

Emergency Management Amendment Bill 2016

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Western Australia

LEGISLATIVE ASSEMBLY

Emergency Management Amendment Bill 2016

A Bill for

An Act to amend the *Emergency Management Act 2005*.

The Parliament of Western Australia enacts as follows:

s. 1

1 **1. Short title**

2 This is the *Emergency Management Amendment Act 2016*.

3 **2. Commencement**

4 This Act comes into operation as follows —

- 5 (a) sections 1 and 2 — on the day on which this Act
6 receives the Royal Assent;
- 7 (b) the rest of the Act — on a day fixed by proclamation,
8 and different days may be fixed for different provisions.

9 **3. Act amended**

10 This Act amends the *Emergency Management Act 2005*.

11 **4. Section 3 amended**

12 (1) In section 3 delete the definitions of:

- 13 ***combat agency***
14 ***emergency management agency***
15 ***hazard***
16 ***hazard management agency***
17 ***support organisation***

18 (2) In section 3 insert in alphabetical order:

- 19 ***emergency management agency*** means —
- 20 (a) a hazard management agency; or
- 21 (b) a public authority, or other person, prescribed
- 22 under section 4(1);
- 23 ***emergency management aspect*** means an aspect of
- 24 emergency management described in paragraph (a),
- 25 (b), (c) or (d) of the definition of ***emergency***
- 26 ***management***;
- 27

1 **emergency management officer** has the meaning given
2 in section 76B(1);

3 **essential services** means the services prescribed by the
4 regulations for the purposes of this definition;

5 **hazard** has the meaning given in section 10A;

6 **hazard declaration** means a declaration made under
7 section 10B(1);

8 **hazard management agency** means a hazard
9 management agency prescribed under section 10D(1)
10 or appointed under section 10D(2);

11 **local emergency management plan** has the meaning
12 given in section 41(1);

13 **response** has the meaning given in paragraph (c) of the
14 definition of **emergency management**;

15 **terrorist act** has the meaning given in *The Criminal*
16 *Code* section 100.1 set out in the Schedule to the
17 *Criminal Code Act 1995* (Commonwealth);
18

19 (3) In section 3 in the definition of **emergency management** delete
20 “the management of the adverse effects of an emergency
21 including —” and insert:
22

23 all aspects of managing the adverse effects of an emergency,
24 namely —
25

26 (4) In section 3:

27 (a) in the definition of **emergency management** after each
28 of paragraphs (a) and (b) and in the definition of
29 **personal details** after each of paragraphs (a) and (b)
30 insert:
31

32 and
33

s. 5

1 (b) in the definition of *public authority* after each of
2 paragraphs (a) to (d) insert:

3

4 or

5

6 **5. Sections 4 to 6 replaced**

7 Delete sections 4 to 6 and insert:

8

9 **4. Emergency management agencies**

10 (1) A public authority, or other person, may be prescribed
11 by the regulations to be an emergency management
12 agency responsible for an activity prescribed by the
13 regulations that relates to emergency management (a
14 *prescribed emergency activity*).

15 (2) A public authority or person can be prescribed as an
16 emergency management agency responsible for a
17 prescribed emergency activity if, because of their
18 functions under any written law or specialised
19 knowledge, expertise or resources, the authority or
20 person is responsible for performing the prescribed
21 emergency activity.
22

23 **6. Part 2A inserted**

24 After section 9 insert:

25

26 **Part 2A — Hazards and hazard management**
27 **agencies**

28 **10A. Term used: hazard**

29 For the purposes of this Act, a hazard is —

30 (a) a cyclone, earthquake, flood, storm or tsunami;
31 or

-
- 1 (b) a fire; or
2 (c) a road, rail or air crash; or
3 (d) a plague or an epidemic; or
4 (e) a disruption to essential services; or
5 (f) a terrorist act or an action, or threat of action,
6 that is reasonably suspected to be a terrorist act;
7 or
8 (g) the presence, or reasonably suspected presence,
9 of an animal or plant pest or an animal or plant
10 disease; or
11 (h) an actual, imminent or reasonably suspected
12 spillage, release or escape of a hazardous
13 substance; or
14 (i) an event, situation or condition that is
15 prescribed by the regulations that is capable of
16 causing or resulting in —
17 (i) loss of life, prejudice to the safety, or
18 harm to the health, of persons or
19 animals; or
20 (ii) destruction of, or damage to, property or
21 any part of the environment;
22 or
23 (j) if a hazard declaration is in force under
24 section 10B — the hazard that is the subject of
25 the declaration.

26 **10B. Minister or State Emergency Coordinator may**
27 **make hazard declaration**

- 28 (1) The Minister or the State Emergency Coordinator may
29 declare that a particular occurrence or imminent
30 occurrence of an event, situation or condition is a
31 hazard for the purposes of this Act.

- 1 (2) A hazard declaration can only be made if the Minister
2 or the State Emergency Coordinator, as the case
3 requires, is satisfied that —
- 4 (a) the event, situation or condition is not referred
5 to in section 10A(a) to (h) or prescribed by
6 regulations made for the purposes of
7 section 10A(i); and
- 8 (b) the event, situation or condition is capable of
9 causing or resulting in —
- 10 (i) loss of life, prejudice to the safety, or
11 harm to the health, of persons or
12 animals; or
- 13 (ii) destruction of, or damage to, property or
14 any part of the environment;
- 15 and
- 16 (c) the occurrence or imminent occurrence of the
17 event, situation or condition is of such a nature
18 or magnitude that it requires a significant and
19 coordinated response.
- 20 (3) A hazard declaration may be made orally or in writing
21 but if made orally must be put in writing as soon as is
22 practicable.
- 23 (4) A hazard declaration is to include —
- 24 (a) a description of the occurrence or imminent
25 occurrence of an event, situation or condition
26 that is declared to be a hazard; and
- 27 (b) the time when, and date on which, it is made.
- 28 (5) A hazard declaration has effect on and from the time it
29 is made.
- 30 (6) A hazard declaration must be —
- 31 (a) published for general information as soon as is
32 practicable after the declaration is made in any

1 manner that the Minister or the State
2 Emergency Coordinator, as the case requires,
3 considers to be appropriate having regard to the
4 circumstances and what is practicable; and

5 (b) published in the *Gazette* as soon as is
6 practicable after the declaration is made.

7 (7) The making of a hazard declaration does not prevent
8 the making of further hazard declarations in relation to
9 the same or a different event, situation or condition.

10 **10C. Variation or revocation of hazard declaration**

11 (1) The Minister may, in writing, vary or revoke a hazard
12 declaration made by the Minister.

13 (2) The State Emergency Coordinator may, in writing,
14 vary or revoke a hazard declaration made by the State
15 Emergency Coordinator.

16 (3) An instrument of variation or revocation under
17 subsection (1) or (2) must be published in the *Gazette*
18 as soon as is practicable after it is made.

19 **10D. Hazard management agencies**

20 (1) A public authority, or other person, may be prescribed
21 by the regulations to be —

22 (a) a hazard management agency for emergency
23 management of a hazard; or

24 (b) a hazard management agency for one or more
25 emergency management aspects of a hazard.

26 (2) The State Emergency Coordinator may, in writing,
27 appoint a public authority, or other person, to be a
28 hazard management agency for either or both of the
29 following emergency management aspects of a hazard
30 referred to in section 10A(j) —

31 (a) response;

- 1 (b) recovery.
- 2 (3) Regulations under subsection (1) or an instrument of
3 appointment under subsection (2) must specify the
4 whole of the State, or an area of the State, as the area
5 for which the public authority or person is a hazard
6 management agency.
- 7 (4) A public authority or person can be prescribed as a
8 hazard management agency under subsection (1) if,
9 because of their functions under any written law or
10 specialised knowledge, expertise or resources, the
11 authority or person is responsible for emergency
12 management of the hazard, or the relevant emergency
13 management aspect of the hazard, in the relevant area.
- 14 (5) If the hazard management agency is not an individual
15 or a body corporate, the regulations or instrument of
16 appointment must designate —
- 17 (a) one or more persons who are authorised to act
18 in the name of the hazard management agency
19 for the purposes of sections 50 and 53; and
- 20 (b) one or more persons who are authorised to act
21 in the name of the hazard management agency
22 for the purposes of authorising persons to act as
23 hazard management officers under section 55.
- 24 (6) In sections 50, 53 and 55 a reference to a hazard
25 management agency is to be taken to include a
26 reference to a person who is designated to act in the
27 name of a hazard management agency under
28 subsection (5) for the purposes of that section.
- 29 (7) The State Emergency Coordinator may, in writing,
30 vary or revoke an appointment under subsection (2).

- 1 **10E. Delegation by hazard management agency**
- 2 (1) A hazard management agency, with the approval of the
- 3 State Emergency Coordinator, may delegate to an
- 4 officer or employee of the agency any power or duty of
- 5 the hazard management agency under any or all of
- 6 sections 50, 53 and 55.
- 7 (2) The delegation is to be in writing.
- 8 (3) A delegate exercising or performing a power or duty
- 9 that has been delegated under this section is to be taken
- 10 to do so in accordance with the terms of the delegation
- 11 unless the contrary is shown.
- 12 (4) Nothing in this section limits the ability of a hazard
- 13 management agency to act through an officer or person
- 14 representing the agency.
- 15

16 **7. Section 13 amended**

- 17 (1) Delete section 13(3) and insert:
- 18
- 19 (3) The Minister must ensure that each member of the
- 20 SEMC has expertise or experience that, in the
- 21 Minister's opinion, is relevant to the functions of the
- 22 SEMC.
- 23 (4A) A member of the SEMC is to be paid the remuneration
- 24 and allowances (if any) determined in his or her case
- 25 by the Minister on the recommendation of the Public
- 26 Sector Commissioner.
- 27
- 28 (2) In section 13(2) after each of paragraphs (a) to (c) insert:
- 29
- 30 and
- 31

1 **8. Section 14 amended**

2 After section 14(e) insert:

3

- 4 (fa) to carry out, and report to the Minister on, a
5 review of the extent to which any
6 recommendations made as the result of an
7 inquiry or investigation into an emergency have
8 been implemented;

9

10 **9. Section 16 amended**

11 Delete section 16(1) and insert:

12

- 13 (1) The SEMC may designate an area of the State as a
14 cyclone area on the advice of —
15 (a) the hazard management agency for emergency
16 management of cyclones in the relevant area; or
17 (b) a hazard management agency for an emergency
18 management aspect of cyclones in the relevant
19 area.

20

21 **10. Section 21 amended**

22 After section 21(3) insert:

23

- 24 (4A) A member of a sub-committee is to be paid the
25 remuneration and allowances (if any) determined in his
26 or her case by the Minister on the recommendation of
27 the Public Sector Commissioner.

28

1 **11. Section 26 amended**

2 (1) In section 26(2) delete “with the relevant hazard management
3 agency,” and insert:

4
5 with the relevant hazard management agency (if any),
6

7 (2) In section 26(3):

8 (a) delete paragraphs (b) and (c);

9 (b) in paragraph (d) delete “agency;” and insert:

10
11 agency (if any); and
12

13 (3) After paragraph 26(3)(a) insert:

14
15 and
16

17 **12. Section 30 amended**

18 In section 30(a) delete “for the district in the development and
19 maintenance of emergency management arrangements for its
20 district;” and insert:

21
22 for the purposes of the performance of that committee’s
23 function under section 32(1);
24

25 **13. Section 32 amended**

26 Delete section 32(1) and insert:

27
28 (1) It is a function of a district emergency management
29 committee to assist in the establishment and

s. 14

1 maintenance of effective local emergency management
2 plans by local governments with local government
3 districts that are in, or partly in, the emergency
4 management district for which the district emergency
5 management committee is established.
6

7 **14. Section 35 amended**

8 In section 35(5) delete “section 16(2)” and insert:

9
10 sections 16(2) and 32
11

12 **15. Section 41 amended**

13 (1) Delete section 41(1) and (2) and insert:

14
15 (1) A local government must ensure that a plan (a *local*
16 *emergency management plan*) for emergency
17 management in the local government’s district is
18 prepared.
19

20 (2) In section 41(3) delete “Local emergency management
21 arrangements are to be consistent with” and insert:

22
23 A local emergency management plan must comply with, and be
24 consistent with,
25

26 (3) In section 41(4) delete “Local emergency management
27 arrangements are to” and insert:

28
29 A local emergency management plan must
30

- 1 (4) In section 41(5):
2 (a) delete “arrangements,” (each occurrence) and insert:
3
4 plan,
5
6 (b) delete “they are” and insert:
7
8 the plan or amendment is
9

10 Note: The heading to amended section 41 is to read:
11 **Local emergency management plans**

12 **16. Part 3 Division 3 heading replaced**

13 Delete the heading to Part 3 Division 3 and insert:
14

15 **Division 3 — Powers of local government relating to**
16 **cyclone area**
17

18 **17. Section 45 amended**

19 (1) In section 45 delete “The powers” and insert:
20

21 (1) The powers
22

23 (2) At the end of section 45 insert:
24

25 (2) A power under section 46 or 47 can be exercised
26 whether or not any particular cyclonic activity is
27 occurring or is imminent.
28

s. 18

1 **18. Section 46 amended**

2 In section 46:

3 (a) delete “any vegetation or premises” and insert:

4

5 any vegetation or premises, or any loose material or
6 thing,

7

8 (b) delete “the cyclonic” and insert:

9

10 cyclonic

11

12 (c) delete “premises.” and insert:

13

14 premises, material or thing.

15

16 Note: The heading to amended section 46 is to read:

17 **Power of local government to destroy dangerous vegetation,**
18 **premises or other things in cyclone area**

19 **19. Section 47 amended**

20 (1) In section 47(1):

21 (a) delete “any vegetation or premises” and insert:

22

23 any vegetation or premises, or any loose material or
24 thing,

25

26

27 (b) delete “the cyclonic” and insert:

28

29 cyclonic

30

1 **20. Part 4 heading replaced**

2 Delete the heading to Part 4 and insert:

3

4 **Part 4 — Emergency situation**

5

6 **21. Section 50 amended**

7 (1) In section 50(1A) delete “may, in writing,” and insert:

8

9 may

10

11 (2) Delete section 50(1) and insert:

12

13 (1) A hazard management agency may declare that an
14 emergency situation exists in an area of the State in
15 respect of —

16 (a) a hazard of which it is the hazard management
17 agency for emergency management in the area;
18 or

19 (b) a hazard of which it is the hazard management
20 agency for either or both of the following
21 emergency management aspects in the area —

22 (i) response;

23 (ii) recovery.

24 (2A) A declaration under subsection (1A) or (1) may be
25 made orally or in writing but if made orally must be put
26 in writing as soon as is practicable.

27

s. 21

- 1 (3) Delete section 50(5A) and insert:
2
- 3 (5A) If a declaration under this section is made by the State
4 Emergency Coordinator in respect of a hazard in an
5 area of the State, the State Emergency Coordinator
6 must, as soon as practicable after the declaration is
7 made, notify the appropriate hazard management
8 agency.
- 9 (5B) For the purposes of subsection (5A), the appropriate
10 hazard management agency is —
- 11 (a) the hazard management agency for emergency
12 management of the hazard in that area; or
- 13 (b) the hazard management agency for either or
14 both of the following emergency management
15 aspects of the hazard in that area —
- 16 (i) response;
17 (ii) recovery.
- 18 (5C) If there is more than one hazard management agency of
19 a kind described in subsection (5B), the appropriate
20 hazard management agency is the hazard management
21 agency of that kind that the State Emergency
22 Coordinator considers most appropriate in the
23 circumstances.
24
- 25 (4) In section 50(6) after “failure” insert:
26
- 27 to put a declaration in writing under subsection (2A),
28
- 29 (5) After section 50(2)(b)(i) insert:
30
- 31 or
32

1 **22. Section 72 amended**

2 (1) In section 72(1) in the definition of *relevant information* delete
3 “means —” and insert:

4
5 means the following —

6
7 (2) In section 72(1) in the definition of *welfare services* delete
8 paragraph (e) and insert:

- 9
10 (e) financial assistance;
11 (f) social services, as defined in the *Children and*
12 *Community Services Act 2004* section 3.

13
14 (3) In section 72(7):

15 (a) delete “about —” and insert:

16
17 about the following —

18
19 (b) in paragraph (d) delete “section; and” and insert:

20
21 section;

22
23 (4) After section 72(5)(a) insert:

24
25 and

26

s. 23

1 **23. Part 6 Division 3A inserted**

2 After Part 6 Division 2 insert:

3

4 **Division 3A — Powers exercisable before emergency**
5 **situation or state of emergency is declared**

6 **76B. Powers of emergency management officers before**
7 **emergency situation or state of emergency is**
8 **declared**

9 (1) In this section —

10 *emergency management officer* means —

11 (a) a police officer; or

12 (b) a person prescribed by the regulations for the
13 purposes of this section;

14 *movement and evacuation powers* means powers of a
15 hazard management officer under section 67.

16 (2) An emergency management officer may exercise
17 movement and evacuation powers if the emergency
18 management officer is satisfied on reasonable grounds
19 that —

20 (a) an emergency has occurred, is occurring or is
21 imminent in an area of the State; and

22 (b) there is an urgent need to exercise those powers
23 to prevent or minimise —

24 (i) loss of life, prejudice to the safety, or
25 harm to the health, of persons or
26 animals; or

27 (ii) destruction of, or damage to, property;
28 or

29 (iii) destruction of, or damage to, any part of
30 the environment.

-
- 1 (3) A power cannot be exercised under subsection (2) in
2 relation to an emergency after the earlier of the
3 following occurs —
- 4 (a) an emergency situation or state of emergency is
5 declared in relation to the emergency;
- 6 (b) the expiry of the period of 4 hours beginning
7 when notice is given under subsection (4) in
8 relation to the exercise of powers.
- 9 (4) As soon as is practicable after movement and
10 evacuation powers are first exercised under
11 subsection (2) in relation to an emergency, an
12 emergency management officer must give notice of the
13 emergency and the exercise of those powers to —
- 14 (a) the appropriate hazard management agency; or
15 (b) if there is no appropriate hazard management
16 agency — the State Emergency Coordinator.
- 17 (5) For the purposes of subsection (4)(a), the appropriate
18 hazard management agency is —
- 19 (a) the hazard management agency for emergency
20 management of the hazard in the area of the
21 State referred to in subsection (2)(a); or
- 22 (b) the hazard management agency for either or
23 both of the following emergency management
24 aspects of the hazard in the area of the State
25 referred to in subsection (2)(a) —
- 26 (i) response;
- 27 (ii) recovery.
- 28 (6) If there is more than one hazard management agency of
29 a kind described in subsection (5), the appropriate
30 hazard management agency is the hazard management
31 agency of that kind that the emergency management
32 officer considers most appropriate in the
33 circumstances.

s. 24

1 (7) An emergency management officer is to comply with
2 any directions given by the State Emergency
3 Coordinator when exercising a power under
4 subsection (2).
5

6 **24. Section 76 amended**

7 In section 76 in the definition of *officer* delete “authorised
8 officer or police officer.” and insert:

9
10 an authorised officer, a police officer or an emergency
11 management officer who is not a police officer.
12

13 **25. Section 85 amended**

14 In section 85 delete “officer or an authorised officer in” and
15 insert:

16
17 officer, an authorised officer or an emergency management
18 officer in
19

20 Note: The heading to amended section 85 is to read:

21 **Obstruction of hazard management officer, authorised officer or**
22 **emergency management officer**

23 **26. Section 86 amended**

24 In section 86(1) delete “71 or 75” and insert:

25
26 71, 75 or 76B
27

1 **27. Section 88 amended**

2 In section 88 delete “officer or an authorised officer.” and
3 insert:

4
5 officer, an authorised officer or an emergency management
6 officer.

7
8 Note: The heading to amended section 88 is to read:

9 **Impersonation of hazard management officer, authorised officer**
10 **or emergency management officer**

11 **28. Section 89 replaced**

12 Delete section 89 and insert:

13

14 **89. False or misleading information**

15 A person must not give information that the person
16 knows to be false or misleading in a material particular
17 to —

18 (a) a hazard management officer, an authorised
19 officer or an emergency management officer
20 exercising a power under this Act; or

21 (b) a person helping a hazard management officer,
22 an authorised officer or an emergency
23 management officer to exercise a power under
24 this Act.

25 Penalty: a fine of \$50 000.

26

s. 29

1 **29. Section 99 amended**

2 After section 99(1)(c) insert:

3

4 (da) that at a specified time a person was an
5 emergency management officer authorised to
6 act under section 76B;

7

8 **30. Section 100 amended**

9 (1) In section 100(6) in the definition of *official* after paragraph (f)
10 insert:

11

12 (ga) an emergency management officer; or

13

14 (2) In section 100(6) in the definition of *official* after each of
15 paragraphs (a) to (f) insert:

16

17 or

18

19 **31. Section 104 replaced**

20 Delete section 104 and insert:

21

22 **104. Transitional provision: local emergency**
23 **management plans**

24 (1) The regulations may exempt all local governments, or a
25 class of local governments, from complying with
26 section 41 during a transitional period specified in the
27 regulations beginning on the day on which the
28 *Emergency Management Amendment Act 2016*
29 section 15 comes into operation.

s. 33

Provision	Delete	Insert
Pt. 3 Div. 2 heading	Emergency management arrangements for local governments	Local emergency management plans
s. 42(1) s. 43(2)	arrangements are	plan is
s. 42(2)	Local emergency management arrangements	A local emergency management plan
s. 43(1) and (3)	arrangements	plan

1 Note: The headings to the amended sections listed in the Table are to read as
 2 set out in the Table

3 **Table**

Amended section	Section heading
s. 42	Reviewing, amending and replacing local emergency management plans
s. 43	Local emergency management plans to be available for inspection

4
