



ACT
Government

REVIEW OF THE *EMERGENCIES ACT 2004*

**Prepared in accordance
with section 203 of the
*Emergencies Act 2004***

Justice and Community
Safety Directorate

August 2021

CONTENTS

BACKGROUND..... 4

MAJOR EMERGENCY MANAGEMENT EVENTS IN THE LAST FIVE YEARS 5

Reviews into the 2019/20 bushfire and storm season..... 6

ACT Emergency Services Agency Operational Review of the Bushfire Season 2019/20.... 6

Report to the Minister for Police and Emergency Services on ACT Government coordination and response during the 2019-20 Bushfire Season..... 7

Review of ACT Emergency Services Responses to the 2019-20 Bushfire Season..... 8

The Royal Commission into National Natural Disaster Arrangements Report..... 8

National Emergency Declaration Act 2020..... 9

Interaction with other Acts 9

Emergency Plans and supporting sub-plans 10

LEGISLATIVE AMENDMENTS IN THE LAST 5 YEARS 12

OBJECTIVES OF THE ACT 14

RECOMMENDATIONS FOR IMPROVEMENT OR AMENDMENT TO THE ACT 14

ACT Recovery Coordinator 14

Resilience 15

Assistant Emergency Services Commissioner 16

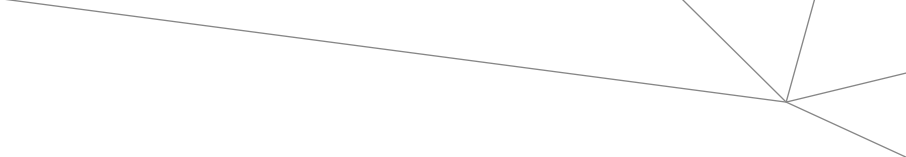
Establishing an all natural hazards Ministerial advisory body..... 16

The declaration of a state of alert 17

The declaration of a state of emergency 18

Informing the community about emergencies 18

Responsibility for preparing the Community Communication and Information Plan 19



Requiring assistance to be given to police and persons acting on behalf of the emergency services.....	19
Delegation by the Commissioner and Chief Officers	20
Victimisation of volunteers	21
Offences relating to fire appliances.....	21
Fire permits.....	22
Security and Emergency Management Senior Officials Group (SEMSOG)	23
Cooperative arrangements with Commonwealth, State or foreign agencies	24

REVIEW OF THE *EMERGENCIES ACT 2004*

BACKGROUND

The Minister for Police and Emergency Services is required under section 203 of the *Emergencies Act 2004* ('the Act') to review the operation of the Act at five yearly intervals.

This review covered the operation of the Act over the five years from 2015/16 to 2020/21.

The review considered the operation of the Act, and whether the Act was appropriately meeting its objectives:

- (a) to protect and preserve life, property and the environment; and
- (b) to provide for effective emergency management that—
 - (i) has regard to the need to prepare for, prevent, respond to and recover from emergencies; and
 - (ii) takes an all-hazards approach to emergency management; and
- (c) to provide for the effective and cohesive management by the Commissioner of the State Emergency Service (SES), the Ambulance Service, Fire and Rescue and the Rural Fire Service (RFS); and
- (d) to recognise the value to the community of all emergency service members, including volunteer members, and providers of operational and administrative support to the commissioner and the services.

The review also considered the events of the 2019/20 bushfire season, including the recommendations from a variety of reviews and inquiries arising from that season. This included the Royal Commission into National Natural Disaster Arrangements, the Report to the Minister for Police and Emergency Services on ACT Government coordination and response during the 2019-20 Bushfire Season, the Interim Report: Report to the Minister for Police and Emergency Services on Whole of ACT Government coordination and response during the 2019-20 bushfire season, the ACT Emergency Services Agency Operational Review of the Bushfire Season 2019/20 and the report of the ACT Legislative Assembly's Standing Committee on Justice and Community Safety's on the Review of the ACT Emergency Services Responses to the 2019-20 Bushfire Season.

The review was undertaken on behalf of the Minister for Police and Emergency Services by an executive steering group comprising representatives of the Justice and Community Safety Directorate (including the Emergency Services Agency and the Security and Emergency Management Division), the Environment, Planning and Sustainable Development Directorate and ACT Policing. The steering group was supported by a whole-of-government working group.

MAJOR EMERGENCY MANAGEMENT EVENTS IN THE LAST FIVE YEARS

The ACT emergency services responded to 391,472 incidents from 1 October 2015 to 31 March 2021. This compares to 268,226 incidents in the previous five-year period.

The most significant operational period in the last five years was the 2019/20 bushfire and storm season. This period produced some of the most unprecedented weather conditions in Australia's history. Large parts of Australia were impacted by significant fires with unpredictable and dangerous fire behaviour fuelled by hot, dry and windy conditions. These conditions meant fires started easily and were difficult to contain with the ACT facing its worst season since the devastating 2003 bushfires.

From August 2019, unprecedented fire activity heavily impacted large areas along the East Coast of Australia resulting in firefighters and specialist emergency management personnel from the ACT deploying interstate to assist. Bushfires to the east of the ACT at Braidwood and on the NSW South Coast caused thick smoke in the ACT and region for a continuous period from late December 2019 through January 2020. Hot and dry conditions precipitated a record number of Total Fire Ban (TOBAN) days (24) throughout the bushfire season, compared to a historical average of five to six.

A State of Alert was declared for the ACT on 2 January 2020 to assist community preparedness and organisational response and coordination with fires burning near the ACT border and forecasts of extreme weather.

Following the hot and dry conditions the ACT experienced severe thunderstorms on 16 January, 20 January and 10 February. The storm event on 20 January produced large hail stones and caused significant damage resulting in the ACT State Emergency Service receiving approximately 2,500 calls for assistance.

The ACT then experienced its first significant bush and grass fire of the season on 23 January 2020 at the Pialligo Redwood Forest. This fire then spread across to Beard, threatening Oaks Estate and Queanbeyan. A second fire started in Pialligo the following day and joined with the first, eventually taking the fire to 424 hectares.

On 27 January 2020, the Orroral Valley fire ignited and threatened the southern rural areas of the ACT, most notably Tharwa, and potentially southern suburbs of Canberra. A State of Emergency was declared for the ACT on 31 January 2020 with the ESA Commissioner appointed as the Emergency Controller. This was the first time since the Act commenced in 2004 that an Emergency Controller had been appointed in the ACT. The Emergency Controller was appointed for a period of 39 consecutive days in January and February.

The Orroral Valley fire was classified as 'out of control' until 8 February 2020, when significant rainfall allowed the status of the fire to be downgraded to 'being controlled'. By the time it was extinguished, the Orroral Valley burned over 86,000 hectares of land, approximately 30% of the ACT.

The Act was not used in the Government's response to the COVID-19 pandemic. The ACT Government's response to the COVID-19 pandemic was managed under the *Public Health Act 1997*.

Other incidents that necessitated a significant response and deployment of ESA resources included:

December 2018 Storm Event

Widespread rain and storms across the ACT on the 13 and 14 December 2018 saw 262 requests for assistance received by the ESA.

Pierces Creek Bushfire

A bushfire started by a burnt-out car on 1 November 2018 quickly spread into steep thickly vegetated terrain, burning over 208 hectares of bushland approximately 7 kilometres from Canberra's urban edge. ACT ESA personnel door knocked homes along the urban interface from Kambah to Gordon to educate residents regarding fire threat alert levels, bushfire plans and resources and information available to them.

Potters Hill Bushfire

A prescribed burn by the ACT Parks and Conservation Service lit on 10 March 2018 escaped control lines on 18 March 2018 under elevated fire danger conditions. The fire was contained on 19 March 2018 and burnt about 200 hectares of bushland.

February 2018 Storm Event

A severe rain event on 25 February 2018 saw over 250 requests for assistance, primarily in the inner north and Belconnen areas, along with localised flooding.

Wind and Storm Event, 13 January 2017

Severe winds associated with a storm on 13 January 2017 caused widespread damage, with over 960 requests for assistance received by the ESA.

Reviews into the 2019/20 bushfire and storm season

Following the unprecedented events of the 2019/20 bushfire and storm season, a number of reviews and inquiries were commissioned to examine the preparation for, and response to, these events. As the Act provides the overarching emergency management framework in the Territory, many of these reviews did consider the operation of the Act in some way, and some made specific recommendations about the Act.

ACT Emergency Services Agency Operational Review of the Bushfire Season 2019/20

This operational review analysed the effectiveness of the ESA's preparation, planning, response and recovery over the 2019/20 bushfire season. It had the following aims:

- to identify opportunities for the enhancement or establishment of cooperative partnerships (including inter-operability) to enhance bushfire management outcomes for the community
- to better understand ESA's strengths and residual risks in relation to its bushfire operational response and incident management capabilities
- to identify bushfire risk management priorities for the Territory, and

- to develop an evidence base that informs future bushfire planning and response capabilities.

The review found that the Act and supporting hierarchy of emergency plans detailing the responsibilities, authorities and mechanisms to prevent or manage emergencies and their consequences worked and allowed an effective response to fire and storm events experienced that summer. It also found that the management regime created by the Act and expanded upon in the various sub plans was comprehensive and structured by design, using a risk-based approach to prioritise preparedness efforts while also recognising the dynamic and emergency nature of emergencies.

The review identified 31 recommendations, grouped across the themes of capability, collective training and exercise, preparedness, personnel, planning and incident management. The ESA has proactively implemented a number of these recommendations and work is continuing on delivering the remaining recommendations.

The review did not identify any deficiency within, or issue with, the Act itself. The review did note that there was no express power in the Act to appoint a deputy or acting Emergency Controller. The power to appoint a deputy Emergency Controller was inserted into the Act in 2020 by the *Emergencies Amendment Act 2020*.

Report to the Minister for Police and Emergency Services on ACT Government coordination and response during the 2019-20 Bushfire Season

This review was commissioned to assess the effectiveness of government coordination of the response to the 2019/20 bushfires, including the adherence to emergency plans, procedures and protocols, as well as coordination with interstate and national agencies. The review was also specifically tasked to consider the effectiveness of the legislative framework for emergency management in the ACT.

An interim report was delivered to the Minister in July 2020, identifying four amendments to the Act assessed as needing to be implemented before the next bushfire season. These were:

- extending the period of time for which an Emergency Controller be appointed, up to 28 days
- allowing the appointment of a Deputy Emergency Controller
- consolidating the provisions relating to the powers of the Emergency Controller so they continue to apply for the duration of their appointment, regardless if a state of emergency or state of alert is declared; and
- clarifying the power of the Emergency Controller to access personal information or health records.

These amendments were implemented through the *Emergencies Amendment Act 2020*, which commenced on 3 September 2020.

The final report noted that the legislative framework for managing emergencies was generally sound, and that the Act fulfilled its functions during the 2019-20 bushfire season. The report did identify some areas for potential improvement, some of which are relevant to the Act. These include the need to:

- better define the rationale for the declaration of a state of alert/state of emergency; and
- include provision for a Deputy Emergency Services Commissioner.

Both of these issues have been addressed in this review and are discussed in more detail in the following pages.

Review of ACT Emergency Services Responses to the 2019-20 Bushfire Season

This review was undertaken by the Standing Committee on Justice and Community Safety of the ACT Legislative Assembly and was released in September 2020. The review had a broad mandate, ranging from preparation, education and public communication, to response actions by the RFS (including the Fire Management Unit in EPSDD) and F&R. Specific focus was accorded to:

- planning and coordination of programs to combat all aspects of the 2019-20 bushfire season
- things done well in preparation for and mitigating the effects of the 2019-20 bushfires; and
- how major events in 2019-20 bushfire season were dealt with as a major ACT natural disaster – and the lessons learned for next season and following years.

The review identified 26 recommendations, primarily focused on RFS and IMT operational practices, assistance for rural landholders and RFS training. None of these recommendations related to the Act or had any implication for this review.

The Royal Commission into National Natural Disaster Arrangements Report

The Royal Commission into National Natural Disaster Arrangements was announced in February 2020. The terms of reference including consideration of:

- the responsibilities of, and coordination between, Australian, state, territory and local governments relating to natural disasters
- Australia's arrangements for improving resilience and adapting to changing climatic conditions
- what actions should be taken to mitigate the impacts of natural disasters; and
- whether changes are needed to Australia's legal framework for the involvement of the Commonwealth in responding to national emergencies.

The Royal Commission made 80 recommendations across a broad range of areas. They included measures to support a greater role for the Commonwealth Government (with states and territories retaining primary responsibility for protecting life, property and the environment within their jurisdiction), strategic leadership directed at building resilience, greater resource sharing, improved national data, and better support for individuals to understand and manage disaster risk within their control.

The ACT Government has supported, supported-in-principle or noted all of the recommendations in the report, and considers they will strengthen Australia's natural disaster arrangements and are consistent with ACT Government policy.

Many of these recommendations will take some time to implement, requiring cooperation and coordination across multiple jurisdictions, directorates and non-government stakeholders. At this time, it is not expected that the implementation will impact upon the Act, nor will amendments to the Act be needed to support implementation.

National Emergency Declaration Act 2020

A recommendation of the Royal Commission that has already been implemented by the Commonwealth Government was that the Commonwealth Government should have the power to declare a state of national emergency. In response, the Commonwealth Parliament has passed the National Emergency Declaration Act 2000. That Act created a legislative framework for the declaration of a national emergency by the Governor-General, on the advice of the Prime Minister.

That Act consolidated the powers available to Commonwealth agencies to respond to, and to support recovery from, emergencies. The Act also empowered Commonwealth Ministers to suspend, vary or substitute 'red tape' legislative requirements where they would benefit the public, and empowered the Prime Minister to require Commonwealth agencies to provide information to assist the government with response, relief and recovery operations.

There is no direct impact upon the Territory upon the declaration of a National Emergency under the Commonwealth Act. A declaration does not impact upon or infringe any Territory law (including the *Emergencies Act 2004*), nor does it restrict or otherwise interact with the power of Territory emergency managers to respond to an emergency within the ACT.

Interaction with other Acts

One of the core principles underpinning emergency management in the ACT is the adoption of an all-hazards approach for managing the possible effects of emergencies. As the Territory is faced with a diversity of hazards, emergency management arrangements need to be sufficiently robust to provide a common 'management' structure, systems and methods of operation that will cater for all hazards which have the potential to impact on a community.

The all-hazards approach is based on the principle that those systems and methods of operation which work for one hazard are most likely to work for other hazards. The Emergencies Act establishes strategic and whole-of-Government arrangements for emergency management. The Act defines emergency broadly to mean an actual or imminent threat that requires a significant and coordinated response and lists a broad range of examples of emergency events including epidemic and electricity or water shortage. This all-hazards approach does not, however, prevent the development of specific plans and arrangements for hazards that require specialised approaches.

For this reason, the ACT Emergency Plan details the lead response agency for hazards facing the Territory. The lead response agency is the agency primarily responsible for controlling the response to a particular emergency. For instance, the Rural Fire Service (RFS) and ACT Fire and Rescue (F&R) are the lead response agencies for bushfires, ACT Policing is the lead response agency for chemical, biological, radiological and nuclear incidents, EPSDD is the lead agency for biosecurity incidents and ACT Health is the lead response agency for communicable human disease outbreaks including pandemics.

The management of those hazards may occur through the provisions of the Act or through other, hazard specific, legislation. For instance, the COVID-19 pandemic response has been managed under the *Public Health Act 1997*. Other Territory legislation that contains provisions for managing hazard-specific incidents includes the *Animal Diseases Act 2005*, the *Plant Diseases Act 2002* and the *Fuels Rationing Act*

2019. The Government is also consolidating a range of Acts relating to animal and plant disease into a new Biosecurity Act.

The lead response agency may, depending on the scale and severity of the incident, choose to manage the incident using the hazard-specific legislation, or if considered appropriate, utilise the provisions of the Act. This could include the declaration of state of alert or state of emergency, or the appointment of an Emergency Controller.

Emergency Plans and supporting sub-plans

Section 147 of the Act requires the Emergency Services Commissioner to prepare an emergency plan that provides the basis for emergency management in the Territory. The ACT Emergency Plan describes the responsibilities and the mechanisms to prevent, or if they occur, manage emergencies and their consequences within the ACT.

In particular, the ACT Emergency Plan:

- outlines the principles for emergency management in the ACT
- describes how the components of emergency management in the ACT work together under a single, comprehensive and flexible framework
- identifies roles and responsibilities related to identified hazards and associated emergencies
- identifies, in relation to each different form of hazard, the lead agency primarily responsible for controlling the response to the emergency
- provides for the coordination of the activities of other agencies in the Territory and elsewhere in support of a lead response agency in the event of an emergency, and
- identifies the key roles and responsibilities that may be activated during an emergency

The ACT Emergency Plan is supported by a number of hazard specific sub-plans and supporting sub-plans. These sub-plans detail the emergency management requirements for the particular hazard or supporting function and are prepared by the lead response agency for the specific hazard or supporting capability. Sub-plans are prepared when the management arrangements necessary to deal with the effects of the hazard or the supporting function:

- differ from the routine operational and coordination arrangements of agencies, including long running incidents
- require specific measures to reduce potential impacts on life, property or the environment of the ACT, or
- require the application of the resources and capability of multiple ACT agencies or cross-jurisdictional resources.

These plans are updated on a regular basis to ensure that they continue to represent best practice and capture developments in emergency management within the Territory and across Australia more generally.

As an example, the ACT Storm Plan was updated and endorsed in early 2021. The ACT Storm Plan outlines the comprehensive emergency management arrangements relevant to the storm hazard in the ACT, and provides for a coordinated, collaborative, whole of government approach to storm emergencies in the

ACT. This version of the Storm Plan was updated to include a greater focus on resilience and community engagement, as well an analysis of the impact of the La Nina weather system on the Territory. The revised Plan also updated SES preparedness arrangements based on the classification of storm incidents.

The review is satisfied that the current approach to preparing and updating plans and sub-plans continues to provide an effective framework for emergency management in the ACT.

LEGISLATIVE AMENDMENTS IN THE LAST 5 YEARS

In keeping with the ACT Government's commitment to continuous improvement of its emergency management arrangements, a number of amendments have been made to the Act since the Act was last reviewed in 2015. The more substantive amendments are as follows:

Emergencies Amendment Act 2016

This Act made a range of amendments to the Act and other legislation to implement the recommendations of the 2015 review of the Act. These amendments included:

- Restricting high-risk activities during total fire bans
- Increasing penalties for lighting a fire during a total fire ban
- Changes to governance arrangements for the ACT Bushfire Council
- Ensuring an all-hazards approach to emergency planning and response
- Clarifying responsibility for community education and awareness
- Simplifying responsibility for fire control and operational planning, and
- Confirming the power of the Chief Officer (ACTAS) to establish, amend, suspend or withdraw an ambulance officer's scope of practice.

Emergencies Amendment Act 2018

This Act made a variety of amendments to enhance the clarity and operation of the Act, particularly in relation to the functions of the Security and Emergency Management Senior Officials Group (SEMSOG), emergency sub-plans and the application of the Act during an emergency situation. Specific amendments included:

- Providing that the Directors-General of all ACT administrative units and the Under Treasurer automatically became members of SEMSOG
- Providing an additional main function for SEMSOG of providing for liaison between entities in relation to ACT security-related matters
- Recognising ACT emergency sub-plans as a formal part of the ACT's emergency management framework
- Requiring that the Minister make a separate stand-alone Community Communication and Information Plan
- Clarifying that if the Chief Minister is unable to exercise the powers of declaring a state of emergency or appointing an emergency controller, the Deputy Chief Minister can exercise this power under the *Australian Capital Territory (Self-Government) Act 1988 (Cwlth) (Self-Government Act)*
- Clarifying that the Chief Minister will not have to consult with an appropriate standing committee of the Legislative Assembly prior to the appointment of an emergency controller, and
- Providing for the continued appointment of the emergency controller, appointed outside a declared emergency, in the event that a state of emergency is declared.

Emergencies Amendment Act 2020

The Act implemented various recommendations of the interim report on ACT Government coordination and response during the 2019-20 bushfire season. The amendments came into effect on 4 September 2020 and included:

- Consolidating of provisions relating to the appointment, functions and powers of the Emergency Controller
- Extending the maximum period for the appointment of an Emergency Controller from 7 days to 28 days, when a State of Emergency has not been declared
- Clarifying the existing power of the Emergency Controller to direct a person to provide any information, including health records or personal information
- Requiring the Emergency Controller to advise the Chief Minister and Minister for Police and Emergency Services at least every 7 days:
 - about the status of the emergency
 - whether they consider the declaration of a State of Alert or Emergency is still justified; and
 - whether their appointment as Emergency Controller is still justified.
- Requiring the Chief Minister and Minister to revoke an emergency declaration and the appointment of an emergency controller if they determine they are no longer justified, and
- Establishing a provision for the Chief Minister to appoint a Deputy Emergency Controller.

OBJECTIVES OF THE ACT

The review determined that the Act is appropriately meeting its objectives.

The Act operates to facilitate the protection and preservation of life, property and the environment so far as possible. The Orroral Valley fire was the most serious fire Canberra had faced since the deadly 2003 fires. The excellent work of all emergency services minimised the impact of the Orroral Valley fire and ensured the protection of Tharwa and the southern suburbs of Canberra. Thankfully, there was no loss of life as a result of these fires, however, the fires did impact on a small number of rural landholders with the loss of pasture and infrastructure. As mentioned previously, the Orroral Valley fire burnt approximately 30% of the ACT impacting significantly on the environment. While there are some amendments proposed to the Act in this review, they would not have prevented the loss of property or the effect of the fire on the Namadgi National Park.

The Act operates to support effective emergency management. The ACT Government's practice of continuous improvement of its emergency management legislation, policies and plans, drawing upon lessons learnt from planning and desktop exercises, recommendations from a range of reviews and developments in other jurisdictions, means the Act continues to provide a comprehensive framework for emergency management and response in the ACT.

The Act operates to facilitate the effective and cohesive management of the four operational Services, namely the State Emergency Service (SES), ACT Ambulance Service (ACTAS), F&R and the RFS. The operational services are supported by the ESA support capabilities and enabling services which comprise the ESA Commissioner's Office, Finance, People Culture and Training, Risk and Planning and ESA Capability Support and Coordination.

The value and extraordinary commitment to the community of all emergency service members, including volunteers and providers of operational and administrative support, is well recognised, resulting in the ACT being well placed to respond to a high level of demand for emergency resources with skilled and motivated personnel, and the necessary equipment and resources to respond.

Further, the ESA's 'team of teams' approach ensures a unified response to an emergency whilst recognising the unique functions, skills and capabilities that each distinct service possesses. The respective services within the ESA operate jointly and collaboratively to respond to emergencies, whether on the frontline, in a support capacity or as part of an Incident Management Team.

A small number of improvements have been identified by this review and are outlined below.

RECOMMENDATIONS FOR IMPROVEMENT OR AMENDMENT TO THE ACT

ACT Recovery Coordinator

The ACT Recovery Sub-Plan provides that if the scale or nature of the emergency is such that a number of different ACT Government directorates and agencies need to undertake recovery activities, a Recovery Coordinator will be activated to coordinate recovery efforts across the ACT Government, community sector and private business. The Recovery Coordinator will be responsible for ensuring recovery planning,

coordination, and stakeholder engagement. A key responsibility of the Recovery Coordinator is to determine the most effective way to inform and deliver recovery services to affected communities.

While the Lead Response Agency or Emergency Controller (if appointed) has overall command and control responsibility for emergency operations, including short term recovery, the Recovery Coordinator will support and report to the Lead Response Agency or Emergency Controller on recovery activities being undertaken until such time as response activities cease. Once response activities cease, overall responsibility for recovery activities transitions to the Recovery Coordinator.

The Royal Commission into Natural Disaster Arrangements highlighted the importance of the recovery process. It also noted the need for effective coordination to ensure services are delivered effectively and efficiently and address the broad range of impacts of a natural disaster.

There is no reference to the ACT Recovery Coordinator in ACT legislation. Given the important role of the Recovery Coordinator, it is appropriate that the role be specifically referred to in legislation. It is recommended that a power for the Minister to appoint a Recovery Coordinator be inserted into the Act.

The Lead Response Agency or Emergency Controller would work closely with the Recovery Coordinator during the response phase of the emergency to ensure a seamless transition from response operations into recovery. This transition to recovery may require the formal establishment of a Recovery Taskforce (led by the Recovery Coordinator) or result in a transition from short term recovery under the control of the Lead Response Agency or Emergency Controller, to business as usual. In either case, the Recovery Coordinator would be required to develop a plan for recovery as early as possible, with identified roles and responsibilities, detailing the outcomes sought in each area of recovery and the activities required to achieve these outcomes.

Resilience

All Australian governments have been increasingly focused on resilience in emergency management. For example, the ESA engages in a range of resilience building activities including Be Storm Ready and Be Fire Ready campaigns. NSW has established Resilience NSW to be the lead disaster management agency in NSW, responsible for disaster recovery and building community resilience to future disasters. Queensland has a Strategy for Disaster Resilience. The recent Royal Commission into National Natural Disaster Arrangements also noted that there needs to be a shift in thinking about national natural disaster management to be one of resilience. Following on from the Royal Commission, the Commonwealth Government announced funding for a new national recovery and resilience agency in the 2021 Budget. In recognition of the increasing focus on resilience in the ACT and to support the shift in thinking, the review recommends that the objects of the Act be expanded to include providing for emergency management that assists in building community resilience.

Assistant Emergency Services Commissioner

Section 7 of the Act allows the Director-General to appoint a public servant to be the ACT Emergency Services Commissioner. Section 8 outlines the Commissioner's functions, while a variety of provisions confer various obligations and powers on the Commissioner.

In May 2020 the role of Deputy ACT Emergency Services Commissioner was established. Following an analysis by the Justice and Community Safety Directorate, the position will be retitled as Assistant Emergency Services Commissioner.

There is no current specific legislative basis in the Act to appoint an Assistant Emergency Services Commissioner.

To provide clarity on the role and functions of the Assistant Emergency Services Commissioner, a specific reference to the role should be included in the Act. This will ensure accountability and certainty of command arrangements.

Amendments should be made to confer the power on the Director-General to appoint an Assistant Emergency Services Commissioner. This appointment power should be discretionary, rather than mandatory, to provide flexibility for future management arrangements within the Emergency Services Agency. It would be a requirement that the Director-General may only appoint a person if the person has the management, professional and technical expertise to exercise the functions of Assistant Emergency Services Commissioner.

The functions of the Assistant Emergency Services Commissioner should be specified in the Act. This will primarily be to support the Commissioner in the exercise of their own functions. Any powers given to an Assistant Emergency Services Commissioner will need to be carefully crafted to ensure certainty and avoid any potential conflict with the exercise of the Commissioner's powers.

It is not proposed to provide a power for the Assistant Emergency Services Commissioner to make guidelines for the strategic operation of each of the emergency Services under section 11 of the Act. This reflects that it is a function of the Commissioner to give the emergency services a strong, cohesive strategic direction.

The Commissioner will retain their existing power under section 12 of the Act (which allows the Commissioner to delegate their functions) to delegate their functions to an Assistant Emergency Services Commissioner.

Establishing an all natural hazards Ministerial advisory body

Section 127 of the Act established the ACT Bushfire Council in its current state (noting there has been an ACT Bushfire Council in various forms for over 80 years, originally undertaking the response functions now undertaken by the ACT RFS (including the Fire Management unit within EPSDD)). The Council's primary function is to advise the Minister about matters relating to bushfires, although it also has a number of consultative roles, including on the Strategic Bushfire Management Plan, any delay or extension to the

bushfire season, any Commissioner's guidelines for appointing the senior volunteer ranks of the RFS, and any determination by the Chief Officer (RFS) on the number of RFS Brigades in the Territory.

The Bushfire Council allows the Minister and the ESA to draw upon expertise from a broad range of individuals either representing a range of key stakeholders (such as rural lessees or the community's interest in the environment) or with experience in a range of areas including land management, firefighting and fire sciences.

The Territory Wide Risk Assessment 2017 (TWRA) delivered a strategic level analysis of the natural hazards and other emergency risks facing the ACT. The TWRA noted that emergency management planning should be based on risk and consider risks across the social, built, economic and natural environments. Accordingly, the TWRA identified and quantified a range of natural and other hazards facing the ACT.

Unsurprisingly given the tragic events of 2003, the TWRA identified the risk of bushfire in the ACT as extreme. However, the TWRA also identified a number of other natural hazards facing the ACT. Heatwave was also assessed as an extreme risk, with an assessment that a heatwave event in the ACT will have a significant impact on the community, particularly those in vulnerable groups with possible serious illness and deaths and will also impact on the economy, the environment and critical infrastructure, resulting in increased demand for government services.

A number of other natural hazards were assessed as being of a high risk, including severe storm and flash flood.

The TWRA highlighted the multitude and broad-ranging risks facing the ACT. This was demonstrated during the 2019/20 summer when the Territory was impacted by bushfires, storms and hail, and thick smoke. For this reason, it is appropriate that the scope of the Bushfire Council be broadened to address all natural hazards. This will allow the Minister and ESA to receive the benefit of the expertise provided by such a Council across all natural hazards.

It is recommended that the name and functions of the Bushfire Council be amended to reflect a new role in advising across all natural hazards. The membership of the Council should also be amended to require members be appointed who are able to advise more broadly across a range of natural hazards rather than just bushfires, noting that many of the skills and backgrounds required of current appointees already allow them to advise on a broader range of hazards.

The declaration of a state of alert

Section 151 of the Act provides that the Minister for Police and Emergency Services, if satisfied that an emergency is likely to happen, may declare that a state of alert exists for all or part of the ACT. There is no description in the statute of what or why a state of alert may be declared.

The 2019/20 bushfire season saw the first declaration of a state of alert in response to the extreme bushfire threat facing the ACT. A state of alert was declared by the Minister for Police and Emergency Services on 2 January 2020 for the entirety of the ACT. This was amended on 20 January 2020 to apply only to south-west rural area of the ACT. A new state of alert applying to the whole of the ACT was declared on 23 January 2020.

Whilst no operational issues were identified with the Act about the declaration of a State of Alert, the seriousness of any declaration of a state of alert merits clear guidance on when such a declaration is warranted. Whilst the ACT Emergency Plan, approved by the Minister under section 147 of the Act, provides guidance and lists the factors to consider in making a declaration, these should be reviewed upon the next update of the ACT Emergency Plan to incorporate any key learnings from the 2020 bushfires.

As mentioned previously, the final report to the Minister for Police and Emergency Services on ACT Government coordination and response during the 2019-20 Bushfire Season recommended that the Act better define the rationale for a state of alert. The review agrees that the Act be amended to include a rationale for a state of alert consistent with the Emergency Plan.

The declaration of a state of emergency

Section 156 allows the Chief Minister, if satisfied that an emergency has happened, is happening or is likely to happen, to declare that a state of emergency exists for some or all of the ACT. A declaration of a state of emergency automatically ends any existing declaration of a state of alert.

The 2019/20 bushfire season saw the first declaration of a state of emergency in response to the threat posed by the fire burning in Namadgi National Park. The Chief Minister declared a state of emergency on 31 January 2020, automatically ending the existing state of alert. The Chief Minister subsequently revoked the declaration of state of emergency on 2 February 2020.

No operational issues were identified with the Act about the declaration of a state of emergency. However, the seriousness of any declaration of a state of alert merits clear guidance on when such a declaration is warranted. Whilst the ACT Emergency Plan, approved by the Minister under section 147 of the Act, provides guidance and lists the factors to consider in making a declaration, these should be reviewed upon the next update of the ACT Emergency Plan to incorporate any key learnings from the 2020 bushfire.

The final report to the Minister for Police and Emergency Services on ACT Government coordination and response during the 2019-20 Bushfire Season recommended that the Act better define the rationale for a state of emergency. The review agrees that the Act be amended to include a rationale for a state of emergency consistent with the Emergency Plan.

Informing the community about emergencies

The effective communication of public information and warnings is a critical element of emergency management, with the power to save lives. In an emergency, public information and warnings play an important role in community safety by empowering people to make informed decisions and take protective action. For these reasons, the Act imposes an obligation on the Minister and Chief Minister to ensure that notice of any declaration of a state of alert or state of emergency be broadcast as soon as possible in the ACT by television or radio.

Recent events have shown that social media has changed the way that emergency-related information is disseminated in emergencies. Social media is becoming an increasingly important source of information

during disasters and other emergency events. In recent years, both in Australia and internationally, an increasing number of people have turned to social media to find relevant and up-to-date information. Social media platforms are routinely used by ACT emergency responders to communicate updates and other essential materials. Information appears on platforms such as Twitter and Facebook in real time, frequently preceding traditional channels such as television and radio.

The increasing reach of and reliance on social media makes it appropriate that any declaration of a state of alert or state of emergency should be broadcast on social media. This would also follow sector best practice, with social media increasingly relied upon by emergency managers as part of a multifaceted approach using a diversity of channels to better target impacted sectors of the community. This review recommends that sections 153 and 158 of the Act be amended to include an obligation to notify the community of any declaration of a state of alert or state of emergency via social media.

Responsibility for preparing the Community Communication and Information Plan

The Community Communication and Information Plan, a requirement of section 149 of the Act, outlines the arrangements for communication with the public, the media and ACT Government Directorates before, during and after emergencies in the Territory. Currently the Act obliges the Minister to make the plan, and the Commissioner to ensure that information about the plan is given to the community. This contrasts with the approach taken for the Emergency Plan, where the Commissioner is responsible for preparation with the Minister approving the plan.

To provide certainty and to ensure consistency within the Act, it is recommended that the Act be amended to specify that the Commissioner has responsibility for preparing the Community Communication and Information Plan. Noting the plan has a whole-of-government focus, the Commissioner should be obliged to consult with SEMSOG in preparing the plan.

The Commissioner's existing obligation to ensure that information about the plan is given to the community should also be amended, so that the obligation is to ensure that information about emergencies is given to the community in accordance with the plan.

Requiring assistance to be given to police and persons acting on behalf of the emergency services

Section 34 of the Act gives the chief officer of an emergency service a range of powers for the protection or preservation of life, property or the environment. Among other powers, a chief officer can require a person to give reasonable assistance to a member of an emergency service. The review considers it appropriate to include police in this provision as well so that a chief officer can require a person to give reasonable assistance to police as well as a member of an emergency service.

This requirement should also extend to a person acting on behalf of a member of an emergency service, such as a member of Roads ACT or a contracted traffic controller engaged to close roads. While emergency service members with the relevant delegation from their chief officer have the power to close roads, in practice the staffing of road closures is routinely done by Roads ACT officers or private sector

traffic contractors engaged to staff the roadblock. This frees up valuable, specialised resources that may be better utilised elsewhere in the response effort. Powers under section 34 must, if practicable, be exercised in accordance with the Commissioner's guidelines.

Restricting access to the general public is a common practice in emergency response operations (where safe to do so), and routinely occurred during the Orroral Valley bushfire where residents in the Tharwa and surrounding regions were given ongoing access to their homes whilst the area was closed to the general public.

The extension of the requirement to assist official personnel reflects the multi-disciplinary, all-agencies approach to emergency management in the Territory, where representatives from a wide range of agencies, from both within and outside of government, may be involved in emergency response operations.

Delegation by the Commissioner and Chief Officers

Section 12 allows the Commissioner to delegate their functions under the Act or another Territory law to a public servant, a member of an emergency service or an emergency services support volunteer. A similar power exists in section 39 for Chief Officers to also delegate their functions under the Act or another Territory law.

This power to delegate is limited in that the Commissioner and Chief Officer may not delegate their functions to a police officer. Currently, they may only delegate their functions to a public servant or a member of an emergency service.

The term 'public servant' is defined in the *Legislation Act 2001* to be a person employed in the public service. 'Public service' is defined as the ACT Public Service. ACT Policing officers are not employed in the ACT Public Service, with ACT Policing the community policing arm of the Australian Federal Police. ACT Policing provides community policing services to the ACT in accordance with an arrangement between the Commonwealth and the ACT for the provision of police services. As such ACT Policing officers are employed under the Commonwealth's *Australian Federal Police Act 1979* and rather than within the ACT Public Service.

Similarly, the Act defines an emergency service as the ACT Ambulance Service, the ACT Fire and Rescue Service, the Rural Fire Service and the ACT State Emergency Service. ACT Policing does not fall within that definition.

It is appropriate that the Commissioner and Chief Officers have the power to delegate their functions to a police officer such as the Chief Police Officer for the ACT. This reflects the complex, multi-agency nature of emergency operations.

A power for the Commissioner and Chief Officer to delegate their functions to a police officer would be consistent with the powers available to the Emergency Controller to delegate their functions to the Chief Police Officer.

A delegation by the Commissioner and Chief Officer to a police officer may not be subdelegated to another person.

Victimisation of volunteers

The significant contribution made by emergency service volunteers has been a long-standing feature of the ACT's emergency response arrangements. Volunteers from the RFS, SES, Community Fire Units (CFUs) and Mapping and Planning Support (MAPS) are a vital component of the ACT Emergency Services Agency and are integral to the ACT Government's commitment to protecting life, property and the environment in the Territory.

The Royal Commission into National Natural Disaster Arrangements Report noted that sustaining an effective volunteer workforce is vital to ensuring future capabilities of emergency services to respond to natural disasters. That Report found that increasing employment protections for emergency service volunteers represents a way to support volunteer participation into the future.

One of the ways that the ACT Government supports volunteers is through chapter 8 of the Act. Section 183 protects volunteers from victimisation from an employer arising from their emergency volunteer duty. An employer who victimises an employee taking part in an emergency operation commits an offence. Victimisation of an employee includes dismissing the employee, changing the employee's position or circumstances to the detriment of the employee, or otherwise injuring the employee in their employment.

Currently the protections in section 183 only apply during a declared state of alert or state of emergency. There is no scope for those protections to be applied in other circumstances. This contrasts with the approach taken in NSW, which has similar provisions penalising victimisation of volunteers. Under sections 60AA and 60D of the *State Emergency and Rescue Management Act 1989 (NSW)* those protections apply both automatically during a state of emergency as well when the Premier or an authorised officer makes an order stating that the provisions apply.

To ensure that volunteers within the ACT emergency services are appropriately protected, it is recommended that the Minister be given a power to declare that the protections in section 183 of the Act may apply outside of a state of alert or state of emergency. This ensures that volunteers are protected and able to service the ACT community without fear of victimisation in emergencies which may pose a serious threat but are not at the scale to warrant the declaration of a state of alert or state of emergency.

Offences relating to fire appliances

The Act contains a number of offences regulating conduct that may pose a danger to occupants of buildings or the general public, such as hindering the use of fire alarms. Division 5.4.2 (Offences relating to premises) contains a variety of sections establishing a number of offences, including section 95 (Offences about fire appliances). Most of the offences in section 95 apply to the occupier of premises, although one

– the offence in section 95 (3) – applies to a person who removes, destroys, damages or interferes with a fire appliance or a container used for housing or storing fire appliances.

Fire appliance, as defined in the Act, has a broad definition, and includes —

- (a) any vehicle, equipment, implement or thing used for the prevention, extinguishing or containment of fire or smoke; and
- (b) any fire alarm; and
- (c) any apparatus for alerting the occupants of a building to a fire or facilitating the evacuation of the building; and
- (d) equipment used for the control or evacuation of smoke from a building.

Section 190 contains a number of offences that also relate to interfering with a fire appliance. These apply to any person, and – like section 95 (3) – are not restricted to the occupier of a premise. For instance, section 190 (1) provides that it is an offence for a person to do something to, or near, a fire appliance that prevents or hinders the effective use of the appliance.

Unlike section 95, section 190 contains a provision stating that the offences in the section do not apply if the person has the permission of a member of either ACT Fire & Rescue, or the Rural Fire Service, or a police officer. This reflects that persons may need to do something to a fire appliance that prevents the effective use of the appliance to test the appliance, or to undertake construction work nearby that would trigger a fire alarm. In those cases, a person may apply for permission to undertake that activity without committing an offence.

Given the similarities between the offences in sections 95 and 190, there are advantages in consolidating these offence provisions to increase clarity and to aid enforcement. It is recommended that section 95 contain offences applying to occupiers of premises, while the offences in section 190 would apply to all persons. It is also recommended that an exemption provision similar to section 190 (4) be added to section 95, allowing a person to undertake an action (such as interfering with a fire appliance, by isolating a fire alarm during construction work) without committing an offence where permission has been obtained in advance.

Fire permits

The Act imposes certain restrictions on the use of fire, or the undertaking of high risk activities (which are likely to create a fire). This includes restrictions on:

- Using fires and appliances for cooking in the open air
- Using fireplaces in fireplaces provided by the Commonwealth or Territory Governments
- Burning off material on a landowner's own land
- Lighting a fire, or using fireworks, and
- Undertaking high risk activities.

The application of these restrictions vary depending on whether the activity is undertaken during the bushfire season or not, or whether it occurs during a total fire ban period.

The Act provides for certain exemptions from these requirements in certain circumstances. For instance, a fire may be lit in the open air during a total fire ban by an entity for the purposes of repairing or restoring essential services provided certain conditions are met.

The Act also confers the Commissioner with a power to issue a permit in certain circumstances to allow a person to undertake activities that would otherwise be an offence under the Act. Under section 118, the Commissioner may issue a permit to use a fire, use fireworks, or undertake a high-risk activity during a total fire ban. Under section 124 the Commissioner may issue a permit to either (a) light, maintain or use a fire in the open air on unleased Territory or Commonwealth land in a rural area to cook food or heat liquids or (b) for the owner of land to burn any material on the land on any day in the bushfire season.

These current fire permit provisions are unnecessarily restrictive and prevent the Commissioner from issuing a fire permit in circumstances where they are otherwise satisfied that issuing a fire permit is appropriate. An example of this is that there is no power available to the Commissioner to issue a fire permit to a person who is not the owner of land to burn material during the bushfire season, which has prevented the Commissioner from issuing a permit to beekeepers to use a bee smoker to tend hives located on another person's land with the permission of the landowner. On another occasion the Commissioner was unable to issue a permit to a neighbourhood group seeking to light a bonfire on unleased Territory land within the urban area – the power to issue a permit only applies to land in the rural area.

It is recommended that the power for the Commissioner to issue fire permits be amended so that the Commissioner has a blanket power to issue a permit to light, maintain or use fire, use fireworks or undertake high fire risk activities which would otherwise be an offence. The amendment would include the power to impose any conditions that the Commissioner's considers appropriate to safeguard public safety.

Security and Emergency Management Senior Officials Group (SEMSOG)

As part of the 2018 amendments to the Act, section 143 (1) which relates to the functions of SEMSOG was amended to recognise that SEMSOG has responsibilities for security. This amendment was in recognition of the broad and all-hazards focus of SEMSOG.

Section 143 (3) (b) which relates to the additional functions of SEMSOG was also amended to include SEMSOG's role in supporting the commissioner in security and emergency management, including the preparation of the emergency plan or any part of the plan. A consequence of this amendment is that it could be interpreted that the Commissioner rather than the Chief Police Officer has responsibilities for security.

To minimise any risk of confusion, section 143 (3) (b) should be amended to provide a general role for SEMSOG in supporting the preparation of the emergency plan and emergency sub-plans without needing to recognise the entity responsibility.

Section 143 (3) (c) should also be amended to remove the reference to the Minister, so that SEMSOG's role is to support the preparation of emergency sub-plans regardless if the sub-plans are prepared or approved by the Minister or by a delegate of the Minister.

Cooperative arrangements with Commonwealth, State or foreign agencies

Section 176 of the Act allows the Minister for Police and Emergency Services to enter into a written arrangement with a Commonwealth or State agency, or any agency of a foreign country, to (among other purposes) facilitate cooperation in emergency management (a 'cooperative arrangement').

The Emergency Services Agency routinely cooperates with interstate emergency service organisations on emergency management matters. This has included such matters as cost-sharing arrangements for joint emergency management activities and data sharing arrangements.

Section 176 currently requires the Minister to enter into the written arrangement (i.e., sign the written document). This is unduly restrictive, creates administrative difficulties, and an unnecessary impost on a Minister, particularly for written arrangements that are routine or administrative in nature.

It is recommended that section 176 be amended to confer the power to enter into written cooperative arrangements upon both the Minister and the Emergency Services Commissioner. It is not proposed that any guidance be included in section 176 as to whether the Minister or Commissioner should be the one to enter into the written arrangement, as it is more appropriate that any such guidance be agreed between the Minister and Commissioner directly and not enshrined in legislation.

