

Emergency Management Amendment Bill 2016

EXPLANATORY MEMORANDUM

OVERVIEW

The purpose of this Bill is to amend the *Emergency Management Act 2005* (the Act) to:

1. provide the State Emergency Management Committee (SEMC) with a new function to review the implementation of past enquiries and investigations into emergencies;
2. change the functions, ex officio membership and qualifications of the SEMC, change the membership of the State Emergency Coordination Group (SECG) and provide for the remuneration of independent SEMC and SEMC subcommittee members;
3. allow a hazard management agency prescribed for an emergency management aspect to declare an emergency situation;
4. implement the eight recommendations of the *Review of the Emergency Management Act 2005*, tabled in Parliament on 4 December 2013; and
5. strengthen and clarify incidental provisions within the Act.

CLAUSE 1 - SHORT TITLE

Sets out the name of the Act.

CLAUSE 2 - COMMENCEMENT

This clause provides for the Act to come into operation as follows:

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

CLAUSE 3 - ACT AMENDED

This clause provides that this Act amends the *Emergency Management Act 2005*.

CLAUSE 4 - SECTION 3 AMENDED

Subclause (1) deletes the terms *combat agency* and *support organisation* from section 3.

Subclause (2) amends the definition of *emergency management agency* within section 3 from “*emergency management agency* means a hazard management agency, a combat agency or a support organisation” to:

“*emergency management agency* means –
(a) a hazard management agency; or
(b) a public authority, or other person, prescribed under section 6(1);”

This subclause also inserts definitions, within section 3 for the following terms: *emergency management aspect, emergency management officer, essential services, hazard declaration, local emergency management plan, response and terrorist act.*

Subclause (3) deletes from the definition of *emergency management* within section 3 “the management of the adverse effects of an emergency including –” and inserts “all aspects of managing the adverse effects of an emergency, namely –”.

Subclause (4) conjoins paragraphs (a) and (b) within the definition of *emergency management* within section 3. It also conjoins paragraphs (a) and (b) within the definition of *personal details*. Finally it inserts the word “or” after paragraphs (a) and (b) within the definition of *public authority*.

CLAUSE 5 - SECTIONS 4 TO 6 REPLACED

This clause deletes sections 4 and 6, relating to the prescription of hazard management agencies, combat agencies and support organisations and inserts section 4 which relates to the prescription of emergency management agencies. The definition of *emergency management agency* includes hazard management agencies.

The provisions contained within section 5 are moved to the new section 10E within the new Part 2A.

CLAUSE 6 - PART 2A INSERTED

This clause inserts Part 2A after section 9 to include the following within the definition of *hazard*:

- “disruption to essential services”;
- reasonable suspicion of a terrorist act;
- “the presence, or reasonably suspected presence, of an animal or plant pest or an animal or plant disease”;
- “an actual, imminent or reasonably suspected spillage, release or escape of a hazardous substance”; and
- a hazard subject of a hazard declaration under the new section 10B.

Section 10B within Part 2A provides for the Minister or the State Emergency Coordinator (SEC) to declare that a particular occurrence or imminent occurrence of an event, situation or condition is a hazard for the purposes of the Act.

A hazard declaration can only be made if the Minister or the SEC is satisfied the event, situation or condition is not prescribed within the *Emergency Management Regulations 2006*; is capable of causing or resulting in loss of life, prejudice to the safety, or harm to the health, of persons or animals, or destruction of, or damage to,

property or any part of the environment and is of such a nature or magnitude that it requires a significant and coordinated response.

A hazard declaration may be made orally or in writing, but if made orally, must be put in writing as soon as is practicable and is to include a description of the occurrence or imminent occurrence of an event, situation or condition that is declared to be a hazard and the time when, and date on which, it is made.

A hazard declaration has effect on and from the time it is made and must be published for general information as soon as is practicable after the declaration is made in a manner considered appropriate by the Minister or the SEC, as the case requires. It must also be published in the *Western Australian Government Gazette* as soon as is practicable after the declaration is made.

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

The Minister or the SEC may vary or revoke an order they have personally made, and an instrument of variation or revocation must be published in the *Western Australia Government Gazette* as soon as is practicable after it is made.

The new section 10(D) within Part 2A clarifies section 4 in relation to the prescription of hazard management agencies. It clarifies that a public authority, or other person, may be prescribed by the regulations to be a hazard management agency for emergency management of a hazard, or a hazard management agency for one or more emergency management aspects of a hazard.

The SEC may also, in writing, appoint a public authority or other person to be a hazard management agency for either or both of the emergency management aspects of response or recovery in relation to a declared hazard. The SEC may vary or revoke such appointment.

Regulations, or an instrument of appointment in the case of an appointed hazard management agency, must specify the whole of the State or an area of the State as the area of responsibility.

CLAUSE 7 - SECTION 13 AMENDED

Subclause (1) amends section 13(3) so that the Minister must ensure that each member of the SEMC has expertise or experience that, in the Minister's opinion, is relevant to the functions of the SEMC only and not to the SECG (the chair and executive officer of the SEMC are being removed from the SECG).

Subclause (1) also inserts provision for a member of the SEMC to be paid the remuneration and allowances (if any) determined in his or her case by the Minister on the recommendation of the Public Sector Commissioner.

Subclause (2) conjoins paragraphs (a) to (c).

CLAUSE 8 – SECTION 14 AMENDED

This clause inserts a new section 14(fa) to require the SEMC to carry out, and report to the Minister on, a review of the extent to which any recommendations made as the result of an enquiry or investigation into an emergency have been implemented.

CLAUSE 9 – SECTION 16 AMENDED

This clause amends section 16 to provide that the SEMC may designate an area of the State as a cyclone area on the advice of the hazard management agency for emergency management of cyclones (i.e. all 4 emergency management aspects of prevention, preparedness, response and recovery) in the relevant area; or a hazard management agency for an emergency management aspect of cyclones in the relevant area.

CLAUSE 10 – SECTION 21 AMENDED

This clause amends section 21 by inserting provision for a member of a SEMC sub-committee to be paid the remuneration and allowances (if any) determined in his or her case by the Minister on the recommendation of the Public Sector Commissioner.

CLAUSE 11 – SECTION 26 AMENDED

Subclause (1) amends section 26(2) to provide that there may not always be a relevant hazard management agency with which the SEC is required to consult in order to establish the SECG. In the case of a declared hazard, a hazard management agency may not need to be appointed until after the SECG is established.

Subclause (2) deletes the chairman and the executive officer of the SEMC from membership of the SECG, as it is neither necessary nor appropriate to include these roles within this operational group. This subclause also provides that there may not always be a relevant hazard management agency to form part of the SECG by inserting the words “if any” and conjoins sections 26(3)(d) and 26(3)(e).

Subclause (3) conjoins sections 26(3)(a) and 26(3)(d).

CLAUSE 12 – SECTION 30 AMENDED

This clause amends section 30 to clarify that the district emergency coordinator for an emergency management district has the function of providing advice and support to the district emergency management committee in order for that committee to perform its function under section 32(1) (i.e. to assist local governments in the establishment and maintenance of effective local emergency management plans).

CLAUSE 13 – SECTION 32 AMENDED

This clause amends section 32(1) to clarify that it is a function of a district emergency management committee to assist local governments in the establishment and maintenance of effective local emergency management plans.

CLAUSE 14 – SECTION 35 AMENDED

This clause amends section 35(5) to provide that if the SEMC publishes a notice in the *Western Australian Government Gazette* relating to an area in which a specified public authority is to perform and exercise all of the functions of a local government, references to local government in sections 16(2) and 32 include any specified public authority (e.g. Rottnest Island).

CLAUSE 15 – SECTION 41 AMENDED

Subclause (1) amends section 41(1) to replace the term “local emergency management arrangements” with “local emergency management plan”.

Subclause (1) also deletes the prescriptive requirements of section 41(2) in relation to local emergency management arrangements; these requirements will be contained within policy in relation to local emergency management plans.

Subclause (2) inserts a requirement for a local emergency management plan to comply with, and be consistent with, the State emergency management policies and State emergency management plans.

Subclauses (3) and (4) delete the word “arrangements” and replace it with “plan.”

The heading to the amended section 41 is changed from “Local emergency management arrangements” to “Local emergency management plans”.

CLAUSE 17 – SECTION 45 AMENDED

This clause amends section 45 by clarifying that preparation for a cyclone can be undertaken at any time.

CLAUSE 18 – SECTION 46 AMENDED

This clause amends section 46 by inserting “any loose material or thing” as items local government can remove, dismantle or destroy, in addition to “any vegetation or premises,” in order to prepare for cyclonic activity.

It also deletes the heading “Powers of local government relating to cyclone area” and inserts “Power of local government to destroy dangerous vegetation, premises or other things in cyclone area.”

CLAUSE 19 – SECTION 47 AMENDED

This clause amends section 47 by inserting “any loose material or thing” as items local government can give directions about to owners or occupiers of land, in addition to “any vegetation or premises”.

CLAUSE 20 – PART 4 HEADING REPLACED

This clause amends the heading to Part 4 by deleting “Hazard management” and replacing it with “Emergency situation”.

CLAUSE 21 – SECTION 50 AMENDED

Subclause (1) amends section 50 by deleting the words “in writing” from section 50(1A) to allow the SEC to make an emergency situation declaration verbally.

Subclause (2) amends section 50(1) to allow a hazard management agency for either or both of the emergency management aspects of response or recovery to make an emergency situation declaration, in addition to a hazard management agency for emergency management (i.e. all 4 emergency management aspects of prevention, preparedness, response and recovery).

The new section 50(2A) is inserted to provide that an emergency situation declaration made verbally must be put in writing as soon as is practicable.

Subclause (3) amends section 50(5A) to require the SEC to notify the “appropriate” hazard management agency after making an emergency situation declaration.

The new section 50(5B) is inserted to provide that for the purposes of section 50(5A), the appropriate hazard management agency is the hazard management agency for emergency management or the hazard management agency for either or both of the emergency management aspects of response or recovery.

The new section 50(5C) provides that if there is more than one hazard management agency for the purposes of section 50(5B), the appropriate one to notify is decided by the SEC.

Subclause (4) amends section 50(6) to provide that a failure to put an emergency situation declaration in writing does not affect its validity.

CLAUSE 22 – SECTION 72 AMENDED

Subclause (1) amends section 72(1) by inserting “the following” after *relevant information means*.

Subclause (2) also amends section 72(1) to insert “financial assistance” and “social services, as defined in the *Children and Community Services Act 2004* section 3” as additional welfare services able to be provided by the Department for Child Protection and Family Support.

Subclause (3) inserts “the following” after *The regulations may include provisions about*.

Subclause (4) conjoins sections 72(5)(a) and 72(5)(b).

CLAUSE 23 – PART 6 DIVISION 3A INSERTED

This clause amends Part 6 by inserting the new section 76B which creates the role of emergency management officer. An emergency management officer may be a police officer or a person prescribed by the regulations and may exercise movement and evacuation powers if satisfied on reasonable grounds that an emergency has occurred, is occurring or is imminent, and there is an urgent need to exercise powers to prevent or minimise-

- loss of life, prejudice to the safety, or harm to the health, of persons or animals; or
- destruction of, or damage to, property; or
- destruction of, or damage to, any part of the environment.

These powers can be exercised prior to the declaration of an emergency situation or a state of emergency, but cease following the declaration of same, or 4 hours after notification is given to the appropriate hazard management agency or the SEC of their exercise. The SEC can also give directions in relation to the exercise of the powers.

For the purposes of notification, the appropriate hazard management agency is the hazard management agency for emergency management of the hazard, or the hazard management agency for either or both of the emergency management aspects of response or recovery.

CLAUSE 24 – SECTION 76 AMENDED

This clause amends section 76 to include an emergency management officer within the definition of *officer*, thus bringing an emergency management officer within general provisions relating to powers such as use of force.

CLAUSE 25 – SECTION 85 AMENDED

This clause amends section 85 to include an emergency management officer as a person who can be obstructed or hindered.

The heading to section 85 is also amended from “Obstruction of a hazard management officer or authorised officer” to “Obstruction of hazard management officer, authorised officer or emergency management officer”.

CLAUSE 26 – SECTION 86 AMENDED

This clause amends section 86 to include section 76B within offences for failing to comply with a direction.

CLAUSE 27 – SECTION 88 AMENDED

This clause amends section 88 to include an emergency management officer as a person who can be impersonated.

The heading to section 88 is also amended from “Impersonation of hazard management officer or authorised officer” to “Impersonation of hazard management officer, authorised officer or emergency management officer”.

CLAUSE 28 – SECTION 89 REPLACED

This clause amends section 89 to include an emergency management officer as a person against whom it is an offence to provide false information. The offence provision extends to a person helping an emergency management officer.

CLAUSE 29 – SECTION 99 AMENDED

This clause amends section 99 to include an emergency management officer within provisions relating to matters taken to be proved in the absence of evidence to the contrary. In the absence of such evidence, it is to be taken that at a specified time a person was an emergency management officer authorised to act under section 76B.

CLAUSE 30 – SECTION 100 AMENDED

This clause amends section 100 to include an emergency management officer within the definition of *official* with respect to provisions relating to protection from liability.

CLAUSE 31 – SECTION 104 REPLACED

This clause deletes the redundant Schedule 1 (consequential amendments that had not previously come into effect) and inserts a transitional provision to allow regulations to be made to exempt local governments from complying with the requirement to have a local emergency management plan in place during a transitional period specified in the regulations.

CLAUSE 32 – SCHEDULE 1 DELETED

This clause deletes Schedule 1 which is redundant.

CLAUSE 33 – OTHER PROVISIONS AMENDED

This clause provides a table that sets out provisions where “local emergency management arrangements” is deleted and replaced with “local emergency management plan”. Such replacement relates to sections 36(a), 37(4)(a), 39(a), 39(b), the heading in Part 3, Division 2 and sections 42(1), 43(2), 42(2) 43(1) and 43(3).

This clause also amends the heading to section 42 from “Reviewing and renewing local emergency management arrangements” to “Reviewing, amending and replacing local emergency management plans”.

It also amends the heading to section 43 to replace “Local emergency management arrangements” with “Local emergency management plan”.