



Australian Capital Territory

Emergencies Amendment Act 2020

A2020-47

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Australian Capital Territory

Emergencies Amendment Act 2020

A2020-47

An Act to amend the *Emergencies Act 2004*, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 Name of Act

This Act is the *Emergencies Amendment Act 2020*.

2 Commencement

This Act commences on the day after its notification day.

Note The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

3 Legislation amended

This Act amends the *Emergencies Act 2004*.

Note This Act also amends other legislation (see sch 1).

4 Division 7.3.1A heading

substitute

Division 7.3.1A Emergency controller and deputy emergency controller

5 Section 150A

substitute

150A Appointment of emergency controller

- (1) This section applies if the Chief Minister—
 - (a) is satisfied that—
 - (i) an emergency has happened, is happening or is likely to happen; but
 - (ii) it is not necessary to declare a state of emergency; or
 - (b) declares that a state of emergency exists in relation to an emergency.

(2) The Chief Minister—

- (a) for subsection (1) (a)—may appoint a person to be the emergency controller for the emergency; and
- (b) for subsection (1) (b)—must appoint a person to be the emergency controller for the declared state of emergency.

Note 1 For the making of appointments (including acting appointments), see the [Legislation Act](#), pt 19.3.

Note 2 In particular, a person may be appointed for a particular provision of a law (see [Legislation Act](#), s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see [Legislation Act](#), s 207).

Note 3 If the Chief Minister is absent from duty or otherwise unable to exercise the powers of Chief Minister, the Deputy Chief Minister acts as Chief Minister (see [Australian Capital Territory \(Self-Government\) Act 1988](#) (Cwlth), s 44).

- (3) The [Legislation Act](#), division 19.3.3 (Appointments—Assembly consultation) does not apply to an appointment under this section.
- (4) The appointment of the emergency controller for an emergency under subsection (1) (a) must be for a term of not longer than 28 days.

Note A person may be reappointed to a position if the person is eligible to be appointed to the position (see [Legislation Act](#), s 208 and dict, pt 1, def *appoint*).

- (5) If a person is appointed as the emergency controller for an emergency under subsection (1) (a) and the Chief Minister declares a state of emergency in relation to the emergency, the person is taken to be appointed under subsection (2) (b) as the emergency controller for the declared state of emergency.
- (6) However, the Chief Minister may appoint someone else under subsection (2) (b) to be the emergency controller for the declared state of emergency.

- (7) The appointment of a person as the emergency controller—
- (a) for an emergency under subsection (1) (a)—ends on the earliest of the following occurring:
 - (i) the appointment is revoked;
 - (ii) the person is taken to be the emergency controller for a declared state of emergency under subsection (5);
 - (iii) another person is appointed to be the emergency controller for a declared state of emergency as mentioned in subsection (6);
 - (iv) the term of the appointment ends; or
 - (b) for a declared state of emergency under subsection (1) (b)—ends if the appointment is revoked.
- (8) The Chief Minister may be satisfied that an emergency is likely to happen if the Chief Minister is satisfied that an event that has happened or is happening, or a circumstance that exists, gives rise to the likelihood of an emergency.

6 Sections 150B and 150C headings

substitute

150B Functions of emergency controller

150C Emergency powers of emergency controller

7 Section 150C (2) (c)

omit

an emergency controller

substitute

the emergency controller

8 Section 150C (2) (d), new example

before the note, insert

Example—information

personal health information or a health record

9 Section 150C (2) (e)

omit

animal substance

substitute

animal, substance

10 New sections 150CA and 150CB

in division 7.3.1A, insert

150CA Appointment of deputy emergency controller

- (1) This section applies if the Chief Minister—
 - (a) is satisfied that—
 - (i) an emergency has happened, is happening or is likely to happen; but
 - (ii) it is not necessary to declare a state of emergency; or
 - (b) declares that a state of emergency exists in relation to an emergency.

- (2) The Chief Minister may appoint a person to be the deputy emergency controller for the emergency or declared state of emergency.

Note 1 For the making of appointments (including acting appointments), see the [Legislation Act](#), pt 19.3.

Note 2 In particular, a person may be appointed for a particular provision of a law (see [Legislation Act](#), s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see [Legislation Act](#), s 207).

Note 3 If the Chief Minister is absent from duty or otherwise unable to exercise the powers of Chief Minister, the Deputy Chief Minister acts as Chief Minister (see [Australian Capital Territory \(Self-Government\) Act 1988](#) (Cwth), s 44).

- (3) The [Legislation Act](#), division 19.3.3 (Appointments—Assembly consultation) does not apply to an appointment under this section.

- (4) The appointment of the deputy emergency controller for an emergency under subsection (1) (a) must be for a term of not longer than 28 days.

Note A person may be reappointed to a position if the person is eligible to be appointed to the position (see [Legislation Act](#), s 208 and dict, pt 1, def *appoint*).

- (5) If a person is appointed as the deputy emergency controller for an emergency under subsection (1) (a) and the Chief Minister declares a state of emergency in relation to the emergency, the person is taken to be appointed under subsection (2) as the deputy emergency controller for the declared state of emergency.

- (6) However, the Chief Minister may appoint someone else under subsection (2) to be the deputy emergency controller for the declared state of emergency.

- (7) The Chief Minister may appoint a person to be the deputy emergency controller only if the person has the management, professional and technical expertise to exercise the deputy emergency controller's functions mentioned in section 150CB.

- (8) The Chief Minister must consult the following people before appointing a person to be the deputy emergency controller for the emergency or declared state of emergency:
 - (a) if an emergency controller for the emergency has been appointed under section 150A—the emergency controller;
 - (b) if an emergency controller for the emergency has not been appointed under section 150A or will be appointed at the same time as the deputy emergency controller—the Minister, SEMSOG or both.
- (9) The appointment of a person as the deputy emergency controller—
 - (a) for an emergency under subsection (1) (a)—ends on the earliest of the following occurring:
 - (i) the appointment is revoked;
 - (ii) the person is taken to be the deputy emergency controller for a declared state of emergency under subsection (5);
 - (iii) another person is appointed to be the deputy emergency controller for a declared state of emergency as mentioned in subsection (6);
 - (iv) the term of the appointment ends;
 - (v) the appointment of the emergency controller is revoked; or
 - (b) for a declared state of emergency under subsection (1) (b)—ends if the appointment of the emergency controller is revoked.
- (10) The Chief Minister may be satisfied that an emergency is likely to happen if the Chief Minister is satisfied that an event that has happened or is happening, or a circumstance that exists, gives rise to the likelihood of an emergency.

150CB Functions of deputy emergency controller

The functions of the deputy emergency controller for an emergency are—

- (a) to support the emergency controller for the emergency to perform the emergency controller's functions mentioned in section 150B during the emergency, as directed by the emergency controller; and
- (b) if the emergency controller for the emergency is unavailable or is, for any other reason, unable to perform the functions of the emergency controller during the emergency—to act as the emergency controller.

Note A person acting in a position under a standing acting arrangement has all the functions (including authorities, duties and powers) of the occupant of the position (in this case, the emergency controller)—see the [Legislation Act](#), s 225B.

11 Sections 159 to 160A

omit

12 Failure to comply with direction given under emergency powers Section 164 (1)

omit

or section 160A (2) (a), (b), (c) or (d)

13 New sections 166A and 166B

insert

166A Emergency controller to advise Chief Minister and Minister

- (1) The emergency controller for an emergency must advise the Chief Minister and the Minister at least every 7 days about—
 - (a) the status of the emergency; and
 - (b) if a state of alert is declared for the emergency—whether the emergency controller considers the declaration of the state of alert is still justified; and
 - (c) if a state of emergency is declared for the emergency—whether the emergency controller considers the declaration of the state of emergency is still justified; and
 - (d) whether the emergency controller considers the appointment of the emergency controller is still justified having regard to the status of the emergency.
- (2) A failure by the emergency controller to comply with subsection (1) (b), (c) or (d), does not affect the validity of the corresponding declaration under subsection (1) (b) or (c), or appointment under subsection (1) (d).

166B Revocation of state of alert and state of emergency declarations and appointment of emergency controller

- (1) The Minister must revoke a declaration of a state of alert, if the Minister decides, after taking into account any advice of the emergency controller under section 166A (1) (b), that the state of alert is no longer justified.

- (2) The Chief Minister must revoke a declaration of a state of emergency, if the Chief Minister decides, after taking into account any advice of the emergency controller under section 166A (1) (c), that the state of emergency is no longer justified.
- (3) The Chief Minister must revoke the appointment of the emergency controller if the Chief Minister decides, after taking into account any advice of the emergency controller under section 166A (1) (d), that the appointment is no longer justified.

**14 Compensation—emergencies
Section 169 (1)**

omit

section 150C (Emergency powers—no declared state of emergency)
or section 160A (Emergency powers—declared state of emergency)

substitute

section 150C (Emergency powers of emergency controller)

**15 Compensation for exercise of functions etc
Section 199 (1)**

omit

section 150C (Emergency powers—no declared state of emergency)
or section 160A (Emergency powers—declared state of emergency)

substitute

section 150C (Emergency powers of emergency controller)

16 Section 199 (1), note

omit

or s 160A

17 Dictionary, new definition of *deputy emergency controller*

insert

deputy emergency controller means the person appointed under section 150CA (2).

18 Dictionary, definition of *emergency controller*

substitute

emergency controller means the person appointed under section 150A (2).

Schedule 1 Consequential amendments

(see s 3)

Part 1.1 Environment Protection Act 1997

[1.1] Section 6 (2), new definition of *emergency controller*

insert

emergency controller—see the [Emergencies Act 2004](#), dictionary.

[1.2] Section 6 (2), definition of *relevant person*, new paragraph (aa)

before paragraph (a), insert

(aa) an emergency controller; or

[1.3] Section 6 (2), definition of *relevant person*, new paragraph (e) (ia)

before paragraph (e) (i), insert

(ia) an emergency controller; or

Part 1.2 Fuels Rationing Act 2019

[1.4] Section 16 (2), definition of *relevant person*, paragraph (a)

substitute

(a) an emergency controller; or

[1.5] Section 16 (2), definition of *relevant person*, paragraph (f) (i)

substitute

(i) an emergency controller; or

Part 1.3 Heritage Act 2004

[1.6] Section 7 (2), new definition of *emergency controller*

insert

emergency controller—see the [Emergencies Act 2004](#), dictionary.

[1.7] Section 7 (2), definition of *relevant person*, new paragraph (aa)

before paragraph (a), insert

(aa) an emergency controller; or

[1.8] Section 7 (2), definition of *relevant person*, new paragraph (e) (ia)

before paragraph (e) (i), insert

(ia) an emergency controller; or

Part 1.4 Lakes Act 1976

[1.9] Section 7 (2), new definition of *emergency controller*

insert

emergency controller—see the [Emergencies Act 2004](#), dictionary.

[1.10] Section 7 (2), definition of *relevant person*, new paragraph (aa)

before paragraph (a), insert

(aa) an emergency controller; or

[1.11] Section 7 (2), definition of *relevant person*, new paragraph (e) (ia)

before paragraph (e) (i), insert

(ia) an emergency controller; or

Part 1.5 Nature Conservation Act 2014

[1.12] Section 7 (2), new definition of *emergency controller*

insert

emergency controller—see the [Emergencies Act 2004](#), dictionary.

[1.13] Section 7 (2), definition of *relevant person*, new paragraph (aa)

before paragraph (a), insert

(aa) an emergency controller; or

[1.14] Section 7 (2), definition of *relevant person*, new paragraph (e) (ia)

before paragraph (e) (i), insert

(ia) an emergency controller; or

Part 1.6 Retirement Villages Act 2012

[1.15] Sections 107 (3A) (b) (i), note and 159 (2A) (b) (i), note

omit

s 160A

substitute

s 150C

Part 1.7 Tree Protection Act 2005

[1.16] Section 19 (2), new definition of *emergency controller*

insert

emergency controller—see the [Emergencies Act 2004](#), dictionary.

[1.17] Section 19 (2), definition of *relevant person*, new paragraph (aa)

before paragraph (a), insert

(aa) an emergency controller; or

[1.18] Section 19 (2), definition of *relevant person*, new paragraph (e) (ia)

before paragraph (e) (i), insert

(ia) an emergency controller; or

Part 1.8 Waste Management and Resource Recovery Act 2016

[1.19] Section 6 (2), new definition of *emergency controller*

insert

emergency controller—see the [Emergencies Act 2004](#), dictionary.

[1.20] Section 6 (2), definition of *relevant person*, new paragraph (aa)

before paragraph (a), insert

(aa) an emergency controller; or

[1.21] Section 6 (2), definition of *relevant person*, paragraph (b)

substitute

- (b) any other person under the control of—
- (i) an emergency controller; or
 - (ii) the chief officer of an emergency service; or

Part 1.9 Water Resources Act 2007

[1.22] Section 28 (3), new definition of *emergency controller*

insert

emergency controller—see the [Emergencies Act 2004](#), dictionary.

[1.23] Section 28 (3), definition of *relevant person*, new paragraph (aa)

before paragraph (a), insert

- (aa) an emergency controller; or

[1.24] Section 28 (3), definition of *relevant person*, new paragraph (e) (ia)

before paragraph (e) (i), insert

- (ia) an emergency controller; or

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 20 August 2020.

2 Notification

Notified under the [Legislation Act](#) on 3 September 2020.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Emergencies Amendment Bill 2020, which was passed by the Legislative Assembly on 27 August 2020.

Clerk of the Legislative Assembly

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