

2014

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

EMERGENCIES AMENDMENT BILL 2014

EXPLANATORY STATEMENT

**Presented by
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EMERGENCIES AMENDMENT BILL 2014

This explanatory statement relates to the Emergencies Amendment Bill 2014 (the Bill) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Legislative Assembly.

The Statement must to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Overview of the Bill

The Emergencies Amendment Bill 2014 improves the ACT's prevention, preparedness, response and recovery from emergencies in the ACT by:

- a) clarifying the Commissioner's functions, including that the Commissioner is responsible for a wide range of operational and administrative support services in the Emergency Services Agency (ESA) that support the function of the Emergency Services;
- b) clarifying the powers of the Emergency Services Commissioner when providing direction to Chief Officers to coordinate response and recovery activities in times of an emergency;
- c) providing the power for Chief Officers and Emergency Controller to close premises in emergencies and to obtain information;
- d) resolving potential inconsistencies between the strategic bushfire management plan and plans of management for public land;
- e) delivering legislative improvements that affect our bushfire planning requirements which assists to prevent bushfires in the ACT;
- f) improving our preparedness and response to emergencies involving essential services by clarifying the powers available to an Emergency Controller; and
- g) increasing the penalty for discarding a lit cigarette, cigarette butt, match or other item that is lit or not fully extinguished from \$200 to \$300, reflecting the bushfire danger posed by these items.

Overview of Emergency Management Arrangements in the ACT

Emergency service agencies need to be prepared and have clear governance arrangements in place to ensure the most effective and coordinated response eventuates when major emergencies¹ and disasters occur.

The *Emergencies Act 2004* (the Emergencies Act) was introduced following the 2003 Canberra Bushfires and provides a consolidated all hazards approach to emergency management in the Territory and brings the ACT Government's emergency services under the umbrella of the ACT ESA.

The Emergencies Act outlines the governance arrangements regarding the powers and functions of the Emergency Services Commissioner (the Commissioner), Chief Officers and four Emergencies Services including:

- a) ACT Fire & Rescue;
- b) ACT Ambulance Service;
- c) ACT Rural Fire Service (RFS); and
- d) ACT State Emergency Service (SES).

The Emergencies Act outlines the comprehensive planning required across government to ensure the ACT is ready as a community to respond and recover from a major emergency or disaster in the ACT. This includes the development of the ACT Emergency Plan (section 147) and range of hazard specific sub plans (section 148) which provides detail around our emergency management arrangements, including regarding who will lead the emergency response. The Emergencies Act also outlines the declaration of a state of alert or state of emergency by the Chief Minister and outlines the appointment and functions of an Emergency Controller (Part 7.3).

Objects of the Act

The ESA is an administrative unit of the ACT Government and comprises the four emergency services as defined within the *Emergencies Act 2004*² and a range of business

¹ The *Emergencies Act 2004* defines an emergency “as an actual or imminent event that requires a significant and coordinated response”. Examples include, and are not limited to, bushfire, storm, earthquake, epidemic, explosion or shortage of electricity, gas, water or fuel.

units that provide a shared capability and support incident and emergency management by all of the emergency services. The business units include functions such as public information, planning, emergency management, risk management, spatial services, fleet management, logistics, ESA training, corporate services and a range of other services.

The Objects of the Act have been amended to be more inclusive and recognise the value to the community of those that provide operational and administrative support to the Commissioner and Services.

Clarifying the Commissioners Functions

The Emergency Services Commissioner is responsible for the business units that provide a shared capability as described above. The Commissioner's functions in section 8 (1) and 8 (4) (e) have been amended to reflect this situation.

The Commissioner's role in strategic and operational planning for emergencies

Section 8 (4) (j) of the Act states the Commissioner, in the exercise of the commissioner's functions, must participate in strategic and operational planning for emergencies.

The function requires clarification that the Commissioner, through ESA internal governance, has a role of overseeing and coordinating planning within ESA and not necessarily participating in all planning activities.

Section 8 (4) has been amended so that the ESA Commissioner must 'oversee and coordinate' strategic and operational planning for emergencies, rather than 'participate' in this planning.

Directions by Commissioner in relation to emergencies

An analysis by the ACT ESA of the Royal Commission into the 2009 Victorian Bushfires and Commission of Inquiry into the 2011 Queensland Floods led to amendments to the *Emergencies Act 2004* in 2012 that provided additional power to the Commissioner to provide Chief Officer's direction in times of an emergency (section 8A).

The intent of the amendments was to ensure a single point of coordination for emergency services that required a coordinated response but did not require the appointment of an Emergency Controller as per Part 7.3 of the Act.

² 'Emergency services' is defined in the Emergencies Act as 'the ambulance service, fire and rescue, the rural fire service or the SES'.

The amendments introduced in 2012 limited the scope of the Commissioner's powers by the inclusion of section 8A (3), which states that the Commissioner "*may not direct a chief officer to undertake an operation in a particular way*". A bushfire exercise in 2013 highlighted the potential for ambiguity in the appointment of an Incident Controller in a pre-emptive fire situation. Given the interpretation of section 8A might give rise to ambiguity in times of an emergency, this Bill deletes section 8A (3) and amends section 8A (2) to outline the intent of the power is for the Commissioner to be able to, for the effective coordination of the emergency, to direct Chief Officers to undertake response or recovery operations. The amendment will also achieve consistency with section 8 (4) (a), which states amongst other items, that "*the Commissioner must seek to give the emergency services a strong, cohesive, strategic and operational direction*".

The amendment does not confer the Chief Officers' powers to the Commissioner, nor is it giving the Commissioner the authority to direct other staff or volunteers of the respective emergency services.

Powers of Chief Officers

Chief Officers of the Ambulance Service, Fire & Rescue, RFS and SES are provided with General Powers in Section 34 of the Act for the protection or preservation of life, property or the environment. Recent exercises and planning activities have highlighted the need for powers to be clarified in relation to Chief Officers ability to 'close premises' and 'obtain information'.

Currently the closure of any premise in an emergency is achieved by de-facto using the following powers:

34(k) give directions to regulate or prohibit the movement of people, animals or vehicles; or

34(l) evacuate people or animals from an area to another place.

The Bill provides the power for Chief Officers to close any premise. The definition of 'premise' in the Act includes any land, structure or vehicle and any part of an area of land, a structure or vehicle.

The Bill also provides an additional power to Chief Officers for the purpose of obtaining information from a person to clarify the current power in section 34 which requires a person to give reasonable assistance to a member of an emergency service. A new power has been

included requiring a person to give information, answer questions, or produce documents or anything else, reasonably needed for the purposes of preserving or protecting life, animals or the environment.

It should be noted that there are no compliance provisions attached to these powers when exercised by a Chief Officer. Powers in section 34 are also conferred on an Emergency Controller to respond to a wide range of emergencies if appointed by the Chief Minister. Section 150 (3) (b) outlines the powers do not apply to an Emergency Controller when responding to an industrial dispute, riot or civil disturbance.

Strategic Bushfire Management Plans

This Bill makes three amendments relating to strategic bushfire management plans (SBMP).

The first amendment strengthens the consultation requirements for the development of the SBMP. The commissioner, in preparing the draft SBMP, is required under the Act to consult with the bushfire council and consider the impact of the plan on any land management agreements and land managers. This Bill adds the ACT Conservator of Flora and Fauna (an appointment under the *Nature Conservation Act 1980*) as a party that must be consulted with when preparing the draft plan. Whilst as a matter of practice the Conservator was consulted in the development of the SBMP, it was not previously required. The inclusion of this requirement to consult with the Conservator supports the objects of the Act which are to protect and preserve life, property and the environment. The commissioner will also be required, when developing the SBMP, to consider the impact of the plan on Plans of Management in force under the *Planning and Development Act 2007*. Advice from the Conservator will be an important part of that process.

The commissioner must prepare a written report setting out any issues raised by the Conservator during consultation and give that report to the Minister with the draft SBMP. The Minister must present any report received to the Legislative Assembly when presenting the SBMP. The Bill also requires the commissioner to consider the impact on any plan of management under the *Planning and Development Act 2007* when developing the draft plan.

The second amendment resolves any inconsistency with other plans of management applying to an area of unleased territory land or land occupied by the Territory. While the consultation process for the development of the SBMP is being strengthened to ensure that any potential inconsistency between the different plans across government relating to public land is minimised, if any inconsistency arises it is important that parties have clarity as to their

obligations with respect to the SBMP. A land owner or manager must ensure that the land is managed in accordance with the SBMP. Currently, where inconsistencies arise between the SBMP and any other plan of management in force under the *Planning and Development Act 2007*, the SBMP has no effect. This Bill amends this so a plan of management has no effect to the extent of any inconsistency with the SBMP. This amendment reflects that the SBMP is the most comprehensive plan for bushfire prevention and mitigation in the ACT.

The third amendment gives effect to recommendation by the ACT Auditor-General. The Auditor-General published a performance audit in July 2013 on Bushfire Preparedness³ and recommended that “*The JACS Directorate, in managing future amendments to the ACT Emergencies Act 2004, should propose amendments, which require the Emergency Services Agency to maintain information on privately owned assets of public interest that are vulnerable to bushfire without the need to include this information in the Strategic Bushfire Management Plan*”. ESA does not currently publish the list given publication of such data could compromise commercial and security sensitivities.

The Bill gives effect to the Auditor-General’s recommendation by amending section 74(2)(f) to remove the requirement for the Strategic Bushfire Management Plan (SBMP) to ‘publish’ a list of privately owned assets of public interest vulnerable to bushfire and instead requires the ESA to ‘maintain’ a list.

Bushfire Operational Plans

Territory Agencies and some rural leaseholders are required to prepare bushfire operational plans consistent with the SBMP under section 78 of the Act. Currently bushfire operational plans need to be submitted to the Commissioner for approval every two years.

The Bill removes the requirement that rural leaseholders submit bushfire operational plans rural leaseholders for approval every 2 years, replacing it with a requirement that the plans be submitted every 5 years. This amendment aligns and harmonises the requirements for bushfire operational plans with Land Management Agreements which are required every five years. The Bill also removes an exemption for certain rural leaseholders from having to develop a bushfire operational plan where their Land Management Agreement is consistent with the Strategic Bushfire Management Plan. All rural leaseholders who are subject to section 78 (1) (b) will now have to prepare a bushfire operational plan and provide it to the Commissioner for approval. This change ensures that owners of land subject to a higher risk

³ ACT Auditor-General’s Performance Audit - Bushfire Preparedness - Recommendation 3, page 60 & 61.

of bushfire must prepare a bushfire operational plan, and have that plan approved by the Commissioner, as the relevant expert on managing bushfire risk in the Territory. The ACT Rural Fire Service will support rural leaseholders to prepare Bushfire Operational Plans through the Farm Firewise Program.

Emergency Controller powers surrounding essential services

Among the objects of the Emergencies Act is to provide for effective emergency management that has regard to the need to prepare for, prevent, respond to and recover from emergencies. Among the ways that the Act does this is by granting an Emergency Controller with certain powers to manage emergencies that, because of its scale or nature present a significant risk of disruption of essential services in the ACT.

Currently, an Emergency Controller may only maintain, restore or prevent disruption of essential services. The amendments in this Bill provide the Emergency Controller with powers, to not only maintain, restore or prevent disruption of essential services, but to also control and coordinate the distribution of essential services in times of an emergency⁴.

This change reflects modern practice in emergency management to focus on an “all hazards” approach to preparedness, prevention, response and recovery. The amendment is consistent with powers provided in other jurisdictions such as New South Wales.

Emergency Controller powers surrounding information

An additional power has been included for an Emergency Controller requiring a person to give information, answer questions, or produce documents or anything else, reasonably needed for the management of an emergency. This will be critical when requiring information from a range of bodies in relation to determining such things as: levels of essential services available; hazardous materials kept on site; passenger details for major transport accidents; architectural plans and drawings.

These powers are subject to offence provisions provided for in section 164 for those that fail to comply with direction given under emergency powers.

⁴ The *Emergencies Act* defines an emergency “as an actual or imminent event that requires a significant and coordinated response”. Examples include, and are not limited to, bushfire, storm, earthquake, epidemic, explosion or shortage of electricity, gas, water or fuel.

ACT Magistrates Court (Litter Infringement Notices) Regulation 2004

A discrete infringement penalty is to be created in Schedule 1 of the *Magistrates Court (Litter Infringement Notices) Regulation 2004* for offences pursuant to section 8 of the *Litter Act 2004* for items that pose a fire risk such as lit cigarettes. The maximum penalty currently for an offence under the section is currently 10 penalty units (\$1500) maximum a with \$200 fine. It is proposed that a separate category of penalty be created of 10 penalty units with \$300 infringement notice penalty. The proposed infringement penalty complies with the requirement in the ACT Guide for Framing Offences that an infringement penalty should not exceed 20% of the maximum penalty for an offence.

Human Rights Considerations

Power to close premises

As a public authority for the purposes of the *Human Rights Act 2004*, the emergency services commissioner is obliged to act consistently with human rights when exercising powers under the *Emergencies Act 2004*. It is possible that the amendment clarifying the power of the chief officer and emergency controllers to close a premise in the event of an emergency may engage human rights, particularly the right to freedom of movement and the right to privacy. Any limitation on these rights is reasonable and proportionate, noting the public interest benefits from addressing the risks to community safety associated with emergencies. Section 28 of the *Human Rights Act 2004* provides that human rights are subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society. Section 28 (2) of the *Human Rights Act 2004* provides that in deciding whether a limit on a human right is reasonable, all relevant factors must be considered, including:

The nature of the right being limited

The amendment may engage the right to freedom of movement and the right to privacy, to the extent that people may be directed to leave and remain absent from their homes for extended periods.

The importance of the purpose of the limitation

The purpose of the limitation (protecting the individuals concerned, and the broader community, from the dangers posed by an emergency) is of very high importance.

The nature and extent of the limitation

The limitation is not extensive. The power to close any premises may be exercised only to protect or preserve life, property or the environment. The chief officer of an emergency service (and in turn emergency controllers, who may exercise these functions in an emergency) already have significant powers under the Act, including to: enter land; remove, destroy or demolish structures and vehicles; regulate or prohibit the movement of people; and evacuate people from an area to another place. When the power to close any premise is exercised by an emergency controller (under sections 150C and 160A) the Act provides that emergency controller may not use this power to end an industrial dispute or deal with a riot or other civil disturbance.

The relationship between the limitation and its purpose

The amendment seeks to support the emergency services commissioner and the emergency services efforts to protect and preserve life, property and the environment, by clarifying that the general powers of a chief officer of an emergency service includes the power to close premises. In an emergency, the chief officer (or an emergency controller exercising the powers of the chief officer) may close and evacuate premises such as schools, houses and shopping centres to safeguard the lives and safety of persons inside those premises. Any limitation on a person's human rights would be to that person's benefit, as the risk to their life and safety posed by the emergency would be reduced.

Less restrictive means reasonably available to achieve the purpose

It is not considered that there are any less restrictive means available to achieve the purpose of the amendment. For these reasons it is considered that any limitation arising from this amendment is reasonable and proportionate.

Require a person to give information, answer questions or produce documents or anything else needed

The amendments granting the chief officer the power to require a person, and granting emergency controllers the power to direct a person, to give information, answer questions, or produce documents or anything else, reasonably needed may engage human rights. Rights engaged may include the right to privacy and rights in criminal proceedings. Any limitation on these rights is reasonable and proportionate, noting the public interest benefits from addressing the risks to community safety associated with emergencies, and that the direction can only be issued in an emergency. Section 28 of the *Human Rights Act 2004* provides that

human rights are subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society. Section 28 (2) of the *Human Rights Act 2004* provides that in deciding whether a limit on a human right is reasonable, all relevant factors must be considered, including:

The nature of the right being limited

Clause 10 amends the general powers of chief officers in section 34 of the Act. It gives a chief officer the power to require a person to give information, answer questions, or produce documents or anything else, reasonably needed. There is no restriction on when the chief officer may make such a requirement of a person (i.e. it is not restricted to an emergency situation), although the requirement may only be made for the protection or preservation of life, property or the environment, and the requirement must be reasonably needed. There is no power to compel a person to comply with such a requirement, nor is it an offence for failing or refusing to comply with the requirement.

Clauses 19 and 21 amends the powers of emergency controllers to manage an emergency both when a state of emergency has not been declared (clause 19) and when there is a declared state of emergency (clause 21). The amendments give an emergency controller to power to direct a person to give information, answer questions, or produce documents or anything else, reasonably needed. The power to issue a direction can only be made for the purposes of managing an emergency, must be reasonably needed, and only applies to an emergency that, because of its scale or nature presents a significant danger to the health or safety of people, animals or property in the ACT or to the environment of the ACT, or presents a significant risk of disruption of essential services in the ACT (section 150). The power does not apply to ending an industrial dispute, or dealing with a riot or other civil disturbance (section 150(3)). Failing to comply with the direction is a strict liability offence under section 164.

The amendment may engage the right to privacy and reputation, to the extent that people may be directed to give information, answer questions or produce documents or anything else needed. Strict liability offences engage the right to presumption of innocence.

The importance of the purpose of the limitation

The purpose of the limitation (allowing a chief officer to undertake necessary emergency planning, and allowing an emergency controller to manage an emergency that may cause harm to life, property and the environment) is of very high importance.

The nature and extent of the limitation

Any limitation is not extensive.

The power of a chief officer to require a person to provide information, answer questions or produce documents or anything else reasonably needed may only be exercised for the protection or preservation of life, property or the environment and must be reasonably needed.

The power of emergency controller to issue a direction for a person to give information, answer questions, or produce documents or anything else, reasonably needed can only be exercised for the purposes of managing an emergency, and only applies to an emergency that, because of its scale or nature presents a significant danger to the health or safety of people, animals or property in the ACT or to the environment of the ACT, or presents a significant risk of disruption of essential services in the ACT (section 150). The direction is also limited to what is reasonably needed by the emergency controller. The power does not apply to ending an industrial dispute, or dealing with a riot or other civil disturbance (section 150(3)).

Both a chief officer and an emergency controller already have extensive powers under the Act. A chief officer may enter land with any necessary assistance or force, demolish or destroy structures or vehicles, direct the movement of people or vehicles and require a person to give reasonable assistance to a member of the emergency service. An emergency controller may direct the movement of people or vehicles, direct that property be placed under their control, and take possession of any premises. The new power is consistent with those existing powers. It is already an offence (under section 164) for a person to fail to comply with a direction of an emergency controller. This amendment does not alter the offence, or the penalty for the offence, but extends the offence to cover this new direction power to ensure consistency within the Act.

The relationship between the limitation and its purpose

The amendment seeks to support the efforts of a chief officer to effectively undertake emergency management planning, and the efforts of an emergency controller to manage the

response to an emergency. The amendment ensures that information or documents necessary to effective emergency planning or emergency response is obtained. Instances when the power could be used includes when a chief officer is developing emergency response planning and wishes to know what flammable materials are stored on an industrial premise, or if there is an accident involving hazardous substances and the emergency controller needs to determine what substances are involved to ensure an effective response.

The power already exists within the Act, with inspectors and investigators able (under section 101) to require the occupier, or anyone at the premises, to give information, answer questions, or produce documents or anything else, reasonably needed. Section 102 provides that it is offence, punishable by 50 penalty units, to fail to take all reasonable steps to comply a requirement.

The existing offence in section 164 (1) of failing to comply with a direction from an emergency controller is a strict liability offence, with a maximum penalty of 50 penalty units. Clause 23 of this Bill extends that offence to include the new direction power. There is no change to the penalty for that offence.

Strict liability offences engage the right to presumption of innocence. Extending the existing offence provision to the new power to direct a person to provide information and/or documents ensures that this power of direction is treated consistently throughout the Act. Given the potentially devastating consequences to public health and safety, and property and the environment from non-compliance with the power of direction it is appropriate that the offence be one of strict liability. The mistake of fact defence and other defences in part 2.3 of the Criminal Code continue to apply to the offence. In addition, the penalty does not exceed 50 penalty units and does not include a term of imprisonment.

Any limitation on a person's human rights would be to that person's overall benefit, as the risk to their life, safety and property posed by an emergency would be reduced.

Less restrictive means reasonably available to achieve the purpose

These amendments seek to ensure that emergency personnel have access to appropriate information to support emergency planning and an effective emergency response. Any sanction applying as a result of the amendment is restricted to an emergency situation when lives and property are realistically in jeopardy. Noting the serious consequences that may result from a failure to comply, it is not considered that there are any less restrictive means available to achieve the purpose of the amendment.

For these reasons it is considered that any limitation arising from this amendment is reasonable and proportionate.

Control and coordinate the distribution of services

It is not considered that the amendment clarifying that an emergency controller may control and coordinate the distribution of essential services raises human rights concerns. The *Human Rights Act 2004* does not explicitly recognise property rights, although the right to privacy provides that everyone has the right not to have his or her privacy, family, home or correspondence interfered with arbitrarily and the right not to be treated in a cruel, inhuman or degrading way has been argued to encompass any adverse effect on the enjoyment of property.

If the amendment did in fact engage a human right, either under the *Human Rights Act 2004* or some other basis of human rights such as international law, any limitation would be justifiable and reasonable. Any limitation would be of high importance, as the power seeks to ensure an emergency controller has the power to control and coordinate the distribution of essential services for the effective management of an emergency and maintain, restore or prevent disruption of the service. Any limitation would not be extensive, as it would only apply in an emergency and would only apply to owners of essential services – the majority of which are publicly owned or otherwise controlled by governments. The Act already provides the power for emergency controller to maintain, restore or prevent disruption of these services. The amendment seeks to support the efforts of the emergency controller to exercise their statutory functions of managing the response to, and the recovery from, emergencies by ensuring that essential services are appropriately controlled and coordinated for the benefit of the community.

The power to control and coordinate the distribution of essential services may be in certain circumstance be deemed an acquisition of property. The Act (section 169) already provides a person who suffers loss because of an act of an emergency controller (which would include any such acquisition of property or any other loss caused by the control and coordination of the essential services) is entitled to be paid reasonable compensation by the Territory for the loss. The Act already provides that the chief officer of an emergency service may, among other powers, control, shut off or disconnect a supply of fuel, gas, electricity, water or anything else, or use a supply of water without charge. For these reasons, and noting that an emergency controller may only control and coordinate the distribution of essential services in

an emergency situation (as set out in section 150) and for the management of an emergency, any limitation on a person's property right is considered to be justifiable and proportionate, and it is not considered that there are any alternative ways of achieving the policy objectives.

Littering by discarding a lit cigarette

The Bill creates a new penalty for the existing offence of littering (under section 8 of the *Litter Act 2004*), where a person litters by discarding a cigarette, cigarette butt, match or other item that is lit or not fully extinguished. A person who commits an offence in that manner would be subjected to a maximum penalty of 10 penalty units, with an infringement notice penalty of \$300. This compares to the existing penalty for littering of 10 penalty units/infringement notice penalty of \$60 (where the litter is a ticket, voucher or receipt, a confectionary wrapper, cigarette (unlit or extinguished), cigarette packet or a similarly small item) or 10 penalty units/infringement notice penalty of \$200 (for any other litter). The \$300 infringement notice penalty complies with the requirement in the ACT Guide for Framing Offences that an infringement penalty should not exceed 20% of the maximum penalty for an offence.

The existing offence of littering in section 8 of the *Litter Act 2014* is a strict liability offence. This amendment does not create a new offence, nor amend the existing offence in section 8, and only amends the penalty for the existing offence where the offence is committed a certain way. There has also been no change to the existing Criminal Code defences available to a person charged with the offence, such as the mistake of fact defence (Code section 36) and the defence of intervening act (Code section 39).

The new penalty is more proportionate to the gravity of the offence. Discarded cigarettes are responsible for causing a significant number of bushfires each year through Australia and the ACT, with approximately seven percent of Australian bushfires caused by discarded cigarettes. History has shown that bushfires pose a very serious threat to the Territory. Bushfires are regularly responsible for numerous death and serious injuries, and cause significant economic and property damage and the loss of plant and animal life.

Clause Notes

Clause 1 Name of Act

This clause specifies the name of the Bill, once enacted, as the *Emergencies Amendment Act 2014*.

Clause 2 Commencement

This clause provides the Act will commence on the day after its notification day.

Clause 3 Legislation amended

This clause states that the Act will amend the *Emergencies Act 2004* and the *Magistrates Court (Litter Infringement Notices) Regulation 2004*.

Clause 4 Objects of Act **Section 3 (d)**

This clause amends the objects of the *Emergencies Act 2004* to recognise the value to the community from not only emergency service members, including volunteer members, but also providers of operational and administrative support to the commissioner and the services.

Clause 5 Commissioner's functions **Section 8 (1) and notes**

This clause replaces existing section 8 (1) and notes. Section 8 specifies the functions of the commissioner. Section 8 (1) provides that the commissioner is responsible for the overall strategic direction and management of the emergency services. The amendment adds to the commissioner's responsibilities the management of the operational and administrative support to the services. Examples of operational and administrative services include spatial services, logistics and fleet management, public information, communications centre, risk management and planning and training.

Clause 6 Section 8 (4) (e)

This clause replaces existing section 8 (4) (e). Section 8 (4) currently provides that the commissioner, in the exercise of the commissioner's functions, must recognise the

importance of all emergency service members, including volunteer members, to the services and the community. New section 8 (4) (e) requires the commissioner to also recognise the importance of providers of operational and administrative support to the commissioner and the services.

Clause 7 Section 8 (4) (j), except examples and note

This clause replaces existing section 8 (4) (j), except for the examples and note. This section currently requires that, in exercising the commissioner's functions, the commissioner must participate in strategic and operational planning for emergencies. The amendment provides that the commissioner must oversee and coordinate strategic and operational planning for emergencies. This amendment reflects the commissioner's obligation to ensure that the necessary emergency planning is undertaken by the emergency services agency, rather than the commissioner necessarily personally participating in all emergency planning activities.

Clause 8 Section 8 (4) (j), note

This is a consequential, technical amendment. The existing note to section 8 (4) (j) was moved to section 8 (1) through clause 5. This amendment removes the duplicated note, which is now redundant. There has been no change to the wording of the note itself.

**Clause 9 Directions by commissioner in relation to emergencies
Section 8A (2) and (3)**

Section 8A was inserted in 2012 to ensure that the commissioner was a single point of coordination for emergencies requiring a coordinated response for which an emergency controller had not yet been appointed. This coordination power included the power (in 8A (2)) to direct a chief officer to undertake response or recovery operations in relation to the emergency. However, this power is limited by current section 8A (3), which states that the Commissioner "may not direct a chief officer to undertake an operation in a particular way". Emergency services agency emergency planning has highlighted the potential for conflict between the two provisions. In an emergency it is important that there be no ambiguity as to the powers for the commissioner to direct that response or recovery operations be undertaken.

This clause replaces existing section 8A (2). New section 8A (2) allows the commissioner, for the effective coordination of the emergency, to direct a chief officer to undertake response or recovery operations. This new provision will provide clarify to emergency arrangements,

and confirms that the commissioner may direct a chief officer to undertake response or recovery operations

The clause also omits existing section 8A (3), which provided that the Commissioner may not direct a chief officer to undertake an operation in a particular way. As noted above, this clause was potentially in conflict with the commissioner's powers to direct the chief officer to undertake response or recovery operations in section 8A (2).

Clause 10 General powers of chief officers
New section 34 (1) (la) and (lb)

Section 34 (1) provides a chief officer with a variety of powers for the protection or preservation of life, property or the environment. This clause provides the chief officer with two new powers.

The first power is to close any premise. Premise is defined in the dictionary of the *Emergencies Act 2004* as including 'any land, structure or vehicle and any part of an area of land, a structure or vehicle'. Examples of premises provided in the new section are government or independent schools, child care centres, business premises, health care facilities, residential homes. Currently the closure of any premise in an emergency is achieved in a de facto manner using powers such as the power in section 34 (l) to evacuate people from an area to another and the power in 34 (k) to regulate or prohibit the movement of people, animals or vehicles.

The second power is to require a person to give information, answer questions, or produce documents or anything else reasonably needed. This power is necessary to allow the chief officer to undertake necessary emergency planning. It may be used, for example, to require a landowner to advise what chemicals are stored on a particular property, which is an important aspect of effective emergency planning for that property and the surrounding area.

There is no sanction or penalty attached to a person who refuses to comply with a request from the chief officer for information, answer questions or produce documents, or who refuses to leave a building. However, penalties will apply to non-compliance with a request to provide information, answer questions or produce documents when the chief officer's powers are exercised by an emergency controller in an emergency under sections 150C (2) (h) or 160A (2)(h) as outlined in clauses 19 and 21. In addition, a person who refuses to

leave a premise in a fire area may commit an offence under existing section 189, which is not amended by this Bill.

Clause 11 Strategic bushfire management plan

New section 72 (2)

Section 72 requires the commissioner to prepare a strategic bushfire management plan and submit the draft plan to the Minister for making. The existing section 72 (2) requires the commissioner, in preparing the draft plan, to consult with the bushfire council. The amended 72 (2) adds the conservator as a party that must be consulted with when preparing the draft plan. The commissioner is also required to consider the impact of the plan on any land management agreement, land manager or plan of management under the *Planning and Development Act 2007*. .

New 72 (2A) also requires the Minister to prepare a written report setting out the commissioner's response to any matters raised by the conservator during consultation on the draft plan. This report must be given to the Minister with the draft plan. This amendment strengthens the consultation requirements for the development of the draft plan.

Clause 12 New section 74 (4A)

This clause inserts a new section 74 (4A). This section requires the Minister, upon receiving a report by the commissioner setting out the commissioner's response to any matters raised by the conservator during consultation on the draft plan, to present that report to the Legislative Assembly when the plan is presented.

Clause 13 Content of strategic bushfire management plan

New section 74 (2) (f)

Section 74 specifies what must be included in a strategic bushfire management plan. Existing section 74 (2) (f) provides that a plan must include a list of privately-owned assets of public interest vulnerable to bushfire. The ACT Auditor-General has raised concerns that publication of this information raises privacy concerns, and has recommended that the requirement to publish the information be removed. This clause gives effect to that recommendation. Rather than publish the information, new section 74 (2) (f) requires a plan to include a statement about how information is kept about privately-owned assets of public interest vulnerable to bushfire.

Clause 14 Section 77 heading

This clause amends the heading for section 77, from ‘Effect of strategic bushfire management plan’ to ‘Compliance with strategic bushfire management plan’. The new heading better reflects the content of section 77 after the amendment made by clause 15 below.

Clause 15 Section 77 (3)

This clause omits existing section 77 (3). That section provided that a strategic bushfire management plan had no effect to the extent that it was inconsistent with any plan of management in force under the *Planning and Development Act 2007* in relation to an area of unleased territory land or land occupied by the Territory. That section is unnecessary as a result of new section 77A, as inserted by clause 16 below. New section 77A provides that, if the strategic bushfire management plan is inconsistent with a plan of management, the plan of management has no effect to the extent of the inconsistency.

Clause 16 New section 77A

This clause inserts a new section 77A. The new section applies if the strategic bushfire management plan is inconsistent with a plan of management in force in relation to an area of unleased territory land or land occupied by the Territory. Section 77A (2) provides that the plan of management has no effect to the extent of the inconsistency. Although the commissioner ensures that extensive consultation is undertaken when developing the strategic bushfire management plan to ensure that there is no inconsistency between the different plans across government relating to public land, if any inconsistency does arise, this clause provides that the strategic bushfire management plan prevails over the plan of management to the extent of the inconsistency. This reflects that the strategic bushfire management plan is the most comprehensive plan for bushfire prevention and mitigation in the ACT.

Clause 17 Bushfire operational plans
Section 78 (1) (b) (iii)

A bushfire operational plan sets out the work and activities to be undertaken on an area of land by which a landholder aims to help manage the risk of bushfire for that land. These

activities may include controlled burning, slashing, mowing and clearing, creating and maintaining fuel breaks and infrastructure maintenance. Bushfire operational plans are approved by the emergency services agency, as the expert agency in managing bushfire risk in the Territory.

Currently, the owner of an area of land in a bushfire abatement zone that meets the requirements of section 78 (1) (b) (i) and (ii) is not required to prepare a bushfire operational plan if there is a land management agreement applying to that land that is consistent with the strategic bushfire management plan. The strategic bushfire management plan is developed by the emergency services agency and establishes the basis and framework for the efficient, effective and comprehensive management of fire and fire-related activities for protecting human life, property, assets and the environment throughout the Territory.

This clause omits section 78 (1) (b) (iii), and so removes the exemption from preparing a bushfire operational plan for landholders who already have a land management agreement that is consistent with the strategic bushfire management plan. All owners of an area of land in a bushfire abatement zone that meets the requirements of section 78 (1) (b) (i) and (ii) will now be required to develop a bushfire operational plan and submit it to the commissioner for approval.

Clause 18 Section 78 (5)

Section 78 (5) currently requires bushfire operational plans to be updated every 2 years.

This amendment harmonises reporting requirements for rural leaseholders so that a leaseholder is only required to update their bushfire operational plan at least every 5 years.

This is consistent with the existing obligation on rural leaseholders in the *Planning and Development Act 2007* to update land management agreements for their property at least every 5 years. This will allow leaseholders to prepare and update their bushfire operational plan and land management agreement at the same time.

There is no change to the existing requirement that a person required to prepare a bushfire operational plan under section 78 (1) (a) (which applies to managers of an area of unleased territory land or land occupied by the Territory) is required to update their bushfire operational plan at least every 2 years.

Clause 19 Emergency powers—no declared state of emergency
Section 150C (2) (ca)

This clause is related to the amendment made by clause 10. That clause amended section 34 to give the chief officer the power to require a person to give information, answer questions, or produce documents or anything else, reasonably needed. This amendment gives an emergency controller the power to direct a person to give information, answer questions, or produce documents or anything else, reasonably needed to assist with the management of the emergency.

Although section 150C (2) (h) provides that the emergency controller may do anything else that the chief officer may do under section 34, this amendment gives the emergency controller the power to direct a person to comply. This means that a failure to comply with a direction given by the emergency controller is an offence under section 164 (1). It is not an offence for a person to decline to provide information, answer questions or produce documents to the chief officer when requested by the chief officer under section 34. A failure to comply with a direction in an emergency situation is much more serious, and potentially poses dangers to life and/or property. Extending the existing offence of failing to comply with a direction given under emergency powers to the new power to direct a person to provide information, answer questions or produce documents is consistent with the offence provisions in the Act. Other directions that the emergency controller can provide – to which the offence in section 164 (1) already applies – include directing movement of people and vehicles and directing that the owners of property place it under the control of the emergency controller.

The offence in section 164 (1) is a strict liability offence, with a maximum penalty of 50 penalty units.

Clause 20 Section 150C (2) (g)

Section 150C specifies the powers available to an emergency controller in an emergency where a state of emergency has not been declared. Section 150C (2) (g) currently provides that, for the management of the emergency, the emergency controller may maintain, restore or prevent disruption of essential services. This clause amends that section so that, in addition to the existing power to maintain, restore or prevent disruption of these services, an emergency controller may also control and coordinate the distribution of services.

The term ‘essential services’ is not defined in the *Emergencies Act 2004* and so take its ordinary meaning. The Macquarie Dictionary, 5th edn, defines essential services as:

‘those services considered necessary to the community, including the police, medical, hospital and ambulance service, the fire brigades, and the defence forces, and sometimes also including electric power, gas, telephone, water supply, and transport services’.

This clause does provide some non-exhaustive examples of an essential service – water, electricity, gas, fuel, food, health, waste disposal, sanitation, freight, public transport, correctional facilities.

This amendment provides the ACT with similar powers to that available in NSW to control and coordinate essential services in an emergency situation.

Clause 21 Emergency powers—declared state of emergency
Section 160A (2) (ca)

This clause mirrors the amendments made by clause 19, but in relation to section 160A (2) (g), which specifies the powers available to an emergency controller in an emergency where a state of emergency has been declared (clause 19 relates to section 150C, which applies where a state of emergency has not been declared).

This amendment gives an emergency controller the power to direct a person to give information, answer questions, or produce documents or anything else, reasonably needed to assist with the management of the emergency. A failure to comply with a direction given by the emergency controller is an offence under section 164 (1). The offence in section 164 (1) is a strict liability offence, with a maximum penalty of 50 penalty units.

Clause 22 Section 160A (2) (g)

This clause mirrors the amendments made by clause 20, but in relation to section 160A (2) (g), which specifies the powers available to an emergency controller in an emergency where a state of emergency has been declared. This clause amends section 160A (2) (g) so that, in addition to the existing power to maintain, restore or prevent disruption of essential services, an emergency controller may also control and coordinate the distribution of these services.

Clause 23 Failure to comply with direction given under emergency powers
Section 164 (1)

This clause is consequential to clauses 19 and 21. Those clauses gave an emergency controller the power, in an emergency, to issue a direction that a person must give information, answer questions or produce documents or anything else reasonably needed.

This clause amends the offence provision in section 164 (1) to include the new power to give the directions for this purpose.

Section 164 provides that it is an offence for a person to fail to comply with a direction given by an emergency controller under section 150C (2) (a), (b) or (c) or section 160A (2) (a), (b) or (c). The new power to direct a person give information, answer questions or produce documents or anything else reasonably needed is consistent with the existing powers to give directions, for such purposes as directing movement of people and vehicles and directing that the owners of property place it under the control of the emergency controller. It is appropriate that a failure to comply with a direction to give information, answer questions or produce documents or anything else reasonably needed also be an offence under section 164, noting the serious consequences that may result to the broader community from a failure to comply with such a direction.

The offence in section 164 is a strict liability offence, with a maximum penalty of 50 penalty units.

Clause 24 Magistrates Court (Litter Infringement Notices) Regulation 2004
Schedule 1, new item 1.1A

Schedule 1 of the *Magistrates Court (Litter Infringement Notices) Regulation 2004* specifies the penalty payable for an offence against the *Litter Act 2004*, under an infringement notice for the offence. Item 1 specifies the penalty payable for committing the offence of littering (section 8 of the *Litter Act 2004*).

This clause inserts a new item 1.1A, which specifies the penalty payable where the offence in section 8 was committed by littering with a cigarette, cigarette butt, match or other item that is lit or not fully extinguished. The penalty unit for the offence is 10 penalty units (which is the same as the penalty units for the other offences under section 8). The infringement penalty is \$300, which compares with an infringement penalty of \$60 (where the litter is a

ticket, voucher or receipt, a confectionary wrapper, cigarette (unlit or extinguished), cigarette packet or a similarly small item) or \$200 (for any other litter).

This amendment reflects the serious consequences arising from littering with lit cigarettes or other items that are lit or not fully extinguished. Littering with lit cigarettes poses a significant bushfire risk, and is responsible for numerous fires each year in the Territory and across Australia.