

2021

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

EMERGENCIES AMENDMENT BILL 2021

**EXPLANATORY STATEMENT
and
HUMAN RIGHTS COMPATIBILITY STATEMENT
(*Human Rights Act 2004, s 37*)**

**Presented by
Mick Gentleman MLA
Minister for Police and Emergency Services**

EMERGENCIES AMENDMENT BILL 2021

This Bill is not a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004* (the HRA).

INTRODUCTION

This explanatory statement relates to the Emergencies Amendment Bill 2021 (the Bill) as presented to the Legislative Assembly. It has been prepared to assist the reader of the Bill and to help inform debate. 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. 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.

BACKGROUND

This Bill implements all of the recommendations of the Report of the Review of the operation of the *Emergencies Act 2004*, which was tabled in the Legislative Assembly on 16 September 2021.

This Bill also makes consequential amendments to the *Dangerous Substances (Explosives) Regulation 2004*, the *Environment Protection Act 1997*, the *Environment Protection Regulation 2005*, the *Road Transport (Vehicle Registration) Regulation 2000* and the *Territory Records Regulation 2009*.

OVERVIEW OF THE BILL

The Bill implements the following changes as recommended by the Report of the Review of the operation of the *Emergencies Act 2004* (the Act), which was tabled in the Legislative Assembly on 16 September 2021:

Conferring a legislative power on the Minister to appoint a Recovery Coordinator

The ACT Recovery Sub-Plan provides that if the scale or nature of the emergency is such that a number of different ACT Government directorates and agencies need to undertake recovery activities, a Recovery Coordinator will be activated to coordinate recovery efforts across the ACT Government, community sector and private business. The Recovery Coordinator is responsible for ensuring recovery planning, coordination, and stakeholder engagement. A key responsibility of the Recovery Coordinator is to determine the most effective way to inform and deliver recovery services to affected communities.

The review noted there is no reference to the ACT Recovery Coordinator in ACT legislation. Given the important role of the Recovery Coordinator, the Review recommended that the role be specifically referred to in legislation.

This Bill creates a power for the Minister to appoint a Recovery Coordinator where the scale or nature of an emergency requires a recovery operation involving different territory agencies.

The Recovery Coordinator will coordinate recovery efforts across the ACT Government, community sector and private sector, coordinate the provision of essential services to communities affected by an emergency and advise SEMSOG and the Minister on recovery matters for the emergency.

Resilience

The Bill amends the objects of the Act to provide for effective emergency management that develops community resilience to emergencies. This reflects the increasing importance in contemporary emergency management doctrine and practices of developing community resilience. Community resilience refers to the capacity of communities to respond positively to crises, and the ability of a community to adapt to pressures and transform itself in a way which makes it more sustainable in the future. Community resilience is critical in minimising the effect of disasters and contributes to a quicker, more effective response.

Assistant Emergency Services Commissioner

This Bill creates a power for the director-general to appoint one or more persons as an ACT Assistant Emergency Services Commissioner (assistant commissioner). The assistant commissioner is responsible for supporting the ACT Emergency Services Commissioner (the commissioner) in the exercise of the commissioner's functions under the Act, and acts as commissioner in their absence.

Multi-Hazard Advisory Council

This Bill transitions the existing ACT Bushfire Council into the ACT Multi-Hazard Advisory Council. This reflects that the Territory faces a range of natural hazards,

not just bushfires. These include heatwave events, severe storm, and flash flood. This change will allow the Minister and Emergency Services Agency to receive the benefit of the expertise provided by an advisory council across all natural hazards rather than just bushfires alone.

This Bill also removes a number of provisions setting out the administrative processes for the Council. This allows those governance requirements to be contained in the Council's Terms of Reference, providing more flexibility and is more reflective of current governance practice.

The declaration of a state of alert and state of emergency

Section 151 of the Act provides that the Minister for Police and Emergency Services, if satisfied that an emergency is likely to happen, may declare that a state of alert exists for all or part of the ACT. There is no description in the Act of what or why a state of alert may be declared.

Section 156 allows the Chief Minister, if satisfied that an emergency has happened, is happening or is likely to happen, to declare that a state of emergency exists for some or all of the ACT. Similarly, the Act does not provide a description of why a state of emergency may be declared.

The Review recommended that the Act be amended to provide further guidance on when both a state of alert and state of emergency be declared.

This Bill amends those sections to clarify that a state of alert and state of emergency may only be declared when the nature of the emergency requires urgent significant and coordinated response to minimise or manage a substantial risk to the safety of people, animals or property; the preservation of the environment; or the provision of essential services.

Using social media to inform the community about emergencies

Section 153 of the Act imposes an obligation on the Minister to ensure that notification of a state of alert is broadcast in the ACT on television and radio. Section 158 imposes a similar obligation on the Chief Minister following the declaration of a state of emergency. Section 115 obliges the commissioner to ensure the broadcast on television and radio of the declaration of a total fire ban. These obligations reflect that effective communication of public information and warnings is a critical element of emergency management. In an emergency, public information and warnings play an important role in community safety by empowering people to make informed decisions and take protective action.

This Bill amends those sections to allow for advice of the declarations to be disseminated on social media. Social media is becoming an increasingly important source of information during disasters and other emergency events. Social media platforms are routinely used by ACT emergency responders to communicate updates and other essential materials. Information appears on those platforms in real time, frequently preceding traditional channels such as television and radio. The increasing reach of and reliance on social media makes it appropriate that any declaration of a state of alert or state of emergency, or declaration of a total fire ban, should be broadcast on social media.

Clarifying responsibility for preparing the Community Communication and Information Plan

The Community Communication and Information Plan, a requirement of section 149 of the Act, outlines the arrangements for communication with the public, the media, and ACT Government Directorates before, during and after emergencies in the Territory.

Currently the Act obliges the Minister to make the plan, and the commissioner to ensure that information about the plan is given to the community. This contrasts with the approach taken for the Emergency Plan, with section 147 of the Act providing the commissioner is responsible for preparation, with the Minister responsible for approval.

To provide certainty and to ensure consistency within the Act, the Review recommended that the Act be amended to specify that the commissioner has responsibility for preparing the Community Communication and Information Plan.

This Bill amends section 149 to implement that recommendation. The Bill also provides that the commissioner must consult with SEMSOG in preparing the Plan.

This Bill also amends the commissioner's existing obligation in section 149 to ensure that information about the plan is given to the community. The obligation has been amended so that the obligation is to ensure that information about emergencies is given to the community in accordance with the plan, rather than information about the plan itself.

Requiring assistance to be given to police and persons acting on behalf of the emergency services

Section 34 of the Act gives the chief officer of an emergency service a range of powers for the protection or preservation of life, property or the environment. Among other powers, a chief officer can require a person to give reasonable assistance to a member of an emergency service.

Emergency operations in the ACT will see members from a range of services, agencies, as well as contracted support personnel, working alongside each other, under the direction of a member of an emergency service, to protect and support the community. For this reason, the review recommended that this provision be amended so that a chief officer can require a person to give reasonable assistance to a police officer or a person acting on behalf of member of an emergency service. This Bill amends section 34 (1) (o) of the Act to implement this recommendation.

The extension of the requirement to assist official personnel reflects the multi-disciplinary, all-agencies approach to emergency management in the Territory, where representatives from a wide range of agencies, from both within and outside of government, may be involved in emergency response operations.

Delegating functions to a police officer

Section 12 allows the commissioner to delegate their functions under the Act or another Territory law to a public servant, a member of an emergency service or an emergency services support volunteer. A similar power exists in section 39 for chief officers to also delegate their functions under the Act or another Territory law.

This power to delegate is limited in that the commissioner and chief officer may not delegate their functions to a police officer. Currently, they may only delegate their functions to a public servant or a member of an emergency service – definitions which do not cover a police officer.

The Review recommended that the commissioner and chief officers be given the power to delegate their functions to a police officer such as the Chief Police Officer for the ACT. This would better reflect and support the complex, multi-agency nature of emergency operations.

The extension of their power to delegate is also consistent with the powers available to the Emergency Controller to delegate their functions to the Chief Police Officer.

This Bill implements that recommendation through amendments to section 12 (for the commissioner) and 39 (for a chief officer).

Extending protections regarding victimisation of volunteers

Emergency service organisations across Australia routinely protect their volunteers through employment protections that protect a volunteer from victimisation in their workplace arising from their emergency volunteer duty. In the ACT, section 183 of the Act provides an employer who victimises an employee taking part in an emergency operation commits an offence. Victimisation of an employee includes dismissing the employee, changing the employee's position or circumstances to the detriment of the employee, or otherwise injuring the employee in their employment.

Currently the protections in section 183 only apply during a declared state of alert or state of emergency. There is no scope for those protections to be applied in other circumstances. This contrasts with NSW where the employment protections can be activated for other emergencies that do not warrant the formal declaration of a state of emergency, but which require the support of significant number of volunteers.

This Bill adopts a similar approach as in NSW by allowing the Minister to issue an emergency operation notice specifying a range of details about the emergency. During the period of time during which an emergency operation notice is in force, the existing employment provisions in the Act apply to emergency service volunteers.

There is no change to the victimisation offence itself, only when it may apply.

Consolidating offences relating to fire appliances

The Act contains a number of offences regulating conduct that may pose a danger to occupants of buildings or the general public, such as hindering the use of fire alarms or other fire appliances. Section 95 contains a number of offences about fire appliances, of which most (but not all) apply only to the occupier of premises. Section 190 also contains a number of offences relating to interfering with fire appliances. These apply to any person and are not restricted to the occupier of premises.

This Bill consolidates these offences to increase clarity and to aid enforcement. The offence in section 95 (3) which applies to all persons is relocated and consolidated into the existing offence in section 190 (1). This results in all offences relating to fire appliances that apply to occupiers are contained in section 95 (along with other provisions relevant to occupiers of premises), while offences that apply to all persons are consolidated in section 190.

There has been no substantive change to the offences themselves, and no change to the maximum penalty for any offence.

Fire permits

The Act confers the commissioner with a power to issue a fire permit in certain circumstances to allow a person to undertake activities that would otherwise be an offence under the Act. Under section 118, the commissioner may issue a permit to use a fire, use fireworks, or undertake a high-risk activity during a total fire ban. Under section 124 the commissioner may issue a permit to either (a) light, maintain or use a fire in the open air on unleased Territory or Commonwealth land in a rural area to cook food or heat liquids or (b) for the owner of land to burn any material on the land on any day in the bushfire season.

The current fire permit provisions are unnecessarily restrictive and prevent the commissioner from issuing a fire permit in circumstances where they are otherwise satisfied that issuing a fire permit is appropriate. For example, there is no power available to the commissioner to issue a fire permit to a person who is not the owner of land to burn material during the bushfire season, nor is there the power to issue a permit to light a fire on unleased Territory land within the urban area – the power to issue a permit only applies to land in the rural area.

This Bill consolidates the power of the commissioner to issue a fire permit into new division 5.6.3. That division creates a new power for the commissioner to issue a fire permit, regardless of land tenure, and which may be issued to a person acting on behalf of, or with the consent of, the owner.

There is no change to the offences concerning the unauthorised use of fire.

The role of the Security and Emergency Management Senior Officials Group

Part 7.1 of the Act deals with the Security and Emergency Management Senior Officials Group (SEMSOG). SEMSOG is the primary mechanism for ensuring cooperation and coordination of activities between ACT Government agencies in planning for and responding to emergencies.

This Bill makes amendments to the function of SEMSOG. The first amendment clarifies section 143 (3) (b) to make it clear that it is the Chief Police Officer which has responsibilities for security. The other amendments recognise SEMSOG's role in supporting the preparation of the Emergency Plan, the Community Communication and Information Plan, and all sub-plans regardless of who is preparing or approving the plan or plans.

Cooperative arrangements with Commonwealth, State, or foreign agencies

Section 176 of the Act allows the Minister to enter into a written arrangement with a Commonwealth or State agency, or any agency of a foreign country, to (among other purposes) facilitate cooperation in emergency management (a 'cooperative arrangement').

The Emergency Services Agency routinely cooperates with interstate emergency service organisations on emergency management matters. This has included such matters as cost-sharing arrangements for joint emergency management activities and data sharing arrangements. This creates an unnecessary impost on the

Minister, particularly for written arrangements that are routine or administrative in nature.

This Bill amends section 176 to confer the power to enter into written cooperative arrangements upon both the Minister and the commissioner.

CONSULTATION ON THE PROPOSED APPROACH

In undertaking the Review, consultation occurred with all ACT Government Directorates and stakeholders such as the ACT Policing, emergency services and union and volunteer organisations.

No public consultation on the Bill has occurred.

CONSISTENCY WITH HUMAN RIGHTS

This Bill does not engage or limit any human rights under the *Human Rights Act 2004*.

APPENDIX A

2021

Emergencies Amendment Bill 2021

Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Emergencies Amendment Bill 2021**. In my opinion, having regard to the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly is consistent with the *Human Rights Act 2004*.

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Shane Rattenbury MLA
Attorney-General

CLAUSE NOTES

Clause 1 **Name of Act**

This clause specifies the name of the Bill, once enacted, as the *Emergencies Amendment Act 2021*.

Clause 2 **Commencement**

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

Clause 3 **Legislation amended**

This clause names the legislation amended by this Bill. In addition to amending the *Emergencies Act 2004*, this Bill also makes consequential changes to the *Environment Protection Act 1997* and the *Territory Records Regulation 2009*.

Clause 4 **New part 1.1 heading**

This clause creates a new part 1.1.

Clause 5 **Objects of Act** **New section 3 (b) (iii)**

This clause amends the objects of the Act. New section 3 (b) (iii) provides that the object of the Act includes to provide for effective emergency management that develops community resilience to emergencies.

Clause 6 **New part 1.2**

This clause creates a new part 1.2 dealing with area concepts.

New section 6A defines the term *built-up area*. The term was previously defined in section 65 but only applied to chapter 5. There has been no substantive change to the definition.

New section 6B defines the term *rural area*. This term was previously defined within the definition of built-up area but has been given its own definition to assist readability and to be consistent with current drafting practice.

Clause 7 **Section 10**

This clause is consequential on the transition of the ACT Bushfire Council to the ACT Multi-Hazard Advisory Council. It provides that the commissioner must seek the advisory council's advice before exercising any function prescribed by regulation relating to natural hazards. It also gives the commissioner the ability to seek advice from the advisory council relating to any other function of the commissioner relating to natural hazards.

Clause 8 **Commissioner may make guidelines**
Section 11 (5)

This clause is consequential on the transition of the ACT Bushfire Council to the ACT Multi-Hazard Advisory Council. The advisory council's broader remit means it is no longer necessary for the council to be consulted on standards and protocols for appointing a person to a senior rank within the rural fire service.

Clause 9 **Section 11 (8), definition of senior rank**

This clause removes the definition of senior rank from this section and is consequential on the changes made by clause 8.

Clause 10 **Delegation by commissioner**
Section 12 (1)

This amendment allows the commissioner to delegate their functions under the Act to a police officer, in addition to the existing power to delegate to a public servant, a member of an emergency service or an emergency services support volunteer. This reflects and supports the complex, multi-agency nature of emergency operations, and is consistent with the existing power of the Emergency Controller to delegate their functions to the Chief Police Officer.

Clause 11 **New sections 13, 14 and 15**

New section 13 confers a power on the director-general to appoint one or more persons to be an ACT Assistant Emergency Services Commissioner (assistant commissioner). There is a requirement that the person may only be appointed if they have the management, professional and technical expertise to exercise the functions required of the position.

New section 14 details the functions of the assistant commissioner, which is to support the commissioner in the exercise of the commissioner's functions. The section provides for various restrictions on the assistant commissioner to not act in a way that would be inconsistent with the commissioner's exercise of functions, and the assistant commissioner must comply with any direction from the commissioner. This reflects the assistant commissioner's function of supporting the commissioner. The section also provides the assistant commissioner is to act as commissioner in the commissioner's absence.

New section 15 provides that an assistant commissioner may delegate their functions to a public servant, a member of an emergency service, a police officer, or an emergency services support volunteer.

Clause 12 **General powers of chief officers**
Section 34 (1) (o)

Section 34 confers a range of powers upon the chief officer of an emergency service. This includes the existing power in 34 (1) (o) to require a person to give reasonable

assistance to a member of an emergency service. This clause extends that requirement to include a person acting on behalf of a member of an emergency service, or a police officer. This amendment reflects the multi-disciplinary, all-agencies approach to emergency management in the Territory, where representatives from a wide range of agencies, from both within and outside of government, may be involved in emergency response operations.

Clause 13 Delegations by chief officers
Section 39

This clause is similar to clause 10 which applied to the commissioner but allows the chief officer to delegate their functions under the Act to a police officer, in addition to the existing power to delegate to a public servant, a member of an emergency service or an emergency services support volunteer.

Clause 14 Rural fire brigades
Section 54 (2)

This clause is consequential on the transition of the ACT Bushfire Council to the ACT Multi-Hazard Advisory Council. The advisory council's broader remit means it is no longer necessary for the council to be consulted on the number of rural fire brigades for the RFS. This clause amends the power of the chief officer (rural fire service) to determine the number of rural fire brigades without any requirement to consult any entity.

Clause 15 Part 5.1

This clause omits part 5.1. Part 5.1 defined *built-up area* and *rural area*. These terms are now defined in new part 1.2 as inserted by clause 6.

Clause 16 Strategic bushfire management plan
Section 72

This clause is consequential on the transition of the ACT Bushfire Council to the ACT Multi-Hazard Advisory Council and amends the section to refer to the new advisory council. There is no change to the requirement for the advisory council to be consulted on the draft strategic bushfire management plan.

Clause 17 Assessment of resources and capabilities
Section 76 (2)

This clause is consequential on the transition of the ACT Bushfire Council to the ACT Multi-Hazard Advisory Council and amends the section to refer to the new advisory council.

Clause 18 **Review of strategic bushfire management plan**
Section 80 (1)

This clause is consequential on the transition of the ACT Bushfire Council to the ACT Multi-Hazard Advisory Council and amends the section to refer to the new advisory council.

Clause 19 **Offences about fire appliances**
Section 95 (3)

This clause omits section 95 (3), which is an offence provision applying to a person who does certain things to a fire appliance or a container housing or storing a fire appliance. The offence in section 95 (3) was the only offence in section 95 that applied to a person generally rather than the occupier of premises. This offence has been relocated to section 190, which also details a range of offences applying to persons dealing with fire appliances. The offences in section 95 as amended will now only apply to occupiers of premises. The amendment will provide clarity for users of the legislation and assist enforcement.

Clause 20 **Section 95 (5)**

This clause is consequential on clause 19 and removes a redundant reference to the relocated offence in section 95 (3).

Clause 21 **Part 5.6 heading**

This clause amends part 5.6 by inserting a new definition section (section 113A) for part 5.6. The new section inserts new signpost references for *fire permit* and *total fire ban* and relocates existing definitions for *firework* and *high risk activity*. The clause also amends the part 5.6 heading to reflect the content of the part more accurately.

Clause 22 **Declaration of total fire ban**
Section 114 (2) and (3)

This clause replaces existing section 114 (2) and (3), which have been rewritten to reflect modern drafting practice. There has been no substantive change to the commissioner's power to declare a total fire ban.

Clause 23 **Publication of total fire ban**
Section 115 (1) (b) and note

This clause replaces the existing obligation in section 115 (1) (b) for notice of the declaration of a total fire ban to be given in a public notice with a requirement that the declaration be notified under the Legislation Act 2001 as if it were a notifiable instrument. This amendment will assist with providing an authoritative record of a declaration of a total fire ban, assisting with enforcement of the Act.

The clause also broadens the requirement for informing the public that a declaration of a total fire ban has been made. As well as ensuring that declaration is broadcast

on television and radio, the declaration must be posted on social media. This reflects the increasingly important role that social media plays in educating the community about emergencies and is consistent with similar changes made by this Bill for declaring a state of alert or state of emergency.

**Clause 24 Offence—lighting etc fire during total fire ban
Section 116 (1) (a)**

This clause makes a grammatical change to the section, replacing *fireworks* with a *firework*, to be consistent with how the term is defined. There is no substantive change made by this clause.

Clause 25 Section 116 (3) (c)

This clause is consequential on the changes to fire permits and updates the section to remove a reference to a permit issued under old section 118 to refer instead to a fire permit. The clause also amends the reference to fireworks, similar to the change made by clause 24.

**Clause 26 Offence—high risk activity during total fire ban
Section 116A (3) (b)**

This clause is consequential on the omission of section 118, which has been replaced by new section 126A, which creates a new power for the commissioner to issue a fire permit.

Clause 27 Section 116A (4)

This clause is consequential on clause 19 and removes the definition of high risk activity, which is now defined in the definition section by part 5.6. There has been no change to the definition itself.

**Clause 28 Fire permits
Section 118**

This clause omits section 118. The power to issue fire permits has been relocated to, and consolidated in, new section 126A, which has created a broader power to issue fire permits than what was available in section 118.

**Clause 29 Bushfire season
Section 119 (3)**

This clause is consequential on the transition of the ACT Bushfire Council to the ACT Multi-Hazard Advisory Council and amends the section to refer to the new advisory council.

**Clause 30 Using fires and appliances for cooking etc in open air
Section 122 (4)**

This clause clarifies the power in section 122 (4) to light a fire on unleased Territory or Commonwealth land in the rural area for cooking food or heating liquids, and the accompanying requirements, does not apply to someone using a fireplace provided by the Territory or Commonwealth. The power to light a fire for use in fireplaces is contained in existing section 122 (3).

Clause 31 Section 122 (4) (a)

This clause is consequential on the omission of section 124, which has been replaced by new section 126A, which creates a new power for the commissioner to issue a fire permit.

**Clause 32 Lighting fires for burning off
Section 123 (3)**

This clause is consequential on the omission of section 124, which has been replaced by new section 126A, which creates a new power for the commissioner to issue a fire permit.

Clause 33 New section 123 (7)

This clause creates new section 123 (7), which provides that the references to the owner of land in section 123 also includes persons acting on behalf of, or with the consent of, the owner of land. This change allows the power to burn material in section 123 to be available to persons engaged by or contracted by the owner, or persons on the land and undertaking that lighting activity with the permission of the owner. The amendment does not change the restrictions that apply to any lighting of fires, nor the requirement that any lighting be in accordance with the *Environment Protection Act 1997*.

**Clause 34 Permits for div 5.6.2
Section 124**

This clause omits section 124. The power to issue fire permits has been relocated to and consolidated in new section 126A, which has created a broader power to issue fire permits than what was available in section 124.

Clause 35 New division 5.6.3

This clause inserts new division 5.6.3 Fire permits and new sections 126A and 126B.

New section 126A creates a new power for the commissioner to issue fire permits to allow a person to undertake certain activities relating to fire. Section 126A (2) specifies certain requirements that an application for a fire permit must contain. Section 126 (3) details the factors that the commissioner must consider in deciding whether to issue a permit. The commissioner may consider any other matter and may also issue the fire permit with conditions. This new power to issue permits is

broader than the existing power of the commissioner, which was limited by location and land tenure.

New section 126B clarifies that a fire permit does not override any requirements or obligations in the *Environment Protection Act 1997*. It also provides that a fire permit is temporarily suspended during a total fire ban unless the fire permit explicitly states it applies during a total fire ban.

Clause 36 **Chapter 6**

This clause replaces chapter 6 with a new chapter 6 that establishes the ACT Multi-Hazard Advisory Council. The advisory council replaces the ACT Bushfire Council as established by the existing chapter 6.

New section 127 establishes the ACT Multi-Hazard Advisory Council.

New section 128 states the constitution of the advisory council. There has been no change to the constitution with the transition to the advisory council.

New section 129 provides that the Minister must appoint the members of the advisory council. New section 129 differs from the existing section 129 relating to the ACT Bushfire Council in that new section 129 does not prescribe any classes of members who must be appointed. Instead, it allows the Minister to appoint members who have the appropriate qualifications or experience to assist the council to exercise its functions. This change allows the qualifications and experiences sought by the advisory council to be varied without needing to amend the Act. The various skills and experiences required to serve on the advisory council will be contained in the council's Terms of Reference. This more flexible approach better reflects current practice of advisory bodies and ensures that the advisory council is better able to advise across all natural hazards. There has been no changes to the term limits of members.

New section 130 details the functions of the advisory council, which is to advise the Minister about matters relating to natural hazards. The advisory council may also advise the commissioner if the commissioner seeks the advice of the council. Additional functions may be given to the advisory under the Act, other Territory law, or by regulation.

New section 131 has not been substantially altered from the existing 131 and obliges the director-general to provide administrative support and facilities to the advisory council.

New section 132 replicates existing section 132 and details the process by which the Minister may end the appointment of a member.

New section 133 provides that the Minister may determine the terms of reference and the procedures for the advisory council, or if the Minister has not done so, the council may decide its own procedures. It is appropriate for the Minister to determine the terms of reference and procedures for the council, noting its main function is to advise the Minister on natural hazards.

New sections 134 and 135 are governance provisions and replicate the existing equivalent provisions in the Act. New chapter 6 has not replicated all the governance provisions in the existing chapter 6. These processes will now be included in the terms of reference for the advisory council. This provides more flexibility for the council and better reflects current governance practices.

Clause 37 Functions of SEMSOG
Section 143 (3) (b) and (c)

This clause amends the additional functions of the Security and Emergency Management Senior Officials Group (SEMSOG), the primary mechanism for ensuring cooperation and coordination of activities between ACT Government agencies in planning for and responding to emergencies.

The amendment provides that SEMSOG is to support the commissioner and the Chief Police Officer in security and emergency management generally. The change resolves any potential perception that the commissioner has sole responsibility for security matters.

The clause also amends SEMSOG's function to support the preparation of the Emergency Plan or any part of the Plan, the Community Communication and Information Plan, as well as any sub-plan, irrespective of who is making or approving the plan. Currently the function is only to support the Minister and commissioner. The change reflects that emergency sub-plans may be made or approved by a range of agencies.

Clause 38 Section 149

This clause amends the provisions relating to the Community Communication and Information Plan (CCIP) which outlines the arrangements for communication with the public, the media, and ACT Government Directorates.

Currently the Act provides that the Minister must make the CCIP but does not specify who has responsibility for preparation. This contrasts with the approach taken for the Emergency Plan, with section 147 of the Act providing the commissioner is responsible for preparation, with the Minister responsible for approval.

This clause provides that the commissioner is responsible for preparing the CCIP, and the Minister approving the plan. To ensure that all ACT Government Directorates have input into the CCIP, the clause requires the commissioner must consult SEMSOG when preparing the plan.

This clause also amends the requirement in current section 149 (3) so that the obligation on the commissioner is to ensure that information about emergencies is given to the community in accordance with the CCIP. Currently the section obliges the commissioner to give information about the CCIP itself to the community, and there is no obligation to act in accordance with the plan.

Clause 39 **Declaration of state of alert**
Section 151 (1) (a)

This amendment provides further guidance on when the Minister may declare a state of alert. As well as being satisfied an emergency is likely to happen, the Minister must also be satisfied that the nature of the emergency calls for an urgent significant and coordinated response to minimise or manage a substantial risk to the safety of people, animals or property; or the preservation of the environment; or the provision of essential services.

Clause 40 **Publication of state of alert declaration**
New section 153 (1) (aa)

Section 153 provides that the Minister ensure that notice of any declaration of a state of alert is notified to the community in various ways. This clause amends that requirement so that the notice must be posted using social media as well as being broadcast on television or radio.

Clause 41 **Declaration of state of emergency**
Section 156 (1)

This amendment provides further guidance on when the Chief Minister may declare a state of emergency. As well as being satisfied an emergency has happened, is happening or is likely to happen, the Chief Minister must also be satisfied that the nature of the emergency calls for an urgent significant and coordinated response to minimise or manage a substantial risk to the safety of people, animals or property; or the preservation of the environment; or the provision of essential services.

Clause 42 **Publication of declaration of state of emergency**
New section 158 (1) (a)

This is similar to clause 40 but applies to a state of emergency, so that notice of a state of emergency must be posted using social media as well as broadcast on television or radio.

Clause 43 **New division 7.3.3**

This clause inserts new division 7.3.3, providing for the appointment of a recovery coordinator. The recovery coordinator will coordinate recovery activities being carried out by territory agencies, private entities, and members of the community, and coordinate the provision of essential services to communities affected or likely to be affected by an emergency.

New section 174B specifies when the Minister may appoint a recovery coordinator. The power to appoint is independent of any other appointment (such as an Emergency Coordinator) or the declaration of a state or alert or state of emergency. A recovery coordinator may be appointed when the Minister is satisfied that an emergency has happened, is happening or is likely to happen, and the scale or nature the emergency requires or is likely to require a recovery operation involving

different agencies. The appointment of a recovery coordinator will ensure the efficient and effective coordination of recovery operations across the Territory.

New section 174C specifies the functions of the recovery coordinator. It also provides that the recovery coordinator must, as far as practicable, exercise their functions in accordance with any part of the emergency plan or associated sub-plan dealing with recovery operations.

Clause 44 **Cooperative arrangements with Commonwealth, State or overseas agencies**
Section 176 (1)

Section 176 provides that the Minister may enter into cooperative arrangements with a Commonwealth or State agency, or an agency of a foreign country with respect to emergency management or certain response operations.

This clause amends the section to provide that those cooperative arrangements may also be entered into by the commissioner. The current section places undue administrative responsibilities on the Minister, particularly for routine, low-level arrangements on matters such as data or cost sharing.

Clause 45 **New sections 182A and 182B**

This clause inserts new sections 182A and 182, relating to the existing provisions concerning victimisation of volunteers in chapter 8. Those provisions provide certain employment protections for emergency service volunteers if the volunteer is victimised by their employer for taking part in an emergency operation during a state of alert or state of emergency.

The clause extends the potential application of the victimisation provisions by allowing the Minister to issue an emergency operation notice specifying certain details of an emergency operation where neither a state of alert nor a state of emergency has been declared. An emergency services volunteer taking part in an emergency operation for which an emergency operation notice has been made will be covered by those employment protections.

New section 182A inserts definitions for chapter 8.

New section 182B confers a power on the Minister to issue an emergency operation notice, specifies the contents of the notice, and also imposes an obligation on the Minister to ensure that the community is informed a notice has been made.

Clause 46 **Victimisation of volunteers**
Section 183 (1)

This clause is related to clause 45 and amends existing section 183 (1) to broaden when the volunteer victimisation provisions apply by including an emergency operation for which an emergency operation notice has been issued.

Clause 47 **Interfering with fire appliance, hydrant, alarm etc**
Section 190 (1) and example and penalty

This clause amends the existing offence section 190 (1) to incorporate elements of the offence in section 95 (3) that has been removed by this Bill. The change consolidates all offences relating to a person interfering with fire appliances into section 190.

There has been no change to the maximum penalty for the offence. The amendment has also not extended application of the offence or introduced new elements but has merely consolidated the offences so that conduct that was previously caught by either section 95 (3) or 190 (1) will now be covered by section 190 (1). It also ensures that a person would not be potentially subject to two offences in the Act arising out of the same conduct and provides greater clarity for persons dealing with fire appliances.

Clause 48 **New section 190 (7)**

This clause inserts a new section 190 (7) defining *fire appliance container*. The term was previously located in section 95 (3) and is consequential on the change made by clause 47.

Clause 49 **Protection of officials from liability**
Section 198 (1), definition of official, new paragraph (aa)

Section 198 confers a number of protections on officials exercising functions under the Act. Any liability that would otherwise attach to that official attaches instead to the Territory. This clause amends that section to extend the protection to the newly created assistant commissioner role.

Clause 50 **Protection of officials from liability**
Section 198 (4) (e)

This clause amends section 198 to reflect the changes to section 34 (1) (o) made by this Bill, that allow a chief officer to require a person to give reasonable assistance not only to emergency service members but also to persons acting on behalf of an emergency service and police officers. A person acting on behalf of an emergency service or a police officer assisting the chief officer will now be taken to be exercising a function under the Act, and so enjoy the protection from liability under this section.

Clause 51 **New chapter 12**

This clause inserts new chapter 12, which contains a number of transitional provisions associated with the transition of the ACT Bushfire Council into the ACT Multi-Hazard Advisory Council, as well as the changes to the commissioner's power to issue fire permits and other amendments made by this Bill.

They provide that current members of the ACT Bushfire Council are taken to be members of the new advisory council upon commencement, and that any required functions of the ACT Bushfire Council that are still yet to be completed may continue

until they are completed. They also provide that permits issued by the commissioner will continue to operate and are deemed to be a fire permit under the new provisions, and that any applications currently being assessed are taken to be an application under the new fire permit provisions.

They also provide that an existing declaration of a built-up area is taken to be a declaration of a built-up area under new 6A.

Section 225 enables the Executive to make regulations dealing with transitional matters.

The section contains 2 different regulation making powers.

Section 225 (1) enables the making of a regulation to deal with any transitional matter that arises as a result of the enactment of the Bill. However, the scope of the regulation must be confined to the same sphere of operation as the amended Act, be strictly ancillary to the operation of the Act and not widen the Act's purpose.

Section 225 (2) enables the making of a regulation that modifies the Act. A regulation under this section may only modify chapter 12 of the Act, and only if the Executive is of the opinion that the part does not adequately or appropriately deal with a transitional issue. A provision of this kind is an important mechanism for achieving the proper objectives, managing the effective operation, and eliminating transitional flaws in the application of the Act in unforeseen circumstances by allowing for flexible and responsive (but limited) modification by regulation.

Section 225 (3) gives a regulation under section 225 (2) full effect according to its terms. A provision of chapter 12 of the Act modified by regulation will operate in the same way (in relation to another provision of the Act or any other territory law) as if it were amended by an Act, and in accordance with established principles of statutory interpretation. The section is not expressed, and does not intend, to authorise the making of a regulation limiting future enactments of the Legislative Assembly. Also, any modification by regulation of chapter 12 of the Act has no ongoing effect after the expiry of that chapter.

These transitional provisions expire 12 months after the day they commence.

Clause 52 Reviewable decisions Schedule 2, items 14 to 17

This clause makes consequential changes to schedule 2 to update references to section numbers and terminology associated with the changes to fire permits issued by the commissioner. Schedule 2 lists decisions made under the Act that are reviewable in accordance with chapter 9 of the Act.

Clauses 53 to 60

These clauses amend the dictionary of the Act. They either insert new definitions, remove obsolete references, or make consequential amendments to terms or section numbers amended by this Bill.

Schedule 1 Consequential amendments

Schedule 1 of the bill includes minor consequential amendments to the:

- *Dangerous Substances (Explosives) Regulation 2004*, to amend references to the definitions of *built-up area* and *rural area*;
- *Environment Protection Act 1997*, to reflect the changes made to system for issuing fire permits;
- *Environment Protection Regulation 2005*, to amend references to the definition of the *built-up area*;
- *Road Transport (Vehicle Registration) 2000*, to amend a reference to the definition of *rural area*; and
- *Territory Records Regulation 2009*, to update references in that Regulation to the new ACT Multi-Hazard Advisory Council, formerly the ACT Bushfire Council.