

## Explanatory Memorandum

### *Overview and background*

The purpose of this Bill is to establish the necessary overarching emergency management arrangements for Western Australia's emergency services, including local governments and support organisations. This includes matters relating to framework/infrastructure, policy, planning and coordination, and additional powers in the event of a higher-level emergency such as an 'emergency situation' or a 'state of emergency'.

In the absence of Emergency Management legislation, Western Australia's emergency management arrangements are derived from a Cabinet Minute of 1985, which approved the re-organisation of emergency services in the State. The arrangements approved by Cabinet form the basis of Policy Statement No. 7 ('PS7'), 'Western Australian Emergency Management Arrangements', issued by the State Emergency Management Committee (SEMC)<sup>1</sup>.

The formalisation of such arrangements strongly supports the Government's Strategic Goal to enhance the quality of life and wellbeing of all people throughout Western Australia through the Strategic Outcome of safe and secure Western Australian communities.

The Bill implements recommendations from the review of Western Australia's emergency management arrangements undertaken by the Legislative Assembly's Community Development and Justice Standing Committee. The review report, 'Emergency Services Legislation in Western Australia', was tabled in the Legislative Assembly on 7 November 2002.

The Bill was previously introduced into the Legislative Assembly of the 36<sup>th</sup> Parliament on 27 October 2004 as the *Emergency Management Bill 2004*. The 2004 Bill lapsed on 23 January 2005 when the 36<sup>th</sup> Parliament was prorogued and dissolved.

Since the tabling of the Bill in 2004, further consultation has been undertaken with emergency management agencies and in particular local governments. Local governments have a longstanding involvement in emergency management arrangements.

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<sup>1</sup> PS7 is a public document, a copy being currently accessible via the website of the Fire and Emergency Services Authority of Western Australia (FESA):

- [www.fesa.wa.gov.au](http://www.fesa.wa.gov.au)
- State emergency management
  - Policy & planning
    - SEMC policy statements
      - No. 7 – Western Australian Emergency Management Arrangements

Since October 2004, FESA has taken the opportunity to consult further with key stakeholders, in particular local government, the WA Police and Department for Community Development. The EM Bill 2005 includes valuable improvements over EM Bill 2004 including:

- The definition of 'hazard' has been expanded to include specific references to a 'tsunami' and a 'terrorist act'. Provisions have also been included to recognise and integrate State and Federal counter terrorism arrangements, an essential element in combating terrorism.
- Access to powers available by the declaration of an emergency situation has been simplified to make it quicker to access 'time critical' powers such as the power to take control of premises for evacuation centres.
- Information sharing provisions have been added to ensure that welfare agencies are able to obtain and share vital information during times of need.
- The volunteers' employment protection provisions have been expanded and clarified to protect employees from victimisation because they have responded to an emergency situation.
- The Government has responded to the concerns from the Western Australian Local Government Association (WALGA) by further enhancing provisions for consultation with the local government authorities.

There are several benefits arising from the Bill.

Firstly, the Bill brings certainty to emergency management arrangements which had previously relied on Cabinet decisions.

Secondly, the Bill provides the necessary powers to emergency management agencies, including:

- Different levels of powers available during an 'emergency situation' or 'state of emergency' – see Part 6, Divisions 1 and 2.
  - Power to evacuate persons.
  - Power to control or use property, e.g. as an evacuation centre.
  - Power to detain and decontaminate persons exposed to hazardous substances.
  - Power to obtain and exchange information, e.g. to provide welfare services.
- Local governments have additional powers in designated 'cyclone areas' – see clauses 44 to 49.
- Directions may be given to 'public authorities' – in relation to the preparation, review or testing of State emergency management plans (see clause 20), and during a declared 'state of emergency' (see clause 74).
- State Emergency Management Committee policies must be complied with – see clause 20.

Thirdly, the Bill introduces additional, legislated protection for emergency management personnel, specifically –

- Liability protection for volunteers and emergency management agency employees when acting in good faith under the Act – see clause 100;
- Protection of employment rights of volunteers temporarily absent from employment in order to perform an emergency management response – see clauses 91 to 94; and
- A requirement for the insurance of volunteers carrying out emergency management activities (with details to be prescribed in regulations) – see clause 101.

## **Part 1 – Preliminary**

### **Clause 1 Explanation Short Title**

This is the formal clause titling the Bill.

### **Clause 2 Explanation Commencement**

The date of commencement will be fixed by proclamation by the Governor. Different commencement days may be fixed for different provisions.

### **Clause 3 Explanation Interpretation**

This clause provides the definitions required for the purposes of the Act.

The following key definitions will assist in understanding the relationship between emergency management, emergencies and hazards:

““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 the 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” 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;”

““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<sup>#</sup>;
- (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;”

<sup>#</sup> The Commonwealth definition is used in the Bill to ensure consistency with the Commonwealth and with other States.

#### **Clause 4 Explanation Hazard management agencies may be prescribed**

In PS7 (Annex F), SEMC has designated 23 hazards/emergencies, and the hazard management agency responsible for each.

Clause 4 of the Bill allows for arrangements such as those set out in Annex F of PS7 to be established in legislation. Specifically, this clause provides for the prescribing, in regulations, of a 'hazard management agency' (HMA) in relation to each category of 'hazard'.

A HMA may have overall responsibility for all emergency management activities undertaken in relation to a proposed hazard – or for an emergency management aspect of that hazard prescribed in the regulations. Aspects of emergency management include activities pertaining to the mitigation or prevention of, preparedness for, response to and recovery from the specific hazard.

It is intended that the regulations will reflect the current HMA arrangements in PS7, e.g.:

- WA Police will be the HMA for 'Road Transport Emergencies' and 'Land Search and Rescue';
- the Fire and Emergency Services Authority of Western Australia (FESA) will be the HMA for 'Fire' in gazetted fire districts, 'Storm/Tempest', 'Tropical Cyclone' and 'Tsunami'; and
- the Department of Health will be the HMA for 'Human Epidemic'.

The regulations may prescribe that the HMA is appointed as HMA for the whole of the State or for an area of the State. This will allow the existing arrangements to be provided for, e.g. the Department of Conservation and Land Management to be prescribed as HMA for 'CALM Managed Land' (other than that which falls within a fire district established under the *Fire Brigades Act 1942*).

Sub-clause 4 reflects that some HMAs (such as WA Police or departments) are not separate legal entities. In such cases WA Police or the department will be prescribed as the HMA, but specific regulations will need to designate persons who may act in the name of the HMA.

#### **Clause 5 Explanation Delegation by hazard management agency**

This clause provides that the HMA may, in writing, with the approval of the State Emergency Coordinator, delegate an officer or employee with the power to:

- make an 'emergency situation' declaration under section 50; or
- revoke an 'emergency situation' declaration under section 53; or
- authorise persons to act as 'hazard management officers' under section 55.

The provisions of this clause do not limit the HMA from 'acting through' an officer or person representing the agency.

### **Clause 6 Explanation Combat agencies and support organisations may be prescribed**

This clause provides for the prescribing, in regulations, of a person or body as a 'combat agency' or 'support organisation', and the emergency management activity/ies for which they are responsible.

A 'combat agency' is a body which, because of its functions under a written law, or knowledge, expertise or resources is responsible for performing a task or activity to combat an emergency. Examples include:

- WA Police as a 'combat agency' for stranded motorists;
- FESA as a 'combat agency' for road accident rescue; and
- FESA as a 'combat agency' for fire resulting from a hazard for which it is not the HMA, e.g. air crash.

A 'support organisation' means an organisation that assists an HMA in an emergency management activity by providing support in restoring essential services (e.g. Alinta Network Services, Main Roads WA, Telstra, Water Corporation and Western Power) or providing services of a humanitarian nature (e.g. Department for Community Development, Department of Health), or carries out functions of a technical nature (e.g. Chemistry Centre, PathWest Laboratory Medicine WA).

The provisions of this clause are consistent with those set out in paragraphs 41 and 42 of PS7.

### **Clause 7 Explanation Act binds the Crown**

The provisions of the Act will 'bind the Crown'.

### **Clause 8 Explanation Relationship to other Acts**

To the extent that the provisions of this Act are inconsistent with those of any other Act, the provisions of this Act will prevail. Where the provisions of this Act are not inconsistent with those of another Act, they are in addition to (and do not detract from) those of the other Act.

The provisions of this Act are in addition to, and do not detract from, those in the *Fuel, Energy and Power Resources Act 1972*. (That Act specifically empowers the Governor to declare a 'state of emergency' in relation to fuel, energy or power.)

### **Clause 9 Explanation Limitation on Act – industrial disputes and civil disturbances**

This Act does not authorise any measures to end an industrial dispute or control a riot or other civil disturbance – the latter being provided for under the *Police Act 1892*.

## **Part 2 – State arrangements**

### **Division 1 – The State Emergency Coordinator**

#### **Clause 10 Explanation    State Emergency Coordinator**

The Commissioner of Police will be the State Emergency Coordinator. (The Commissioner of Police is currently the State Emergency Coordinator.)

#### **Clause 11 Explanation    Functions of the State Emergency Coordinator**

The State Emergency Coordinator's functions include the following:

- being responsible for coordinating the response to an emergency during a 'state of emergency' declared under clause 56;
- providing advice to the Minister about emergencies;
- providing advice to the State Disaster Council (see clause 63) during a 'state of emergency';
- providing advice and assistance to hazard management agencies; and
- carrying out other emergency management activities as directed by the Minister.

The State Emergency Coordinator is empowered to liaise with the Australian Government and other persons in or outside the State, and make agreements/arrangements with such persons, to assist in the management of emergencies. These powers are available when authorised under a State emergency management plan or a State emergency policy, or when authorised by the SEMC or the State Disaster Council.

*NB Any powers provided under this Act may be limited or regulated by the regulations – see clause 102(2).*

#### **Clause 12 Explanation    Delegation by State Emergency Coordinator**

This clause empowers the State Emergency Coordinator to delegate any power or duty except for the power to delegate. The delegation must be made in writing.

The empowerment for the State Emergency Coordinator (SEC) to formally delegate any power or duty does not limit the SEC's ability to 'act through' an officer or person representing the SEC.

### **Division 2 – The State Emergency Management Committee**

#### **Clause 13 Explanation    State Emergency Management Committee**

This clause establishes the State Emergency Management Committee (SEMC), the body responsible for Western Australia's emergency management policy and planning.

The SEMC will consist of the following members:

- A chairman appointed by the Minister (currently, the SEMC chairman is the Commissioner of Police);
- A deputy chairman appointed by the Minister (currently the deputy chairman is the CEO of the Fire and Emergency Services Authority of Western Australia {FESA});

- An executive officer appointed by the Minister (currently, the executive officer is the FESA Executive Director, Emergency Management Services); and
- Other members in accordance with the regulations. (Other members are currently the four chairpersons of the SEMC functional sub-committees – Emergency Services; Lifelines Services; Public Information; Recovery Services; and the Directors-General of the Department for Community Development and the Department of Health.)

The Minister is to ensure that each member has expertise or experience that, in the Minister's opinion, is relevant to the functions they will be performing. In regard to the chairman, this includes the chairman's role on the State Emergency Coordination Group established under clause 26.

The regulations may make provision concerning the constitution and procedures of the SEMC. Subject to any such regulations, SEMC may determine its own procedures.

#### **Clause 14 Explanation    Functions of the SEMC**

The SEMC's functions are to:

- advise the Minister on emergency management and the preparedness of the State to combat emergencies;
- provide direction, advice and support to the State, local government, private sector and communities in order to plan and prepare for an efficient emergency management capability for the State;
- provide a forum for whole of community <sup>#</sup> coordination to ensure the minimisation of the effects of emergencies;
- provide a forum for the development of community wide information systems to improve communications during emergencies;
- develop and coordinate risk management strategies to assess community vulnerability to emergencies;
- perform other functions provided under the Act or prescribed under the regulations.

<sup>#</sup> The intent of this clause is to ensure that an integrated approach to emergency management is taken by emergency management agencies (including local governments) and their respective communities.

#### **Clause 15 Explanation    Powers of the SEMC**

This clause empowers the SEMC to do all things necessary or convenient for or in connection with the performance of its functions. This includes:

- the production and publication of information on matters relating to the SEMC's functions; and
- acting in conjunction with other bodies or persons.

*NB Any powers provided under this Act may be limited or regulated by the regulations – see clause 102(2).*

## **Clause 16 Explanation    Designation of cyclone areas**

The SEMC may, on the advice of the HMA for cyclones in the relevant area, designate an area of the State as a ‘cyclone area’. The notice of designation is to be published in the *Government Gazette*.

Before making any designation under this clause, SEMC is to:

- notify the relevant local government/s of the proposed designation;
- allow a reasonable time for receipt of submissions from the local government/s; and
- have regard to any submissions received from the local government/s.

Local governments are provided with powers in relation to designated ‘cyclone areas’ – see clauses 44 to 49, in addition to those already held under the *Local Government Act 1995*.

(The designation of a ‘cyclone area’ would only be for the purposes of this Act.)

## **Clause 17 Explanation    State emergency management policies**

The SEMC is to arrange for the preparation of State emergency management policies, which are to include provision for:

- a strategic framework for emergency management in the State;
- the roles and responsibilities of emergency management agencies; and
- other matters prescribed by the regulations.

State emergency management policies, and amendments to them, will come into effect when approved by the SEMC<sup>2</sup>.

## **Clause 18 Explanation    State emergency management plans**

The SEMC is to arrange for the preparation of State emergency management plans, which are to be consistent with State emergency management policies.

State emergency management plans, and amendments to them, will come into effect when approved by the SEMC<sup>3</sup>.

## **Clause 19 Explanation    Reviewing State emergency management policies and State emergency management plans**

This clause empowers the SEMC to arrange for:

- State emergency management policies and plans to be reviewed, amended or replaced; and for
- State emergency management plans to be tested; whenever the SEMC considers it appropriate.

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<sup>2</sup> State emergency management policies already exist, and are publicly available via FESA’s web-site:

- [www.fesa.wa.gov.au](http://www.fesa.wa.gov.au)
  - State emergency management
    - Policy & planning
    - SEMC policy statements

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- [www.fesa.wa.gov.au](http://www.fesa.wa.gov.au)
  - State emergency management
    - Policy & planning
    - State plans

## **Clause 20 Explanation**    **Direction to public authorities**

This clause empowers SEMC to issue directions to a ‘public authority’, defined in clause 3 as:

- “(a) an agency as defined in the *Public Sector Management Act 1994*,” (i.e. a department, or an entity listed in Schedule 2 of that Act or an employee of the entity);
- “(b) a body, corporate or unincorporated, 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. “

Clause 20 empowers the SEMC to issue a written direction to a ‘public authority’ to:

- prepare, or assist in the preparation of; or
  - review, or assist in the review of; or
  - amend or replace, or assist in the amendment or review of; or
  - test, or assist in the testing of;
- a State emergency management plan.

The SEMC may issue written guidelines to help public authorities to respond to a written direction. A public authority is to comply with the SEMC’s direction – within the time and in the manner specified by the SEMC.

Public authorities that are given roles / responsibilities under a State emergency management policy are to comply with that policy.

*NB Any powers provided under this Act may be limited or regulated by the regulations – see clause 102(2).*

## **Clause 21 Explanation**    **Sub-committees**

This clause empowers the SEMC to establish sub-committees to advise on, or assist with, any matters relevant to its functions or the performance of its functions. This provision will cover SEMC’s existing arrangements, under which it has four ‘standing’ sub-committees (Emergency Services Group; Lifelines Services Group; Public Information Group; Recovery Services Group) and *ad hoc* working groups established to address specific issues.

Sub-committees may, but do not need to, include a SEMC member.

SEMC may:

- issue directions to sub-committees in relation to the performance of its functions, and its procedures (and such directions are to be complied with);
- remove a person from membership of a sub-committee; and
- reconstitute or discharge a sub-committee.

Subject to any directions from the SEMC, sub-committees may determine their own procedures.

**Clause 22 Explanation**    **SEMC may delegate**

The SEMC may delegate any of its powers or duties (except for the power to delegate) to a SEMC member, a SEMC sub-committee or a member of a SEMC sub-committee. Any such delegation is to be in writing, signed by the SEMC chairman.

The empowerment for the SEMC to formally delegate any power or duty does not limit the SEMC's ability to 'act through' an agent.

*NB Any powers provided under this Act may be limited or regulated by the regulations – see clause 102(2).*

**Clause 23 Explanation**    **Minister may give directions**

The Minister is empowered to give written directions to the SEMC concerning its functions, either generally or in relation to a specific matter. SEMC is to comply with such directions.

The text of the Minister's direction is to be included in SEMC's annual report.

**Clause 24 Explanation**    **Facilities and services for SEMC**

The Minister is to ensure that SEMC is provided with the facilities and services that, in the Minister's opinion, are reasonably necessary to enable it to perform its functions. This could include arrangements for such facilities and services to be provided by departments or authorities.

FESA currently provides executive and administrative support for SEMC.

**Clause 25 Explanation**    **Annual report of SEMC**

The SEMC is to prepare an annual report on its activities during each financial year, and is to submit the annual report to the Minister as soon as practicable after the end of the financial year.

The Minister is to cause the report to be tabled before each House of Parliament as soon as practicable after it is prepared.

**Division 3 – The State Emergency Coordination Group**

**Clause 26 Explanation**    **State Emergency Coordination Group**

A State Emergency Coordination Group (SECG) is established as soon as a 'state of emergency' is declared under section 56.

The SECG may also be established by the State Emergency Coordinator (SEC), either:

- at the request of a Hazard Management Agency (HMA); or
- at the initiative of the SEC, in consultation with the HMA.

The SECG will consist of:

- the SEC, who will chair the SECG;
- the SEMC chairman;
- the SEMC executive officer;
- a representative of the relevant HMA; and
- such other member/s as the SEC considers necessary.

The SECG may determine its own procedures, and will cease to be established when the SEC so determines.

SECG is the operational arm of the SEMC. The SECG is part of the existing emergency management arrangements outlined in SEMC's Policy Statement No. 7 (PS7). PS7 also includes details of other operational coordination groups which would typically be established to deal with a major emergency. These groups include the Incident Management Group (IMG) and Operations Area Management Group (OAMG), and would involve the local governments directly impacted by the emergency. It is not intended to prescribe IMG or OAMG in the Bill.

#### **Clause 27 Explanation Functions of the State Emergency Coordination Group**

The SECG's functions are to:

- ensure the provision of coordinated emergency management by the various agencies and organisations involved;
- provide advice and direction to agencies and organisations to facilitate effective emergency management; and
- liaise between emergency management agencies and the Minister.

#### **Division 4 – Emergency Management Districts**

##### **Clause 28 Explanation Establishment of Emergency Management Districts**

The Minister may, by order published in the Government Gazette, divide the State into emergency management districts. (There are currently 14 emergency management districts across the State.) In making such an order, the Minister is to consider the advice of the SEMC.

The boundaries of emergency management districts are, so far as is practicable, to follow the boundaries of the local government districts contained within them. If it is proposed that a particular emergency management district's boundaries not follow the boundaries of the local government districts, then the Minister is to:

- notify each local government affected;
- allow a reasonable time for the receipt of submissions on the proposal; and
- have regard to any local government submission.

##### **Clause 29 Explanation District emergency coordinator**

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

(District emergency coordinators are part of the existing emergency management arrangements outlined in SEMC's Policy Statement No. 7. The relevant Police District Officer has traditionally been appointed as the district emergency coordinator, but clause 29 is not prescriptive and allows flexibility in that regard.)

**Clause 30 Explanation**     **Functions of district emergency coordinator**

The district emergency coordinator's functions are to:

- provide advice and support to the district emergency management committee in the development and maintenance of emergency management arrangements for the district; and
- carry out other emergency management functions as directed by the State Emergency Coordinator.

**Clause 31 Explanation**     **District emergency management committees**

This clause establishes a district emergency management committee (DEMC) for each emergency management district. (DEMCs are part of the existing emergency management arrangements outlined in SEMC's Policy Statement No. 7.)

The chairpersons of the local emergency management committees within an emergency management district may be invited by the SEMC to nominate a panel of names for consideration for appointment as chairman of the DEMC. SEMC may appoint one of those persons, or another person, as chairman.

The SEMC will determine the constitution and procedures of a DEMC, and the terms and conditions of appointment of members.

**Clause 32 Explanation**     **Functions of district emergency management committees**

The functions of a district emergency management committee (DEMCs) are to:

- assist in the establishment and maintenance of emergency management arrangements for its district; and
- undertake other functions as prescribed by the regulations.

**Clause 33 Explanation**     **Annual report of district emergency management committees**

Each DEMC is to prepare, within the time and in a manner directed by SEMC, an annual report on its activities during each financial year, and is to submit the annual report to the SEMC within the timeframe directed by the SEMC. Directions by the SEMC are to be made in writing.

A DEMC's annual report is to include the annual report for each local emergency management committee within the emergency management district.

**Part 3 – Local arrangements**

**Division 1 – Local emergency authorities**

**Clause 34 Explanation**     **Local governments may combine**

With the agreement of the SEMC, two or more local governments may agree to unite for the purposes of this Part of the Act. Where that happens, references to a local government, its district or its office are deemed to be references to the combined local governments, their districts or their offices.

The effect of this clause is to allow local governments to establish joint local emergency management committees and local emergency management arrangements, rather than undertaking such matters individually.

**Clause 35 Explanation**     **Specific public authority may exercise functions of local government**

This clause empowers the SEMC, by a notice in the *Government Gazette*, to designate an area (either inside or outside a local government district) for which a specified ‘public authority’ (see ‘Clause 20 Explanation’) is to perform and exercise the emergency management functions of a local government.

Before making such a designation, SEMC must:

- notify each local government potentially affected by the designation;
- allow a reasonable time for receipt of submissions on the proposal; and
- have regard to local government submissions when making the designation.

Once a specified ‘public authority’ has been designated for an area, the local government is not to exercise its powers (under this Part) in the designated area without the approval of the specified public authority.

The intention of clause 35 is to ensure that all areas of Western Australia are covered by appropriate emergency management arrangements. It will be necessary for SEMC to consider how emergency management arrangements are to be handled for:

- Abrolhos Islands – over which the Department of Fisheries holds a land management order, but which are part of the Shire of Northampton according to some records;
- Rottnest Island – which is provided for under the *Rottnest Island Authority Act 1987*, but which is part of the City of Cockburn according to some records; and
- Kings Park – which is provided for under the *Botanic Gardens and Parks Act 1998*, but does not fall within a local government district.

Detailed consultation with stakeholders will be required prior to the publication of a notice under this clause.

**Clause 36 Explanation**     **Functions of local government**

A local government’s functions are to:

- ensure that effective ‘local emergency management arrangements’ (see clause 41) are prepared and maintained for its district;
- manage recovery following an emergency affecting a community in its district; and
- perform any other functions given to the local government under this Act.

**Clause 37 Explanation**     **Local emergency coordinators**

This clause requires the State Emergency Coordinator (SEC) to appoint a local emergency coordinator for each local government district. Before making such appointment, the SEC is to:

- consult the relevant local government/s; and
- have regard to local government submissions when making the appointment.

The local emergency coordinator's functions are to:

- advise and support the local emergency management committee in the development and maintenance of emergency management arrangements for the local government district;
- assist Hazard Management Agencies in providing a coordinated response during an emergency; and
- undertake other emergency management activities in accordance with directions from the State Emergency Coordinator.

Local emergency coordinators are part of the existing emergency management arrangements outlined in SEMC's PS7 (paragraph 38) and Policy Statement No. 3, 'Local Community Emergency Management Arrangements'<sup>4</sup>.

### **Clause 38 Explanation**    **Local emergency management committees**

This clause requires a local government to establish a local emergency management committee (LEMC) for its district. A local government may establish more than one LEMC for its district if circumstances warrant such (e.g. size, location, population), and will then need to specify the area in which each LEMC is to exercise its functions. (This situation already exists in some local government districts.)

Membership of the LEMC will consist of:

- a chairman and other members nominated by the local government; and
- the local emergency coordinator, if not the chairman.

Subject to the matters outlined above, the constitution and procedures of a LEMC (and the terms and conditions of appointment as members) are to be determined by the SEMC.

LEMCs are part of the existing emergency management arrangements outlined in SEMC's PS7 (sub-paragraph 34(c) and Annex E).

### **Clause 39 Explanation**    **Functions of local emergency management committees**

A local emergency management committee (LEMC) is to:

- Advise and assist its local government in ensuring that 'local emergency management arrangements' (see clause 41) are established for the local government district;
- liaise with agencies, organisations and other persons in the development, review and testing of local emergency management arrangements; and
- carry out any other emergency management activities as directed by the SEMC, or prescribed by the regulations.

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<sup>4</sup> PS3 is a public document, a copy being currently accessible via FESA's website:

- [www.fesa.wa.gov.au](http://www.fesa.wa.gov.au)
  - State emergency management
    - Policy & planning
      - SEMC policy statements
        - No. 3 – Local Community Emergency Management Arrangements

**Clause 40 Explanation**     **Annual report of local emergency management committee**

Each LEMC is to prepare, in a manner directed by the SEMC, an annual report on its activities during each financial year, and is to submit the annual report to its DEMC within the timeframe directed by SEMC. Directions by the SEMC are to be made in writing.

**Division 2 – Emergency management arrangements for local governments**

**Clause 41 Explanation**     **Emergency management arrangements in local government district**

This clause requires that a local government must ensure that ‘local emergency management arrangements’ are prepared in relation to emergency management in the local government district.

The local emergency management arrangements are to set out:

- the local government’s policies for emergency management;
- the roles and responsibilities of ‘public authorities’ (see Clause 20 – Explanation) and other persons involved in emergency management in its district;
- provisions relating to the coordination of emergency management operations and activities;
- a description of emergencies likely to occur in its district;
- emergency management strategies and priorities for the local government district;
- a recovery plan, and the nomination of a local recovery coordinator;
- other matters about emergency management prescribed by the regulations; and
- any other matters that the local government considers appropriate.

The local emergency management arrangements are to be consistent with State emergency policies and plans.

A copy of each local government’s local emergency management arrangements (and any amendments) is to be delivered to the SEMC as soon as practicable after they are prepared.

Local emergency management arrangements are part of the existing emergency management arrangements outlined in SEMC’s Policy Statement No. 3, ‘Local Community Emergency Management Arrangements’, and the accompanying document ‘Local Community Emergency Management Arrangements Guide’<sup>5</sup>.

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      - No. 3 – Local Community Emergency Management Arrangements
      - Local Community Emergency Management Arrangements Guide.

**Clause 42 Explanation**     **Reviewing and renewing local emergency management arrangements**

Local emergency management arrangements must be reviewed by the local government in accordance with the procedures established by SEMC, and may be amended or replaced whenever the local government considers appropriate.

**Clause 43 Explanation**     **Local emergency management arrangements to be available for inspection**

A local government must keep a copy of its local emergency management arrangements at its office. The arrangements are to be available for inspection by members of the public, free of charge. The arrangements may be made available in written or electronic form.

**Division 3 – Powers of local government during cyclone**

**Clause 44 Explanation**     **Meaning of “cyclone area”**

A ‘cyclone area’ means a cyclone area designated by SEMC under section 16.

**Clause 45 Explanation**     **Exercise of powers under this Division**

The powers available to the local government under clauses 46 to 49 are only to be exercised by a person expressly so authorised by the local government.

**Clause 46 Explanation**     **Power of local government to destroy dangerous vegetation or premises in cyclone area**

This clause empowers local governments to remove or destroy vegetation or remove, dismantle or destroy premises in a cyclone area, provided that the local government is satisfied that, as a result of a cyclone, the vegetation or premises may –

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

*NB Any powers provided under this Act may be limited or regulated by the regulations – see clause 102(2).*

These powers are essential to facilitate ‘clean-up’ activities to remove loose materials which could cause damage during a cyclone.

The ‘cyclone’ provisions in clauses 44 to 49 were a strong focus of the Community Development and Justice Standing Committee’s 2002 report ‘Emergency Services Legislation in Western Australia’.

Any person who suffers loss or damage because of the exercise, or purported exercise, of a power under clauses 46, 47 or 48 is entitled to claim, and be paid, just and reasonable compensation – see clauses 78 to 83.

**Clause 47 Explanation**     **Local government may require owner or occupier of land to take action**

This clause empowers local governments to issue a written direction requiring an owner or occupier to take measures (specified in the direction) to prevent or minimise the loss, harm, destruction or damage, provided that the local government is satisfied that, as a result of a cyclone, the vegetation or premises may cause loss or harm to the safety or health of persons or animals, or destroy or damage property or any part of the environment.

The owner/occupier of land is to comply with the direction regardless of the terms under which the land is held.

*NB Any powers provided under this Act may be limited or regulated by the regulations – see clause 102(2).*

**Clause 48 Explanation**     **Additional powers when direction given**

If a direction given under clause 47 is not complied with, the local government may:

- do anything that it considers necessary to achieve what was intended by the direction; and
- then recover the cost of anything it does as a debt due from the person who failed to comply with the direction.

This clause includes further provisions that allow action via the courts for an owner to seek reimbursement from an occupier, or an occupier to seek reimbursement from an owner for:

- expenses incurred in complying with the direction; or
- any conviction, fine or reimbursement of costs made to a local government.

Clause 48 mirrors section 3.26 of the *Local Government Act 1995*.

**Clause 49 Explanation**     **Provisions are in addition to other powers**

The provisions of this section are in addition to, and do not detract from, a local government's powers under the *Local Government Act 1995*.

For example, Schedule 3.1 (Division 1, clause 10) of the *Local Government Act 1995* empowers any local government to issue notices under section 3.25(1) to require owners/occupiers of land to -

“take specified measures for preventing or minimizing:  
    (a) danger to the public; or  
    (b) damage to property;  
which might result from cyclonic activity.”

## **Part 4 – Hazard management**

### **Division 1 – Emergency situation declaration**

#### **Clause 50 Explanation     *Hazard management agency may make emergency situation declaration***

This clause covers matters relating to the declaration of an ‘emergency situation’.

A Hazard Management Agency (HMA) may declare that an ‘emergency situation’ exists in a part of the State in respect of a hazard for which the HMA is responsible. The declaration must be in writing, and include the time and date of its making, and the area of the State to which it applies. Before making the declaration, the HMA must first be satisfied that:

- an emergency has occurred, is occurring or is imminent in that part of the State; and that
- to prevent or minimise loss of life, illness or injury, to persons or animals, or property loss or damage, or damage to the environment, it will be necessary to exercise powers under Part 6 of this Act.

The HMA is also to take reasonable steps to undertake consultation in accordance with State emergency management policies. However, failure to consult does not affect the validity of the declaration.

As soon as practicable after the declaration is made, the HMA must notify the State Emergency Coordinator, relevant district emergency coordinator/s and relevant local emergency coordinator/s.

The intention of making an ‘emergency situation’ declaration is to allow the use of powers under Part 6, ‘Emergency powers’. There are certain levels of control/accountability built-in:

- the only person who can make an ‘emergency situation’ declaration on behalf of a HMA is the person delegated by the State Emergency Coordinator (see clause 5);
- an ‘emergency situation’ is only valid for a maximum of three days (see clause 51), and can only be extended by the State Emergency Coordinator (see clause 52);
- any extension by the State Emergency Coordinator may be in respect of all powers, or only for clauses 69, ‘Powers of officer to control or use property’, or 72, ‘Exchange of information’ (see clause 52);
- powers available during an ‘emergency situation’ are only exercisable by persons appointed as ‘hazard management officers’ or by the most senior Police officer available in the emergency area (see clause 71); and
- any powers provided under this Act may be limited or regulated by the regulations (see clause 102(2)).

#### **Clause 51 Explanation     *Duration of emergency situation declaration***

An ‘emergency situation’ declaration:

- comes into operation from the time that it is made, or later if so specified in the declaration; and
- only remains in force for three days unless revoked within that three days, or extended by the State Emergency Coordinator.

### **Clause 52 Explanation**    **Extension of emergency situation declaration**

The State Emergency Coordinator may, in writing, extend or further extend the declaration of an ‘emergency situation’.

A declaration of extension:

- must include the time and date on which it is made, and the period of the extension; and
- remains in force for the period of extension unless revoked earlier.

Any extension by the State Emergency Coordinator may be in respect of –

- all powers - in which case the extension must not be for more than seven days; or
- only for clauses 69, ‘Powers of officer to control or use property’, or 72, ‘Exchange of information’ (see clause 52) – in which case the extension may be for such period as the State Emergency Coordinator considers necessary.

The powers available under clauses 69 and 72 are needed during the ‘response’ and ‘recovery’ phases of an emergency, in relation to emergency accommodation and the sharing of information about those affected by the emergency. Recovery can be a lengthy operation, often extending over a period of months. In such cases it would not be administratively practical for extensions to be made each seven days, so the State Emergency Coordinator (Commissioner of Police) is authorised to make extensions for the period that he/she considers necessary.

### **Clause 53 Explanation**    **Revocation of emergency situation declaration**

A HMA must revoke an ‘emergency situation’ declaration as soon as the HMA is satisfied that it is no longer necessary for the powers under Part 6 of this Act to be exercised.

The HMA’s revocation must be made in writing, and is to include the time and date that the declaration was made.

Regardless of any other written law, the revocation of an ‘emergency situation’ declaration does not affect:

- penalties or punishments relevant to the period that the declaration was in force; or
- any investigation or legal proceedings in respect of such a penalty or punishment.

### **Clause 54 Explanation**    **Notice of declaration**

Any notice declaring, extending or revoking an emergency situation is to be:

- published as soon as practicable after it is made, in a manner which the HMA considers to be reasonable; and
- published in the *Government Gazette* as soon as practicable after it is made.

A failure to publish the notice of declaration does not affect the validity of the declaration.

## **Division 2 – Hazard management officers**

### **Clause 55 Explanation Authorisation of hazard management officers**

This clause empowers HMAs to authorise officers or employees of the HMA, or other persons, to act as ‘hazard management officers’ during an ‘emergency situation’ declared by the HMA.

The authorisation is to specify:

- whether it applies to a specific ‘emergency situation’ or to any ‘emergency situation’ declared by the HMA;
- the particular, or the particular class of, employee, officer or person to whom it applies; and
- the terms and conditions on which the authorisation is given.

The authorisation of a ‘hazard management officer’ may be given in writing or orally – if the latter, it must be put in writing as soon as practicable. However, a failure to put the authorisation in writing does not invalidate the authorisation or anything done under the authorisation.

## **Part 5 – State of emergency**

### **Division 1 – State of emergency declaration**

#### **Clause 56 Explanation Minister may make state of emergency declaration**

This clause empowers the Minister to declare, in writing, that a ‘state of emergency’ exists in the whole of the State or in a part of the State, provided that the Minister:

- has considered the advice of the State Emergency Coordinator;
- is satisfied that an emergency has occurred, is occurring or is imminent; and
- is satisfied that extraordinary measures are required to prevent or minimise
  - loss of life, prejudice to the safety, or harm to the health, of persons or animals;
  - destruction of, or damage to, property; or
  - destruction of, or damage to, any part of the environment.

The Minister’s declaration is to specify the time and date on which it was made, and the area of the State to which it applies. Further declarations may be made in relation to the same ‘state of emergency’ or to a different ‘state of emergency’.

There is a widespread expectation that any declaration of a ‘state of emergency’ would automatically bring with it the ability to access a broader range of ‘disaster relief’ measures. Such is not the case, as the State and Federal natural disaster relief arrangements do not have a direct relationship to the declaration of a ‘state of emergency’.

The intention of empowering the declaration of a ‘state of emergency’ under this Bill is to:

- allow the use of additional powers necessary to respond to, and recover from, the emergency; and
- provide compensation arrangements in relation to loss or damage resulting from the exercise, or purported exercise, of such powers.

### **Clause 57 Explanation**    **Duration of state of emergency declaration**

A 'state of emergency' declaration:

- comes into operation from the time that it is made, or later if so specified in the declaration; and
- only remains in force for three days unless revoked within that three days, or extended by the Minister.

### **Clause 58 Explanation**    **Extension of state of emergency declaration**

The Minister may, in writing, extend or further extend the declaration of a 'state of emergency'.

A declaration of extension:

- must include the time and date on which it is made, and the period of the extension; and
- remains in force for the period of extension unless revoked earlier.

Any extension by the Minister may be in respect of:

- all powers - in which case the extension must not be for more than 14 days; or
- only for clauses 69, 'Powers of officer to control or use property', or 72, 'Exchange of information' – in which case the extension may be for such period as the Minister considers necessary.

The powers available under clauses 69 and 72 are needed during the 'response' and 'recovery' phases of an emergency, in relation to emergency accommodation and the sharing of information about those affected by the emergency. Recovery can be a lengthy operation, often extending over a period of months. In such cases it would not be administratively practical for extensions to be made each 14 days, so the Minister is authorised to make extensions for the period that she/he considers necessary.

### **Clause 59 Explanation**    **Revocation of state of emergency declaration**

The Minister may revoke a 'state of emergency' declaration at any time. The revocation must be in writing, and is to include the time and date on which it is made.

Regardless of any other written law, the revocation of a 'state of emergency' declaration does not affect:

- penalties or punishments relevant to the period that the declaration was in force; or
- any investigation or legal proceedings in respect of such a penalty or punishment.

### **Clause 60 Explanation**    **Notice of declaration**

Any notice declaring, extending or revoking a 'state of emergency' is to be published:

- as soon as practicable after it is made, in a manner which the Minister considers to be reasonable; and
- in the *Government Gazette* as soon as practicable after it is made.

The declaration is valid even if it is not published.

## **Division 2 – Authorised officers**

### **Clause 61 Explanation**    **Authorised officers**

This clause empowers the State Emergency Coordinator to authorise persons to act as ‘authorised officers’ during a ‘state of emergency’. (Authorised officers are provided with specific powers under Part 6 of the Bill.)

The authorisation is to specify whether it applies to:

- a specific state of emergency or to any state of emergency; and
- individuals or classes of persons.

It is also to specify the terms and conditions on which it is given.

The authorisation of an ‘authorised officer’ may be given in writing or orally – if the latter, it must be put in writing as soon as practicable. However, a failure to put the authorisation in writing does not invalidate the authorisation or anything done under the authorisation.

### **Clause 62 Explanation**    **Identification of authorised officers**

The State Emergency Coordinator may issue an identification card to an authorised officer containing the person’s name and photograph, and stating that the person is an authorised officer for the purposes of this Act.

The authorised officer should carry his/her identification card while performing functions under the Act, and if practicable, produce the card before exercising any power as an authorised officer. An identification card is to be returned to the State Emergency Coordinator (or his/her nominee) as soon as the person ceases to be an authorised officer. Failure to return an identification card is an offence under the Act – the maximum applicable penalty being \$1,000.

## **Division 3 – The State Disaster Council**

### **Clause 63 Explanation**    **State Disaster Council**

If a state of emergency is declared, a State Disaster Council (SDC) is established, comprising:

- The Premier as chairman;
- The Minister as deputy chairman (with the power to act as chairman if the Premier is absent from a meeting of the SDC);
- The State Emergency Coordinator; and
- Such other members as are appointed by the chairman.

Subject to any directions by the chairman, the SDC may determine its own procedures.

The SDC ceases to be established when the chairman so determines.

The SDC is the forum through which Government (represented by the Premier and relevant Ministers) is kept informed of developments in respect of a ‘state of emergency’, and has the opportunity to provide input.

## **Clause 64 Explanation    Functions of the State Disaster Council**

The SDC functions are to:

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

## **Part 6 – Emergency powers**

### **Division 1 – Powers during emergency situation or state of emergency**

#### **Clause 65 Explanation    Application of this Division**

This Division applies during a declared ‘emergency situation’ or ‘state of emergency’.

#### **Clause 66 Explanation    Obtaining identifying particulars**

The offices of ‘hazard management officer’ (HMO) and ‘authorised officer’ (AO) are prescribed for the purposes of the *Criminal Investigation (Identifying People) Act 2002* and any HMO may exercise the powers in Part 3 of that act during an ‘emergency situation’ or a ‘state of emergency’.

This provision enables HMOs and AOs to require a person to give their personal details if that person is believed to have committed an offence. There is a similar provision in the *Dangerous Goods Safety Act 2004* (section 34).

A HMO or AO may also request a person to give his/her personal details, provided such are reasonably required for emergency management purposes, during an ‘emergency situation’ or a ‘state of emergency’. The HMO or AO may request evidence to substantiate such personal details if he/she reasonably suspects that the person’s response is false.

The provisions of this clause are important for two reasons:

- HMOs and AOs need to have the legislated power to seek the identification of a person that they believe might have committed an offence; and
- Emergency management agencies require information about persons affected by emergencies, but there is often a reluctance to provide this information. It is hoped that the inclusion of specific provision to empower HMOs and AOs to obtain such information, and the requirement to keep it confidential (see clause 95) will improve this situation.

### **Clause 67 Explanation**    **Powers concerning movement and evacuation**

During an ‘emergency situation’ or a ‘state of emergency’, a HMO or AO may:

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

*NB Any powers provided under this Act may be limited or regulated by the regulations – see clause 102(2).*

Any decision to evacuate persons under this clause would need to be made in accordance with SEMC’s Policy Statement No. 5, ‘Evacuation Policy’, which “provides guidance on evacuation decision making by using a community-centred approach to safety when communities are exposed to emergencies”<sup>6</sup>.

### **Clause 68 Explanation**    **Use of vehicles**

This clause empowers a HMO or AO to use a vehicle in any place and any circumstances despite any provision of the *Road Traffic Act 1974* that requires a permit for such actions.

### **Clause 69 Explanation**    **Powers of officer to control or use property**

During an ‘emergency situation’ or ‘state of emergency’, a HMO or AO may take control of or make use of any place, vehicle or other thing – which may be inside or outside the emergency area.

*NB Any powers provided under this Act may be limited or regulated by the regulations – see clause 102(2).*

Any person who suffers loss or damage because of the exercise, or purported exercise, of a power under this clause is entitled to claim, and be paid, just and reasonable compensation – see clauses 78 to 83.

### **Clause 70 Explanation**    **Powers of officers in relation to persons exposed to hazardous substances**

This clause empowers a HMO or AO, during an ‘emergency situation’ or ‘state of emergency’, to detain, quarantine and decontaminate any person who has been exposed to a hazardous substance (this would typically involve a chemical, biological or radiological substance).

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<sup>6</sup> PS5 is a public document, a copy being currently accessible via FESA’s website:

- [www.fesa.wa.gov.au](http://www.fesa.wa.gov.au)
- State emergency management
  - Policy & planning
    - SEMC policy statements
      - No. 5 – Evacuation Policy

The HMO's or AO's direction may be given for the purpose of ensuring that the hazardous substance is contained, or for ensuring that the person does not pose a serious risk to the life or health of others or to the environment – because of the hazardous substance involved.

A person must not be detained or quarantined for more than 24 hours unless the State Emergency Coordinator has given authorisation for a longer period.

*NB Any powers provided under this Act may be limited or regulated by the regulations – see clause 102(2).*

### **Clause 71 Explanation Powers of police to direct closure of places and concerning movement and evacuation**

This clause provides that, during an 'emergency situation' or 'state of emergency', the most senior police officer present in the emergency area may direct an owner, occupier or person in charge of any place of business, worship or entertainment to close that place to the public for the period specified in the direction.

The following powers are also available to the most senior police officer present in the emergency area:

- The powers concerning movement and evacuation available to a HMO under clause 67; and
- The powers concerning the closure of places of business, worship or entertainment available to an AO under clause 75(1)(i)

However, that person must not exercise such powers if that would be contrary to or in conflict with

- any direction given to the police officer by the Hazard Management Agency that made the emergency situation declaration or by the State Emergency Coordinator<sup>#</sup>; or
- the exercise of a power by a HMO under clause 67, or by an AO under clause 75(1)(i).

When exercising powers under this clause, a police officer has all the immunities of a HMO or AO.

*NB Any powers provided under this Act may be limited or regulated by the regulations – see clause 102(2).*

<sup>#</sup> Any decision to evacuate persons under this clause would also need to be made in accordance with SEMC's Policy Statement No. 5, 'Evacuation Policy', which "provides guidance on evacuation decision making by using a community-centred approach to safety when communities are exposed to emergencies"<sup>7</sup>.

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<sup>7</sup> PS5 is a public document, a copy being currently accessible via FESA's website:

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      - No. 5 – Evacuation Policy

## **Clause 72 Explanation    Exchange of information**

During the response and recovery phases of an emergency, one of the key issues is a lack of certainty about who has been affected by the emergency, and their state of wellbeing. This information is essential for persons trying to find out what may have happened to their relatives or friends, and to welfare agencies trying to provide welfare services to those affected by the emergency.

Welfare services required during and after an emergency can include accommodation, catering, clothing and personal requisites, registration and inquiry services and financial assistance.

The intention of clause 72 is to empower the necessary exchange of information between emergency management agencies, welfare agencies and other persons, and to ensure that appropriate controls and procedures are set in place.

To achieve this, clause 72:

- Defines the type of information that may be exchanged, the ‘relevant information’. (This covers personal information, and includes the scope for other kinds of information to be prescribed by the regulations.);
- Defines ‘welfare services’ – the matters set out in the second paragraph of this Explanation;
- Requires that the obtaining or exchanging of information under the clause must be for the purposes of emergency management during a declared ‘emergency situation’ or ‘state of emergency’;
- Empowers a HMO or AO to request an emergency management agency to disclose ‘relevant information’ (defined as personal details of a person, or about that person’s whereabouts or state of health, or information of a kind prescribed by the regulations);
- Empowers a HMO or AO to disclose relevant information to an emergency management agency (this would include a ‘support organisation’ such as the Department for Community Development), regardless of the provisions of any law of this State relating to secrecy or confidentiality;
- Empowers a HMO or AO to disclose relevant information, if regulations so provide, to a person or entity engaged by an emergency management agency to provide welfare services;
- Empowers the entity engaged to provide welfare services to further disclose the relevant information, if regulations so provide, to other persons, e.g. family, relatives;
- Provides that, if information is disclosed in good faith in accordance with the clause:
  - no civil or criminal liability is incurred;
  - the disclosure cannot be regarded as a breach of any duty of confidentiality imposed by law, or of professional ethics or standards, or as unprofessional conduct;
- SEMC must establish procedures for the disclosure of information by HMOs and AOs to emergency management agencies. (In practical terms, it is expected that SEMC would be involved in the establishment of procedures covering all aspects of information sharing.); and
- Empowers the making of regulations concerning the provisions of this clause. (Extensive consultation with stakeholders will be required during the drafting of such regulations.)

**NB**    *Any powers provided under this Act may be limited or regulated by the regulations – see clause 102(2).*

The confidentiality provisions of clause 95 will also apply to any exchange of information under clause 72.

The need to exchange information about persons affected is not a new requirement; it is a longstanding, significant and necessary function in relation to each major emergency experienced by this State. Clause 72 (and the confidentiality provisions of clause 95) will ensure that an appropriate, legislated infrastructure is established, and that appropriate legislative protection is provided for those performing the function in good faith.

## **Division 2 – Further powers during state of emergency**

### **Clause 73 Explanation    Application of this division**

This Division applies if a ‘state of emergency’ declaration is in force - subject to any limitation on the availability of powers made under clause 58.

### **Clause 74 Explanation    Power to direct public authorities during state of emergency**

The State Emergency Coordinator (SEC) is responsible for coordinating the activities of ‘public authorities’ (see Clause 20 Explanation) during a ‘state of emergency’. For that purpose, the SEC may:

- direct a public authority to do or refrain from doing any act, or to perform or exercise or refrain from performing or exercising any function; and
- appoint an officer of a public authority to have overall control of particular activities carried out by a number of public authorities in response to the emergency.

If a direction is given under this clause, the public authority is to comply, and the direction will prevail over any written or other law. (This provision is essential to the success of emergency management arrangements, as the current establishing legislation of Western Australia’s emergency services provides little in the way of defining responsibility for coordination of multi-agency incidents.)

*NB Any powers provided under this Act may be limited or regulated by the regulations – see clause 102(2).*

### **Clause 75 Explanation    General powers during a state of emergency**

During a ‘state of emergency’, an authorised officer may utilise the following powers for the purposes of emergency management:

- (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;
- (o) require a person to give the authorised officer reasonable help to exercise the authorised officer's powers under this Division.

An 'authorised officer' does not require a warrant or consent to enter a place or vehicle in the emergency area.

*NB Any powers provided under this Act may be limited or regulated by the regulations – see clause 102(2). For example, it is intended that the powers available under clause 75(g) will be limited by a regulation mirroring regulation 12 of the Fire and Emergency Services Authority of Western Australia Regulations 1998.*

### **Division 3 – General provisions**

#### **Clause 76 Explanation General provisions regarding powers**

If a person does not comply with a direction under this Division, a 'hazard management officer' (HMO) or '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.

The powers of an HMO or AO under this division are in addition to, and do not detract from, any powers the person may have under any other law.

*NB Any powers provided under this Act may be limited or regulated by the regulations – see clause 102(2).*

#### **Clause 77 Explanation General provisions regarding directions**

A direction under this Part may be given in writing or orally. If the latter, it is to be confirmed in writing within two working days – unless it is complied with or cancelled within that period. Failure to confirm a direction in writing within two working days does not invalidate the direction.

## **Part 7 – Compensation and insurance**

### **Division 1 - Compensation**

#### **Clause 78 Explanation Entitlement to compensation**

This clause provides that a person who suffers loss or damage because of the exercise, or purported exercise, of a power under:

- clause 46, 'Power of a local government to destroy dangerous vegetation or premises in cyclone area';
- clause 47, 'Local government may require owner or occupier of land to take action';
- clause 48, 'Additional powers when direction given' (under clause 47);
- clause 69, 'Powers of officer to control or use property'; or
- clause 75(1)(f), empowering an 'authorised officer' to "remove, dismantle, demolish or destroy a vehicle, or any premises, in the emergency area";

is entitled to be paid just and reasonable compensation for the loss or damage.

Compensation is not payable to the extent that the damage or loss:

- was recoverable by the person under a policy of insurance; or
- was contributed to by the conduct of the person; or
- would have happened in any event, regardless of the exercise or purported exercise of the power.

#### **Clause 79 Explanation Applying for compensation**

The person who has suffered damage or loss because of the exercise or purported exercise of a power under clauses 46, 47, 48, 69 or 75(1)(f) may apply to the Minister within 90 days after the damage or loss. (The Minister may accept an application made more than 90 days after the damage or loss, if the Minister is satisfied that it would be reasonable to do so.)

The application is to be made in writing, and is to:

- state details of the person's loss or damage;
- state the amount of compensation claimed and the grounds for such claim; and
- be supported by such further information as is prescribed by the regulations.

The applicant must provide any other relevant information required by the Minister in writing (under clause 80(1)).

#### **Clause 80 Explanation Lapsing of application**

The Minister may direct an applicant to provide further information to assist in the determination of the application, and is to advise the applicant of the:

- information required;
- timeframe for lodgement of the information (which is to be at least 21 days); and
- fact that the application will lapse if the information is not given to the Minister within the required timeframe.

The Minister may extend or further extend the timeframe for lodgement of information, but the application will lapse if the information is not submitted within that extended time.

### **Clause 81 Explanation**    **Notice of decision**

As soon as practicable after making a decision about the application for compensation, the Minister is to give an applicant for compensation a written notice stating:

- the decision and the reason for it;
- details of the amount of compensation to be paid, and how such amount was assessed; and
- that the applicant may apply for review of the decision – if the Minister decides not to pay compensation, or to pay less than the amount claimed.

### **Clause 82 Explanation**    **Funding of compensation**

Any compensation that the Minister decides to pay is to be charged to the Consolidated Fund, as are any expenses incurred in the administration of this Part.

## **Division 2 – Review**

### **Clause 83 Explanation**    **Review of compensation decision**

If an applicant is not satisfied with a decision of the Minister in relation to an application for compensation, he/she may apply to the State Administrative Tribunal for a review of that decision.

## **Division 3 – Policies of insurance**

### **Clause 84 Explanation**    **Extension of policy of insurance**

This clause empowers the holder of an insurance policy over property to make a claim against that insurance policy in relation to any damage or loss caused to the property because of the exercise of a power, or performance of a function, in good faith under this Act - provided that it happened for the purpose of protecting:

- the property from damage; or
- a person or an animal from death or injury.

For the purpose of the insurance policy, the damage is taken to be caused by the happening of an event for which the policy provides insurance cover – despite any provision of the policy which purports to vary or exclude such.

## **Part 8 – Offences**

### **Clause 85 Explanation**    **Obstruction of a hazard management officer or authorised officer**

This clause provides that it is an offence to obstruct a hazard management officer or authorised officer in the exercise of a power under this Act. A maximum<sup>#</sup> penalty of \$50,000 would apply for individuals, or \$250,000 for bodies corporate.<sup>##</sup>

<sup>#</sup> Section 9(2) of the *Sentencing Act 1995* specifies that a penalty prescribed in legislation is the maximum that may be applied by the courts. The court would determine the actual amount of any penalty imposed.

## Section 40(5) of the *Sentencing Act 1995* specifies that a body corporate is liable to a fine of five times the maximum fine that could be imposed on a natural person convicted of the same offence.

**Clause 86 Explanation**    **Failure to comply with direction**

This clause provides that it is an offence to fail to comply with a direction under –

- clause 47, ‘Local government may require owner or occupier of land to take action’;
- clause 67, ‘Powers concerning movement and evacuation’;
- clause 70, ‘Powers of officers in relation to persons exposed to hazardous substances’;
- clause 71, ‘Powers of police to direct closure of places and concerning movement and evacuation’; or
- clause 75, ‘General powers during a state of emergency’.

A maximum penalty of \$50,000 would apply for individuals, or \$250,000 for bodies corporate – see Clause 85 Explanation. A maximum daily penalty of \$5,000 for individuals or \$25,000 for bodies corporate would apply in relation to ongoing offences.

**Clause 87 Explanation**    **Failure to give help**

This clause provides that it is an offence to fail to give reasonable help required under section 75(1)(o) during a ‘state of emergency’. A maximum penalty of \$50,000 would apply for individuals, or \$250,000 for bodies corporate – see Clause 85 Explanation.

**Clause 88 Explanation**    **Impersonation of hazard management officer or authorised officer**

This clause provides that it is an offence to impersonate a ‘hazard management officer’ or an ‘authorised officer’. A penalty of \$50,000 applies for individuals. A maximum penalty of \$50,000 would apply for individuals, or \$250,000 for bodies corporate – see Clause 85 Explanation.

**Clause 89 Explanation**    **False or misleading information**

This clause provides that it is an offence for a person to give information (knowing it to be false or misleading in a material particular) to a ‘hazard management officer’ or an ‘authorised officer’, or a person assisting either officer. A maximum penalty of \$50,000 would apply for individuals, or \$250,000 for bodies corporate – see Clause 85 Explanation.

**Clause 90 Explanation**    **False compensation claim**

This clause provides that it is an offence to give a false or misleading statement in a claim for compensation under Part 7. A maximum penalty of \$50,000 would apply for individuals, or \$250,000 for bodies corporate – see Clause 85 Explanation.

## **Part 9 – Employment protection**

The Community Development and Justice Standing Committee's 2002 Report (see 'Overview and background', page 1 of this Explanatory Memorandum) recommended that the Drafting Instructions for the proposed Emergency Management legislation include the following provisions:

### ***“Protection of employment rights***

*There should be provision to protect the employment of a person who is absent from employment in order to perform authorised emergency operations.*

*There should be a provision to protect from prejudice in employment and employment conditions of a person who is absent from employment in order to perform authorised emergency operations.”*

While there is an industrial relations system which provides protection for unfair dismissal in this State, it does not specifically provide employment protection to those employees carrying out an emergency management response on a voluntary basis.

Therefore, in accordance with the recommendations of the Report, this part of the Bill has been included to protect the employment rights of volunteers, temporarily absent from employment, because they were carrying out an emergency management response. The absence from employment must be reasonable in all the circumstances to attract the protection provided under the Bill.

The Bill mirrors some of the *Industrial Relations Act 1979* powers in relation to unfair dismissal claims and the remedies afforded under the *Industrial Relations Act 1979*. The remedies provided to an employee under the Bill are reinstatement and compensation. This maintains consistency between the Bill and *Industrial Relations Act 1979*, which is important as the Bill bars an employee from bringing an unfair dismissal claim under both the Bill and another Act such as the *Industrial Relations Act 1979*.

It is intended that the provisions of this Bill would apply to all Western Australian employees who are carrying out emergency management responses on a voluntary basis.

While this Bill makes provision for employment protection, it is expected that reliance on the provision of Part 9 would be extremely rare as:

- There is a strong awareness amongst employers and their employees of the need for a Community-Centred approach to emergency management in Western Australia, involving all of the community in ensuring the safety of their communities;
- There is a strong sense of community-mindedness amongst employers in releasing volunteers to perform emergency responses, and an awareness of the vital role that emergency volunteers play;
- It would be reasonable to assume that employers and their employees have reached an understanding of when it would be reasonable for the employee to be absent to undertake an emergency response. FESA is responsible (directly and indirectly) for 26,500 emergency service volunteers and is not aware of any situations where a volunteer has been victimised by his or her employer; and
- The existence of these provisions in the Bill will provide an additional focus on the respective responsibilities of employers and employees, and provide a significant disincentive to the victimisation of emergency management volunteers.

As part of the implementation of this Bill it is intended that FESA and other emergency management agencies will work closely with volunteers and volunteer associations to encourage volunteers to ensure that they have developed an appropriate level of understanding with employers concerning their release to undertake emergency response activities. It is also intended that employer associations and organisations would be consulted in a similar vein. It is hoped that consultation with volunteers and employer bodies will lead to greater communication and understanding so that the provisions of Part 9 of the Bill will not need to be relied upon.

### **Clause 91 Explanation    Meaning of terms used in this Part**

This clause provides the definitions required for the purposes of this Part of the Bill in relation to when an employee carries out an emergency management response and when an employee carries out such an activity on a voluntary basis.

The Bill has also adopted the definitions provided for an “employee” and “employer” as defined under the *Industrial Relations Act 1979* to ensure that the consistency between the Bill and the *Industrial Relations Act 1979* is maintained.

The Bill states that an employee will be considered to have carried out an emergency management response if the employee:

- Undertakes an activity that involves responding to an emergency;
- Carries out the activity on a voluntary basis;
- Is a member of, or has a ‘member-like association<sup>#</sup> with’, an emergency management agency (i.e. a hazard management agency, combat agency or support organisation); or
- 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.

<sup>#</sup> The term ‘member like association’ is also found in the federal *Workplace Relations Act 1996* section 170CK. The relevant explanatory memorandum states that:

*“The concept of a “member-like association” is intended to cover circumstances where, for example, a recognised emergency management body has no formal membership requirement or where a person’s membership may have recently lapsed, but the person is, for all practical purposes, still considered to be a member of the body.”*

- Source: *The Parliament of the Commonwealth of Australia, House of Representatives, the Workplace Relations Amendment (Protection for Emergency Management Volunteers) Bill 2003, Explanatory Memorandum, page 4.*

Under the provisions of the Bill an employee is not classified as having carried out an emergency management response if the activity that the employee was carrying out involved the prevention of, preparedness for, or recovery from, an emergency. Regular activities such as training would not fall within the parameters of the protection, being regarded as a preparedness activity.

The Bill classifies an employee as carrying out an activity as part of an emergency management response, on a voluntary basis even if the employee directly or indirectly takes or agrees to take an honorarium, a gratuity, similar payment, whether wholly or partly for carrying out the activity.

### **Clause 92 Explanation**    **Protection of employment rights**

The Bill provides protection for an employee's employment and employment rights. If an employee, who is a volunteer, is called to carry out an emergency management response their continuity of service will be unaffected. In addition, an employee, carrying out an emergency management response, will be paid as if they had attended work at the time they were scheduled to. When an employee is absent from work, carrying out an emergency management response they will continue to accrue entitlements towards paid leave such as annual leave, sick leave and long service leave.

It is understood that the federal *Workplace Relations Act 1996* already protects employees from termination on the ground of temporary "voluntary emergency management activity". However, it would be preferable for appropriate protection to also be included in Western Australian legislation. It would provide some certainty of what is intended, and would not leave Western Australia's emergency management volunteers subject to the vagaries of Commonwealth legislative changes. However, it is acknowledged that the Commonwealth provisions will prevail to the extent of any inconsistencies between Commonwealth and State legislation.

In the absence of unlawful termination provisions in the Bill, it would be onerous for an employee to have to seek redress under the *Workplace Relations Act 1996* in a Federal Court. Such actions are costly and there may be time delays before cases are heard.

Advantages to the employee proceeding under the Bill would be that the matter would be dealt with locally and the penalty could be sought against the employer in the same proceedings thereby ensuring efficient use of the courts' and parties' time, resources, etc.

The protection for employment and remuneration of State Government employees, who are members of certain emergency service agencies, already exists. Circular to Departments and Authorities No. 2 of 2001, 'Paid Leave to Emergency Service Volunteers' (issued on 30 May 2001 by the department then titled the Department of Productivity and Labour Relations, now the Department of Consumer and Employment Protection) provides that:

- State Government employees who are members of the State Emergency Service, St John Ambulance Brigades, Volunteer Fire and Rescue Service Brigades, Bush Fire Brigades, FESA Units or Volunteer Marine Rescue Services and who are absent from duty as a result of their attendance at an emergency, may be granted leave with pay for the period of the absence; and
- The leave with pay is to be granted on the basis that the employee is not required for the employer's own essential operations and/or emergency services.

The same protection of wages and conditions does not currently exist for employees who are not State Government employees. The Bill would fill that gap and provide for consistency in wages protection for all Western Australian employees who are carrying out emergency management responses as volunteers.

### **Clause 93 Explanation Victimisation because of emergency management response**

This clause states that an employer must not victimise an employee for the reason, or reasons which include the reason, that the employee was temporarily absent from their employment because they were carrying out an emergency management response.

At a practical level however, it would be expected that the:

- Employer and employee would have reached an understanding about temporary absences for emergency responses; and
- Employee would seek the employer's specific consent before being absent from work.

It is also recognised that an employee will not always be able to seek their employers consent before making themselves absent from work and in such a case all of the circumstances of the case would need to be considered before the employee was denied the protection of this Bill.

Employers are however provided with a defence under this clause. An employer has a defence if the employer can show that the employee's absence was not reasonable having regard to all of the circumstances. Alternatively, it is also a defence if the action taken by the employer was not based on the reason or for reasons that include the reason that the employee was absent for an emergency management response.

In determining the reasonableness of the absence, in all of the circumstances, some of the factors which might be considered would be the duration of the absence of the employee, the size of the employer's business and the employee's role within the business.

The clause also outlines examples as to when it would be considered that an employer had victimised an employee. The examples of victimisation include if the employer:

- Dismisses the employee from employment with the employer;
- Alters the employee's position in his or her employment with the employer, to the employee's disadvantage;
- Refuses to promote or transfer the employee;
- Does not provide the entitlements outlined in clause 92 of the Bill such as long service leave, sick leave, recreational leave and other benefits to which an employee is entitled to. In addition, continuity of service is not to be broken if an employee is absent carrying out an emergency management response; and
- Otherwise injures the employee in his or her employment with the employer.

### **Clause 94 Explanation Civil penalty for breach of section 93**

This clause empowers the Magistrates Court to provide a remedy for the employee for any loss or injury suffered as well as impose a civil penalty of up to \$50,000 on the employer for breach of this Part of the Bill in the one proceeding. Additional criminal penalties can also be imposed for failure to comply with these orders, and daily fines can be imposed for ongoing offences.

The clause provides 'standing' to a person who has been victimised or an organisation or an association of which the person is a member. This clause adopts the definition of an "association" and "organisation" as provided under the *Industrial Relations Act 1979* and includes bodies such as trade unions.

Under clause 94 a person, who has standing, can bring an application in the Magistrates Court on one of the grounds provided under section 93(1). The grounds included are that the employer victimised the employee for a reason, or reasons that included that the employee was temporarily absent from employment because the employee was carrying out an emergency management response.

If the Magistrates Court is satisfied, on the balance of probabilities (the standard observed in civil proceedings), that a person has been victimised then they may order an employer to:

- Reinstatement the employee if they were dismissed from their employment;
- Pay the person compensation for any loss or injury suffered as a result of the contravention; and
- Pay to the Treasurer an amount not exceeding \$50,000 (the civil penalty).

In relation to the compensation that is payable, the Magistrates Court does not have jurisdiction to order any amount exceeding 6 months of the employee's remuneration, which is consistent with the terms of the *Industrial Relations Act 1979*. The Magistrates Court may base its calculation on an average rate of remuneration received by the employee during any relevant period of employment.

The Magistrates Court does not have jurisdiction to order the employer to pay an amount to the employee exceeding \$5,000, or such amount prescribed by the regulations for loss or injury suffered as a result of the contravention, such as loss of sick leave entitlements or annual leave entitlements.

An employee is barred under the Bill from bringing an application under this Bill for dismissal, loss or injury as well as another Act for example the *Industrial Relations Act 1979*.

The Bill also allows for fines to be imposed on any employer for non compliance with an order made by the Magistrates Court under clause 94(3) of the Bill. This will assist with preventing contraventions and failures to comply with any order made under clause 94(3) of the Bill. The maximum fine that may be imposed for failure to comply is \$50,000. In addition, the Bill also allows for the imposition of daily fines of \$5,000 against the employer for each day that they fail to comply with any order issued by the Magistrates Court as outlined in clause 94(8).

## **Part 10 – Miscellaneous**

### **Clause 95 Explanation    Confidentiality of information**

This clause prohibits a person who has been engaged in the performance of functions under this Act from improperly dealing with information obtained in the course of duty. As such information will generally relate to persons affected by emergencies, it is very important that the information remain confidential. Failure to do so would breach those persons' right to privacy, and would potentially jeopardise the collection of future information.

The penalty for breaching the provisions of this clause are a maximum fine of \$12,000 for individuals, or \$60,000 for bodies corporate (see Clause 85 Explanation), and imprisonment for one year.

#### **Clause 96 Explanation**    **Expenses**

This clause empowers the Minister to approve the payment to a Hazard Management Agency, combat agency or support organisation of expenses incurred in implementing emergency management during an 'emergency situation' or a 'state of emergency' – provided such expenses are not otherwise payable out of monies provided by Parliament for that purpose.

Expenses approved by the Minister under this section are to be charged to the Consolidated Fund.

#### **Clause 97 Explanation**    **Bodies corporate or employers, conduct on behalf of**

In the case of an offence where the state of mind of a corporation or employer charged is relevant (eg. knowing a statement to be false or misleading) it is sufficient to show that the director, etc. who actually made the statement had that state of mind.

There are similar provisions in the *Contaminated Sites Act 2003* (section 28) and the *Gene Technology Bill* (clauses 188 and 189).

#### **Clause 98 Explanation**    **Body corporate's officers, liability of**

This is a standard provision across WA legislation, providing that a body corporate's officers may be charged with an offence that the body corporate itself is charged with. Specific defences for individuals are provided in sub-clause (6), i.e. that –

- The offence was committed without the officer's consent or connivance; and
- 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.

#### **Clause 99 Explanation**    **Evidentiary matters**

This is a standard provision across WA legislation, setting out the standard evidentiary matters which will apply in proceedings under this Act.

#### **Clause 100 Explanation**    **Protection from liability**

This clause gives persons performing functions in good faith under this Act immunity from liability for any loss or damage.

The provisions of this clause:

- Do not affect a person's rights to further limit liability by relying on a provision of the *Civil Liability Act 2002*;
- Allow those persons who have suffered any damage, loss or injury to claim compensation through any policy of insurance over the property concerned; and
- Do not affect a person's right to recover damages under the *Motor Vehicle (Third Party Insurance) Act 1973*.

### **Clause 101 Explanation Regulations as to compensation of volunteers**

This clause empowers the Governor to make regulations to require a Hazard Management Agency, combat agency or support organisation to insure volunteers for compensation for injury caused to them whilst carrying out emergency management activities.

Although it is understood that the insurance policies of Government departments/agencies and local governments include cover for volunteers, there are few legislative requirements to do so. (The *Fire Brigades Regulations 1943* and the *Bush Fires Act 1954* include such requirements.)

Extensive consultation will be required with stakeholders in the drafting of these regulations.

### **Clause 102 Explanation Regulations**

This clause empowers the Governor to make regulations:

- Prescribing matters to give effect to the Act; and
- Which may limit the circumstances, and regulate the manner, in which the powers under the Act may be exercised.

Extensive consultation will be required with stakeholders in the drafting of these regulations.

### **Clause 103 Explanation Review of Act**

This clause requires that the Minister carry out a review of the operation and effectiveness of this Act as soon as practicable after the expiry of five years from the commencement of the Act. The Minister is to prepare a report concerning the review of the Act, and is to table the report before each House of Parliament as soon as practicable after the report is prepared.

### **Clause 104 Explanation Consequential amendment**

This clause provides that Schedule 1 is to have effect in relation to a consequential amendment to the *Fire Brigades Act 1942*.

### **Schedule 1 – Consequential amendment**

This clause amends the *Fire Brigades Act 1942* to insert a new section 34A, 'Powers concerning persons exposed to hazardous material'.

The provisions of this section are similar to those proposed as part of the Emergency Management Bill. However, the powers under the Bill will only become available if an 'emergency situation' or 'state of emergency' is declared. The Fire and Emergency Services Authority of Western Australia (FESA) potentially needs the powers proposed in section 34A to deal with any hazardous materials ('hazmat') incident that it responds to.

Although the *Fire Brigades Act 1942* was amended in 1994 to include a role in relation to hazmat, no specific powers were added to ensure an appropriate response to a hazmat incident. The opportunity is being taken with this Bill to address that omission, by adding specific powers to the *Fire Brigades Act 1942*, with specific controls.

Proposed section 34A of the Fire Brigades Act will only empower a direction to be given for the detention and quarantine of a person exposed to hazardous material for:

- Specific purposes (ensuring that the hazardous material is contained, or ensuring that the person does not pose a serious risk to the life or health of others because of the hazardous material involved); and
- A maximum period of three hours without the authorisation in writing by the FESA CEO.