

2012

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**EMERGENCIES (COMMISSIONER DIRECTIONS)
AMENDMENT BILL 2012**

EXPLANATORY STATEMENT

Presented by
Minister for Police and Emergency Services
Mr Simon Corbell MLA

Overview of Bill

The Emergencies (Commissioners Directions) Bill (the Bill) provides the Emergency Services Commissioner (the commissioner) with the express authority to give directions to the chief officers of the emergency services.

The need to address this gap reflects contemporary findings and lessons learned, including those from the Victorian Bushfires Royal Commission and the initial observations of the report by Neil Comrie into the 2010-2011 floods in Victoria.

The Bill further strengthens the ACT's statutory arrangements to ensure they remain at the forefront of emergency management nationally for high level control and coordination.

The existing functions of the commissioner provide for the overall strategic direction and management of the emergency services and ensure each agency is prepared for emergencies. Section s.35 (3) of the *Emergencies Act 2004* (the Act), provides that a direction by a chief officer “*must, if practicable, be in accordance with any direction of the commissioner and the commissioner’s guidelines*”, however no express provisions are established for the commissioner to give direction to chief officers during an emergency event, as defined by the *Emergencies Act 2004* (the Act).

While commissioners guidelines may be prepared under the Act to make provision for the operation of the emergency services, they do not necessarily provide for effective and timely decision making by the commissioner relating to the joint operations of services during specific emergency situations that allows consideration of the range of circumstances that may arise requiring immediate direction to be provided.

The Bill provides for the commissioner to direct a chief officer to undertake response or recovery operations in relation to the emergency. This section only applies to an emergency other than one for which an emergency controller is appointed, and the commissioner may not direct the chief officer to undertake an operation in a particular way.

While this Bill may relate to a number of areas addressed by the ACT's human rights legislation (including, for example, the right to life, protection of the family and children, and freedom of movement) the Bill does not purport to limit such rights to any materially different extent than is already provided for under the Act. As a public authority for the purposes of the *Human Rights Act 2004*, the commissioner will continue to be obliged to act consistently with human rights when exercising the power to give a direction.

Notes on key clauses

Clause 1 - Name of Act - states the title of the Act, which is the Emergencies (Commissioner Directions) Amendment Act 2012.

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*.

Clause 4 - New section 7 (2) - inserts a new paragraph to provide that the director-general may appoint a person as commissioner only if the person has the management, professional and technical expertise to exercise the commissioner's functions.

This provision ensures that in exercising an authority to give direction to a chief officer, the commissioner has the relevant management and professional expertise to give such direction in the context of the relevant emergency.

Clause 5 - New note, Section 8 (1), Commissioners Functions - inserts a new note cross referencing the new section 8A.

Under Section 8(1) the commissioner is responsible for the overall strategic direction and management of the emergency services. This insertion expressly recognises that this function includes the response and recovery operations of the emergency services.

Clause 6 - New section 8A, Directions by the commissioner in relation to emergencies - inserts a new section that provides for the commissioner to give direction to chief officers during an emergency.

New Section 8A (1) confirms that the new provisions apply to an emergency other than one for which an emergency controller is appointed. This establishes the mechanisms for high level control and coordination of the emergency services during an emergency, but short of the circumstances where an emergency controller is appointed, which are covered elsewhere in the Act.

If an emergency is of such magnitude that the appointment of an emergency controller becomes appropriate, the Act clearly establishes a statutory presumption of primacy and provides appropriate authority to the emergency controller who “*may direct the commissioner or the head of an entity to undertake response or recovery operations*” (s.162(1)).

New Section 8A (2) provides the commissioner with the authority to direct a chief officer to undertake response or recovery operations in relation to an emergency.

Under the Act, an emergency is defined as “*an actual or imminent event that requires a significant and coordinated response*”. In the context of this definition, the intended effect of the new Section 8A is that the commissioner should have the ability to give direction under certain situations, where the scale and complexity of the emergency is, or is likely to be, significant and may exceed the traditional scope of one or more emergency service.

For example if an incident occurred that was attended by a single emergency service, the commissioner may direct the chief officer of another service to provide additional resources to ensure the optimum capability of the Territory is made available to respond.

Likewise if an incident occurred that required the provision of supporting agencies or services to support response to an incident (for example: support for the provision of public information), the commissioner may direct a chief officer to establish arrangements for the provision of this support.

New Section 8A (3) establishes that the commissioner may not direct the chief officer to undertake an operation in a particular way. This clarifies that it is not intended that the commissioner's direction making power should usurp, or result in ambiguity or conflict in relation to the powers of the chief officers during an emergency, and the existing responsibility of each chief officer to manage and control the emergency service he or she is appointed to lead.

Clause 7 - New section 12 (2) Delegation by commissioner – inserts a new section that establishes the commissioner may delegate the commissioner's power under section 8A only to a chief officer.

This clause relates to the new s.7(2), recognising that in that absence of the commissioner, only an official with experience in the management of emergencies should be delegated with authority to give directions to a chief officer.