

Emergency Management Bill 2004

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Western Australia

LEGISLATIVE ASSEMBLY

Emergency Management Bill 2004

A Bill for

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

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Emergency Management Act 2004*.

2. Commencement

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

3. Interpretation

10 In this Act, unless the contrary intention appears —

“authorised officer” means —

- (a) the State Emergency Coordinator; and
- (b) a person authorised under section 66;

“combat agency” has the meaning given by section 5(1);

15 **“district emergency management committee”** means a district emergency management committee established under section 28(1);

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

20

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

25 **“emergency management”** means managing the adverse effects of an emergency, including —

- (a) mitigating or preventing the potential adverse effects of an emergency;
- (b) preparing for and responding to the emergency; and
- (c) managing recovery;

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

5 **“emergency management district”** means an emergency management district established under section 25;

“emergency situation” means an emergency situation declared under section 44;

“emergency situation declaration” means a declaration made under section 44;

10 **“hazard”** means —

(a) a cyclone, earthquake, flood, storm or other natural event;

(b) a fire;

(c) a road or air crash;

15 (d) a plague or an epidemic;

(e) any other event, situation or condition that is capable of —

(i) causing loss or harm to the safety or health of persons or animals; or

20 (ii) destroying or damaging property or any part of the environment,

and is prescribed by the regulations;

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

25 **“hazard management officer”** means a person authorised under section 49;

“hazardous substance” means —

(a) a chemical, biological or radiological substance; or

(b) any other substance,

30 that could cause loss of life, injury to a person or damage to the health of a person or to the environment;

s. 3

“local emergency management committee” means a committee established under section 35;

“local government district” means a district under the *Local Government Act 1995*;

5 **“occupier”** has the same meaning as in the *Local Government Act 1995*;

“owner” has the same meaning as in the *Local Government Act 1995*;

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

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

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

“public authority” means —

15 (a) an agency within the meaning of the *Public Sector Management Act 1994*;

(b) a body, corporate or unincorporate, that is established or continued for a public purpose by the State, regardless of the way it is established;

20 (c) a member or officer of a body referred to in paragraph (a) or (b);

(d) a person in the service of the State upon whom a function is conferred under a written law; and

25 (e) a person or body prescribed (or of a class prescribed) by the regulations as a public authority for the purposes of this Act;

“recovery” means activities which support emergency affected communities in the reconstruction of physical infrastructure and the restoration of emotional, social, economic and physical wellbeing;

30 **“SEMC”** means the State Emergency Management Committee established under section 12;

“State Disaster Council” means the State Disaster Council established under section 78;

“State Emergency Coordinator” means the person holding the office referred to in section 9;

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

5 **“State emergency management policy”** means a policy prepared under section 16;

“state of emergency” means a state of emergency declared under section 61;

10 **“state of emergency declaration”** means a declaration made under section 61;

“support organisation” has the meaning given by section 5(3);

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

15 **4. “Hazard management agency” may be prescribed**

(1) A public authority, or other person, may be prescribed by the regulations to be a hazard management agency for a hazard prescribed by the regulations.

20 (2) A hazard management agency prescribed under subsection (1) is to be a public authority or other person who or which, because of that agency’s functions under any written law or specialised knowledge, expertise and resources, is responsible for emergency management in relation to the hazard for which it is prescribed.

25 (3) If the hazard management agency is not an individual or a body corporate, the regulations are to designate —

(a) one or more persons who are authorised to act in the name of the hazard management agency for the purposes of sections 44, 46 and 47; and

30 (b) one or more persons who are authorised to act in the name of the hazard management agency for the purposes of authorising under section 49 persons to act as hazard management officers.

s. 5

- (4) In sections 44, 46, 47 and 49 a reference to a “hazard management agency” is taken to include a reference to a person who is designated to act in the name of a hazard management agency under subsection (3) for the purposes of that section.

5 **5. Combat agencies and support organisations**

- (1) A public authority, or other person, may be prescribed by the regulations to be a combat agency for the purposes of this Act.

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

- 15 (3) A public authority, or other person, may be prescribed by the regulations to be a support organisation for the purposes of this Act.

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

6. Act binds the Crown

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

7. Relationship to other Acts

- 30 (1) Where the provisions of this Act are inconsistent with the provisions of any other Act, or of any subsidiary legislation made under any other Act, the provisions of this Act prevail.

(2) This Act is in addition to, and does not derogate from, the *Fuel, Energy and Power Resources Act 1972*.

5 (3) Subject to subsection (1), all powers given by or under this Act are in addition to, and not in derogation from, powers exercisable apart from this Act.

8. Limitation on Act — industrial disputes and civil disturbances

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

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

Part 2 — State arrangements

Division 1 — The State Emergency Coordinator

9. State Emergency Coordinator

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

10. Functions of the State Emergency Coordinator

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

11. Delegation by State Emergency Coordinator

- 25 (1) The State Emergency Coordinator may delegate to any person
any power or duty of the State Emergency Coordinator under
another provision of this Act.
- (2) The delegation is to be in writing signed by the State
Emergency Coordinator.

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

Division 2 — The State Emergency Management Committee

12. State Emergency Management Committee

- 10 (1) The State Emergency Management Committee is established.
- (2) The SEMC is to consist of —
- (a) a chairman appointed by the Minister;
 - (b) a deputy chairman appointed by the Minister;
 - 15 (c) an executive officer of the SEMC appointed by the Minister; and
 - (d) such other members as are provided for, and appointed in accordance with, the regulations.
- (3) The regulations may make provision as to the constitution and procedure of the SEMC.
- 20 (4) Subject to the regulations the SEMC may determine its own procedures.

13. Functions of the SEMC

The SEMC has the following functions —

- 25 (a) to advise the Minister on emergency management and the preparedness of the State to combat emergencies;
- (b) to provide direction, advice and support to public authorities, industry, commerce and the community in order to plan and prepare for an efficient emergency management capability for the State;

- 5
- (c) to provide a forum for community coordination to ensure the minimisation of the effects of emergencies;
- (d) to provide a forum for the development of community wide information systems to improve communications during emergencies;
- (e) to develop and coordinate risk management strategies to assess community vulnerability to emergencies;
- (f) to perform other functions given to the SEMC under this Act;
- 10 (g) to perform any other function prescribed by the regulations for the purposes of this section.

14. Powers of the SEMC

- (1) The SEMC may do all things necessary or convenient to be done for or in connection with the performance of its functions.
- 15 (2) Without limiting subsection (1) and any other powers conferred on the SEMC by this Act, the SEMC may —
- (a) produce and publish information on matters related to its functions; and
- (b) act in conjunction with another public authority or any other person.
- 20

15. Designation of cyclone areas

The SEMC, on the advice of the relevant hazard management agency, may, by notice published in the *Gazette*, designate an area of the State as a cyclone area.

25 **16. State emergency management policies**

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

- (b) the roles and responsibilities of agencies involved in emergency management for the State; and
- (c) other matters that are prescribed by the regulations.

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

17. State emergency management plans

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

15 **18. Reviewing State emergency management policies and State emergency management plans**

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

19. Directions to public authorities

- (1) The SEMC may, in writing, direct a public authority to —
 - 25 (a) prepare, or assist in the preparation of, a State emergency management plan;
 - (b) review, or assist in the review of, a State emergency management plan;
 - 30 (c) amend or replace, or assist in the amendment or replacement of, a State emergency management plan; or

(d) test, or assist in the testing of, a State emergency management plan.

(2) The SEMC may issue written guidelines to help public authorities respond to a direction under subsection (1).

5 (3) A public authority is to comply with a direction under subsection (1) within the time and in the manner specified in the direction.

20. Sub-committees

10 (1) The SEMC may establish such sub-committees as it thinks fit to advise the SEMC on any aspect of its functions or to assist with any matters relevant to the performance of its functions.

(2) A sub-committee may, but need not, consist of or include members of the SEMC.

15 (3) The SEMC may remove a person from membership of a sub-committee and may reconstitute or discharge a sub-committee.

(4) The SEMC may give directions to a sub-committee with respect to the performance of its functions and its procedures and the sub-committee is to comply with any such direction.

20 (5) Subject to the directions of the SEMC, a sub-committee may determine its own procedures.

21. SEMC may delegate

25 (1) The SEMC may delegate to a member of the SEMC, a sub-committee established under section 20 or a member of such a sub-committee any power or duty of the SEMC under another provision of this Act.

(2) The delegation is to be in writing signed by the chairman of the SEMC.

(3) A delegate exercising or performing a power or duty that has been delegated under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.

5 (4) Nothing in this section limits the ability of the SEMC to act through an agent.

22. Annual report of SEMC

10 (1) As soon as is practicable after the end of each financial year the SEMC is to prepare and submit to the Minister an annual report on activities undertaken by it during the financial year.

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

Division 3 — The State Emergency Coordination Group

23. State Emergency Coordination Group

15 (1) If a state of emergency is declared, a State Emergency Coordination Group is established.

20 (2) If a hazard occurs or the occurrence of a hazard is imminent, the State Emergency Coordinator may, on the request of the relevant hazard management agency, or on his or her own initiative and in consultation with the relevant hazard management agency, establish a State Emergency Coordination Group.

(3) The State Emergency Coordination Group is to consist of —
25 (a) the State Emergency Coordinator;
(b) the chairman of the SEMC;
(c) the executive officer of the SEMC appointed under section 12(2)(c);
(d) a representative of the relevant hazard management agency; and

(e) such other members as are, in the opinion of the State Emergency Coordinator, necessary.

(4) The State Emergency Coordinator is the chairman of the State Emergency Coordination Group.

5 (5) The State Emergency Coordination Group may determine its own procedures.

(6) The State Emergency Coordination Group ceases to be established on a day determined by the State Emergency Coordinator.

10 **24. Functions of the State Emergency Coordination Group**

The State Emergency Coordination Group has the following functions —

(a) to ensure the provision of coordinated emergency management by public authorities and other persons;

15 (b) to provide advice and direction to public authorities and other persons to facilitate effective emergency management; and

(c) to liaise between emergency management agencies and the Minister.

20 **Division 4 — Emergency Management Districts**

25. Establishment of emergency management districts

(1) For the purposes of this Act the State is divided into such emergency management districts as the Minister may determine by order published in the *Gazette*.

25 (2) In making an order under subsection (1) the Minister is to have regard to the advice of the SEMC.

(3) So far as is practicable emergency management districts are to be established by reference to the boundaries of local government districts.

26. District emergency coordinator

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

5 **27. Functions of district emergency coordinator**

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

- 10
- (a) to provide advice and support to the district emergency management committee for the district in the development and maintenance of emergency management arrangements for its district;
 - (b) to carry out other emergency management functions in accordance with the directions of the State Emergency Coordinator.

15 **28. District emergency management committees**

- (1) A district emergency management committee is established for each emergency management district.
- (2) The SEMC may invite the chairmen of the local emergency management committees within the emergency management district to submit a panel of names to the SEMC for consideration for appointment as chairman of the district emergency management committee.
- 20
- (3) The SEMC may appoint such person as it thinks fit to be chairman of the district emergency management committee irrespective of whether the name of that person is submitted under subsection (2).
- 25
- (4) Subject to this section, the constitution and procedures of a district emergency management committee, and the terms and conditions of appointment of members, are to be determined by
- 30
- the SEMC.

29. Functions of district emergency management committees

- 5
- (1) It is a function of a district emergency management committee to assist in the establishment and maintenance of effective emergency management arrangements for the district for which it is constituted.
 - (2) District emergency management committees have such other functions as are prescribed by the regulations.

30. Annual report of district emergency management committees

- 10
- (1) Each district emergency management committee is to prepare and submit to the SEMC an annual report on activities undertaken by it during the financial year.
 - (2) The annual report —
 - 15 (a) is to be prepared within the time, and in the manner, directed in writing by the SEMC; and
 - (b) is to include the annual report prepared under section 37 of each local emergency management committee within the district.

Part 3 — Local arrangements

Division 1 — Local emergency authorities

31. Local governments may combine

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

32. Specified public authority may exercise functions of local government

- 20 (1) The SEMC, by notice published in the *Gazette*, may designate —
- (a) a specified area of a local government district; or
- (b) a specified area that is not part of a local government district,
- 25 as an area in which a specified public authority is to perform and exercise all of the functions of a local government under this Part.
- (2) A local government is not to perform or exercise functions under this Part in relation to an area designated under
- 30 subsection (1).

(3) If a notice is published under subsection (1), this Part applies as if —

(a) a reference to a local government were a reference to the public authority specified in the notice; and

5 (b) a reference to a local government district, in relation to the public authority specified in the notice, were a reference to the area designated in the notice.

(4) In subsection (1) —

10 “**specified**” means specified in the notice referred to in that subsection.

33. Functions of local government

It is a function of a local government —

15 (a) subject to this Act, to ensure that effective local emergency management arrangements are prepared and maintained for its district;

(b) to manage recovery following an emergency affecting the community in its district; and

(c) to perform other functions given to the local government under this Act.

20 **34. Local emergency coordinators**

(1) The State Emergency Coordinator is to appoint a local emergency coordinator for a local government district.

(2) The local emergency coordinator for a local government district has the following functions —

25 (a) to provide advice and support to the local emergency management committee for the district in the development and maintenance of emergency management arrangements for the district;

30 (b) to assist hazard management agencies in the provision of a coordinated response during an emergency in the district;

- (c) to carry out other emergency management activities in accordance with the directions of the State Emergency Coordinator.

35. Local emergency management committees

- 5 (1) A local government is to establish a local emergency management committee for the local government's district.
- (2) A local emergency management committee consists of —
 - (a) a chairman appointed by the chairman of the SEMC on the nomination of the relevant local government; and
 - 10 (b) other members appointed by the relevant local government.
- (3) A nomination for the purposes of subsection (2)(a) is to be made to the chairman of the SEMC in writing.
- (4) The nomination is to be made within such reasonable time after the receipt by the local government of a notice from the chairman of the SEMC stating that the nomination is required as is specified in the notice.
- 15 (5) If the nomination is not made under subsection (3) within the time specified under subsection (4), the chairman of the SEMC may nominate a person he or she thinks fit to be chairman of the local emergency management committee.
- 20 (6) Subject to this section, the constitution and procedures of a local emergency management committee, and the terms and conditions of appointment of members, are to be determined by the SEMC.
- 25

36. Functions of local emergency management committees

The functions of a local emergency management committee are —

- (a) to help the local government for its district to ensure that local emergency management arrangements are established for its district;
- 30

- (b) to liaise with public authorities and other persons in the development, review and testing of local emergency management arrangements; and
- (c) to carry out other emergency management activities as directed by the SEMC or prescribed by the regulations.

37. Annual report of local emergency management committee

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

Division 2 — Emergency management arrangements for local governments

38. Emergency management arrangements in local government district

- (1) A local government is to ensure that arrangements (“**local emergency management arrangements**”) for emergency management in the local government’s district are prepared.
- (2) The local emergency management arrangements are to set out —
 - (a) the local government’s policies for emergency management;
 - (b) the roles and responsibilities of public authorities and other persons involved in emergency management in the local government district;
 - (c) provisions about the coordination of emergency operations and activities relating to emergency management performed by the persons mentioned in paragraph (b);

- (d) a description of emergencies that are likely to occur in the local government district;
 - (e) strategies and priorities for emergency management in the local government district; and
 - 5 (f) other matters about emergency management in the local government district the local government considers appropriate.
- (3) Local emergency management arrangements are to be consistent with the State emergency management policies and State
10 emergency management plans.
- (4) Local emergency management arrangements are to include a recovery plan and the nomination of a local recovery coordinator.
- (5) A local government is to deliver a copy of its local emergency
15 management arrangements, and any amendment to the arrangements, to the SEMC as soon as is practicable after they are prepared.

39. Reviewing and renewing local emergency management arrangements

- 20 (1) A local government is to ensure that its local emergency management arrangements are reviewed at least once a year.
- (2) Local emergency management arrangements may be amended or replaced whenever the local government considers it appropriate.

25 **40. Local emergency management arrangements to be available for inspection**

- (1) A local government is to keep a copy of its local emergency management arrangements at the offices of the local government.

- (2) The arrangements are to be available for inspection, free of charge, by members of the public during office hours.
- (3) The arrangements may be made available in written or electronic form.

5 **Division 3 — Powers of local government during cyclone**

41. Meaning of “cyclone area”

In this Division —

“cyclone area” means a cyclone area designated under section 15.

10 **42. Power of local government to destroy dangerous vegetation or premises in cyclone area**

If —

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

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

25 **43. Local government may require owner or occupier of land to take action**

- (1) If —
 - (a) a cyclone is occurring or is imminent; and
 - (b) a local government is of the opinion that any vegetation or premises on land in a cyclone area in the district of

the local government may, as a result of the cyclonic activity —

- 5 (i) cause loss or harm to the safety or health of persons or animals; or
- (ii) 10 destroy or damage property or any part of the environment,

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

- (2) This section is in addition to, and does not derogate from, the powers of a local government under the *Local Government Act 1995*.

Part 4 — Hazard management

Division 1 — Emergency situation declaration

44. Hazard management agency may make emergency situation declaration

- 5 (1) A hazard management agency may, in writing and with the approval of the State Emergency Coordinator, declare that an emergency situation exists in a part of the State in respect of a hazard for which it is a hazard management agency.
- 10 (2) The State Emergency Coordinator may approve the declaration of an emergency situation if satisfied that —
- (a) an emergency has occurred, is occurring or is imminent in that part of the State; and
 - (b) there is a need to exercise powers under Division 2 Subdivision 3 to prevent or minimise —
- 15 (i) loss of life, illness or injury;
- (ii) property loss or damage; or
- (iii) damage to the environment.
- (3) A declaration under this section is to include —
- (a) the time and date on which the declaration is made; and
 - 20 (b) the area of the State to which it applies.
- (4) Before making a declaration under this section the hazard management agency is to take reasonable steps to undertake consultation in accordance with State emergency management policies.
- 25 (5) A failure to consult under subsection (4) does not affect the validity of the declaration.
- (6) The making of an emergency situation declaration does not prevent the making of further emergency situation declarations in relation to the same or a different emergency.

45. Duration of emergency situation declaration

An emergency situation declaration —

- (a) has effect on and from the time it is made, or such later time as is specified in the declaration; and
- 5 (b) if it is not extended by the hazard management agency under section 46, or sooner revoked under section 47, remains in force for 3 days after it first has effect.

46. Extension of emergency situation declaration

- 10 (1) A hazard management agency may, in writing and with the approval of the State Emergency Coordinator, by declaration extend, or from time to time further extend, the duration of an emergency situation declaration.
- (2) A declaration extending, or further extending, the duration of an emergency situation declaration —
 - 15 (a) is to include the time and date on which the declaration is made;
 - (b) is to state the period, of not more than 7 days, by which the duration of the emergency situation declaration is extended; and
 - 20 (c) remains in force until the end of the period stated under paragraph (b) unless the emergency situation declaration is sooner revoked under section 47.
- (3) A declaration extending the duration of an emergency situation declaration has effect on and from the time it is made.

47. Revocation of emergency situation declaration

- 25 (1) As soon as a hazard management agency is satisfied that it is no longer necessary for the powers under Division 2 Subdivision 3 to be exercised in relation to an emergency situation it has declared to exist, the hazard management agency is to revoke
- 30 the emergency situation declaration.

- (2) The revocation is to be made by declaration in writing and is to include the time and date on which it is made.
- (3) The revocation declaration has effect on and from the time it is made, or such later time as is specified in the revocation declaration.
- (4) Despite any other written law, the revocation of an emergency situation declaration does not affect —
- (a) any penalty or punishment incurred, imposed, or liable to be incurred or imposed, before the revocation; or
- (b) any investigation or legal proceedings in respect of such a penalty or punishment.

48. Notice of declaration

Notice of a declaration made under section 44, 46 or 47 is to be —

- (a) published for general information as soon as is practicable after the declaration is made in any manner that the hazard management agency consider to be appropriate having regard to the circumstances and what is practicable; and
- (b) published in the *Gazette* as soon as is practicable after the declaration is made.

Division 2 — Hazard management officers

Subdivision 1 — Authorisation

49. Authorisation of hazard management officers

- (1) A hazard management agency may authorise officers or employees of the hazard management agency, or other persons, to act as hazard management officers —
- (a) in response to an emergency arising from a hazard for which the hazard management agency is prescribed; or

- (b) during an emergency situation declared by that hazard management agency,
- or in both of those cases.
- (2) An authorisation under subsection (1) is to specify —
- 5 (a) whether it applies to any emergency arising from a hazard for which the hazard management agency is prescribed or to any emergency situation declared by the hazard management agency or whether it is limited to a particular emergency or to a particular emergency situation declared by the hazard management agency;
- 10 (b) the particular, or the particular class of, employee, officer or person to whom it applies; and
- (c) the terms and conditions on which it is given.
- (3) An authorisation under subsection (1) may be given orally or in writing but if given orally is to be put in writing as soon as is practicable.
- 15
- (4) A failure to put an authorisation in writing under subsection (3) does not invalidate the authorisation or anything done under the authorisation.
- (5) A hazard management officer may exercise a power under this Part only subject to the terms and conditions on which the person is authorised under this section.
- 20
- (6) A hazard management officer is to comply with the directions of the relevant hazard management agency when exercising a power under this Part.
- 25

Subdivision 2 — General powers

50. Application of this Division

This Division applies during an emergency or if an emergency situation declaration is in force.

51. Obtaining identifying particulars

5 The office of hazard management officer is prescribed for the purposes of the *Criminal Investigation (Identifying People) Act 2002* and any holder of that office may exercise the powers in Part 3 of that Act during an emergency or an emergency situation.

52. Hazard management officer may establish controlled access area

10 (1) If a hazard management officer reasonably believes that access to an area needs to be controlled for the purposes of dealing with an emergency or emergency situation or ensuring that people or property will not be endangered during an emergency or emergency situation, the hazard management officer may establish a controlled access area.

15 (2) The hazard management officer must take reasonable measures to notify people of the existence and boundaries of the controlled access area and when the controlled access area ceases to be established.

20 (3) The area of a controlled access site must not be greater than is reasonably necessary for the purposes for which it is established.

(4) The boundaries of a controlled access area may be altered at any time.

25 (5) A controlled access area ceases to be established when a hazard management officer determines that the purposes for which it was established have ceased to exist.

53. Powers of hazard management officer concerning movement and evacuation

30 (1) During an emergency or emergency situation, for the purpose of emergency management, a hazard management officer may do all or any of the following —

(a) direct or, by direction, prohibit, the movement of persons, animals and vehicles within, into, out of or

around a controlled access area or any part of the controlled access area or emergency area;

- 5 (b) direct the evacuation and removal of persons or animals from the controlled access area or any part of the controlled access area or emergency area;
- (c) close any road, access route or area of water in or leading to the controlled access area or emergency area.

(2) In this section —

10 **“controlled access area”** means an area established under section 52.

54. Use of vehicles

15 During an emergency or emergency situation, for the purpose of emergency management, a hazard management officer may use a vehicle in any place and in any circumstance despite any provision of the *Road Traffic Act 1974* that requires a permit for the use of that vehicle or for the use of that vehicle in that place or in that circumstance.

Subdivision 3 — Powers during emergency situation

55. Application of this Division

20 This Division applies if an emergency situation declaration is in force.

56. Powers of hazard management officer to control or use property

- 25 (1) During an emergency situation, for the purpose of emergency management, a hazard management officer may take control of or make use of any place, vehicle or other thing.
- (2) The place, vehicle or other thing may be in, or outside, the emergency area.

57. Powers of hazard management officers in relation to persons exposed to hazardous substances

- 5 (1) During an emergency situation, for a purpose mentioned in subsection (2), a hazard management officer may direct any person who has been exposed to a hazardous substance to do all or any of the following —
- 10 (a) to remain in an area specified by the hazard management officer for such period as is specified by the hazard management officer;
- (b) to remain quarantined from other persons for such period, and in such reasonable manner, as is specified by the hazard management officer;
- 15 (c) to submit to decontamination procedures within such reasonable period, and in such reasonable manner, as is specified by the hazard management officer.
- (2) A direction may be given under subsection (1) for the purpose of —
- (a) ensuring that the hazardous substance is contained; or
- 20 (b) ensuring that the person to whom the direction is given does not pose a serious risk to the life or health of others or to the environment because of the hazardous substance involved.
- (3) The period specified under subsection (1)(a) or (b) must not be more than 24 hours unless the State Emergency Coordinator has given authorisation for a longer period to be specified in relation to the person exposed to the hazardous substance.
- 25

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

- 30 (1) During an emergency situation, for the purpose of emergency management, the most senior police officer present in the emergency area may direct the owner, occupier or the person apparently in charge of any place of business, worship or

entertainment in the emergency area to close that place to the public for the period specified in the direction.

- 5
- (2) Subject to subsection (3), during an emergency situation the most senior police officer present in the emergency area may exercise any of the powers of a hazard management officer under section 53.
- (3) A police officer is not to exercise a power under subsection (2) in a manner that is contrary to or in conflict with —
- 10
- (a) a direction given to the police officer by the hazard management agency that made the emergency situation declaration; or
- (b) the exercise of a power by a hazard management officer under section 53.
- (4) When exercising powers under this section a police officer has
- 15
- all the immunities of a hazard management officer.

Subdivision 4 — General provisions

59. General provisions regarding powers

- 20
- (1) If the person does not comply with a direction under this Part, a hazard management officer or police 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.
- (2) A hazard management officer or police officer may exercise a power under this section with the help, and using the force, that
- 25
- is reasonable in the circumstances.
- (3) The powers of a hazard management officer or police officer under this Part are in addition to, and not in derogation from, the powers the person may have under another written law or other law.

60. General provisions regarding directions

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

Part 5 — State of emergency

Division 1 — State of emergency declaration

61. Minister may make state of emergency declaration

- 5 (1) The Minister may, in writing, declare that a state of emergency exists in the whole or in any part or parts of the State.
- (2) A declaration may be made under this section if the Minister —
- 10 (a) has considered the advice of the State Emergency Coordinator;
- (b) is satisfied that an emergency has occurred, is occurring or is imminent; and
- (c) is satisfied that extraordinary measures are required to prevent or minimise —
- 15 (i) illness, injury or loss of life;
- (ii) property loss or damage; or
- (iii) damage to the environment.
- (3) A declaration under this section is to include —
- (a) the time and date on which the declaration is made; and
- (b) the area of the State to which it applies.
- 20 (4) The making of a state of emergency declaration does not prevent the making of further state of emergency declarations in relation to the same or a different emergency.

62. Duration of state of emergency declaration

- A state of emergency declaration —
- 25 (a) has effect on and from the time it is made, or such later time as is specified in the declaration; and
- (b) if it is not extended by the Minister under section 63, or sooner revoked under section 64, remains in force for 3 days after it first has effect.

63. Extension of state of emergency declaration

- (1) The Minister may by declaration in writing extend, or from time to time further extend, the duration of a declaration made under section 61.
- 5 (2) A declaration extending, or further extending, the duration of a state of emergency declaration —
- (a) is to state the period, of not more than 14 days, by which the duration of the state of emergency declaration is extended; and
- 10 (b) remains in force until the end of the period stated under paragraph (a) unless the state of emergency declaration is sooner revoked under section 64.
- (3) A declaration extending the duration of a state of emergency declaration has effect on and from the time it is made.

15 **64. Revocation of state of emergency declaration**

- (1) The Minister may revoke a state of emergency declaration at any time.
- (2) The revocation is to be made by declaration in writing and is to include the time and date on which it is made.
- 20 (3) The revocation declaration has effect on and from the time it is made, or such later time as is specified in the revocation declaration.
- (4) Despite any other written law, the revocation of a state of emergency declaration does not affect —
- 25 (a) any penalty or punishment incurred, imposed, or liable to be incurred or imposed, before the revocation; or
- (b) any investigation or legal proceedings in respect of such a penalty or punishment.

65. Notice of declaration

A declaration made under section 61, 63 or 64 is to be —

- 5
- (a) published for general information as soon as is practicable after the declaration is made in any manner that the Minister considers to be appropriate having regard to the circumstances and what is practicable; and
 - (b) published in the *Gazette* as soon as is practicable after the declaration is made.

Division 2 — Authorised officers

10 **Subdivision 1 — Authorisation and identification**

66. Authorised officers

- (1) The State Emergency Coordinator may authorise persons to act as authorised officers during a state of emergency.
- (2) An authorisation under subsection (1) is to specify —
- 15
- (a) whether it applies to any state of emergency or is limited to a particular state of emergency;
 - (b) the particular, or a particular class of, person to whom it applies; and
 - (c) the terms and conditions on which it is given.
- 20
- (3) An authorisation under subsection (1) may be given orally or in writing but if given orally is to be put in writing as soon as is practicable.
- (4) A failure to put an authorisation in writing under subsection (3) does not invalidate the authorisation or anything done under the
- 25
- authorisation.
- (5) An authorised officer may exercise a power under this Part only subject to the terms and conditions on which the person is authorised under this section.

- (6) An authorised officer is to comply with directions of the State Emergency Coordinator when exercising a power under this Part.

67. Identification of authorised officers

- 5 (1) The State Emergency Coordinator may issue an identification card to an authorised officer —
- (a) containing the individual's name and a photograph of the person; and
- 10 (b) stating that the person is an authorised officer for the purposes of this Act.
- (2) An authorised officer should —
- (a) carry his or her identification card while performing functions under this Act; and
- 15 (b) if it is practicable to do so, produce it before exercising a power of an authorised officer under this Act.
- (3) An authorised officer who has been issued with an identification card and who ceases to be an authorised officer is to return the identification card to the State Emergency Coordinator or a person nominated by the State Emergency Coordinator as soon as is practicable.
- 20 (4) A person who contravenes subsection (3) without reasonable excuse, the onus of proving which is on the person, commits an offence.
- Penalty: \$1 000.

25 **Division 3 — Powers during state of emergency**

68. Application of this Division

This Division applies if a state of emergency declaration is in force.

69. Power to direct public authorities during state of emergency

- 5 (1) During a state of emergency the State Emergency Coordinator is responsible for coordinating such activities of public authorities as the State Emergency Coordinator considers necessary or desirable for responding to the emergency.
- (2) For that purpose the State Emergency Coordinator may —
- 10 (a) direct any public authority to do or refrain from doing any act, or to perform or exercise or refrain from performing or exercising any function; and
- (b) appoint an officer of a public authority to have overall control of particular activities carried out by public authorities in response to the emergency where a number of public authorities are involved.
- (3) If a direction is given to a public authority under this section —
- 15 (a) the public authority is to comply with the direction; and
- (b) the direction prevails to the extent of any inconsistency with any enactment or other law.

70. Obtaining identifying particulars

20 The office of authorised officer is prescribed for the purposes of the *Criminal Investigation (Identifying People) Act 2002* and any holder of that office may exercise the powers in Part 3 of that Act during a state of emergency.

71. Powers of authorised officer to control or use property

- 25 (1) During a state of emergency, for the purpose of emergency management, an authorised officer may take control of or make use of any place, vehicle or other thing.
- (2) The place, vehicle or other thing may be in, or outside, the emergency area.

72. Use of vehicles

5 During a state of emergency, for the purpose of emergency management, an authorised officer may use a vehicle in any place and in any circumstance despite any provision of the *Road Traffic Act 1974* that requires a permit for the use of that vehicle or for the use of that vehicle in that place or in that circumstance.

73. Powers of authorised officer concerning movement and evacuation

10 During a state of emergency, for the purpose of emergency management, an authorised officer may do all or any of the following —

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

74. Powers of authorised officers in relation to persons exposed to hazardous substances

25 (1) During a state of emergency, for a purpose mentioned in subsection (2), an authorised officer may direct any person who has been exposed to a hazardous substance to do all or any of the following —

- (a) to remain in an area specified by the authorised officer for such period as is specified by the authorised officer;
- 30 (b) to remain quarantined from other persons for such period, and in such reasonable manner, as is specified by the authorised officer;

- (c) to submit to decontamination procedures within such reasonable period, and in such reasonable manner, as is specified by the authorised officer.
- 5 (2) A direction may be given under subsection (1) for the purpose of —
- (a) ensuring that the hazardous material is contained; or
- (b) ensuring that the person to whom the direction is given does not pose a serious risk to the life or health of others or to the environment because of the hazardous material
10 involved.
- (3) The period specified under subsection (1)(a) or (b) must not be more than 24 hours unless the State Emergency Coordinator has given authorisation for a longer period to be specified in relation to the person exposed to the hazardous substance.

15 **75. General powers during a state of emergency**

- (1) During a state of emergency, for the purpose of emergency management, an authorised officer may —
- (a) enter or, if necessary, break into and enter, a place or vehicle in the emergency area;
- 20 (b) 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;
- (c) contain an animal or substance in the emergency area;
- (d) remove or destroy an animal, vegetation or substance in
25 the emergency area;
- (e) remove, dismantle, demolish or destroy a vehicle, or any premises, in the emergency area;
- (f) disconnect or shut off any electricity, gas, water or fuel supply, or any drainage facility, or any other service, in
30 the emergency area;
- (g) take and use fuel, gas, electricity or water in the emergency area;

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- (h) 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;
- (i) turn off, disconnect or shut down any motor or equipment in the emergency area;
- (j) open a container or other thing, or dismantle equipment in the emergency area;
- 10 (k) excavate land or form tunnels in the emergency area;
- (l) build earthworks or temporary structures, or erect barriers in the emergency area;
- (m) remove to such place as the authorised officer thinks proper any person who obstructs or threatens to obstruct emergency management activities;
- 15 (n) require a person to give the authorised officer reasonable help to exercise the authorised officer's powers under this Division.
- (2) An authorised officer may enter a place or vehicle in the emergency area without a warrant or the consent of the occupier of the place or the owner of the vehicle.
- 20

76. General provisions regarding powers

- 25 (1) If a person does not comply with a direction under this Division, an authorised officer may do all such things as are reasonably necessary to ensure compliance with the direction, using such force as is reasonable in the circumstances.
- (2) An authorised officer may exercise a power under this section with the help, and using the force, that is reasonable in the circumstances.
- 30 (3) The powers of an authorised officer under this Division are in addition to, and not in derogation from, the powers the person may have under another enactment or other law.

77. General provisions regarding directions

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

Division 4 — The State Disaster Council

10 **78. State Disaster Council**

- (1) If a state of emergency is declared, a State Disaster Council is established.
- (2) The Premier is to be the chairman of the State Disaster Council.
- 15 (3) The Minister is to be the deputy chairman of the State Disaster Council.
- (4) If the chairman is not present at any meeting of the State Disaster Council the deputy chairman is to act as chairman and while so acting has the functions of chairman.
- (5) The State Disaster Council is to include —
- 20 (a) the State Emergency Coordinator; and
- (b) such other members as are appointed by the chairman.
- (6) The chairman may give directions as to the procedure of the State Disaster Council.
- (7) Subject to this section and the directions of the chairman the State Disaster Council may determine its own procedures.
- 25 (8) The State Disaster Council ceases to be established on a day determined by its chairman.

79. Functions of the State Disaster Council

The functions of the State Disaster Council are —

- 5
- 10
- (a) to liaise with the Government and the State Emergency Coordination Group in relation to the state of emergency;
 - (b) to provide prompt and accurate advice to the Government and the State Emergency Coordination Group in relation to the state of emergency;
 - (c) to provide support for the Government and the State Emergency Coordination Group in relation to the state of emergency; and
 - (d) to perform any other functions as directed by the Premier.

Part 6 — Compensation and insurance

Division 1 — Compensation

80. Entitlement to compensation

- 5 (1) Subject to this Division, a person who suffers loss or damage because of the exercise, or purported exercise, of a power under section 56 or 71, is entitled to be paid just and reasonable compensation for the loss or damage.
- 10 (2) Compensation is not payable to the person for loss or damage to the extent that —
- (a) an amount for the loss or damage is recovered or recoverable by the person under a policy of insurance; or
- (b) the conduct of the person contributed to the loss or damage.
- 15 (3) Compensation is not payable to the person for loss or damage if the loss or damage would have happened in any event irrespective of the exercise, or purported exercise, of the power.

81. Applying for compensation

- 20 (1) A person who suffers loss or damage because of the exercise, or purported exercise, of a power under section 56 or 71 may apply to the Minister for compensation for the loss or damage.
- (2) The application is to be made in writing within 90 days after the person suffers the loss or damage.
- 25 (3) The application is to —
- (a) state details of the person's loss or damage;
- (b) state the amount of compensation claimed and the grounds for the amount claimed; and
- (c) be accompanied by such further information as is prescribed by the regulations.

(4) The applicant is to provide any other relevant information required by notice given under section 82 to decide the application.

5 (5) Despite subsection (2), the Minister may accept a person's application for compensation made more than 90 days after the person suffers the loss or damage if the Minister is satisfied that it would be reasonable in all the circumstances to accept the application.

82. Lapsing of application

10 (1) If an application for compensation is made under this Division, the Minister may direct the applicant to provide information to decide the application by giving the applicant a notice stating —

- 15 (a) the required information;
- (b) the time by which the information is to be given to the Minister; and
- (c) that, if the information is not given to the Minister by the stated time, the application will lapse.

(2) The stated time is to be reasonable and, in any case, at least 21 days after the notice is given.

20 (3) The Minister may give the applicant a further notice extending or further extending the time if the Minister is satisfied that it would be reasonable in all the circumstances to give the extension.

25 (4) A notice may be given under subsection (3) even if the time to which it relates has lapsed.

(5) If the applicant does not comply with the requirement within the stated time or any extension, the application lapses.

(6) In this section —
“information” includes a record relating to information.

83. Notice of decision

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

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

15 **84. Funding of compensation**

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

20 **Division 2 — Review**

85. Review of compensation decision

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

Division 3 — Policies of insurance

86. Extension of policy of insurance

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

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

Part 7 — Offences

87. Obstruction of a hazard management officer or authorised officer

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

Penalty:

- (a) for an individual, \$50 000;
- (b) for a body corporate, \$500 000.

10 88. Failure to comply with direction

- (1) A person given a direction under section 43, 53, 57 or 58 or Part 5 Division 3 must comply with the direction.

Penalty:

- (a) for an individual, \$50 000;
- 15 (b) for a body corporate, \$500 000.

- (2) A person must comply with a direction referred to in subsection (1) despite the provisions of any other Act, or of any subsidiary legislation made under any other Act, and the person does not commit an offence by reason of that compliance.

20 89. Failure to give help

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

Penalty:

- (a) for an individual, \$50 000;
- 25 (b) for a body corporate, \$500 000.

90. Impersonation of hazard management officer or authorised officer

A person must not pretend to be a hazard management officer or an authorised officer.

30 Penalty: \$50 000.

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91. False or misleading information

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

Penalty:

- 10 (a) for an individual, \$50 000;
 (b) for a body corporate, \$500 000.

92. False compensation claim

15 A person must not, in or in relation to a claim for compensation under Part 6, make a statement that the person knows to be false or misleading in a material particular to, or otherwise mislead, the Minister or any other person.

Penalty:

- (a) for an individual, \$50 000;
(b) for a body corporate, \$500 000.

93. Victimisation because of emergency management activity

20 (1) An employer must not victimise an employee of the employer for being temporarily absent from employment because of the carrying out of emergency management activity.

Penalty:

- 25 (a) for an individual, \$50 000;
 (b) for a body corporate, \$500 000.

(2) It is a defence for the employer to show that —

- 30 (a) the absence was not reasonable having regard to all the circumstances; or
 (b) that the victimisation did not occur for the reason referred to in subsection (1).

- (3) An employer victimises an employee if the employer —
- (a) dismisses the employee from employment with the employer;
 - (b) alters the employee's position in his or her employment with the employer, to the employee's prejudice; or
 - (c) otherwise disadvantages the employee in his or her employment with the employer.
- (4) For the purposes of this section, an employee carries out an emergency management activity if —
- (a) the employee carries out an activity that involves dealing with an emergency;
 - (b) the employee carries out the activity on a voluntary basis;
 - (c) the employee is a member of, or has a member-like association with, an emergency management agency; and
 - (d) the employee was requested by or on behalf of the emergency management agency to carry out the activity or no such request was made, but it would be reasonable to expect that, if the circumstances had permitted the making of such a request, it is likely that such a request would have been made.
- (5) For the purposes of subsection (4)(b) an employee carries out an activity on a voluntary basis even if the employee directly or indirectly takes or agrees to take —
- (a) an honorarium;
 - (b) a gratuity; or
 - (c) a similar payment,
- wholly or partly for carrying out the activity.
- (6) A court that convicts an employer of an offence under this section may make any order that The Western Australian

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Industrial Relations Commission could make under section 23A of the *Industrial Relations Act 1979*.

- 5 (7) If proceedings are commenced in a court under subsection (1), the victim cannot subsequently lodge a claim under the *Industrial Relations Act 1979* because of the act and, conversely, if the victim lodges a claim under that Act because of the act, proceedings cannot subsequently be commenced under subsection (1) because of the act.
- 10 (8) In this section —
 “employee” has the same meaning as in the *Industrial Relations Act 1979*;
 “employer” has the same meaning as in the *Industrial Relations Act 1979*.

Part 8 — Miscellaneous

94. Expenses

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

95. Bodies corporate or employers, conduct on behalf of

- 15 (1) In this section —
- “engaging in conduct”** includes failing or refusing to engage in conduct;
- “state of mind”** of a person includes —
- 20 (a) the knowledge, intention, opinion, belief or purpose of the person; and
- (b) the person’s reasons for the intention, opinion, belief or purpose.
- (2) This section applies to and in relation to proceedings for an offence against this Act;
- 25 (3) If it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show —
- 30 (a) that the conduct was engaged in by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; and

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- (b) that the director, employee or agent had the relevant state of mind.
- (4) Conduct engaged in on behalf of a body corporate by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority is taken to have been engaged in also by the body corporate, unless the body corporate establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.
- (5) If it is necessary to establish the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show —
 - (a) that the conduct was engaged in by an employee or agent of the person within the scope of his or her actual or apparent authority; and
 - (b) that the employee or agent had the relevant state of mind.
- (6) Conduct engaged in on behalf of a person other than a body corporate (the “**employer**”) by an employee or agent of the person within the scope of his or her actual or apparent authority is taken to have been engaged in also by the employer, unless the employer establishes that the employer took reasonable precautions and exercised due diligence to avoid the conduct.

96. Body corporate’s officers, liability of

- (1) In this section —
 - “**officer**”, in relation to a body corporate, has the same meaning as in the *Corporations Act 2001* of the Commonwealth but does not include an employee of the body unless the employee was concerned in the management of the body.
- (2) If a body corporate is charged with an offence under this Act, every person who was an officer of the body at the time of the alleged offence may also be charged with the offence.

- (3) If a body corporate and an officer are charged as permitted under subsection (2) and the body corporate is convicted of the offence, the officer is to be taken to have also committed the offence, subject to subsection (6).
- 5 (4) If a body corporate commits an offence under this Act, then, although the body is not charged with the offence, every person who was an officer of the body at the time the offence was committed may be charged with the offence.
- 10 (5) If an officer is charged as permitted by subsection (4) and it is proved that the body corporate committed the offence, the officer is to be taken to have also committed the offence, subject to subsection (6).
- (6) If under this section an officer is charged with an offence it is a defence to prove —
- 15 (a) that the offence was committed without the officer's consent or connivance; and
- (b) that the officer took all the measures to prevent the commission of the offence that he or she could reasonably be expected to have taken having regard to
- 20 the officer's functions and to all the circumstances.

97. Evidentiary matters

- (1) In proceedings for an offence against this Act, an allegation in the complaint of any of the following matters is, in the absence of evidence to the contrary, taken to be proved —
- 25 (a) that at a specified time an emergency situation declaration or a state of emergency declaration was in force;
- (b) that at a specified time a specified area was, or was part of, an emergency area or a controlled access area
- 30 established under section 52;
- (c) that at a specified time a person was a hazard management officer, an authorised officer or a police officer authorised to act under section 58;

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- (d) that at a specified time a specified person was given a notice or direction under this Act;
- (e) that at a specified time a specified requirement was made of a specified person.

5 (2) Unless the contrary is proved, it is to be presumed that a document purporting to have been signed by the Minister, the State Emergency Coordinator, the chairman of the SEMC, a hazard management officer or an authorised officer was signed by a person who at the time was the Minister, the State
10 Emergency Coordinator, the chairman of the SEMC, a hazard management officer or an authorised officer.

(3) Unless the contrary is proved, it is to be presumed that a document purporting to have been signed by a delegate of the Minister, the State Emergency Coordinator or the SEMC was
15 signed by a person who at the time was such a delegate and was authorised to sign it.

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

98. Protection from liability

20 (1) An action in tort does not lie against the State, a Minister, the State Emergency Coordinator, a local government or an official for anything done, in good faith, under this Act.

(2) This section does not stop a person further limiting the person's liability for an act or omission by relying on a provision of the
25 *Civil Liability Act 2002*.

(3) Subsection (1) does not affect any right to recover damages in respect of the death of or bodily injury to any person directly caused by, or by the driving of, a motor vehicle if, at the time of the death or bodily injury —

30 (a) the vehicle was owned or was being driven by a person who, but for subsection (1), would incur liability in respect of the death or injury; and

- 5 (b) there was in force in respect of the vehicle a contract of insurance in accordance with section 4 of the *Motor Vehicle (Third Party Insurance) Act 1943* or the corresponding legislation of a State or Territory prescribed for the purposes of section 3(4) of that Act.
- (4) The protection given by this section applies even though the thing done in the performance or purported performance of a function under this Act may have been capable of being done whether or not this Act had been enacted.
- 10 (5) In this section a reference to the doing of anything includes a reference to the omission to do anything.
- (6) In this section —
- “**motor vehicle**” has the meaning given in section 3(1) of the *Motor Vehicle (Third Party Insurance) Act 1943*;
- 15 “**official**” means —
- (a) a member of the State Disaster Council, the State Emergency Management Committee, the State Emergency Coordination Group, a district emergency management committee or local emergency management committee;
- 20 (b) an authorised officer;
- (c) a district emergency coordinator;
- (d) a local emergency coordinator;
- (e) an emergency management agency;
- 25 (f) a hazard management officer;
- (g) a person acting under the direction or on the requirement of an authorised officer, a hazard management officer, or a police officer, under this Act.

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99. Regulations as to compensation of volunteers

(1) In this section —

“**emergency management activity**” means an activity related to emergency management and prescribed by the regulations;

“**volunteer**” means a person who —

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

(2) For the purposes of this section a person carries out an activity on a voluntary basis even if the person directly or indirectly takes or agrees to take —

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

wholly or partly for carrying out the activity.

(3) The Governor may make regulations concerning compensation and insurance of volunteers carrying out emergency management activities.

(4) Regulations made under this section may require an emergency management agency to take out and keep current in accordance with the regulations a policy of insurance that insures volunteers for compensation for injury caused to them while they are engaged in carrying out emergency management activities.

(5) Without limiting subsections (3) and (4), regulations made under this section may —

- (a) provide for the compensation that is payable for injury caused to a volunteer and the circumstances in which the compensation is payable;

- 5 (b) prescribe the terms and conditions on and subject to which insurance is to be provided, including the amounts of insurance cover to be taken out and kept current;
- (c) prescribe classes or categories of volunteers to which specified provisions or obligations under the regulations apply or do not apply;
- 10 (d) prescribe classes or categories of emergency management agencies to which specified provisions or obligations under the regulations apply or do not apply;
- (e) provide for circumstances in which emergency management agencies are exempt from the regulations; and
- 15 (f) prescribe a penalty of not more than \$50 000, with or without a daily penalty of not more than \$10 000, for an offence against the regulations.

100. Regulations

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

25 **101. Review of Act**

- (1) The Minister is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiry of 5 years from the commencement of this Act.
- 30 (2) In the course of that review the Minister is to consider and have regard to —
- (a) whether there is a need for the Act to continue; and

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(b) any other matters that appear to the Minister to be relevant to the operation and effectiveness of the Act.

(3) The Minister is to prepare a report based on the review and, as soon as is practicable after the report is prepared, is to cause it to be laid before each House of Parliament.

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102. Consequential amendment

Schedule 1 has effect.

Schedule 1 — Consequential amendment

[s. 102]

1. Fire Brigades Act 1942 amended

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

5 [* *Reprint 6 as at 7 March 2003.*
*For subsequent amendments see Western Australian
Legislation Information Tables for 2003, Table 1, p. 147 and
Act No.50 of 2003.*]

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

10 “

34A. Powers concerning persons exposed to hazardous material

(1) Without limiting section 34, for a purpose mentioned in subsection (2), in a hazardous material incident an authorised officer may direct a person who has been exposed to hazardous material to do all or any of the following —

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(a) to remain in an area specified by the authorised officer for such period as is specified by the authorised officer;

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(b) to remain quarantined from other persons for such period, and in such reasonable manner, as is specified by the authorised officer;

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(c) to submit to decontamination procedures within such reasonable period, and in such reasonable manner, as is specified by the authorised officer.

(2) A direction may be given under subsection (1) for the purpose of —

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(a) ensuring that the hazardous material is contained; or

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

(10) In this section —

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

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

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