutes a new definition of “bushfire operational plan”, in light of the substituted section 78.

Clause 21 – Dictionary, definition of *commissioner* – substitutes a new definition of commissioner, correcting the spelling of “Services”.

Clause 22 – Dictionary, definition of *emergency* – substitutes a new set of examples that includes, at item 4, a reference to shortage of fuel.

Schedule 1 – other amendments – Part 1.1, Fuels Control Act 1979 – amends the *Fuels Control Act 1979* to confer on the emergency services authority the emergency powers under the Act. Section 12 of the Act now enables the authority, rather than the fuels controller, to make certain requirements if the minister has declared a fuels emergency under section 11.

A new section 12A states that the fuels controller must give the emergency services authority the information it requires about the storage, supply of use of fuel in relation to which an emergency has been declared.

Sections 16(2) and 17(c) have been amended as a consequence of the amendment to section 12, to refer to the authority where appropriate.

Schedule 1 – other amendments – Part 1.2, Occupational Health and Safety Act 1989 – amends the *Occupational Health and Safety Act 1989* by removing from the definition of “associated law” the reference to the *Fuels Control Act 1979*, as it is not necessary.