

Western Australia

Emergency Management Act 2005

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No. 15 of 2005

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Emergency Management Act 2005

CONTENTS

Part 1 — Preliminary

1.	Short title	2
2.	Commencement	2
3.	Interpretation	2
4.	Hazard management agencies may be prescribed	6
5.	Delegation by hazard management agency	7
6.	Combat agencies and support organisations may be prescribed	7
7.	Act binds the Crown	8
8.	Relationship to other Acts	8
9.	Limitation on Act — industrial disputes and civil disturbances	8

Part 2 — State arrangements

Division 1 — The State Emergency Coordinator

10.	State Emergency Coordinator	9
11.	Functions of the State Emergency Coordinator	9
12.	Delegation by State Emergency Coordinator	10

Division 2 — The State Emergency Management Committee

13.	State Emergency Management Committee	10
14.	Functions of the SEMC	11
15.	Powers of the SEMC	12
16.	Designation of cyclone areas	12
17.	State emergency management policies	12
18.	State emergency management plans	13

19.	Reviewing State emergency management policies and State emergency management plans	13
20.	Directions to, and duties of, public authorities	13
21.	Sub-committees	14
22.	SEMC may delegate	14
23.	Minister may give directions	15
24.	Facilities and services for SEMC	15
25.	Annual report of SEMC	16
	Division 3 — The State Emergency Coordination Group	
26.	State Emergency Coordination Group	16
27.	Functions of the State Emergency Coordination Group	17
	Division 4 — Emergency management districts	
28.	Establishment of emergency management districts	18
29.	District emergency coordinator	18
30.	Functions of district emergency coordinator	18
31.	District emergency management committees	19
32.	Functions of district emergency management committees	19
33.	Annual report of district emergency management committees	20
	Part 3 — Local arrangements	
	Division 1 — Local emergency authorities	
34.	Local governments may combine	21
35.	Specified public authority may exercise functions of local government	21
36.	Functions of local government	22
37.	Local emergency coordinators	23
38.	Local emergency management committees	23
39.	Functions of local emergency management committees	24
40.	Annual report of local emergency management committee	24
	Division 2 — Emergency management arrangements for local governments	
41.	Emergency management arrangements in local government district	25

42.	Reviewing and renewing local emergency management arrangements	26
43.	Local emergency management arrangements to be available for inspection	26
	Division 3 — Powers of local government during cyclone	
44.	Meaning of “cyclone area”	26
45.	Exercise of powers under this Division	27
46.	Power of local government to destroy dangerous vegetation or premises in cyclone area	27
47.	Local government may require owner or occupier of land to take action	27
48.	Additional powers when direction given	28
49.	Provisions are in addition to other powers	29
	Part 4 — Hazard management	
	Division 1 — Emergency situation declaration	
50.	Hazard management agency may make emergency situation declaration	30
51.	Duration of emergency situation declaration	31
52.	Extension of emergency situation declaration	31
53.	Revocation of emergency situation declaration	32
54.	Notice of declaration	33
	Division 2 — Hazard management officers	
55.	Authorisation of hazard management officers	33
	Part 5 — State of emergency	
	Division 1 — State of emergency declaration	
56.	Minister may make state of emergency declaration	35
57.	Duration of state of emergency declaration	35
58.	Extension of state of emergency declaration	36
59.	Revocation of state of emergency declaration	37
60.	Notice of declaration	37
	Division 2 — Authorised officers	
61.	Authorised officers	37
62.	Identification of authorised officers	38
	Division 3 — The State Disaster Council	
63.	State Disaster Council	39
64.	Functions of the State Disaster Council	40

Part 6 — Emergency powers

Division 1 — Powers during emergency situation or state of emergency

65.	Application of this Division	41
66.	Obtaining identifying particulars	41
67.	Powers concerning movement and evacuation	42
68.	Use of vehicles	42
69.	Powers of officer to control or use property	42
70.	Powers of officers in relation to persons exposed to hazardous substances	43
71.	Powers of police to direct closure of places and concerning movement and evacuation	43
72.	Exchange of information	44

Division 2 — Further powers during state of emergency

73.	Application of this Division	46
74.	Power to direct public authorities during state of emergency	46
75.	General powers during a state of emergency	47

Division 3 — General provisions

76.	General provisions regarding powers	48
77.	General provisions regarding directions	49

Part 7 — Compensation and insurance

Division 1 — Compensation

78.	Entitlement to compensation	50
79.	Applying for compensation	50
80.	Lapsing of application	51
81.	Notice of decision	52
82.	Funding of compensation	52

Division 2 — Review

83.	Review of compensation decision	52
-----	---------------------------------	----

Division 3 — Policies of insurance

84.	Extension of policy of insurance	52
-----	----------------------------------	----

Part 8 — Offences		
85.	Obstruction of a hazard management officer or authorised officer	54
86.	Failure to comply with direction	54
87.	Failure to give help	54
88.	Impersonation of hazard management officer or authorised officer	54
89.	False or misleading information	55
90.	False compensation claim	55
Part 9 — Employment protection		
91.	Meaning of terms used in this Part	56
92.	Protection of employment rights	57
93.	Victimisation because of emergency management response	57
94.	Civil penalty for breach of section 93	58
Part 10 — Miscellaneous		
95.	Confidentiality of information	60
96.	Expenses	60
97.	Bodies corporate or employers, conduct on behalf of	60
98.	Body corporate's officers, liability of	62
99.	Evidentiary matters	63
100.	Protection from liability	64
101.	Regulations as to compensation of volunteers	65
102.	Regulations	67
103.	Review of Act	67
104.	Consequential amendment	67
Schedule 1 — Consequential amendment		
1.	<i>Fire Brigades Act 1942</i> amended	68
	34A. Powers concerning persons exposed to hazardous material	68
Defined Terms		

Western Australia

Emergency Management Act 2005

No. 15 of 2005

An Act to provide for prompt and coordinated organisation of emergency management in the State, and for related purposes.

[Assented to 27 September 2005]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Emergency Management Act 2005*.

2. Commencement

- (1) This Act comes into operation on a day to be fixed by proclamation.
- (2) Different days may be fixed under subsection (1) for different provisions.

3. Interpretation

In this Act, unless the contrary intention appears —

“authorised officer” means —

- (a) the State Emergency Coordinator; and
- (b) a person authorised under section 61;

“combat agency” has the meaning given by section 6(1);

“district emergency management committee” means a district emergency management committee established under section 31(1);

“emergency” means the occurrence or imminent occurrence of a hazard which is of such a nature or magnitude that it requires a significant and coordinated response;

“emergency area” means the area to which an emergency situation declaration or a state of emergency declaration applies;

“emergency management” means the management of the adverse effects of an emergency including —

- (a) prevention — the mitigation or prevention of the probability of the occurrence of, and the potential adverse effects of, an emergency;

- (b) preparedness — preparation for response to an emergency;
- (c) response — the combating of the effects of an emergency, provision of emergency assistance for casualties, reduction of further damage, and help to speed recovery; and
- (d) recovery — the support of emergency affected communities in the reconstruction and restoration of physical infrastructure, the environment and community, psychosocial and economic wellbeing;

“emergency management agency” means a hazard management agency, a combat agency or a support organisation;

“emergency management district” means an emergency management district established under section 28;

“emergency situation” means an emergency situation declared under section 50;

“emergency situation declaration” means a declaration made under section 50;

“hazard” means —

- (a) a cyclone, earthquake, flood, storm, tsunami or other natural event;
- (b) a fire;
- (c) a road, rail or air crash;
- (d) a plague or an epidemic;
- (e) a terrorist act as defined in *The Criminal Code* section 100.1 set out in the Schedule to the *Criminal Code Act 1995* of the Commonwealth;
- (f) any other event, situation or condition that is capable of causing or resulting in —
 - (i) loss of life, prejudice to the safety, or harm to the health, of persons or animals; or

- (ii) destruction of, or damage to, property or any part of the environment,

and is prescribed by the regulations;

“hazard management agency” has the meaning given by section 4;

“hazard management officer” means a person authorised under section 55;

“hazardous substance” means —

- (a) a chemical, biological or radiological substance; or
- (b) any other substance,

that is capable of causing loss of life, injury to a person, or damage to the health of a person or to the environment;

“local emergency coordinator” means a local emergency coordinator appointed under section 37;

“local emergency management committee” means a committee established under section 38;

“local government district” —

- (a) has the meaning given to “district” by the *Local Government Act 1995*; and
- (b) in relation to a local government, means the district established for the local government under the *Local Government Act 1995*;

“occupier” has the meaning given to that term in the *Local Government Act 1995*;

“owner” has the meaning given to that term in the *Local Government Act 1995*;

“personal details”, in relation to a person, means —

- (a) the person’s full name;
- (b) the person’s date of birth;
- (c) the address of where the person is living; and
- (d) the address of where the person usually lives;

“place” includes land, area of water or premises;

“premises” includes a building or structure, or part of a building or structure, of any type;

“property” means real or personal property of any description;

“public authority” means —

- (a) an agency as defined in the *Public Sector Management Act 1994*;
- (b) a body, corporate or unincorporate, that is established or continued for a public purpose by the State, regardless of the way it is established;
- (c) a local government or regional local government;
- (d) the Police Force of Western Australia;
- (e) a member or officer of a body referred to in paragraph (a), (b), (c) or (d); or
- (f) a person or body prescribed (or of a class prescribed) by the regulations as a public authority for the purposes of this definition;

“recovery” has the meaning given in paragraph (d) of the definition of “emergency management”;

“SEMC” means the State Emergency Management Committee established under section 13;

“State Disaster Council” means the State Disaster Council established under section 63;

“State Emergency Coordination Group” means the State Emergency Coordination Group established under section 26;

“State Emergency Coordinator” means the person holding the office referred to in section 10;

“State emergency management plan” means a plan prepared under section 18;

“State emergency management policy” means a policy prepared under section 17;

“state of emergency” means a state of emergency declared under section 56;

“state of emergency declaration” means a declaration made under section 56;

“support organisation” has the meaning given by section 6(3);

“vehicle” means any thing capable of transporting people or things by road, rail or water, including a hovercraft, and it does not matter how the thing is moved or propelled.

4. Hazard management agencies may be prescribed

- (1) A public authority, or other person, may be prescribed by the regulations to be a hazard management agency for emergency management, or an emergency management aspect prescribed by the regulations, of a hazard prescribed by the regulations.
- (2) The regulations may prescribe the whole of the State, or an area of the State, as the area for which the public authority or person is a hazard management agency.
- (3) A hazard management agency prescribed under subsection (1) is to be a public authority or other person who or which, because of that agency’s functions under any written law or specialised knowledge, expertise and resources, is responsible for emergency management, or the prescribed emergency management aspect, in the area prescribed of the hazard for which it is prescribed.
- (4) If the hazard management agency is not an individual or a body corporate, the regulations are to designate —
 - (a) one or more persons who are authorised to act in the name of the hazard management agency for the purposes of sections 50 and 53; and
 - (b) one or more persons who are authorised to act in the name of the hazard management agency for the purposes of authorising under section 55 persons to act as hazard management officers.

- (5) In sections 50, 53 and 55 a reference to a hazard management agency is to be taken to include a reference to a person who is designated to act in the name of a hazard management agency under subsection (4) for the purposes of that section.

5. Delegation by hazard management agency

- (1) A hazard management agency, with the approval of the State Emergency Coordinator, may delegate to an officer or employee of the agency any power or duty of the hazard management agency under sections 50, 53 and 55, or any of those sections.
- (2) The delegation is to be in writing.
- (3) A delegate exercising or performing a power or duty that has been delegated under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (4) Nothing in this section limits the ability of a hazard management agency to act through an officer or person representing the agency.

6. Combat agencies and support organisations may be prescribed

- (1) A public authority, or other person, may be prescribed by the regulations to be a combat agency for the purposes of this Act.
- (2) A combat agency prescribed under subsection (1) is to be a public authority or other person who or which, because of the agency's functions under any written law or specialised knowledge, expertise and resources, is responsible for performing an emergency management activity prescribed by the regulations in relation to that agency.
- (3) A public authority, or other person, may be prescribed by the regulations to be a support organisation for the purposes of this Act.

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- (4) A support organisation prescribed under subsection (3) is to be a public authority or other person who or which, because of the agency's functions under any written law or specialised knowledge, expertise and resources, is responsible for providing support functions prescribed by the regulations in relation to that organisation.

7. Act binds the Crown

This Act binds the Crown in right of the State and, so far as the legislative power of the State permits, the Crown in its other capacities.

8. Relationship to other Acts

- (1) Where the provisions of this Act are inconsistent with the provisions of any other Act, or of any subsidiary legislation made under any other Act, the provisions of this Act prevail.
- (2) This Act is in addition to, and does not derogate from, the *Fuel, Energy and Power Resources Act 1972*.
- (3) Subject to subsection (1), all powers given by or under this Act are in addition to, and not in derogation from, powers exercisable apart from this Act.

9. Limitation on Act — industrial disputes and civil disturbances

This Act does not authorise the taking of measures directed at —

- (a) ending an industrial dispute; or
- (b) controlling a riot or other civil disturbance.

Part 2 — State arrangements

Division 1 — The State Emergency Coordinator

10. State Emergency Coordinator

The Commissioner of Police is to hold the office of State Emergency Coordinator.

11. Functions of the State Emergency Coordinator

- (1) The State Emergency Coordinator is responsible for coordinating the response to an emergency during a state of emergency.
- (2) In addition to his or her other functions under this Act and any other written law, the State Emergency Coordinator is to —
 - (a) provide advice to the Minister in relation to emergencies;
 - (b) provide advice to the State Disaster Council during a state of emergency;
 - (c) provide such advice and assistance to hazard management agencies as the State Emergency Coordinator considers appropriate; and
 - (d) carry out other emergency management activities as directed by the Minister.
- (3) Where authorised to do so under a State emergency management plan or State emergency management policy, or authorised to do so by the SEMC or the State Disaster Council, the State Emergency Coordinator may —
 - (a) liaise with the Australian Government and other persons, in or outside the State; and
 - (b) enter into agreements and arrangements with those persons,to assist the State to manage emergencies.

12. Delegation by State Emergency Coordinator

- (1) The State Emergency Coordinator may delegate to any person any power or duty of the State Emergency Coordinator under another provision of this Act.
- (2) The delegation is to be in writing signed by the State Emergency Coordinator.
- (3) A delegate exercising or performing a power or duty that has been delegated under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (4) Nothing in this section limits the ability of the State Emergency Coordinator to act through an officer or a person representing the State Emergency Coordinator.

Division 2 — The State Emergency Management Committee

13. State Emergency Management Committee

- (1) The State Emergency Management Committee is established.
- (2) The SEMC is to consist of —
 - (a) a chairman appointed by the Minister;
 - (b) a deputy chairman appointed by the Minister;
 - (c) an executive officer of the SEMC appointed by the Minister;
 - (d) a person who is representative of local government, appointed by the Minister; and
 - (e) such other members as are provided for, and appointed in accordance with, the regulations.
- (3) The Minister is to ensure that —
 - (a) the chairman has expertise or experience that, in the Minister's opinion, is relevant to the functions of the

SEMC and the State Emergency Coordination Group;
and

- (b) each other member has expertise or experience that, in the Minister's opinion, is relevant to the functions of the SEMC.
- (4) The regulations may make provision as to the constitution and procedures of the SEMC.
- (5) Subject to the regulations the SEMC may determine its own procedures.

14. Functions of the SEMC

The SEMC has the following functions —

- (a) to advise the Minister on emergency management and the preparedness of the State to combat emergencies;
- (b) to provide direction, advice and support to public authorities, industry, commerce and the community in order to plan and prepare for an efficient emergency management capability for the State;
- (c) to provide a forum for whole of community coordination to ensure the minimisation of the effects of emergencies;
- (d) to provide a forum for the development of community wide information systems to improve communications during emergencies;
- (e) to develop and coordinate risk management strategies to assess community vulnerability to emergencies;
- (f) to perform other functions given to the SEMC under this Act;
- (g) to perform any other function prescribed by the regulations for the purposes of this section.

15. Powers of the SEMC

- (1) The SEMC may do all things necessary or convenient to be done for or in connection with the performance of its functions.
- (2) Without limiting subsection (1) and any other powers conferred on the SEMC by this Act, the SEMC may —
 - (a) produce and publish information on matters related to its functions; and
 - (b) act in conjunction with another public authority or any other person.

16. Designation of cyclone areas

- (1) The SEMC may, on the advice of the agency prescribed as the hazard management agency for cyclones in the relevant area, designate an area of the State as a cyclone area.
- (2) Before designating an area under subsection (1) the SEMC is to notify each local government in whose district any part of the area proposed to be designated is situated and allow a reasonable time for submissions on the proposal.
- (3) In designating an area under subsection (1) the SEMC is to have regard to any submissions of a local government.
- (4) Notice of the designation is to be published in the *Gazette*.

17. State emergency management policies

- (1) The SEMC is to arrange for the preparation of State emergency management policies.
- (2) State emergency management policies are to include provision for —
 - (a) a strategic framework for emergency management in the State;
 - (b) the roles and responsibilities of emergency management agencies; and

(c) other matters that are prescribed by the regulations.

- (3) A State emergency management policy, and any amendment to a State emergency management policy, has effect when it is approved by the SEMC.

18. State emergency management plans

- (1) The SEMC is to arrange for the preparation of State emergency management plans as the SEMC considers necessary.
- (2) A State emergency management plan is to be consistent with State emergency management policies.
- (3) A State emergency management plan, and any amendment to a State emergency management plan, has effect when it is approved by the SEMC.

19. Reviewing State emergency management policies and State emergency management plans

- (1) The SEMC may arrange for a State emergency management policy or a State emergency management plan to be reviewed, amended or replaced, whenever the SEMC considers it appropriate.
- (2) The SEMC may arrange for a State emergency management plan to be tested whenever the SEMC considers it appropriate.

20. Directions to, and duties of, public authorities

- (1) If a public authority is given a role and responsibilities under a State emergency management policy, the SEMC may, in writing, direct the public authority, in relation to that role and those responsibilities, to —
- (a) prepare, or assist in the preparation of, a State emergency management plan;
- (b) review, or assist in the review of, a State emergency management plan;

- (c) amend or replace, or assist in the amendment or replacement of, a State emergency management plan; or
 - (d) test, or assist in the testing of, a State emergency management plan.
- (2) The SEMC may issue written guidelines to help public authorities respond to a direction under subsection (1).
 - (3) A public authority is to comply with a direction under subsection (1) within the time and in the manner specified in the direction.
 - (4) A public authority that is given a role and responsibilities under a State emergency management policy is to comply with the State emergency management policy.

21. Sub-committees

- (1) The SEMC may establish such sub-committees as it thinks fit to advise the SEMC on any aspect of its functions or to assist with any matters relevant to the performance of its functions.
- (2) A sub-committee may, but need not, consist of or include members of the SEMC.
- (3) The SEMC may remove a person from membership of a sub-committee and may reconstitute or discharge a sub-committee.
- (4) The SEMC may give directions to a sub-committee with respect to the performance of its functions and its procedures and the sub-committee is to comply with any such direction.
- (5) Subject to the directions of the SEMC, a sub-committee may determine its own procedures.

22. SEMC may delegate

- (1) The SEMC may delegate to a member of the SEMC, a sub-committee established under section 21 or a member of

such a sub-committee any power or duty of the SEMC under another provision of this Act.

- (2) The delegation is to be in writing signed by the chairman of the SEMC.
- (3) A delegate exercising or performing a power or duty that has been delegated under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (4) Nothing in this section limits the ability of the SEMC to act through an agent.

23. Minister may give directions

- (1) The Minister may give directions in writing to the SEMC with respect to the performance of its functions, either generally or in relation to a particular matter, and the SEMC is to give effect to any such direction.
- (2) The text of a direction given under subsection (1) is to be included in the annual report submitted by the SEMC under section 25.

24. Facilities and services for SEMC

- (1) The Minister is to ensure that the SEMC is provided with the facilities and services that, in the opinion of the Minister, are reasonably necessary to enable it to perform its functions.
- (2) Without limiting subsection (1), the Minister may arrange with the relevant employing authority (as that term is defined in the *Public Sector Management Act 1994*) for the SEMC to make use, either full-time or part-time, of the services of any officer or employee —
 - (a) in the Public Service;
 - (b) in a public authority; or
 - (c) otherwise in the service of the State.

- (3) Without limiting subsection (1), the Minister may arrange with —
 - (a) a department of the Public Service; or
 - (b) a public authority,for the SEMC to make use of any facilities or services of the department or public authority.
- (4) An arrangement under subsection (2) or (3) is to be made on terms agreed by the parties.

25. Annual report of SEMC

- (1) As soon as is practicable after the end of each financial year the SEMC is to prepare and submit to the Minister an annual report on activities undertaken by it during the financial year.
- (2) The Minister is to cause the report to be laid before each House of Parliament as soon as is practicable after it is prepared.

Division 3 — The State Emergency Coordination Group

26. State Emergency Coordination Group

- (1) If a state of emergency is declared, a State Emergency Coordination Group is established.
- (2) If an emergency occurs or is imminent, the State Emergency Coordinator may, on the request of the relevant hazard management agency, or on his or her own initiative and in consultation with the relevant hazard management agency, establish a State Emergency Coordination Group.
- (3) The State Emergency Coordination Group is to consist of —
 - (a) the State Emergency Coordinator;
 - (b) the chairman of the SEMC;
 - (c) the executive officer of the SEMC appointed under section 13(2)(c);

- (d) a representative of the relevant hazard management agency;
 - (e) a person who is representative of the local governments in the emergency area, or in the area where the emergency is occurring or is imminent, as the case requires, nominated by the State Emergency Coordinator; and
 - (f) such other members as are, in the opinion of the State Emergency Coordinator, necessary.
- (4) The State Emergency Coordinator is the chairman of the State Emergency Coordination Group.
- (5) The State Emergency Coordination Group may determine its own procedures.
- (6) The State Emergency Coordination Group ceases to be established on a day determined by the State Emergency Coordinator.

27. Functions of the State Emergency Coordination Group

The State Emergency Coordination Group has the following functions —

- (a) to ensure the provision of coordinated emergency management by public authorities and other persons;
- (b) to provide advice and direction to public authorities and other persons to facilitate effective emergency management;
- (c) to liaise between emergency management agencies and the Minister.

Division 4 — Emergency management districts

28. Establishment of emergency management districts

- (1) For the purposes of this Act the State is divided into such emergency management districts as the Minister, on the advice of the SEMC, may determine by order published in the *Gazette*.
- (2) So far as is practicable emergency management districts are to be established by reference to the boundaries of local government districts.
- (3) If an emergency management district is proposed to be established other than by reference to the boundaries of a local government district, the Minister is to notify each local government in whose district any part of the area proposed to be established is situated and allow a reasonable time for submissions on the proposal.
- (4) In making an order under subsection (1) the Minister is to have regard to any submissions of the local governments.

29. District emergency coordinator

The State Emergency Coordinator is to appoint a district emergency coordinator for each emergency management district.

30. Functions of district emergency coordinator

The district emergency coordinator for an emergency management district has the following functions —

- (a) to provide advice and support to the district emergency management committee for the district in the development and maintenance of emergency management arrangements for its district;
- (b) to carry out other emergency management functions in accordance with the directions of the State Emergency Coordinator.

31. District emergency management committees

- (1) A district emergency management committee is established for each emergency management district.
- (2) The SEMC may invite the chairmen of the local emergency management committees within the emergency management district to submit a panel of names to the SEMC for consideration for appointment as chairman of the district emergency management committee.
- (3) The SEMC may appoint such person as it thinks fit to be chairman of the district emergency management committee irrespective of whether the name of that person is submitted under subsection (2).
- (4) The district emergency coordinator for the emergency management district is to be a member of the district emergency management committee, and may be appointed as chairman of the committee.
- (5) Subject to this section, the constitution and procedures of a district emergency management committee, and the terms and conditions of appointment of members, are to be determined by the SEMC.

32. Functions of district emergency management committees

- (1) It is a function of a district emergency management committee to assist in the establishment and maintenance of effective emergency management arrangements for the district for which it is constituted.
- (2) District emergency management committees have such other functions as are prescribed by the regulations.

33. Annual report of district emergency management committees

- (1) Each district emergency management committee is to prepare and submit to the SEMC an annual report on activities undertaken by it during the financial year.
- (2) The annual report —
 - (a) is to be prepared within the time, and in the manner, directed in writing by the SEMC; and
 - (b) is to include the annual report prepared under section 40 of each local emergency management committee within the district.

Part 3 — Local arrangements

Division 1 — Local emergency authorities

34. Local governments may combine

- (1) Two or more local governments may, with the approval of the SEMC, agree to unite for the purposes of emergency management under this Part.
- (2) If 2 or more local governments (the “**combined local government**”) unite as mentioned in subsection (1), the provisions of this Part apply as if —
 - (a) a reference to a local government were a reference to the combined local government;
 - (b) a reference to the local government’s district were a reference to the districts of the combined local government; and
 - (c) a reference to the local government’s offices were a reference to the office of each local government that is part of the combined local government.

35. Specified public authority may exercise functions of local government

- (1) The SEMC, by notice published in the *Gazette*, may designate —
 - (a) a specified area of one or more local government districts; or
 - (b) a specified area that is not part of a local government district,

as an area in which a specified public authority is to perform and exercise all of the functions of a local government under this Part.

- (2) Before designating an area under subsection (1) the SEMC is to notify each local government in whose district any part of the area proposed to be designated is situated of what is proposed to be done and allow a reasonable time for submissions on the proposal.
- (3) In designating an area under subsection (1) the SEMC is to have regard to any submissions of the local government.
- (4) A local government is not to perform or exercise functions under this Part in relation to an area within its district that is designated under subsection (1)(a) unless the local government is requested to do so by the public authority specified under subsection (1) in relation to that area.
- (5) If a notice is published under subsection (1), section 16(2) and this Part apply as if —
 - (a) a reference to a local government were a reference to the public authority specified in the notice; and
 - (b) a reference to a local government district, in relation to the public authority specified in the notice, were a reference to the area designated in the notice.
- (6) In subsection (1) —
“specified” means specified in a notice published under that subsection.

36. Functions of local government

It is a function of a local government —

- (a) subject to this Act, to ensure that effective local emergency management arrangements are prepared and maintained for its district;
- (b) to manage recovery following an emergency affecting the community in its district; and
- (c) to perform other functions given to the local government under this Act.

37. Local emergency coordinators

- (1) The State Emergency Coordinator is to appoint a local emergency coordinator for each local government district.
- (2) Before appointing a local emergency coordinator for a local government district the State Emergency Coordinator is to consult the relevant local government.
- (3) In making an appointment the State Emergency Coordinator is to have regard to any submissions of the local government.
- (4) The local emergency coordinator for a local government district has the following functions —
 - (a) to provide advice and support to the local emergency management committee for the district in the development and maintenance of emergency management arrangements for the district;
 - (b) to assist hazard management agencies in the provision of a coordinated response during an emergency in the district;
 - (c) to carry out other emergency management activities in accordance with the directions of the State Emergency Coordinator.

38. Local emergency management committees

- (1) A local government is to establish one or more local emergency management committees for the local government's district.
- (2) If more than one local emergency management committee is established, the local government is to specify the area in respect of which the committee is to exercise its functions.
- (3) A local emergency management committee consists of —
 - (a) a chairman and other members appointed by the relevant local government in accordance with subsection (4); and

- (b) if the local emergency coordinator is not appointed as chairman of the committee, the local emergency coordinator for the local government district.
- (4) Subject to this section, the constitution and procedures of a local emergency management committee, and the terms and conditions of appointment of members, are to be determined by the SEMC.

39. Functions of local emergency management committees

The functions of a local emergency management committee are, in relation to its district or the area for which it is established —

- (a) to advise and assist the local government in ensuring that local emergency management arrangements are established for its district;
- (b) to liaise with public authorities and other persons in the development, review and testing of local emergency management arrangements; and
- (c) to carry out other emergency management activities as directed by the SEMC or prescribed by the regulations.

40. Annual report of local emergency management committee

- (1) After the end of each financial year each local emergency management committee is to prepare and submit to the district emergency management committee for the district an annual report on activities undertaken by it during the financial year.
- (2) The annual report is to be prepared within such reasonable time, and in the manner, as is directed in writing by the SEMC.

Division 2 — Emergency management arrangements for local governments

41. Emergency management arrangements in local government district

- (1) A local government is to ensure that arrangements (“**local emergency management arrangements**”) for emergency management in the local government’s district are prepared.
- (2) The local emergency management arrangements are to set out —
 - (a) the local government’s policies for emergency management;
 - (b) the roles and responsibilities of public authorities and other persons involved in emergency management in the local government district;
 - (c) provisions about the coordination of emergency operations and activities relating to emergency management performed by the persons mentioned in paragraph (b);
 - (d) a description of emergencies that are likely to occur in the local government district;
 - (e) strategies and priorities for emergency management in the local government district;
 - (f) other matters about emergency management in the local government district prescribed by the regulations; and
 - (g) other matters about emergency management in the local government district the local government considers appropriate.
- (3) Local emergency management arrangements are to be consistent with the State emergency management policies and State emergency management plans.

- (4) Local emergency management arrangements are to include a recovery plan and the nomination of a local recovery coordinator.
- (5) A local government is to deliver a copy of its local emergency management arrangements, and any amendment to the arrangements, to the SEMC as soon as is practicable after they are prepared.

42. Reviewing and renewing local emergency management arrangements

- (1) A local government is to ensure that its local emergency management arrangements are reviewed in accordance with the procedures established by the SEMC.
- (2) Local emergency management arrangements may be amended or replaced whenever the local government considers it appropriate.

43. Local emergency management arrangements to be available for inspection

- (1) A local government is to keep a copy of its local emergency management arrangements at the offices of the local government.
- (2) The arrangements are to be available for inspection, free of charge, by members of the public during office hours.
- (3) The arrangements may be made available in written or electronic form.

Division 3 — Powers of local government during cyclone

44. Meaning of “cyclone area”

In this Division —

“**cyclone area**” means a cyclone area designated under section 16.

45. Exercise of powers under this Division

The powers given to a local government by this Division can only be exercised on behalf of the local government by a person expressly authorised by it to exercise those powers.

46. Power of local government to destroy dangerous vegetation or premises in cyclone area

If a local government is of the opinion that any vegetation or premises on land in a cyclone area in the district of the local government may, as a result of the cyclonic activity —

- (a) cause loss of life, prejudice to the safety, or harm to the health, of persons or animals; or
- (b) destroy or damage property or any part of the environment,

the local government may remove or destroy the vegetation or remove, dismantle or destroy the premises.

47. Local government may require owner or occupier of land to take action

- (1) If a local government is of the opinion that any vegetation or premises on land in a cyclone area in the district of the local government may, as a result of the cyclonic activity —
 - (a) cause loss of life, prejudice to the safety, or harm to the health, of persons or animals; or
 - (b) destroy or damage property or any part of the environment,

the local government may give a person who is the owner or the occupier of the land a direction in writing requiring the person to take measures specified in the direction to prevent or minimise the loss, prejudice, harm, destruction or damage.

- (2) A person who is given a direction under subsection (1) is not prevented from complying with it because of the terms on which the land is held.

48. Additional powers when direction given

- (1) This section applies when a direction is given under section 47.
- (2) If the person who is given the direction (the “**direction recipient**”) fails to comply with it, the local government may do anything that it considers necessary to achieve, so far as is practicable, the purpose for which the direction was given.
- (3) The local government may recover the cost of anything it does under subsection (2) as a debt due from the person who failed to comply with the notice.
- (4) If a direction recipient —
 - (a) incurs expense in complying with the direction; or
 - (b) fails to comply with such a direction and, as a consequence, is convicted and fined or has to pay to a local government the cost it incurs in doing anything under subsection (2),

the direction recipient may apply to a court for an order under subsection (6).

- (5) In subsection (4) —

“**court**” means a court that would have jurisdiction to hear an action to recover a debt of the amount of the expense, fine or cost sought to be recovered by the direction recipient.
- (6) On an application under subsection (4) the court may order —
 - (a) if the direction recipient is the owner, the occupier; or
 - (b) if the direction recipient is the occupier, the owner,to pay to the direction recipient so much of that expense, fine or cost as the court considers fair and reasonable in the circumstances.
- (7) In determining what is fair and reasonable the court is to have regard to —
 - (a) the type of land involved;

- (b) the terms on which the occupier is occupying the land;
and
- (c) any other matter the court considers to be relevant.

49. Provisions are in addition to other powers

This Division is in addition to, and does not derogate from, the powers of a local government under the *Local Government Act 1995* Part 3 Division 3.

Part 4 — Hazard management

Division 1 — Emergency situation declaration

50. Hazard management agency may make emergency situation declaration

- (1) A hazard management agency may, in writing, declare that an emergency situation exists in an area of the State in respect of a hazard of which it is the hazard management agency for emergency management.
- (2) The hazard management agency must not make the declaration unless it is satisfied that —
 - (a) an emergency has occurred, is occurring or is imminent in that area of the State; and
 - (b) there is a need to exercise powers under Part 6 to prevent or minimise —
 - (i) loss of life, prejudice to the safety, or harm to the health, of persons or animals;
 - (ii) destruction of, or damage to, property; or
 - (iii) destruction of, or damage to, any part of the environment.
- (3) An emergency situation declaration is to include —
 - (a) the time when, and date on which, the declaration is made; and
 - (b) the area of the State to which it applies.
- (4) Before making a declaration under this section the hazard management agency is to take reasonable steps to undertake consultation in accordance with State emergency management policies.
- (5) The hazard management agency must notify the State Emergency Coordinator, and each district emergency coordinator and local emergency coordinator for a local

government district to which the emergency situation declaration applies, as soon as practicable after the declaration is made.

- (6) A failure to consult under subsection (4) or notify under subsection (5) does not affect the validity of the declaration.
- (7) The making of an emergency situation declaration does not prevent the making of further emergency situation declarations in relation to the same or a different emergency.

51. Duration of emergency situation declaration

An emergency situation declaration —

- (a) has effect on and from the time it is made, or such later time as is specified in the declaration; and
- (b) if it is not extended by the State Emergency Coordinator under section 52, or sooner revoked under section 53, remains in force for 3 days after the time it first has effect.

52. Extension of emergency situation declaration

- (1) The State Emergency Coordinator may, in writing, by declaration extend, or from time to time further extend, the duration of an emergency situation declaration.
- (2) The declaration may limit the powers that may be exercised during the period by which the duration is extended.
- (3) A declaration extending, or further extending, the duration of an emergency situation declaration —
 - (a) is to include the time when, and date on which, the declaration is made;
 - (b) is to state the period by which the duration of the emergency situation declaration is extended; and

- (c) remains in force until the end of the period stated under paragraph (b) unless the emergency situation declaration is sooner revoked under section 53.
- (4) The period by which the duration of an emergency situation declaration is extended —
 - (a) unless paragraph (b) applies, must not exceed 7 days; or
 - (b) if the only powers that may be exercised during the period are any or all of the powers under section 69 in relation to a place or the powers under section 72, may be for such period as the State Emergency Coordinator considers necessary.
- (5) A declaration extending the duration of an emergency situation declaration has effect on and from the time it is made.

53. Revocation of emergency situation declaration

- (1) As soon as a hazard management agency is satisfied that it is no longer necessary for the powers under Part 6 to be exercised in relation to an emergency situation it has declared to exist, the hazard management agency is to revoke the emergency situation declaration.
- (2) The revocation is to be made by declaration in writing and is to include the time when, and date on which, it is made.
- (3) The revocation declaration has effect on and from the time it is made, or such later time as is specified in the revocation declaration.
- (4) Despite any other written law, the revocation of an emergency situation declaration does not affect —
 - (a) any penalty or punishment incurred, imposed, or liable to be incurred or imposed, before the revocation; or
 - (b) any investigation or legal proceedings in respect of such a penalty or punishment.

54. Notice of declaration

- (1) Notice of a declaration made under section 50, 52 or 53 is to be —
 - (a) published for general information as soon as is practicable after the declaration is made in any manner that the hazard management agency or State Emergency Coordinator, as the case requires, considers to be appropriate having regard to the circumstances and what is practicable; and
 - (b) published in the *Gazette* as soon as is practicable after the declaration is made.
- (2) A failure to publish notice of the declaration does not affect the validity of the declaration.

Division 2 — Hazard management officers

55. Authorisation of hazard management officers

- (1) A hazard management agency may authorise officers or employees of the hazard management agency, or other persons, to act as hazard management officers during an emergency situation declared by that hazard management agency.
- (2) An authorisation under subsection (1) is to specify —
 - (a) whether it applies to any emergency situation declared by the hazard management agency or whether it is limited to a particular emergency situation declared by the hazard management agency;
 - (b) the particular, or the particular class of, employee, officer or person to whom it applies; and
 - (c) the terms and conditions on which it is given.
- (3) An authorisation under subsection (1) may be given orally or in writing but if given orally is to be put in writing as soon as is practicable.

Emergency Management Act 2005

Part 4 0 Hazard management

Division 2 0 Hazard management officers

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- (4) A failure to put an authorisation in writing under subsection (3) does not invalidate the authorisation or anything done under the authorisation.
- (5) A hazard management officer may exercise a power under Part 6 only subject to the terms and conditions on which the person is authorised under this section.
- (6) A hazard management officer is to comply with the directions of the relevant hazard management agency when exercising a power under Part 6.

Part 5 — State of emergency

Division 1 — State of emergency declaration

56. Minister may make state of emergency declaration

- (1) The Minister may, in writing, declare that a state of emergency exists in the whole or in any area or areas of the State.
- (2) The Minister must not make a declaration under this section unless the Minister —
 - (a) has considered the advice of the State Emergency Coordinator;
 - (b) is satisfied that an emergency has occurred, is occurring or is imminent; and
 - (c) is satisfied that extraordinary measures are required to prevent or minimise —
 - (i) loss of life, prejudice to the safety, or harm to the health, of persons or animals;
 - (ii) destruction of, or damage to, property; or
 - (iii) destruction of, or damage to, any part of the environment.
- (3) A declaration under this section is to include —
 - (a) the time when, and date on which, the declaration is made; and
 - (b) the area of the State to which it applies.
- (4) The making of a state of emergency declaration does not prevent the making of further state of emergency declarations in relation to the same or a different emergency.

57. Duration of state of emergency declaration

A state of emergency declaration —

- (a) has effect on and from the time it is made, or such later time as is specified in the declaration; and
- (b) if it is not extended by the Minister under section 58, or sooner revoked under section 59, remains in force for 3 days after the time it first has effect.

58. Extension of state of emergency declaration

- (1) The Minister may by declaration in writing extend, or from time to time further extend, the duration of a declaration made under section 56.
- (2) The declaration may limit the powers that may be exercised during the period by which the duration is extended.
- (3) A declaration extending, or further extending, the duration of a state of emergency declaration —
 - (a) is to state the period by which the duration of the state of emergency declaration is extended; and
 - (b) remains in force until the end of the period stated under paragraph (a) unless the state of emergency declaration is sooner revoked under section 59.
- (4) The period by which the duration of a state of emergency declaration is extended —
 - (a) unless paragraph (b) applies, must not exceed 14 days; or
 - (b) if the only powers that may be exercised during the period are any or all of the powers under section 69 in relation to a place or the powers under section 72, may be for such period as the Minister considers necessary.
- (5) A declaration extending the duration of a state of emergency declaration has effect on and from the time it is made.

- (2) An authorisation under subsection (1) is to specify —
 - (a) whether it applies to any state of emergency or is limited to a particular state of emergency;
 - (b) the particular, or a particular class of, person to whom it applies; and
 - (c) the terms and conditions on which it is given.
- (3) An authorisation under subsection (1) may be given orally or in writing but if given orally is to be put in writing as soon as is practicable.
- (4) A failure to put an authorisation in writing under subsection (3) does not invalidate the authorisation or anything done under the authorisation.
- (5) An authorised officer may exercise a power under Part 6 only subject to the terms and conditions on which the person is authorised under this section.
- (6) An authorised officer is to comply with directions of the State Emergency Coordinator when exercising a power under Part 6.

62. Identification of authorised officers

- (1) The State Emergency Coordinator may issue an identification card to an authorised officer —
 - (a) containing the individual's name and a photograph or digital image of the person; and
 - (b) stating that the person is an authorised officer for the purposes of this Act.
- (2) An authorised officer should —
 - (a) carry his or her identification card while performing functions under this Act; and
 - (b) if it is practicable to do so, produce it before exercising a power of an authorised officer under this Act.

64. Functions of the State Disaster Council

The functions of the State Disaster Council are —

- (a) to liaise with the State Government and the State Emergency Coordination Group in relation to the state of emergency;
- (b) to provide prompt and accurate advice to the Government and the State Emergency Coordination Group in relation to the state of emergency;
- (c) to provide support for the Government and the State Emergency Coordination Group in relation to the state of emergency;
- (d) to liaise with the Australian Government as required; and
- (e) to perform any other functions as directed by the Premier.

Part 6 — Emergency powers

Division 1 — Powers during emergency situation or state of emergency

65. Application of this Division

Subject to any limitation in a declaration under section 52 or 58, this Division applies if an emergency situation declaration or state of emergency declaration is in force.

66. Obtaining identifying particulars

- (1) The office of hazard management officer is prescribed for the purposes of the *Criminal Investigation (Identifying People) Act 2002* and any holder of that office may exercise the powers in Part 3 of that Act in relation to an offence or suspected offence under this Act during an emergency situation.
- (2) The office of authorised officer is prescribed for the purposes of the *Criminal Investigation (Identifying People) Act 2002* and any holder of that office may exercise the powers in Part 3 of that Act in relation to an offence or suspected offence under this Act during a state of emergency.
- (3) Without limiting subsections (1) and (2), a hazard management officer or authorised officer may, where reasonably required for the purposes of emergency management during an emergency situation or state of emergency, request a person to give the officer any or all of the person's personal details.
- (4) If an officer reasonably suspects that a personal detail given by a person in response to a request under subsection (3) is false, the officer may request the person to produce evidence of the correctness of the detail.

67. Powers concerning movement and evacuation

For the purpose of emergency management during an emergency situation or state of emergency, a hazard management officer or authorised officer may do all or any of the following —

- (a) direct or, by direction, prohibit, the movement of persons, animals and vehicles within, into, out of or around an emergency area or any part of the emergency area;
- (b) direct the evacuation and removal of persons or animals from the emergency area or any part of the emergency area;
- (c) close any road, access route or area of water in or leading to the emergency area.

68. Use of vehicles

For the purposes of emergency management during an emergency situation or state of emergency, a hazard management officer or authorised officer may use a vehicle in any place and in any circumstance despite any provision of the *Road Traffic Act 1974* that requires a permit for the use of that vehicle or for the use of that vehicle in that place or in that circumstance.

69. Powers of officer to control or use property

- (1) For the purposes of emergency management during an emergency situation or state of emergency, a hazard management officer or authorised officer may take control of or make use of any place, vehicle or other thing.
- (2) The place, vehicle or other thing may be in, or outside, the emergency area.

70. Powers of officers in relation to persons exposed to hazardous substances

- (1) During an emergency situation or state of emergency, for a purpose mentioned in subsection (2), a hazard management officer or authorised officer may direct any person who has been exposed to a hazardous substance to do all or any of the following —
 - (a) to remain in an area specified by the officer for such period as is specified by the officer;
 - (b) to remain quarantined from other persons for such period, and in such reasonable manner, as is specified by the officer;
 - (c) to submit to decontamination procedures within such reasonable period, and in such reasonable manner, as is specified by the officer.
- (2) A direction may be given under subsection (1) for the purpose of —
 - (a) ensuring that the hazardous substance is contained; or
 - (b) ensuring that the person to whom the direction is given does not pose a serious risk to the life or health of others or to the environment because of the hazardous substance involved.
- (3) The period specified under subsection (1)(a) or (b) must not be more than 24 hours unless the State Emergency Coordinator has given authorisation for a longer period to be specified in relation to the person exposed to the hazardous substance.

71. Powers of police to direct closure of places and concerning movement and evacuation

- (1) For the purpose of emergency management during an emergency situation or state of emergency, the most senior police officer present in the emergency area may direct the owner, occupier or the person apparently in charge of any place

of business, worship or entertainment in the emergency area to close that place to the public for the period specified in the direction.

- (2) Subject to subsection (3), during an emergency situation or state of emergency the most senior police officer present in the emergency area may exercise any of the powers of a hazard management officer under section 67 or an authorised officer under section 75(1)(i), as the case requires.
- (3) A police officer is not to exercise a power under subsection (2) in a manner that is contrary to or in conflict with —
 - (a) a direction given to the police officer by the hazard management agency that made the emergency situation declaration or by the State Emergency Coordinator, as the case requires; or
 - (b) the exercise of a power by a hazard management officer under section 67 or an authorised officer under section 75(1)(i), as the case requires.
- (4) When exercising powers under this section a police officer has all the immunities of a hazard management officer or authorised officer.

72. Exchange of information

- (1) In this section —

“relevant information” means —

 - (a) the personal details of a person;
 - (b) information about the whereabouts of a person;
 - (c) information about the state of health of a person;
 - (d) information of a kind prescribed by the regulations;

“welfare services” means the provision of the following for persons affected by an emergency —

 - (a) accommodation;

- (b) catering;
 - (c) clothing and personal requisites;
 - (d) registration and inquiry services for the purpose of enabling individuals to be traced, families to be reunited and inquiries answered;
 - (e) financial assistance.
- (2) During an emergency situation or state of emergency, for the purposes of emergency management —
- (a) a hazard management officer or an authorised officer may disclose relevant information —
 - (i) to an emergency management agency; and
 - (ii) if the regulations so provide, to a person or entity engaged by an emergency management agency to provide welfare services, in accordance with those regulations;
- and
- (b) if the regulations so provide, an agency, person or entity to whom relevant information is disclosed under paragraph (a) may further disclose the information in accordance with those regulations.
- (3) During an emergency situation or state of emergency, for the purposes of emergency management, a hazard management officer or an authorised officer may request an emergency management agency that holds relevant information to disclose the information to the hazard management officer or authorised officer.
- (4) An emergency management agency may comply with a request under subsection (3) despite any law of this State relating to secrecy or confidentiality.
- (5) If information is disclosed, in good faith, under subsection (2) or in compliance with a request under subsection (3) —

- (a) no civil or criminal liability is incurred in respect of the disclosure;
 - (b) the disclosure is not to be regarded as a breach of any duty of confidentiality or secrecy imposed by law; and
 - (c) the disclosure is not to be regarded as a breach of professional ethics or standards or as unprofessional conduct.
- (6) The SEMC must establish procedures for the disclosure of information under subsection (2)(a)(i).
- (7) The regulations may include provisions about —
- (a) the circumstances in which information may be disclosed under this section;
 - (b) the agencies, persons and entities to whom information may be disclosed under this section;
 - (c) the conditions subject to which information may be disclosed under this section;
 - (d) the receipt and storage of information disclosed under this section; and
 - (e) the restriction of access to such information.

Division 2 — Further powers during state of emergency

73. Application of this Division

Subject to any limitation in a declaration under section 58, this Division applies if a state of emergency declaration is in force.

74. Power to direct public authorities during state of emergency

- (1) During a state of emergency the State Emergency Coordinator is responsible for coordinating such activities of public authorities as the State Emergency Coordinator considers necessary or desirable for responding to the emergency.
- (2) For that purpose the State Emergency Coordinator may —

- (a) direct any public authority to do or refrain from doing any act, or to perform or refrain from performing any function; and
 - (b) appoint an officer of a public authority to have overall control of particular activities carried out by public authorities in response to the emergency where a number of public authorities are involved.
- (3) If a direction is given to a public authority under subsection (2)(a) —
- (a) the public authority is to comply with the direction within the time and in the manner, if any, specified in the direction; and
 - (b) the direction prevails to the extent of any inconsistency with any written law or other law.

75. General powers during a state of emergency

- (1) During a state of emergency, for the purpose of emergency management, an authorised officer may —
- (a) enter or, if necessary, break into and enter, a place or vehicle in the emergency area;
 - (b) search any place or vehicle and anything found in or on the place or vehicle;
 - (c) take into a place in the emergency area the equipment, persons or materials the authorised officer reasonably requires for exercising a power under this Division;
 - (d) contain an animal or substance in the emergency area;
 - (e) remove or destroy an animal, vegetation or substance in the emergency area;
 - (f) remove, dismantle, demolish or destroy a vehicle, or any premises, in the emergency area;
 - (g) disconnect or shut off any electricity, gas, water or fuel supply, or any drainage facility, or any other service, in the emergency area;

- (h) take and use fuel, gas, electricity or water in the emergency area;
 - (i) direct the owner or occupier or the person apparently in charge of any place of business, worship or entertainment in the emergency area to close that place to the public for the period specified in the direction;
 - (j) turn off, disconnect or shut down any motor or equipment in the emergency area;
 - (k) open a container or other thing, or dismantle equipment, in the emergency area;
 - (l) excavate land or form tunnels in the emergency area;
 - (m) build earthworks or temporary structures, or erect barriers, in the emergency area;
 - (n) remove to such place as the authorised officer thinks proper any person who obstructs or threatens to obstruct emergency management activities; and
 - (o) require a person to give the authorised officer reasonable help to exercise the authorised officer's powers under this Division.
- (2) An authorised officer may enter a place or vehicle in the emergency area without a warrant or the consent of the occupier of the place or the owner of the vehicle.

Division 3 — General provisions

76. General provisions regarding powers

- (1) In this section —
“**officer**” means a hazard management officer, authorised officer or police officer.
- (2) If a person does not comply with a direction under this Part, an officer may do all such things as are reasonably necessary to ensure compliance with the direction, using such force as is reasonable in the circumstances.

- (3) An officer may exercise a power under this Part with the help, and using the force, that is reasonable in the circumstances.
- (4) The powers of an officer under this Part are in addition to, and not in derogation from, the powers the person may have under another written law or other law.

77. General provisions regarding directions

- (1) A direction may be given under this Part orally or in writing.
- (2) A direction given orally is to be confirmed in writing within 2 working days after it is given, unless within that period it is complied with or cancelled.
- (3) Failure to comply with subsection (2) does not invalidate the direction.

Part 7 — Compensation and insurance

Division 1 — Compensation

78. Entitlement to compensation

- (1) Subject to this Division, a person who suffers loss or damage because of the exercise, or purported exercise, of a power under section 46, 47, 48, 69 or 75(1)(f) is entitled to be paid just and reasonable compensation for the loss or damage.
- (2) Compensation is not payable to the person for loss or damage to the extent that —
 - (a) an amount for the loss or damage is recovered or recoverable by the person under a policy of insurance; or
 - (b) the conduct of the person contributed to the loss or damage.
- (3) Compensation is not payable to the person for loss or damage if the loss or damage would have happened in any event irrespective of the exercise, or purported exercise, of the power.

79. Applying for compensation

- (1) A person who suffers loss or damage because of the exercise, or purported exercise, of a power under section 46, 47, 48, 69 or 75(1)(f) may apply to the Minister for compensation for the loss or damage.
- (2) The application is to be made in writing within 90 days after the person suffers the loss or damage.
- (3) The application is to —
 - (a) state details of the person's loss or damage;
 - (b) state the amount of compensation claimed and the grounds for the amount claimed; and

- (c) be accompanied by such further information as is prescribed by the regulations.
- (4) The applicant is to provide any other relevant information required by notice given under section 80 to decide the application.
- (5) Despite subsection (2), the Minister may accept a person's application for compensation made more than 90 days after the person suffers the loss or damage if the Minister is satisfied that it would be reasonable in all the circumstances to accept the application.

80. Lapsing of application

- (1) If an application for compensation is made under this Division, the Minister may direct the applicant to provide information to decide the application by giving the applicant a notice stating —
 - (a) the required information;
 - (b) the time by which the information is to be given to the Minister; and
 - (c) that, if the information is not given to the Minister by the stated time, the application will lapse.
- (2) The stated time is to be reasonable and, in any case, at least 21 days after the notice is given.
- (3) The Minister may give the applicant a further notice extending or further extending the time if the Minister is satisfied that it would be reasonable in all the circumstances to give the extension.
- (4) A notice may be given under subsection (3) even if the time to which it relates has lapsed.
- (5) If the applicant does not comply with the requirement within the stated time or any extension, the application lapses.
- (6) In this section —

“information” includes a record relating to information.

81. Notice of decision

As soon as is practicable after deciding the application the Minister is to give the applicant a written notice stating —

- (a) the decision and the reasons for it;
- (b) if the Minister decides to pay compensation —
 - (i) details of the amount and how the amount was assessed; and
 - (ii) if the amount is less than the amount claimed — that the applicant may apply for a review of the decision, and how the applicant may apply for the review;
- (c) if the Minister decides not to pay compensation — that the applicant may apply for a review of the decision, and how the applicant may apply for the review.

82. Funding of compensation

The Consolidated Fund is charged with the payment of any compensation payable under this Part and any expenses incurred in the administration of this Part, and is appropriated accordingly.

Division 2 — Review

83. Review of compensation decision

An applicant who is dissatisfied with a decision of the Minister to refuse to pay compensation or about the amount of compensation may apply to the State Administrative Tribunal for a review of the decision.

Division 3 — Policies of insurance

84. Extension of policy of insurance

- (1) This section applies to a policy of insurance for damage to property if —

- (a) damage is caused to the property because of the exercise of a power, or performance of a function, under this Act by a person, in good faith, in relation to an emergency; and
 - (b) the power is exercised, or the function is performed, for the purpose of protecting —
 - (i) the property from damage; or
 - (ii) a person or an animal from death or injury.
- (2) For the purposes of the policy of insurance, the damage is, by the operation of this section, to be taken to be damage caused by the happening of an event for which the policy provides insurance cover.
- (3) A term of a policy of insurance that purports to vary or exclude the operation of subsection (2) is void.

Part 8 — Offences

85. Obstruction of a hazard management officer or authorised officer

A person must not obstruct or hinder a hazard management officer or an authorised officer in the exercise of a power under this Act.

Penalty: a fine of \$50 000.

86. Failure to comply with direction

- (1) A person given a direction under section 47, 67, 70, 71 or 75 must comply with the direction.

Penalty:

- (a) a fine of \$50 000;
- (b) for each separate and further offence committed by the person under the *Interpretation Act 1984* section 71, a fine of \$5 000.
- (2) A person must comply with a direction referred to in subsection (1) despite the provisions of any other written law, and the person does not commit an offence by reason of that compliance.

87. Failure to give help

A person required to give reasonable help under section 75(1)(o) must comply with the requirement.

Penalty: a fine of \$50 000.

88. Impersonation of hazard management officer or authorised officer

A person must not falsely represent, by words or conduct, that the person is a hazard management officer or an authorised officer.

Penalty: a fine of \$50 000.

89. False or misleading information

A person must not give information that the person knows to be false or misleading in a material particular to a hazard management officer or an authorised officer exercising a power under this Act or to a person helping a hazard management officer or an authorised officer to exercise a power under this Act.

Penalty: a fine of \$50 000.

90. False compensation claim

A person must not, in or in relation to a claim for compensation under Part 7, make a statement that the person knows to be false or misleading in a material particular to, or otherwise mislead, the Minister or any other person.

Penalty: a fine of \$50 000.

Part 9 — Employment protection

91. Meaning of terms used in this Part

(1) In this Part —

“**employee**” has the meaning given to that term in the *Industrial Relations Act 1979*;

“**employer**” has the meaning given to that term in the *Industrial Relations Act 1979*.

(2) For the purposes of this Part —

(a) an employee carries out an emergency management response if —

- (i) the employee undertakes an activity that involves responding to an emergency;
- (ii) the employee carries out the activity on a voluntary basis;
- (iii) the employee is a member of, or has a member-like association with, an emergency management agency; and
- (iv) the employee was requested by or on behalf of the emergency management agency to carry out the activity or no such request was made, but it would be reasonable to expect that, if the circumstances had permitted the making of such a request, it is likely that such a request would have been made;

and

(b) an employee does not carry out an emergency management response if the activity involves prevention of, preparedness for, or recovery from, an emergency.

(3) For the purposes of subsection (2)(a)(ii) an employee carries out an activity on a voluntary basis even if the employee directly or indirectly takes or agrees to take —

- (a) an honorarium;
- (b) a gratuity; or
- (c) a similar payment,

wholly or partly for carrying out the activity.

92. Protection of employment rights

- (1) For the purpose of calculating the entitlement of an employee to long service leave, sick leave, recreational leave or other benefits to which the employee is entitled, the continuity of service of the employee is to be taken not to have been broken only by the employee's absence from the employment because the employee was carrying out an emergency management response.
- (2) An employee who is absent from the employee's employment because the employee is carrying out an emergency management response is entitled to be paid by the person's employer remuneration for the period of the employee's absence calculated at the employee's ordinary rate of remuneration, determined in accordance with the regulations, on the time that the employee would ordinarily have worked had the employee worked his or her scheduled work time.

93. Victimisation because of emergency management response

- (1) An employer must not victimise an employee of the employer for the reason that, or reasons that include the reason that, the employee was temporarily absent from employment because the employee was carrying out an emergency management response.
- (2) It is a defence for the employer to show that —
 - (a) the absence was not reasonable having regard to all the circumstances; or

- (b) that the victimisation did not occur for the reason, or for reasons that include the reason, referred to in subsection (1).
- (3) An employer victimises an employee if the employer —
 - (a) dismisses the employee from employment with the employer;
 - (b) alters the employee’s position in his or her employment with the employer, to the employee’s disadvantage;
 - (c) refuses to promote or transfer the employee;
 - (d) does not provide the entitlements referred to in section 92; or
 - (e) otherwise injures the employee in his or her employment with the employer.

94. Civil penalty for breach of section 93

- (1) In this section —
 - “**association**” has the meaning given to that term in the *Industrial Relations Act 1979*;
 - “**court**” means the Magistrates Court;
 - “**organisation**” has the meaning given to that term in the *Industrial Relations Act 1979*.
- (2) The following persons may apply to the court for an order under this section in respect of a contravention of section 93(1) —
 - (a) the person directly affected by the contravention;
 - (b) an organisation or an association of which that person is a member.
- (3) If the court is satisfied that the employer has contravened section 93(1), the court may order the employer —
 - (a) to reinstate the person if he or she was dismissed from employment;

- (b) subject to subsection (6), to pay to the person compensation for any loss or injury suffered as a result of the contravention; or
- (c) to pay to the Treasurer an amount not exceeding \$50 000,

or do any one or more of those things.

- (4) The standard of proof to be applied in determining whether there has been a contravention of section 93(1) is the standard observed in civil proceedings.
- (5) A person is not entitled to compensation both under this section and otherwise for the same dismissal, loss or injury.
- (6) The court does not have jurisdiction under subsection (3)(b) to order that there be paid —
 - (a) to an employee who has been dismissed, any amount exceeding 6 months' remuneration of the employee; and
 - (b) in any other case, any amount exceeding \$5 000 or such other amount as is prescribed by the regulations.
- (7) For the purposes of subsection (6)(a) the court may calculate the amount on the basis of an average rate of remuneration received during any relevant period of employment.
- (8) A person must comply with an order made against him or her under this section.

Penalty:

- (a) a fine of \$50 000;
- (b) for each separate and further offence committed by the person under the *Interpretation Act 1984* section 71, a fine of \$5 000.

Part 10 — Miscellaneous

95. Confidentiality of information

A person who has been engaged in the performance of functions under this Act must not, directly or indirectly, record, disclose or make use of information obtained in the course of duty, except —

- (a) for the purpose of, or in connection with, performing functions under this Act;
- (b) as required or allowed under this Act or another written law;
- (c) with the written consent of the Minister or person to whom the information relates; or
- (d) in prescribed circumstances.

Penalty: a fine of \$12 000 and imprisonment for one year.

96. Expenses

- (1) The Minister may approve the payment to an emergency management agency of expenses that are —
 - (a) incurred by the emergency management agency in implementing emergency management during an emergency situation or a state of emergency in accordance with this Act; and
 - (b) not otherwise payable out of moneys provided by Parliament for that purpose.
- (2) The Consolidated Fund is charged with the payment of any expenses that are approved under subsection (1) and is appropriated accordingly.

97. Bodies corporate or employers, conduct on behalf of

- (1) In this section —

“engaging in conduct” includes failing or refusing to engage in conduct;

“state of mind” of a person includes —

- (a) the knowledge, intention, opinion, belief or purpose of the person; and
 - (b) the person’s reasons for the intention, opinion, belief or purpose.
- (2) This section applies to and in relation to proceedings for an offence against this Act.
- (3) If it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show —
- (a) that the conduct was engaged in by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; and
 - (b) that the director, employee or agent had the relevant state of mind.
- (4) Conduct engaged in on behalf of a body corporate by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority is to be taken to have been engaged in also by the body corporate, unless the body corporate establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.
- (5) If it is necessary to establish the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show —
- (a) that the conduct was engaged in by an employee or agent of the person within the scope of his or her actual or apparent authority; and
 - (b) that the employee or agent had the relevant state of mind.

s. 098

- (6) Conduct engaged in on behalf of a person other than a body corporate (the “**employer**”) by an employee or agent of the person within the scope of his or her actual or apparent authority is to be taken to have been engaged in also by the employer, unless the employer establishes that the employer took reasonable precautions and exercised due diligence to avoid the conduct.

98. Body corporate’s officers, liability of

- (1) In this section —
“**officer**”, in relation to a body corporate, has the meaning given to that term in the *Corporations Act 2001* of the Commonwealth but does not include an employee of the body unless the employee was concerned in the management of the body.
- (2) If a body corporate is charged with an offence under this Act, every person who was an officer of the body at the time of the alleged offence may also be charged with the offence.
- (3) If a body corporate and an officer are charged as permitted under subsection (2) and the body corporate is convicted of the offence, the officer is to be taken to have also committed the offence, subject to subsection (6).
- (4) If a body corporate commits an offence under this Act, then, although the body is not charged with the offence, every person who was an officer of the body at the time the offence was committed may be charged with the offence.
- (5) If an officer is charged as permitted by subsection (4) and it is proved that the body corporate committed the offence, the officer is to be taken to have also committed the offence, subject to subsection (6).
- (6) If under this section an officer is charged with an offence it is a defence to prove —

- (a) that the offence was committed without the officer's consent or connivance; and
- (b) that the officer took all the measures to prevent the commission of the offence that he or she could reasonably be expected to have taken having regard to the officer's functions and to all the circumstances.

99. Evidentiary matters

- (1) In proceedings for an offence against this Act, an allegation in the prosecution notice of any of the following matters is, in the absence of evidence to the contrary, to be taken to be proved —
 - (a) that at a specified time an emergency situation declaration or a state of emergency declaration was in force;
 - (b) that at a specified time a specified area was, or was part of, an emergency area;
 - (c) that at a specified time a person was a hazard management officer, an authorised officer or a police officer authorised to act under section 71;
 - (d) that at a specified time a specified person was given a notice or direction under this Act;
 - (e) that at a specified time a specified requirement was made of a specified person.
- (2) Unless the contrary is proved, it is to be presumed that a document purporting to have been signed by the Minister, the State Emergency Coordinator, the chairman of the SEMC, a hazard management officer or an authorised officer was signed by a person who at the time was the Minister, the State Emergency Coordinator, the chairman of the SEMC, a hazard management officer or an authorised officer.
- (3) Unless the contrary is proved, it is to be presumed that a document purporting to have been signed by a delegate of the Minister, the State Emergency Coordinator or the SEMC was

s. 0100

signed by a person who at the time was such a delegate and was authorised to sign it.

- (4) This section is in addition to and does not affect the operation of the *Evidence Act 1906*.

100. Protection from liability

- (1) An action in tort does not lie against the State, a Minister, the State Emergency Coordinator, a local government or an official for anything done, in good faith, under this Act.
- (2) This section does not stop a person further limiting the person's liability for an act or omission by relying on a provision of the *Civil Liability Act 2002*.
- (3) Subsection (1) does not affect any right to recover damages in respect of the death of or bodily injury to any person directly caused by, or by the driving of, a motor vehicle if, at the time of the death or bodily injury —
- (a) the vehicle was owned or was being driven by a person who, but for subsection (1), would incur liability in respect of the death or injury; and
 - (b) there was in force in respect of the vehicle a contract of insurance in accordance with the *Motor Vehicle (Third Party Insurance) Act 1943* section 4 or the corresponding legislation of a State or Territory prescribed for the purposes of section 3(4) of that Act.
- (4) The protection given by this section applies even though the thing done in the performance or purported performance of a function under this Act may have been capable of being done whether or not this Act had been enacted.
- (5) In this section a reference to the doing of anything includes a reference to the omission to do anything.
- (6) In this section —

“motor vehicle” has the meaning given to that term in the *Motor Vehicle (Third Party Insurance) Act 1943* section 3(1);

“official” means —

- (a) a member of the State Disaster Council, the State Emergency Management Committee, the State Emergency Coordination Group, a district emergency management committee or local emergency management committee;
- (b) an authorised officer;
- (c) a district emergency coordinator;
- (d) a local emergency coordinator;
- (e) an emergency management agency;
- (f) a hazard management officer;
- (g) a person acting under the direction or on the requirement of an authorised officer, a hazard management officer, or a police officer, under this Act.

101. Regulations as to compensation of volunteers

(1) In this section —

“prescribed emergency activity” means an activity prescribed by the regulations that relates to emergency management;

“volunteer” means a person who —

- (a) carries out a prescribed emergency activity; and
- (b) carries out the activity —
 - (i) on a voluntary basis; or
 - (ii) in accordance with a direction given under this Act or any other written law.

s. 0101

- (2) For the purposes of this section a person carries out an activity on a voluntary basis even if the person directly or indirectly takes or agrees to take —
- (a) an honorarium;
 - (b) a gratuity; or
 - (c) a similar payment,
- wholly or partly for carrying out the activity.
- (3) The Governor may make regulations concerning compensation and insurance of volunteers carrying out prescribed emergency activities.
- (4) Regulations made under this section may require an emergency management agency to take out and keep current in accordance with the regulations a policy of insurance that insures volunteers for compensation for injury caused to them while they are engaged in carrying out prescribed emergency activities.
- (5) Without limiting subsections (3) and (4), regulations made under this section may —
- (a) provide for the compensation that is payable for injury caused to a volunteer and the circumstances in which the compensation is payable;
 - (b) prescribe the terms and conditions on and subject to which insurance is to be provided, including the amounts of insurance cover to be taken out and kept current;
 - (c) prescribe classes or categories of volunteers to which specified provisions or obligations under the regulations apply or do not apply;
 - (d) prescribe classes or categories of emergency management agencies to which specified provisions or obligations under the regulations apply or do not apply;

- (e) provide for circumstances in which emergency management agencies are exempt from the regulations; and
- (f) prescribe a penalty of not more than \$50 000 for an offence against the regulations, with or without a penalty for each separate and further offence committed under the *Interpretation Act 1984* section 71 of not more than \$5 000.

102. Regulations

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.
- (2) Without limiting subsection (1), the regulations may limit the circumstances, and regulate the manner, in which the powers conferred by this Act may be exercised.

103. Review of Act

- (1) The Minister is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiry of 5 years from the commencement of this Act.
- (2) In the course of that review the Minister is to consider and have regard to —
 - (a) whether there is a need for the Act to continue; and
 - (b) any other matters that appear to the Minister to be relevant to the operation and effectiveness of the Act.
- (3) The Minister is to prepare a report based on the review and, as soon as is practicable after the report is prepared, is to cause it to be laid before each House of Parliament.

104. Consequential amendment

Schedule 1 has effect.

cl. 1

Schedule 1 — Consequential amendment

[s. 104]

1. Fire Brigades Act 1942 amended

- (1) The amendment in this clause is to the *Fire Brigades Act 1942**.

[* Reprint 6 as at 7 March 2003.

For subsequent amendments see Western Australian Legislation Information Tables for 2004, Table 1, p. 171 and Gazette 28 June 2005 p. 2918-19.]

- (2) After section 34 the following section is inserted in Part VII —

“

34A. Powers concerning persons exposed to hazardous material

- (1) Without limiting section 34, for a purpose mentioned in subsection (2), in a hazardous material incident an authorised officer may direct a person who has been exposed to hazardous material to do all or any of the following —
- (a) to remain in an area specified by the authorised officer for such period as is specified by the authorised officer;
 - (b) to remain quarantined from other persons for such period, and in such reasonable manner, as is specified by the authorised officer;
 - (c) to submit to decontamination procedures within such reasonable period, and in such reasonable manner, as is specified by the authorised officer.
- (2) A direction may be given under subsection (1) for the purpose of —
- (a) ensuring that the hazardous material is contained; or

- (b) ensuring that the person to whom the direction is given does not pose a serious risk to the life or health of others because of the hazardous material involved.
- (3) The Director or, in his absence, the officer or any member of the brigade who for the time being is in charge must not specify a period of more than 3 hours under subsection (1)(a) or (b) unless the chief executive officer of the Authority has given written authorisation for a longer period to be specified in relation to the person exposed to the hazardous material.
- (4) If a person does not comply with a direction under this section, an authorised officer may do all such things as are reasonably necessary to ensure compliance with the direction, using such force as is reasonable in the circumstances.
- (5) An authorised officer may exercise a power under this section with the help, and using the force, that is reasonable in the circumstances.
- (6) An authorised officer may revoke a direction given under this section at any time.
- (7) A person shall not obstruct or hinder an authorised officer in the exercise of a power under this section.
Penalty: a fine of \$50 000.
- (8) A person given a direction under this section shall comply with the direction.
Penalty: a fine of \$50 000.
- (9) The regulations may limit the circumstances, and regulate the manner, in which the powers conferred by this section may be exercised.

cl. 1

(10) In this section —

“authorised officer”, in relation to a hazardous material incident, means —

- (a) the Director or, in his absence, the officer or any member of the brigade who for the time being is in charge; and
- (b) the chief executive officer of the Authority.

”.

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Defined Terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined Term	Provision(s)
association.....	94(1)
authorised officer	3, Sch. 1, cl. 1(2)
combat agency	3
combined local government	34(2)
court	48(5), 94(1)
cyclone area	44
direction recipient	48(2)
district emergency management committee	3
emergency.....	3
emergency area	3
emergency management.....	3
emergency management agency	3
emergency management district.....	3
emergency situation	3
emergency situation declaration.....	3
employee.....	91(1)
employer	91(1), 97(6)
engaging in conduct	97(1)
hazard.....	3
hazard management agency	3
hazard management officer.....	3
hazardous substance	3
information.....	80(6)
local emergency coordinator	3
local emergency management arrangements	41(1)
local emergency management committee	3
local government district.....	3
motor vehicle	100(6)
occupier.....	3
officer.....	76(1), 98(1)
official.....	100(6)
organisation.....	94(1)
owner	3
personal details	3
place.....	3
premises	3
prescribed emergency activity	101(1)
property.....	3
public authority.....	3

Defined Terms

recovery	3
relevant information.....	72(1)
SEMC	3
specified	35(6)
State Disaster Council.....	3
State Emergency Coordination Group	3
State Emergency Coordinator	3
State emergency management plan.....	3
State emergency management policy.....	3
state of emergency	3
state of emergency declaration.....	3
state of mind.....	97(1)
support organisation.....	3
vehicle.....	3
volunteer	101(1)
welfare services.....	72(1)