

2010

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

EMERGENCIES AMENDMENT BILL 2010

EXPLANATORY STATEMENT

Circulated by authority of the
Minister for Police and Emergency Services
Mr Simon Corbell MLA

EMERGENCIES AMENDMENT BILL 2010

Outline

This Bill contains a number of amendments designed to strengthen the governance arrangements for planning for, and responding to, emergencies in the ACT. The proposed amendments reflect the outcomes of careful consideration by the Government, five years after the *Emergencies Act 2004* was enacted, of the most appropriate structures and arrangements for ensuring a coordinated, whole of government approach.

The proposed amendments take account of changes at the national level to inter jurisdictional coordination arrangements and an increasing focus on an “all hazards” approach to preparedness, prevention, response and recovery.

The proposed amendments build on a sound foundation of settled arrangements in the ACT, and are intended to clarify roles, responsibilities and accountabilities.

The key proposed amendments would:

- redesignate the Territory Controller as the Emergency Controller thus more clearly articulating the responsibilities of that position;
- decouple the activation of the powers of the Emergency Controller from the need to formally declare a State of Emergency. This will allow allowing the greater coordination capacity of that position to be utilized in advance of an emergency occurring – e.g. on a day of “catastrophic” bushfire danger rating – but where a formal declaration of a State of Emergency would be inappropriate;
- transfer the current functions of Emergency Management Committee to the Security and Emergency Management Senior Officials Group (SEMSOG). This will emphasise the role of Chief Executives collectively supporting the Government and an Emergency Controller in managing the response to an emergency and ensuring a coordinated whole of government effort; and
- require agencies to address preparedness, prevention, response and recovery under an all-hazards approach.

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Detail

Clause 1 — Name of Act

This is a technical clause that names the short title of the Act. The name of the Act would be the *Emergencies Amendment Act 2009*.

Clause 2 — Commencement

This clause enables the Act to commence by way of a notice by the Minister after the Act is notified on the Legislation Register. If the Act is not commenced within six months of notification, the provisions of the *Legislation Act 2001* will automatically commence the Act.

Clause 3 — Legislation Amended

This Act amends the *Emergencies Act 2004*.

Clause 4 — Objects of Act Section 3 (b)

The objects of the Act, with regard to the provision of effective emergency management, have been expanded to incorporate the need to prepare for, prevent, respond to and recover from (PPRR) emergencies and to take an all-hazards approach.

This is consistent with the evolution of national arrangements for multijurisdictional cooperation and coordination within the broad context of an all hazards, all agencies approach emergency management.

Clause 5 — Commissioner's functions. New section 8 (4) (ga)

This new section adds to the ESA Commissioner's mandatory functions by requiring that the Commissioner must emphasise the importance of communicating information, advice and warnings to the community during an emergency.

Clause 6 and 7— Part 7.1 heading and Section 141

These clauses substitute the Security and Emergency Management Senior Officials Group (SEMSOG) for the current Emergency Management Committee (EMC). The Government agreed that the functions of the EMC should be transferred to the SEMSOG.

Clause 8, 9, 10, 11 and 12— Section 142 heading and Sections 142 (1), (1) (aa), (2) and (3)

These clauses provide for the constitution of the SEMSOG, which specifically comprises the chief executive of the Department of Justice and Community Safety, and most officials formerly appointed to the EMC, namely the ESA Commissioner,

Chief Officers of the four ESA Services, the Chief Police Officer and the Chief Health Officer.

Other persons may be appointed by the Minister for Police and Emergency Services and these might include relevant agency chief executives.

The Minister will not be required to try and ensure that persons representing the community's interests and environmental interests respectively and a specialist in recovery from emergencies are among other persons appointed to SEMSOG.

The SEMSOG is to be chaired by the Chief Executive, Department of Justice and Community Safety.

Clause 13 — Section 143 heading

This clause provides for the functions of SEMSOG.

Clause 14 — Section 143

This clause substitutes SEMSOG for the current EMC. The Government agreed that the functions of the EMC should be transferred to the SEMSOG.

Clauses 15 and 16— Section 143 (3) (b) and (c)

These clauses expand on the current functions of SEMSOG to provide support for the Emergency Services Commissioner in emergency management, and clarify that this support includes for the preparation by the Commissioner of the Emergency Plan or any part of the plan (see also clause 18 below).

Clause 17 — Sections 144 to 146

This clause provides for the removal of sections 144 to 146 relating to the calling, details and frequency of EMC meetings. This is consistent with the Government's decision to abolish the EMC.

Clause 18 — Emergency plan Section 147 (1)

This clause substitutes the Emergency Services Commissioner for the current EMC as the responsible entity to prepare the ACT Emergency Plan (the Plan).

Clause 19 — Section 147 (4) and (5)

This clause substitutes the Emergency Services Commissioner for the current EMC for monitoring the scope and effectiveness of the plan, and as the responsible entity to make recommendations for amendments to the plan.

Clause 20 — Community and information plan Section 149 (1)

This amendment provides for the Plan to include a community and communication information plan for communicating information to the community during an emergency. This is consistent with the appointment of an emergency controller.

Clause 21, 22 and 23 — Division 7.3.1 heading; Section 150 heading; and Section 150

These are technical amendments to provide for the restructure of Part 7.3 ‘Management of emergencies’.

Clause 24 — New division 7.3.1A

This new division provides for the appointment of (150A), functions of (150B), and emergency powers for (150C) an emergency controller when a state of emergency has not been declared, i.e. where an emergency has happened, is happening, or is likely to happen.

Such appointments may arise in circumstances relating to a catastrophic fire danger rating; an animal health incident similar to the Equine Influenza outbreak; an emerging pandemic similar to the H1N1 outbreak; and where it is necessary to make provisions for recovery well in advance of the peak of an impending emergency.

This amendment is consistent with the Government’s decision to decouple the activation and powers of the Emergency Controller from the need to formally declare a state of emergency.

This new division makes provisions for the review of the appointment of an Emergency Controller by the Chief Minister not later than 48 hours after the appointment was made. This is further expanded to provide that, unless sooner revoked, the appointment of an emergency controller ends not later than 7 days after an appointment is made or if a state of emergency is declared.

Clause 25 — New division 7.3.1B

This is a technical amendment to delineate between a non-declared (7.3.1A) and a declared (7.3.1B) state of emergency.

Clause 26 — Sections 159 and 160

This clause substitutes ‘emergency controller’ for the current ‘territory controller’.

Clause 27 — New division 7.3.1C heading

This new division reflects the restructure of Part 7.3 (‘management of emergencies’) to allow the appointment of an emergency controller for a declared (7.3.1B) and non-declared (7.3.1A) state of emergency, and inserts a new division (7.3.1C) outlining provisions to apply if an emergency controller is appointed.

Clause 28 — Section 161 heading

This clause substitutes ‘management executive for emergency’ for the current ‘management executive for a declared state of emergency’. This amendment reflects the Government’s decision to decouple the activation and powers of the emergency controller from the need to formally declare a state of emergency.

Clause 29 — Section 161 (1) to (4)

This clause substitutes ‘emergency controller’ for the current ‘territory controller’; provides for the appointment of a management executive when an emergency controller is appointed; and makes provisions for the management executive to consist of people nominated by the emergency controller; and who may include members of the SEMSOG.

Clause 30 — Section 162

This clause substitutes ‘emergency’ for ‘declared state of emergency’ and ‘emergency controller’ for the current ‘territory controller’ and reiterates the emergency controller’s powers of, and limitations to, direction.

Clause 31 — Section 163 heading

This is a technical amendment to provide for emergency powers for a declared state of emergency. [See also clause 24 which provides (s. 150C) for emergency powers for a (non-declared state of) emergency.

Clause 32 — Section 163

This clause substitutes ‘emergency controller’ for the current ‘territory controller’.

Clause 33 — Section 163 (as amended)

This is a technical amendment to renumber the amended s.163 as s. 160A.

**Clause 34 — Failure to comply with direction given under emergency powers
Section 164 (1)**

This is a technical amendment to apply the current offence provisions for failure to comply with directions given by an emergency controller to both a non-declared (7.3.1A) and a declared (7.3.1B) state of emergency.

Clause 35, 36 and 37 — Section 165, Section 166 heading and Section 166

These clauses substitute ‘emergency controller’ for the current ‘territory controller’ in these sections of the Act.

Clause 38 — Section 167

This is a technical amendment which substitutes ‘emergency’ for ‘declared state of emergency’ and applies the current prohibition on the deployment of Territory resources outside the ACT during an emergency where an emergency controller has been appointed. An emergency controller must be appointed where a state of emergency has been declared.

**Clause 39 — Power to remove person obstructing response
operations etc
Section 168 (1)**

This clause substitutes ‘emergency controller’ for the current ‘territory controller’.

Clause 40 — Section 169 heading

This amendment provides for the restructure of Part 7.3 (‘management of emergencies’), for compensation to be paid in respect of both a declared and a non-declared state of emergency.

Clause 41 — Section 169 (1)

This clause substitutes ‘emergency controller’ for the current ‘territory controller’; and entitles compensation if a person suffers loss because an act or omission of an emergency controller’s powers for both a declared and non-declared state of emergency.

Clause 42 — Section 169 (3)

This clause substitutes ‘emergency controller’ for the current ‘territory controller’.

**Clause 43 — Recovery of compensation in court
Section 172**

This clause substitutes ‘compensation – emergency’ for the current ‘compensation – declared state of emergency’, consistent with the appointment of an emergency controller for both a declared and non-declared state of emergency.

Clause 44 — Section 173

This is a technical amendment which applies the requirement of the Emergency Services Commissioner to assist with recovery to ‘an emergency for which an emergency controller has not been appointed’ rather than ‘an emergency other than a declared state of emergency’.

Clause 45 and 46 — Sections 177 to 179, and Authorised person’s power to require name and address Section 196

These clauses substitute ‘emergency controller’ for the current ‘territory controller’.

**Clause 47 — Compensation for exercise of functions etc
Section 199 and note**

This is a technical amendment to provide for claims for compensation in respect of both a declared and non-declared state of emergency.

Clause 48 — New section 203

This new section requires that the Act be reviewed every 5 years, and that a report on the review be provided by the Minister to the Legislative Assembly within 3 months after the day the review is started.

Clauses 49 to 53 — Dictionary, new definitions

These define; emergency controller; emergency management; and SEMSOG. Current definitions for the emergency management committee and the territory controller are deleted.

Schedule 1 – Consequential Amendments

Clause 1.1 – 1.13

These amendments substitute (and define) ‘SEMSOG’ for the ‘ACT Emergency Management Committee’, and substitute (and define) ‘emergency controller’ for ‘territory controller’ in the relevant legislation.