

## Explanatory Memorandum

### **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.

#### **Clause 4 Explanation "Hazard management agency" may be prescribed**

This clause provides for the prescribing, in regulations, of a 'hazard management agency' (HMA) in relation to each category of hazard. A HMA has overall responsibility for all emergency management activities undertaken in relation to a proposed hazard. This includes 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, including that:

- the WA Police Service 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'.

Sub-clause 3 reflects that some HMAs (such as the WA Police Service or departments) are not separate legal entities. In such cases the WA Police Service 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 Combat agencies and support organisations**

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 expertise / resources is responsible for performing a task or activity to combat an emergency. Examples include:

- the WA Police Service as a 'combat agency' for stranded motorists; and
- FESA as a 'combat agency' for road accident rescue.

A 'support organisation' means an organisation that assists in an emergency management activity by providing support in restoring essential services, or carrying out functions of a humanitarian nature or carries out functions of a technical nature. Examples include AlintaGas, Department for Community Development, Department of Health, Main Roads WA, Telstra, Water Corporation and Western Power.

Where a department is designated as a combat agency or a support organisation, specific regulations will need to designate persons who may act on their behalf.

## **Clause 6 Explanation Act binds the Crown**

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

## **Clause 7 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*.

## **Clause 8 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.

## **Part 2 - State arrangements**

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

## **Clause 9 Explanation State Emergency Coordinator**

The Commissioner of Police will be the State Emergency Coordinator.

## **Clause 10 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 61;
- providing advice to the Minister about emergencies;
- providing advice to the State Disaster Council (see clause 78) during a 'state of emergency';
- providing advice and assistance to hazard management agencies;
- carrying out other emergency management activities as directed by the Minister.

The State Emergency Coordinator is empowered to make agreements/arrangements in or outside the State to assist in the management of emergencies.

*NB    Any powers provided under this Act may be limited or regulated by the regulations – see clause 100(2).*

## **Clause 11 Explanation    Delegations by the 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 12 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;
- 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. (The other SEMC members are currently the four chairpersons of the SEMC 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 regulations may make provision concerning the constitution and procedures of the SEMC. Subject to any such regulations, SEMC may determine its own procedures.

### **Clause 13 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 advice 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 community 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;
- to develop and coordinate risk management strategies to assess community vulnerability to emergencies;
- to perform other functions provided under the Act or prescribed under the regulations.

### **Clause 14 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
- act in conjunction with other bodies or persons.

*NB Any powers provided under this Act may be limited or regulated by the regulations – see clause 100(2).*

### **Clause 15 Explanation**    **Designation of cyclone areas**

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

Local governments are provided with powers in relation to designated 'cyclone areas' – see clauses 41 and 42.

### **Clause 16 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 operation when approved by the SEMC.

### **Clause 17 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 operation when approved by the SEMC.

### **Clause 18 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, tested, amended or replaced – whenever the SEMC considers it appropriate.

### **Clause 19 Explanation**    **Direction to public authorities**

This clause 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.

*NB    Any powers provided under this Act may be limited or regulated by the regulations – see clause 100(2).*

### **Clause 20 Explanation**    **Sub-committees**

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

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

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

### **Clause 21 Explanation**    **SEMC may delegate**

The SEMC may delegate any of its powers or duties 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 100(2).*

### **Clause 22 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 23 Explanation**    **State Emergency Coordination Group**

A State Emergency Coordination Group (SECG) is established as soon as a 'state of emergency' is declared under section 61.

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 will cease to be established when the SEC so determines.

#### **Clause 24 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 25 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.

#### **Clause 26 Explanation**    **District emergency coordinator**

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

#### **Clause 27 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 28 Explanation**    **District emergency management committees**

This clause establishes a district emergency management committee (DEMC) for each emergency management district.

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 29 Explanation**    **Functions of district emergency management committees**

The functions of district emergency management committees (DEMCs) are:

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

## **Clause 30 Explanation**    **Annual report of district emergency management committees**

Each DEMC is to prepare, 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 31 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.

#### **Clause 32 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 entity is to perform and exercise the emergency management functions of a local government.

The intention of this clause 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 in relation to:

- 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, but which is part of the City of Cockburn according to some records; and
- Kings Park – which is provided for under the Botanic Parks and Gardens Act, 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 section.



### **Clause 33 Explanation**    **Functions of a local government**

A local government's functions are to:

- ensure that effective 'local emergency management arrangements' (see clause 38) 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 34 Explanation**    **Local emergency coordinators**

This clause requires the State Emergency Coordinator to appoint a local emergency coordinator for each local government district.

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;
- to assist Hazard Management Agencies in providing a coordinated response during an emergency; and
- to undertake other emergency management activities in accordance with directions from the State Emergency Coordinator.

### **Clause 35 Explanation**    **Local emergency management committees**

This clause requires a local government to establish a local emergency management committee (LEMC) for its district.

Membership of the LEMC will consist of:

- a chairman, nominated by the local government and appointed by the SEMC chairman; and
- other members appointed by the local government.

The following procedures will apply in relation to the nomination of the LEMC chairman:

- The SEMC chairman is to advise the local government, in writing, that a nomination is required;
- The nomination must be made by the local government within a reasonable time after the receipt of the SEMC chairman's advice; and
- If a nomination is not made as required, the SEMC chairman may appoint a person that he/she thinks fit to be the LEMC 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.

### **Clause 36 Explanation**    **Functions of local emergency management committees**

A local emergency management committee (LEMC) is to:

- help its local government to ensure that ‘local emergency management arrangements’ (see clause 38) 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
- undertake any other emergency management activities as directed by the SEMC, or prescribed by the regulations.

### **Clause 37 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 district emergency management committee 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 38 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 agencies, organisations 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;
- a recovery plan, and the nomination of a local recovery coordinator; 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.

**Clause 39 Explanation**     **Reviewing and renewing local emergency management arrangements**

Local emergency management arrangements must be reviewed at least once a year by the local government, and may be amended or replaced whenever the local government considers appropriate.

**Clause 40 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 41 Explanation**     **Meaning of “cyclone area”**

A ‘cyclone area’ means a cyclone area designated under section 15.

**Clause 42 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:

- a cyclone is occurring or is imminent; and
- the local government is satisfied that, as a result of the 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.

*NB Any powers provided under this Act may be limited or regulated by the regulations – see clause 100(2).*

**Clause 43 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:

- a cyclone is occurring or is imminent; and
- the local government is satisfied that, as a result of the 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.

*NB Any powers provided under this Act may be limited or regulated by the regulations – see clause 100(2).*

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 44 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 made in writing and must be approved by the State Emergency Coordinator. (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.)

The State Emergency Coordinator may approve the declaration if 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, or property loss or damage, or damage to the environment, it will be necessary to exercise powers under Division 2 Subdivision 3 of this Act.

The declaration must include the time and date of its making, and the area of the State to which it applies.

#### **Clause 45 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 HMA.

#### **Clause 46 Explanation**    **Extension of emergency situation declaration**

A Hazard Management Agency (HMA) may, in writing, and with the approval of the State Emergency Coordinator, 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;
- must not extend the declaration by more than seven days; and
- remains in force for the period of extension unless revoked earlier.

#### **Clause 47 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 Division 2 Subdivision 3 of this Act to be exercised.

The HMA's revocation must be made in writing.

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 48 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

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

#### **Subdivision 1 - Authorisation**

#### **Clause 49 Explanation**    **Authorisation of hazard management officers**

This clause empowers HMAs to authorise officers or employees of the HMA as 'hazard management officers' in an 'emergency' or a declared 'emergency situation' in respect of a hazard for which the HMA is prescribed.

The authorisation is to specify whether it applies to

- a specific emergency or emergency situation or to any emergency or emergency situation; and
- individuals or classes of employees or officers or persons.

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

## **Subdivision 2 – General powers**

### **Clause 50 Explanation Application of this Division**

This Division applies during an 'emergency' or a declared 'emergency situation'.

### **Clause 51 Explanation Obtaining identifying particulars**

The office of 'hazard management officer' (HMO) is 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 or an emergency situation.

This provision enables HMOs to require a person to give their personal details. There is a similar provision in the *Dangerous Goods Safety Act 2004* (section 34).

### **Clause 52 Explanation Hazard management officer may establish controlled access**

A HMO may establish a 'controlled access area' if the HMO reasonably believes that access to the area needs to be controlled to assist in dealing with an emergency or an emergency situation, or to ensure that people or property will not be endangered during an emergency or an emergency situation. (The size of a controlled access area must not be larger than is reasonably necessary, and the boundaries may be altered at any time.)

The HMO is to take reasonable steps to tell people of the existence and boundaries of the controlled access area, and when the controlled access area ceases to be established.

A controlled access area ceases to exist when a HMO so determines.

### **Clause 53 Explanation Powers of hazard management officer concerning movement and evacuation**

During an emergency situation, a HMO may:

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

*NB Any powers provided under this Act may be limited or regulated by the regulations – see clause 100(2).*

**Clause 54 Explanation**    **Use of vehicles**

This clause empowers a HMO 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.

**Subdivision 3 – Powers during emergency situation**

**Clause 55 Explanation**    **Application of this Division**

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

**Clause 56 Explanation**    **Powers of hazard management officer to control or use property**

During an emergency situation, a HMO may take control of or make use of any place, vehicle or other thing – which may be inside or outside the emergency area declared in relation to the emergency situation.

*NB*    *Any powers provided under this Act may be limited or regulated by the regulations – see clause 100(2).*

**Clause 57 Explanation**    **Powers of hazard management officers in relation to persons exposed to hazardous substances**

This clause empowers a HMO, during an emergency situation, 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).

The HMO'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 100(2).*

**Clause 58 Explanation Powers of police to direct closure of places and concerning movement and evacuation**

This clause provides that, during an emergency situation, 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 powers available to a HMO under clause 53 (control of movement and evacuation) are available to the most senior police officer present. 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.

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

*NB Any powers provided under this Act may be limited or regulated by the regulations – see clause 100(2).*

**Subdivision 4 – General provisions**

**Clause 59 Explanation General provisions regarding powers**

If a person does not comply with a direction under this Part of the Act, a HMO or police officer may do all such things as are reasonably necessary to ensure compliance with the direction, using such force as is reasonably necessary. These powers are in addition to, and do not detract from, any powers that 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 100(2).*

**Clause 60 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 5 - State of emergency**

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

#### **Clause 61 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:

- is satisfied that extraordinary measures are required to prevent or minimise illness, injury or loss of life, or property loss or damage, or damage to the environment;
- is satisfied that an emergency has occurred, is occurring or is imminent; and
- has considered the advice of the State Emergency Coordinator.

The Minister’s declaration is to specify the time and date on which it applies, 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’.

#### **Clause 62 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 63 Explanation Extension of state of emergency declaration**

The Minister may, in writing, 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;
- must not extend the declaration by more than 14 days; and
- remains in force for the period of extension unless revoked earlier.

#### **Clause 64 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 65 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
- published in the *Government Gazette* as soon as practicable after it is made

## **Division 2 – Authorised officers**

### **Subdivision 1 – Authorisation and identification**

#### **Clause 66 Explanation**    **Authorised officers**

This clause empowers the State Emergency Coordinator to authorise persons to act as 'authorised officers' during a 'state of emergency'.

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 67 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 – Powers during a state of emergency**

#### **Clause 68 Explanation**    **Application of this division**

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

**Clause 69 Explanation**    **Power to direct public authorities during state of emergency**

The State Emergency Coordinator (SEC) is responsible for coordinating the activities of agencies/organisations during a state of emergency. For that purpose, the SEC may:

- direct an agency/organisation 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 an agency/organisation to have overall control of particular activities carried out by a number of agencies/organisations in response to the emergency.

*NB*    *Any powers provided under this Act may be limited or regulated by the regulations – see clause 100(2).*

**Clause 70 Explanation**    **Obtaining identifying particulars**

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

This provision enables authorised officers to require a person to give their personal details. There is a similar provision in the *Dangerous Goods Safety Act 2004* (section 34).

**Clause 71 Explanation**    **Powers of authorised officer to control or use property**

During a state of emergency, an authorised officer may take control of or make use of any place, vehicle or other thing – which may be inside or outside the emergency area declared in relation to the state of emergency.

*NB*    *Any powers provided under this Act may be limited or regulated by the regulations – see clause 100(2).*

**Clause 72 Explanation**    **Use of vehicles**

This clause empowers an authorised officer 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.

*NB*    *Any powers provided under this Act may be limited or regulated by the regulations – see clause 100(2).*

**Clause 73 Explanation Powers of authorised officer concerning movement and evacuation**

During a state of emergency, an authorised officer may:

- control or prohibit the movement of persons, animals, and vehicles within, into, out of or around 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 100(2).*

**Clause 74 Explanation Powers of authorised officer in relation to persons exposed to hazardous substances**

This clause empowers an authorised officer, during a 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).

The authorised officer'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 100(2).*

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

During a state of emergency, an authorised officer has the following general powers:

- (a) enter or, if necessary, break into and enter, a place or vehicle in the emergency area;
- (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 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 the emergency area;
- (g) take and use fuel, gas, electricity or water in the emergency area;
- (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;
- (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;
- (n) 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 100(2).*

**Clause 76 Explanation General provisions regarding powers**

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.

The powers of an authorised officer 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 100(2).*

**Clause 77 Explanation General provisions regarding directions**

A direction under this Division 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.

**Division 4 – The State Disaster Council**

**Clause 78 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.

### **Clause 79 Explanation**    **Functions of the State Disaster Council**

The SDC functions are to:

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

## **Part 6 – Compensation and insurance**

### **Division 1 - Compensation**

### **Clause 80 Explanation**    **Entitlements to compensation**

This clause provides that a person who suffers loss or damage because of the exercise, or purported exercise, of a power under section 56 or 71 (in relation to the control or use of property) 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 81 Explanation**    **Applying for compensation**

The person who has suffered damage or loss because of the exercise or purported exercise of a power under section 56 or 71 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.)

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.

### **Clause 82 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;
- the timeframe for lodgement of the information (which is to be at least 21 days); and
- the 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 83 Explanation**    **Notice of decision**

The Minister is to give an applicant for compensation a written notice stating:

- the decision and the reason for it; 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 84 Explanation**    **Funding of compensation**

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

## **Division 2 - Review**

### **Clause 85 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 86 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.

## Part 7 - Offences

### **Clause 87 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. Different penalties apply for individuals (\$50,000) and body corporates (\$500,000). In each case, the penalty specified is the maximum which may be applied by the courts.

### **Clause 88 Explanation**     **Failure to comply with direction**

This clause provides that it is an offence to fail to comply with a direction under sections 43, 53, 57 or 58, or Part 5 Division 3. Different penalties apply for individuals (\$50,000) and body corporates (\$500,000). In each case, the penalty specified is the maximum which may be applied by the courts.

### **Clause 89 Explanation**     **Failure to give help**

This clause provides that it is an offence to fail to give reasonable help required under section 75(1)(n) during a state of emergency. Different penalties apply for individuals (\$50,000) and body corporates (\$500,000). In each case, the penalty specified is the maximum which may be applied by the courts.

### **Clause 90 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. The penalty specified is the maximum which may be applied by the courts.

### **Clause 91 Explanation**     **False or misleading information**

This clause provides that it is an offence to give false or misleading information to a hazard management officer or an authorised officer, or a person assisting either officer. Different penalties apply for individuals (\$50,000) and body corporates (\$500,000). In each case, the penalty specified is the maximum which may be applied by the courts.

### **Clause 92 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 6. Different penalties apply for individuals (\$50,000) and body corporates (\$500,000). In each case, the penalty specified is the maximum which may be applied by the courts.



**Clause 93 Explanation**    **Victimisation because of emergency management activity**

This clause protects the employment rights of volunteers temporarily absent from employment because of the carrying out of an emergency management activity.

**Part 8 - Miscellaneous**

**Clause 94 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 95 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 96 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).

**Clause 97 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 98 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 99 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.

**Clause 100 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.

**Clause 101 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.

**Clause 102 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, proposed section 34A of the Fire Brigades Act will only empower the detention and quarantine of a person for three hours without the authorisation in writing by the chief executive officer of the Fire and Emergency Services Authority of Western Australia.