**2018**

**THE LEGISLATIVE ASSEMBLY FOR THE**

**AUSTRALIAN CAPITAL TERRITORY**

**Emergencies Amendment Bill 2018**

**EXPLANATORY STATEMENT**

**Presented By**

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EMERGENCIES AMENDMENT BILL 2018

# Summary

This Explanatory Statement (Statement) relates to the *Emergencies Amendment Bill 2018* (the Bill) as presented to the Legislative Assembly. This Statement has been prepared to assist the reader’s understanding of the Bill and to help inform debate on the Bill. It does not form part of the Bill and has not been endorsed by the Legislative Assembly.

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

**Intent of the Bill**

The Bill amends the *Emergencies Act 2004* (the Act) to enhance the clarity and operation of the Act, particularly in relation to the functions of the Security and Emergency Management Senior Officials Group (SEMSOG), emergency sub-plans and the application of the Act during an emergency situation.

In order to achieve this intent, the Bill amends the Act to:

* provide that the Directors-General of all ACT administrative units and the Under Treasurer will automatically become members of the Security and Emergency Management Senior Officials Group (SEMSOG)
* provide an additional main function for SEMSOG of providing for liaison between entities in relation to ACT security-related matters
* recognise the ACT emergency sub-plans as a formal part of the ACT’s emergency management framework
* require that the Minister make a separate stand-alone Community Communication and Information Plan
* clarify that if the Chief Minister is unable to exercise the powers of declaring a state of emergency or appointing an emergency controller, the Deputy Chief Minister can exercise this power under the *Australian Capital Territory (Self-Government) Act 1988 (Cwlth)* (Self-Government Act)
* clarify that the Chief Minister will not have to consult with an appropriate standing committee of the Legislative Assembly prior to the appointment of an emergency controller, and
* provide for the continued appointment of the emergency controller, appointed outside a declared emergency, in the event that a state of emergency is declared.

**Overview of Bill and reasons for amendments of specific provisions**

The Bill will ensure that all administrative unit Directors-General and the Under Treasurer are standing members of SEMSOG

Under section 142(1) of the Act, the constitution of SEMSOG consists of:

*(a) the director-general; and*

*(b) the commissioner; and*

*(c) the chief officer (ambulance service); and*

*(d) the chief officer (fire and rescue service); and*

*(e) the chief officer (rural fire service); and*

*(f) the chief officer (SES); and*

*(g) the chief police officer; and*

*(h) the chief health officer; and*

*(i) the other members appointed under subsection (2).*

Other administrative unit Directors-General and the Under Treasurer are therefore not standing members of SEMSOG. They are appointed to SEMSOG through a separate appointment process under subsection 142(2) of the Act.

The SEMSOG Terms of Reference provide that all administrative unit Directors-General and the Under Treasurer are SEMSOG members. In the interests of administrative efficiency, the Bill will amend the Act to recognise all administrative unit Directors-General and the Under Treasurer as standing members of SEMSOG. This will remove the need for the Minister to re-appoint a Director-General to SEMSOG should their position title change.

The Bill will include security as a main function of SEMSOG

The Act states that the main function of SEMSOG is *to provide for liaison between entities in relation to emergency management.*

However, in practice, SEMSOG has a diverse role that includes the following:

* implementing whole of government emergency management policy arrangements, for example, the ACT’s Protective Security Policy Framework (PSPF) and *Australia’s Strategy for Protecting Crowded Places from Terrorism* and
* coordinating emergency management matters between government entities for consideration by the Security and Emergency Management Committee of Cabinet (SEMC) which provides strategic direction for the ACT Government’s emergency prevention and preparedness arrangements.

In addition, the current threat environment requires a strategic approach for planning and coordinating both security and public safety matters.

Therefore the Bill will amend the Act to recognise the main function of SEMSOG as being to provide for liaison between entities in relation to both security and emergency management.

The Bill will recognise ACT emergency sub-plans as a formal part of the ACT’s emergency management framework.

Section 148 of the Act requires that the emergency plan must include a plan for an emergency if there is a reasonable possibility of that emergency happening in the ACT. Section 148 provides examples of such plans, including a terrorist attack plan, a flood emergency plan and a storm emergency plan.

As part of the ACT’s emergency management framework, ACT Government administrative units and agencies have developed emergency sub-plans including:

* hazard-specific sub-plans for storms, bushfires, flood, extreme heat, hazardous materials and animal diseases and
* supporting sub-plans where operational arrangements and functions are required, such as recovery and fatality management arrangements, for example, the Urban Search and Rescue Sub-plan.

However, the Act only refers to the Emergency Plan and not to sub-plans. It is therefore unclear whether these sub-plans are recognised as part of the Emergency Plan and the emergency management framework in Part 7.2 of the Act.

The sub-plans, which deal with specific hazards, including the examples given above, such as storm and bushfires, would have been intended to form part of the ACT emergency management framework. It would therefore defeat the purpose of this provision if the sub‑plans were not included within the ACT emergency management framework and if the sub-plans were not subject to the same statutory requirements as the Emergency Plan.

The Bill will therefore provide a statutory basis for the sub-plans so that they will be a part of the ACT statutory emergency management framework.

The Bill will also clarify that an additional function of SEMSOG, in addition to preparing the Emergency Plan, will be to support the Minister in the preparation of an emergency sub-plan.

Furthermore, the Bill will clarify that it will no longer be sufficient for the Emergency Plan to include a Community Communication and Information Plan but that the Minister will be required to make a separate stand-alone Community Communication and Information Plan for communicating critical information to the public during an emergency.

The Bill will reference the Self-Government Act to clarifythat the Deputy Chief Minister can exercise the powers of the Chief Minister if the Chief Minister is unable to exercise his powers

Under the Act, only the Chief Minister has the power to appoint an emergency controller (section 150A and 159) or declare a state of emergency (section 156).

It is not inconceivable that a situation could arise where the Chief Minister is absent from duty, or for any other reason, unable to exercise his or powers as Chief Minister. This could interfere with the declaration of a state of emergency or the appointment of the Emergency Controller.

The Bill will therefore amend sections 150A, 156 and 159 of the Act to include notes referencing section 44 of the Self-Government Act. Section 44 provides that where the Chief Minister is absent from duty, or, for any other reason, unable to exercise the powers of the Chief Minister, the Deputy Chief Minister can act as the Chief Minister.

The Bill will remove the statutory requirement of the Chief Minister having to consult with the appropriate Legislative Assembly standing committee before appointing an emergency controller

Under sections 150A and 159 of the Act, the Chief Minister may appoint an emergency controller, i.e. make a statutory appointment, either outside a declared state of emergency or during a declared state of emergency.

Division 19.3.3 of the *Legislation Act 2001* (Legislation Act)requires that where a Minister makes an appointment to a statutory position of a non-ACT public servant, an appointment for longer than six months, an appointment for a second or consecutive term or the appointment of a non-advisory position, the Minister is required to consult with the appropriate standing committee of the Legislative Assembly prior to making the statutory appointment.

A situation may arise where the Chief Minister is seeking to re-appoint a non-ACT public servant, such as the Chief Police Minister, as the emergency controller but cannot formally do so until he or she has consulted with the appropriate Legislative Assembly standing committee under the Legislation Act.

This requirement creates the risk of a delay in the appointment of an emergency controller.

It also creates the risk that where this requirement is not complied with, and the Chief Minister fails to consult with the appropriate Legislative Assembly standing committee, the appointment would not have access to the necessary powers and protections under the Act.

The Bill will therefore exempt all emergency controller appointments from the requirements of Division 19.3.3 of the Legislation Act, by explicitly dis-applying these provisions, to the appointment of an emergency controller.

The Bill will provide for the continuation of the appointment of an emergency controller, appointed outside a declared state of emergency, to continue if a state of emergency is declared.

Under section 150A of the Act, the Chief Minister has the power to appoint an emergency controller outside a declared state of emergency. This would occur when the Chief Minister is satisfied that an emergency has happened, is happening or is likely to happen and that while it is not necessary to declare a state of emergency, an emergency controller is required to be appointed to address the emergency situation.

However, section 150A provides that the appointment of the emergency controller outside the emergency automatically ends when a state of emergency is declared under subsection 156(2) of the Act.

In an emergency situation in the ACT, it is more likely than not that an emergency controller appointed by the Chief Minister outside a declared state of emergency would continue in that position if the emergency worsens and a state of emergency is declared. Therefore, the termination of the emergency controller’s appointment on the declaration of a state of emergency, when the emergency controller is in most cases re-appointed to that position, is unnecessary and creates additional procedural requirements at a critical time during the emergency situation.

Furthermore, the termination of the emergency controller’s appointment would impede the emergency controller’s task of managing the emergency. The function of the emergency controller is to manage the response to, and recovery from, an emergency and therefore any restrictions on the ability of the emergency controller to perform these functions would undermine the whole purpose of having an emergency controller.

In addition, there is a risk that if a state of emergency were declared without the re-appointment of the emergency controller, on the assumption that the emergency controller continues automatically in this role, the emergency controller would not have access to the necessary powers and protections under the Act.

The Bill will amend the Act to allow for the continuation of an emergency controller appointment, where the emergency controller was appointed outside a state of emergency, if a state of emergency is declared. The Bill will also amend the Act to allow the Chief Minister to appoint a different person to be the emergency controller, and revoke the original appointment.

**Human Rights**

This Bill does not have any human rights implications.

**Details of the ACT Emergencies Amendment Bill 2018**

**Part 1 Preliminary**

1. **Name of Act**

This clause provides that the name of the Act will be the *Emergencies Amendment Act 2018.*

1. **Commencement**

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

**Clause 3** **Legislation Amended**

This clause clarifies that the only legislation to be amended is the Emergencies Act*.*

**Clause 4 Constitution of SEMSOG Section 142 (1) (a)**

This clause substitutes the existing paragraph 142(1)(a) which provides that SEMSOG includes the Director-General, JACS and substitutes it with a new paragraph 142(1)(a) which provides that SEMSOG includes the Directors-General of all the ACT Government administrative units.

This clause also includes a new paragraph 142(1)(aa) which provides that SEMSOG includes the Under Treasurer.

**Clause 5 New section 142 (4)**

This clause inserts a new subsection 142(4) to provide a definition of the Under Treasurer as defined in section of the *Financial Management Act 1996.*

**Clause 6 Functions of SEMSOG Section 143**

This clause includes security as an additional new function for SEMSOG. In addition to providing liaison between entities in relation to emergency management, SEMSOG will provide liaison between entities in relation to security and emergency management.

**Clause 7 New section 143 (3) (ba)**

Under paragraph 143(3)(b), one of the additional functions of SEMSOG is to support the Commissioner of the Emergency Services Agency (ESA Commissioner) in the preparation of the Emergency Plan or any part of the plan.

This clause includes a new additional function for SEMSOG, which will be to support the Minister in the preparation of an emergency sub-plan.

**Clause 8 Section 148**

This clause substitutes the existing section 148, which provides that the emergency plan must include a plan for an emergency if there is a reasonable possibility of the emergency happening in the ACT.

The new subsection 148(1) instead provides that the Minister may make sub-plans for hazard specific emergencies for the ACT (emergency sub-plans). As the Minister has the function of making the sub-plans, this function can be delegated.

The new subsection 148(1) includes the following examples of emergency plans, some of which are already the subject of sub-plans:

* terrorist attack
* flood emergency
* storm emergency
* bushfire emergency
* urban fire emergency
* chemical or hazardous material incident
* disease or epidemic emergency.

The clause also includes a new subsection 148(2) which provides that the emergency sub-plans may provide a basis for coordination between the emergency services agencies, the Territory, Commonwealth and State agencies and other entities i.e. this new subsection (2) accommodates the supporting sub-plans providing operational arrangements.

Finally, the clause includes a new subsection 148(3) which specifies that the emergency sub-plans must be consistent with the primary emergency plan.

 **Clause 9 Community communication and information plan Section 149 (1)**

The current subsection 149(1) provides that the Emergency Plan must include a Community Communication and Information Plan.

This clause substitutes a new subsection 149(1), which clarifies that the Minister must make a Community Communication and Information Plan.

Therefore, this clause provides that the Minister must make a separate stand-alone Community Communication and Information Plan and it will no longer be sufficient for the Community Communication and Information Plan to be part of the Emergency Plan. The Minister can delegate this function of making the Community Communication and Information Plan.

**Clause 10 Appointment of emergency controller––no declared state of emergency Section 150A (2), new note**

This clause adds a note to confirm that where the Chief Minister is absent from duty or otherwise unable to exercise the powers of the Chief Minister, the Deputy Chief Minister may act as Chief Minister, in accordance with section 44 of the Self-Government Act for the purpose of exercising this power of the Chief Minister of appointing an emergency controller.

**Clause 11 New section 150A (2A)**

This clause dis-applies Division 19.3.3 of the Legislation Act to the appointment of an emergency controller both in a state of emergency and outside a state of emergency.

The Chief Minister will no longer be required to consult with the appropriate standing committee of the Legislative Assembly prior to the appointment of an emergency controller, where the appointment is of a non-ACT public servant, for a period of more than six months, for a second or consecutive term of office or for a non-advisory position, as required in the Legislation Act.

**Clause 12 Section 150A (4)**

The existing subsection 150A (4) provides that the appointment of the emergency controller, where there is no state of emergency, is terminated seven days after the appointment or if a state of emergency is declared. Therefore, the appointment of an emergency controller appointed outside a declared emergency is terminated automatically on the declaration of an emergency.

This clause substitutes the existing subsection 150A (4) to provide that the appointment of the emergency controller will be terminated only if:

* the appointment is revoked (subclause 4(a))
* a state of emergency is declared and the emergency controller is taken to be the emergency controller for the declared emergency (subclause 4(b)) or
* another person is appointed to be the emergency controller for the declared state of emergency (subclause 4(c)).

This clause therefore clarifies that the declaration of a state of emergency does not terminate the appointment of an emergency controller and that the emergency controller is to be taken to be the emergency controller for the declared state of emergency unless another person is appointed to the position of emergency controller.

Note that where another person is appointed to be the emergency controller for the declared emergency, the appointment of the emergency controller appointed outside the emergency will be automatically revoked without the need for an instrument of revocation.

**Clause 13 Functions of emergency controller—no declared state of emergency**

**Section 150B (3)**

Section 150B (3) of the Act provides that the emergency controller appointed outside an emergency must exercise his or her powers in accordance with the emergency plan.

This clause clarifies subsection 150B (3) of the Act to provide that, in addition to exercising his or her emergency powers in accordance with the emergency plan, the emergency controller must also exercise his or her powers in accordance with any relevant emergency sub-plans.

**Clause 14 Declaration of state of emergency**

 **Section 156(2), new note**

This clause adds a note to confirm that where the Chief Minister is absent from duty or otherwise unable to exercise the powers of the Chief Minister, the Deputy Chief Minister may act as Chief Minister, in accordance with section 44 of the Self-Government Act, for the purpose of exercising this power of the Chief Minister of declaring a state of emergency.

**Clause 15 Appointment of emergency controller for declared state of emergency Section 159, new note**

This clause adds a note to confirm that where the Chief Minister is absent from duty or otherwise unable to exercise the powers of the Chief Minister, the Deputy Chief Minister may act as Chief Minister, in accordance with section 44 of the Self-Government Act, for the purpose of exercising this power of the Chief Minister of appointing an emergency controller.

**Clause 16 New section 159 (2) to (4)**

The existing section 159 states that for a declared state of emergency, the Chief Minister must appoint an emergency controller.

This clause clarifies this provision by including:

* subclause (2) which provides that where an emergency controller is appointed without the declaration of an emergency, that person is taken to be the emergency controller for the emergency
* subclause (3) which provides that the Chief Minister may appoint someone else to be the emergency controller for the emergency and
* subclause (4) which provides that Division 19.3.3 of the Legislation Act does not apply to the appointment of an emergency controller for a declared emergency.

As in the unamended section 159, there are no time limits on the appointment of the emergency controller in an emergency.

**Clause 17 Functions of emergency controller Section 160 (3)**

Section 160 provides that the emergency controller in relation to a declared emergency must exercise his or her powers in accordance with the Emergency Plan.

This clause clarifies subsection 160 (3) to provide that the emergency controller for a declared emergency must exercise his or her powers in accordance with the Emergency Plan and any relevant emergency sub-plans.

**Clause 18 Dictionary, new definition of *emergency sub-plan***

This clause includes a definition for the new concept of a sub-plan as defined in section 148 (see clause 8).