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THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

EMERGENCIES AMENDMENT BILL 2016

EXPLANATORY STATEMENT

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EMERGENCIES AMENDMENT BILL 2016

Introduction

This explanatory statement relates to the Emergencies Amendment Bill 2016 (the Bill) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

The Statement must to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Overview of the Bill

The Bill implements the recommendations of the Report of the review of the operation of the Emergencies Act 2004 (the Act), which was tabled in the Legislative Assembly on 29 October 2015 (the Review).[1]

Restricting high-risk activities during total fire bans

Section 114 of the Act allows the ESA Commissioner to declare a total fire ban for some, or all, of the ACT, and for a stated period of time. The ESA Commissioner may only declare a total fire ban if satisfied that severe weather conditions conducive to the spread of fire exist or are likely, or because of the number, nature of location of any existing fires, it is appropriate to declare a total fire ban. Total fire bans are declared when conditions are such that controlling the spread of a bushfire would be extremely difficult and where the community is at significant risk of injury/death and loss of property as a result of fire.

Given the significant difficulty in controlling a fire during a total fire ban period, section 116 of the Act makes it an offence to light a fire in the open air during a total fire ban period. A person commits the offence if the person lights, maintains or uses a fire, or uses fireworks, in the open air in an area during a total fire ban period. While the Act makes it an offence to light a fire, it does not specifically address activities that do not themselves necessarily involve the use of fire, but which may cause a fire to ignite when undertaken in an open area. This is in contrast to the position adopted in most other jurisdictions. Noting the risks posed by undertaking certain high-risk activities during a total fire ban period, the Review considered it appropriate that these activities be restricted during these high fire danger periods.

The Bill creates a new offence of undertaking a high risk activity in the open during a total fire ban period. High-risk activity has been defined to include welding, grinding, soldering and gas cutting. The Bill also creates the power for additional high risk activities to be prescribed by regulation. The maximum penalty for the offence is 12 months imprisonment, 100 penalty units or both.

[1] The Review can be accessed at the ESA website at http://esa.act.gov.au/community-information/publications/

Increased penalties for lighting a fire during a total fire ban

The Review examined the adequacy of penalties for bushfire-related offences. The existing maximum penalties for the majority of offences were found to be balanced and proportionate, with the exception of the penalty for the offence of lighting a fire during a total fire ban in section 116 of the Act. The Review found that it was inconsistent that the bushfire related offence which potentially carries the greatest risk – that of lighting a fire during a total fire ban – has the lowest penalty of all these fire-related penalties in the Act.

The Justice and Community Safety (JACS) Directorate's Guide for Framing Offences states that penalties should be in proportion to their seriousness, and that the maximum penalty for an offence should reflect the seriousness of the offence relative to other offences of a similar nature. Total fire bans are declared when conditions are such that the spread and control of a wildfire would be extremely difficult and where the community is at significant risk of injury/death and loss of property as a result of fire. As such, it is necessary that the penalty for lighting a fire during a total fire ban reflects the extremely serious consequences to life, property and the environment that may attach to this conduct. The penalty must also reflect community views about the seriousness of these offences. The current maximum penalty for lighting a fire during a total fire ban period is both out of step with community perceptions as well as being significantly out of step with the penalties available in some other Australian jurisdictions.

This Bill increases the maximum penalty for the offence in section 16 from the current maximum of 50 penalty units to imprisonment to two years, 200 penalty units or both. This amendment ensures that the penalty provides a more effective deterrent against persons deliberately lighting fires on total fire bans.

Changes to governance arrangements for the ACT Bushfire Council

The ACT Bushfire Council (the Council) has performed a role in the bushfire preparedness of the ACT for over 75 years. Since being reconstituted by the Act in 2004, the Council's primary function is to advise the Minister about matters relating to bushfires, or the Commissioner, when asked.

The Council is comprised of the chairperson, a deputy chairperson and at least three, and no more than ten, other members who are appointed by the Minister for a term of not longer than four years (members may be reappointed to the Council). The Act requires the Minister to try and ensure that representatives with the skills or experience in a range of disciplines such as fire sciences, land management, fighting fires, and indigenous land management are appointed.

The obligation on the Minister to try and ensure that people with those skills and experiences means that the Minister is not obliged to appoint members with those backgrounds. Similarly, while sections 129 (f), (g) and (h) of the Act require the Minister to try and ensure that a person is appointed to represent the interests of rural lessees, the community's interest in the environment and the community's interests generally, there is no specific requirement that persons representing these interests be appointed.

The Review recommended a change to the representative appointments – those members referred to in section 129 (2) (f) to (h) – who are appointed to represent the interests of rural lessees, the community and the community's interests in relation to the environment. Given that ultimately bushfire risk is managed to protect the community and the environment, the Review considered it important that these interests be appropriately represented on the Council. As such it recommended that the Minister be obliged to appoint a representative of those interests to the Council. This would also be consistent with general ACT Government practice for the appointment of community representatives to advisory bodies, where a community representative is required. The Bill gives effect to this recommendation.

The Bill also imposes term limits on appointments to the Council. While the Act currently provides that a person must not be appointed for a term of more than 4 years, there is no restriction on the number of times a person can be reappointed to the Council. Term limits provide a regular opportunity to ensure that the Council is comprised of members with the most appropriate set of skills and experiences. New members bring fresh insights, ideas and approaches, which is particularly useful in an advisory body such as the Council. To promote good governance, and to be consistent with Government policy on appointments to advisory bodies, the Bill provides that members may not serve more than two consecutive terms. The restriction only applies to consecutive terms of membership – there is no restriction on a member seeking reappointment in the future following a break in their membership.

The Review also recommended changes to the consultation role of the Council. The Act currently provides that the Council has a consultation role in relation to the appointment by the Minister of the Chief Officer and Deputy Chief Officer of the Rural Fire Service (RFS), and in relation to the appointment by the Chief Officer (RFS) of volunteer members of the RFS of a senior rank.

The Review noted the Council's consultation role – being focused on the RFS – is inconsistent as it does not have a similar role in relation to appointments within ACT Fire & Rescue (ACTF&R). This is despite the ACTF&R responding to more grass and bush fires than the RFS (as is expected given the ACTF&R professional full-time capacity whilst the RFS is primarily a volunteer response organisation).

The Council's consultation functions do not appear to have been given to other similar bodies in other jurisdiction. In particular, in NSW none of the statutory bushfire-related advisory committees –the Bush Fire Co-ordinating Committee, the Rural Fire Service Advisory Council and the Fire Services Joint Standing Committee – have any statutory role in relation to the appointment of the chief officer or any other RFS member.

The Review found that the consultation role for appointments was a historical legacy of the Council's previous role in undertaking fire response operations for the Territory, and considered that it was not appropriate for an advisory role to exercise such a function. Accordingly the Bill removes the obligation to consult with the Council on appointments to the RFS. It creates a new obligation for the Council to be consulted on guidelines made by the Commissioner where those guidelines establish standards required for appointment to senior roles within the RFS. This change ensures that the Council is able to contribute to the development of skills, abilities and other prerequisites required for appointment to senior roles, but not the position itself.

The Bill also confirms the Council's ability to publish advice given to the Minister and the Commissioner. The Council is obliged to consult with the Commissioner prior to publishing its advice.

Giving the Chief Officer (RFS) powers in relation to fire prevention for premises

Part 5.4 of the Act is concerned with fire prevention in relation to premises. That part gives the Chief Officer (F&R) certain fire prevention related powers, including the power to issue improvement, occupancy or closure notices. 'Premises' is defined in the dictionary of the Act to include any land, structure or vehicle and any part of an area of land, a structure or vehicle. Premises therefore has a much more expansive meaning than how the term may be ordinarily used, which is to refer to a building.

There are no powers given to the Chief Officer (RFS) under this part. This means that the Chief Officer (RFS) has no power to act to address a risk to public safety or to the safety of people who are or are likely to be at the premises. This applies even in the rural area, where the Chief Officer (RFS) is responsible for fire preparedness and fire response. The Review noted that the current situation where the Chief Officer (RFS) has no power to address a risk to public safety in premises within the rural area appeared to contradict the Chief Officer's responsibilities for fire preparedness and response in the rural area. Noting the importance of protecting public safety, this Bill confers the power upon the Chief Officer (RFS) to issue an improvement notice, occupancy notice or closure notice for premises within the rural area.

Permission to interfere with fire appliances

Section 190 of the Act creates a number of offences relating to interfering with fire appliances, hydrants or alarms. The offences reflect the significant danger posed by persons interfering with these devices so as to prevent their effective operation.

Section 190 (1) provides that a person commits an offence if the person does something to, or near, a fire appliance that prevents or hinders the effective use of the appliance. A person commits the offence in section 190 (3) if they cover, enclose or conceal a fire hydrant, or obliterates a mark, sign or letter indicating the position of, or distinguishing a, fire hydrant.
A person commits an offence under section 190 (4) if the person does anything to a fire alarm that prevents or hinders the effective use of the fire alarm. The offence is not committed if the person does the thing to give an alarm of fire, or to test or do maintenance work on the fire alarm.

While it is appropriate that interfering with these important safety devices constitutes an offence, it is important to appreciate that there are occasions when these devices have to be interfered with, including for maintenance purposes. For instance, the offence in section 190 (4) of preventing or hindering the effective use of a fire alarm does not apply if a person is testing or doing maintenance work on the alarm.

For that reason, section 190 (2) provides that a person does not commit an offence under 190 (1) (preventing or hindering the effective use of a fire appliance) if they have the permission of a member of ACTF&R, a member of the RFS or a police officer to undertake the action that is preventing or hindering the effective use of a fire appliances. That permission currently only extends to the offence in section 190 (1), and currently there is no scope for a member of ACTF&R, a member of the RFS or a police officer to give permission to actions that would constitute an offence under sections 190 (3) or (4).

As an example, a building may require maintenance works that are likely to generate sufficient smoke to activate a fire alarm in that building. To avoid the fire alarm being triggered, and ACTF&R diverting resources to attend in response to the alarm, it may be appropriate for the person(s) undergoing the work to isolate the fire alarm to prevent it being activated or ACTF&R being alerted. While permission may be sought from an ACTF&R officer under 190 (2), that permission only applies to the offence in section 190 (1), and they would still be committing the offence in section 190 (4). While section 190 (4) does not apply to maintenance work being carried out on the fire alarm itself, it does not extend to maintenance work that is not directly on the fire alarm itself but is likely to trigger the alarm (such as welding works occurring underneath a fire alarm sensor).

This Bill extends the ability of a member of ACTF&R, a member of the RFS or a police officer to give consent to actions that would otherwise constitute an offence under section 190 (1) to the offences in section 190 (3) and (4). This will allow appropriate consent to be given to activities that would otherwise constitute an offence under those sections. A person giving their consent under this provision will be able to impose any conditions necessary to ensure that public safety is appropriately protected during any such works.

Ensuring an all hazards approach to emergency planning and response

The Bill makes a number of amendments to support the ESA's ability to adopt an all hazards approach to emergency management. The all hazards approach concerns arrangements for managing the large range of possible effects of risks and emergencies. This concept is useful to the extent that a large range of risks can cause similar problems and measures such as warning, evacuation, medical services and community recovery will be required during and following emergencies. While the Act already reflects this all hazards approach, the Bill makes various minor amendments to enhance the ability of the Emergency Services Agency to plan for, and respond to, the various emergencies its members are regularly called upon to respond to.

The first amendment is in relation to the powers available in the Act to the Chief Officer (F&R) and the Chief Officer (RFS) for the purpose of extinguishing or preventing the spread of a fire in the built-up area and the rural area respectively. Section 34 of the Act gives certain powers to Chief Officers that may be exercised for the preservation of life, property or the environment. Section 39 allows the Chief Officers to delegate their powers to members of an emergency service, including members of other emergency services other than their own.

The Act also confers additional powers on the Chief Officer (F&R) and the Chief Officer (RFS) (part 5.2, sections 67 and 68 respectively) that may be exercised at, immediately after, or in anticipation of the spread of, a fire. Members of ACTF&R and RFS (in relation to fires in rural areas) may exercise these powers without being directed or given authority by their respective chief officer if the powers are exercised in accordance with the commissioner's guidelines, and it is not practicable for a direction or authority to be obtained. This allows members of ACTF&R and the RFS to exercise the powers of their chief officer in an emergency when life or property is threatened, without the need to first obtain the necessary approval or endorsement. The Commissioner may issue guidelines that would specify the circumstances when these powers may be exercised, and the manner in which they may be exercised.

The powers in part 5.2 may only be exercised by the Chief Officer for the purposes of extinguishing or preventing the spread of fire, and only by other members of ACTF&R or RFS for the protection of life or property or to control or extinguish a fire. The powers may not be exercised to respond to consequences of the fire. An example of this limitation arose during the September 2011 Energy Services Invironmental fire at Mitchell. In addition to the fire itself, ACTF&R members had to deal with the spread of chemicals from the factory, and a significant and potentially dangerous smoke plume that affected a significant part of northern Canberra. While the powers of the Chief Officer (F&R) in section 34 were available to ACTF&R members, in relation to the broader plume and the spread of chemicals from the factory, the powers relating to fires in a built-up area in section 67 were not available as they would not be exercised for the purposes of "extinguishing or preventing the spread of the fire". This is despite ACTF&R being the lead response agency for the unintentional release of hazardous materials such as chemical, radiological, explosives or liquid fuels under the ACT Emergency Plan.

This Bill amends sections section 67 and 68 so that members of ACTF&R or the RFS are able to exercise the powers available to them under those sections to protect life or property where the threat to life or property arises as a consequence of a fire, rather than just from the fire itself.

The second amendment relates to the role of the RFS. The main function of the RFS is to protect and preserve life, property and the environment from fire in rural areas. In exercising this function, the RFS is responsible for operational planning, in consultation with ACTF&R, for fire in the rural area, including fire preparedness, and fire response in rural areas, other than a fire that is in a building and at which a member of fire and rescue is present. The RFS also has the function of undertaking assistance operations to support other entities in the exercise of their functions under the Act.

Under the Commissioner's Guidelines for the concept of operations for grass and bush fires in the ACT, first response to all bush and grass fires in the ACT is to be by the nearest available most appropriate resource, irrespective of jurisdiction or Service. This is not currently supported by the Act, which only confers a function on the RFS (in relation to the built-up area) of undertaking assistance operations to support other entities in the exercise of their functions – that is, the RFS only has power to assist ACTF&R, rather than undertake operate independently. In reality, the RFS already operates within the built-up area, sometimes in conjunction with ACTF&R or the SES and sometimes on its own. These operations range from conducting hazard reduction burns through to responding to grass and bush fires.

Noting the importance of protecting and preserving life, property and the environment, the Review noted the importance of the RFS having the ability to respond to fire within the built up area where ACTF&R is not available or where a member of ACTF&R is not present to direct the RFS. It recommended that the RFS be given the function of responding to fire within the built-up area where ACTF&R is not present. This reflects the existing policy, as set out in the Commissioner's concept of operations for grass and bush fires in the ACT, that first response to all bush and grass fires in the ACT will be by the nearest available most appropriate resource, irrespective of jurisdiction or Service. This Bill enacts that recommendation.

This power only applies when a member of ACTF&R is not present. In line with the existing Commissioner's concept of operations for grass and bush fires, the RFS would hand over control of fire response operations in relation to a fire within the built-up area as soon as it is safe and practicable to do so following a member of ACTF&R arriving on scene. There is no change to the current practice that ACTF&R have primacy of response for building fires, whether in the city or rural areas.

The third amendment provides for consistent immunities for all members of the emergency services, including the SES and the Ambulance Service, under all ACT legislation.

The Act provides broad powers on chief officers and members of the emergency services to protect and preserve life, property and the environment. Exercising these functions may see the emergency service member committing an offence under other ACT legislation. For this reason relevant legislation contains an exemption for actions undertaken by certain members of an emergency service in an emergency.

For instance, section 7 of the *Nature Conservation Act 2014* provides that it does not apply to the exercise or purported exercise by a relevant person of a function under the Emergencies Act for the purpose of protecting life or property or controlling, extinguishing or preventing the spread of a fire. Relevant person is defined as—

(a) a member of the ambulance service; or
(b) a member of fire and rescue; or
(c) a member of the rural fire service; or
(d) a member of the SES; or
(e) any other person under the control of—
    (i) the chief officer (ambulance service); or
    (ii) the chief officer (fire and rescue); or
    (iii) the chief officer (rural fire service); or
    (iv) the chief officer (SES); or
(f) a police officer.

This provision refers to all four emergency services (as well as police officers), reflecting that members of all four emergency services may be required to act to protect or preserve life or property in a way that would otherwise breach a provision of the *Nature Conservation Act 2014*.

Similar provisions apply in other ACT legislation. However, many of these provisions do not apply to all emergency services, and are restricted to members of ACTF&R and the RFS. Noting the importance of ensuring that members of all emergency services are able, within the limits of their training and functions, to respond, or assist with response, to all hazards, it is important that all members of the emergency services receive the necessary immunities.

This Bill amends section 6 of the *Environmental Protection Act 1997*, section 7 of the *Heritage Act 2004*, section 28 of the *Water Resources Act 2007* and section 19 of the *Tree Protection Act 2005* to extend the immunity to members of all four ACT emergency services.

Clarifying responsibility for community education and awareness

Under section 8 (2) of the Act, the Commissioner is responsible for 'community education and improving community preparedness for emergencies'. The Commissioner is also obliged (under section 8 (4) (g)) to emphasise community education and preparedness for emergencies when exercising the Commissioner's functions. The Commissioner is responsible for preparing the strategic bushfire management plan, which is required to include strategies for prevention of, and preparedness for, bushfires (section 74 (2) (g) of the Act). After the Minister makes the strategic bushfire management plan, the Commissioner is required under section 76 (1) to conduct an assessment of the available resources and capabilities for bushfire prevention and preparedness.

Under part 5.3 (Bushfire Prevention) of the Act, the Commissioner is responsible for elements of policy for bushfire prevention activities in the ACT. This includes the declaration of the bushfire abatement zone and the preparation of a strategic bushfire management plan for the Minister. Under section 78, the Commissioner is also responsible for the approval of Bushfire Operational Plans.

Chief Officers also have responsibilities for community education and preparedness under the Act. The Chief Officer (F&R) is responsible for:

- operational planning for fire in the built-up area, including fire preparedness and control;
- operational planning (in consultation with the Chief Officer (RFS)) for fire in the bushfire abatement zone, including fire preparedness and control; and
- community awareness about fire prevention and preparedness in the city area.

The Chief Officer (RFS) is responsible for:

- operational planning, in consultation with the Chief Officer (F&R) for fire outside the city area, including fire preparedness and control;
- community awareness about fire prevention and preparedness outside the city area.

The Chief Officer (SES) is responsible for community awareness about storm, flood and civil defence preparedness. The Chief Officer (ACT Ambulance Service) is responsible for community awareness about pre-hospital medical emergencies.

The Review found that there was considerable overlap between the Commissioner's responsibilities for community education and preparedness and the various responsibilities of the Chief Officers. While the Act draws a distinction between the responsibilities for 'community awareness' (Chief Officers) and 'education and preparedness' (Commissioner), in practice these terms are used interchangeably to mean the same thing, potentially leading to confusion and duplication when it comes to resource allocation and effort.

The Review recommended the streamlining of the responsibilities for community awareness, education and preparedness into one line of responsibility. In small jurisdictions such as the ACT, there are insufficient resources and capacity to fragment such important functions across multiple services and reporting lines, especially if there is not a clear understanding of what is expected. This can lead to potential fragmentation of resourcing and communication activities that can lead to ineffectual results and poor messaging to the community.

The review's recommendation followed concerns raised by the ACT Auditor-General, whose 2013 audit into bushfire preparedness noted these responsibilities led to a number of distinct arms of the Emergency Services Agency with responsibility for community education and awareness programs. The Audit also noted that the ESA Media and Community Information business unit has also been involved in coordinating community education and awareness campaigns across the ESA and this has added an additional layer of complexity.

To ensure the community is appropriately educated, aware of emergencies and confident of their role in emergency prevention, this Bill confirms that responsibility for community education and awareness rests with the Commissioner. This amendment does not diminish the important role that the various emergency services have in providing advice to the community and raising community awareness. These services will continue to deliver community education and awareness programs in accordance with the Commissioners' strategic direction.

Legal recognition for the ACT Ambulance Service Clinical Advisory Committee

The Chief Officer (Ambulance Service) is responsible for matters relating to the technical and professional expertise of the Ambulance Service, for example, training and professional standards (section 28 of the Act). Under section 38 (2), the Chief Officer may also determine standards and protocols for medical treatment provided by the Ambulance Service.

In exercising this power, the Chief Officer is supported by a clinical advisory committee who provide authoritative expert advice and recommendations on all clinical matters relevant to the chief officer's functions, and to maintain the quality of pre-hospital emergency and routine ambulance care to the community. The clinical advisory committee is chaired by the Medical Advisor to the Ambulance Service, and includes medical practitioners from the Canberra and Calvary hospitals. Additional members are co-opted as required to provide specialist input.

The ACTAS clinical advisory committee is not specifically referred to in ACT legislation, and does not have any legal status. As such, members of the committee do not enjoy any specific legal protections, and the committee's proceedings and deliberations do not have any privileges and are subject to disclosure in legal and other proceedings. Members of the committee, and members of the Ambulance Service more generally, have raised concerns that this lack of legal protection inhibits the committee's ability to review and advise on medical care provided by members of the ambulance service, as part of a broader 'lessons learnt' / quality assurance process.

This contrasts to quality assurance committees declared under the *Health Act 1993*. Under section 25 of that Act, the Health Minister may approve a quality assurance committee for a health facility. That approval confers certain legal protections on members of that committee, and ensures that sensitive information disclosed to the committee to support its deliberations is protected from disclosure to a court or from a freedom of information application. Quality assurance committees are used to encourage and facilitate the voluntary participation of health care practitioners in healthcare improvement by providing a confidential and privileged environment where their practice and the data that describes it can be examined. The members of a quality assurance committee and those assisting such a committee to perform its functions are subject to very strict confidentiality provisions. Information or documents created by or for a committee are not generally admissible in any legal proceedings. Similarly, the members of a quality assurance committee and those assisting the committee cannot be called to give evidence in legal proceedings.

Interstate ambulance services benefit from the legal protections that quality assurance committees can deliver when reviewing and advising on medical care provided by members of their ambulance service. Ambulance services in NSW and Tasmania have quality assurance committees with legislated protection concerning the release of information.
The reviews of the ACTAS in 2010 and 2014 by Grant Lennox recommended that a quality assurance committee with statutory protection for their records, proceedings and members be established for the ACTAS. This would ensure open and honest participation of clinical personnel in the scrutiny of clinical incidents, adverse events and deaths.

By allowing ambulance officers to freely discuss the circumstances surrounding a negative patient outcome, without fear that admissions made to the committee will be disclosed to a court or other investigating body, systemic weaknesses will be identified and protocols developed to avoid re-occurrences. This will benefit the broader community by supporting the provision of the highest quality ambulance services.

This Bill establishes the ACTAS Quality Assurance Committee, and provides that committee similar protections to that of quality assurance committees approved under the *Health Act 1993*.

Power of the Chief Officer (ACTAS) to establish, amend, suspend or withdraw an ambulance officer's scope of practice

The Chief Officer (ACTAS) is, under section 28 (3) of the Act, responsible for matters relating to the professional and technical expertise of the Ambulance Service. To assist the Chief Officer in fulfilling that function, section 35 of the Act allows a Chief Officer to give directions to emergency service members, and section 35 (2) specifically provides that a direction by the Chief Officer (ACTAS) may be about the provision of medical treatment. In addition, section 38 (2) gives the Chief Officer the power to determine standards and protocols for medical treatment by the Ambulance Service.

The Chief Officer (ACTAS) currently approves the authority for and scope of clinical practice for members of the Ambulance Service. The authority to practice provides the member with administrative authority to undertake clinical practice and activities at a particular level, and the scope of practice encompasses the range of drugs and procedures called Clinical Management Guidelines that the member is approved to access and administer.

While this power to define the authority for and scope of practice for individual members of the ambulance service is considered to integral part of the Chief Officer's power to provide direction and determine standards and protocols, there is no specific power in the Act for the Chief Officer to establish, amend, suspend or withdraw the scope of practice for individual members. This contrasts with the approach taken in respect of health practitioners under the *Health Act 1993*. Part 5 of that Act confers specific powers for the scope of clinical practice of various health practitioners to be amended, suspended or withdrawn. It is acknowledged that this power relates to health practitioners, and ambulance officers are not currently registered health practitioners, although it is currently being considered at a national level. Accordingly, this Bill confers upon the Chief Officer (ACTAS) a specific power to establish, amend, suspend or withdraw an ambulance officer's scope of clinical practice.

It is important to clarify that the power to amend, suspend or withdraw a member's authority to practice/scope of clinical practice is not a disciplinary measure. Instances where a members authority to practice may be amended or suspended include where a member of the ambulance service returns from a period of extended leave. During their clinical revalidation, the authority to practice for that member may be amended from independent to supervised practice for a period of 3 months to ensure that the member's clinical skills and knowledge are up to date.

A member's authority to practice may also be suspended or amended where an adverse clinical incident (patient death) has occurred and the Ambulance Service needs to undertake a robust quality review of the case. During this period, the member's authority to practice may with due consideration be amended or withdrawn. As previously mentioned, amending or suspending a member's scope of practice is not a disciplinary measure, and is solely concerned with enhancing public safety by ensuring that the Chief Officer is satisfied that a member of the Ambulance Service has the necessary skills and abilities to safely and properly provide clinical care to the community. The *Public Sector Management Act 1994* would continue to apply where there is suspected misconduct by a member of the Ambulance Service that may warrant administrative sanction or termination of employment.

Clarifying the power of the Chief Officer (ACTAS) to vary or suspend an ambulance officer's scope of practice is also consistent with the approach adopted in other jurisdictions. Tasmania, South Australia and Queensland all give the power to the chief officer of the ambulance services or the head of the Health Department to within which the ambulance service operates a specific power to determine the scope of services provided by ambulance officers.

Simplifying responsibility for fire control

The Act currently assigns responsibility for fire control between ACTF&R and the RFS on a geographic basis. As its name suggests, the term 'built-up area' refers to metropolitan Canberra, with the Commissioner having power under section 65 (1) to declare an area to be a built-up area. The bushfire abatement zone is declared under section 71 to incorporate rural areas immediately surrounding the built-up area where specific measures may be required to reduce risk to life and property in the built-up area of Canberra from fires occurring in that zone.

The Act provides that ACTF&R is responsible for fire control and response in the built-up area, as well as for planning for fire in the bushfire abatement zone (in consultation with the RFS). The RFS has responsibility for fire response in rural areas as well for planning for fire outside the city area (in consultation with ACTF&R). The city area is a combination of the built-up area and the bushfire abatement zone.

The Commissioner's concept of operations for bush and grass fires provides that, in relation to fires in the bushfire abatement zone, the service responsible for incident control will be decided by the officers in charge on scene from each service liaising with each other and jointly determining the priorities and strategies for the management of the fire, including incident control.

If agreement is not quickly achieved on scene the officer in charge on scene from each Service must immediately contact their respective Chief Officer. The Chief Officers will then liaise with each other and appoint an Incident Controller and other key Incident Management Team (IMT) roles as required. If, in the opinion of either Chief Officer the fire is likely to escalate, or has escalated, into a complex incident threatening life, property or significant environmental assets, or multiple incidents are occurring that may compete for resources the fire will be under the control of an off-scene located IMT.

If an IMT is not in place, the Chief Officers will liaise with each other and appoint an Incident Controller and other key IMT roles as required, taking into consideration the risk profile of the incident. In the event that agreement is not reached between the Chief Officers, the Commissioner will appoint an Incident Controller and other key IMT roles as required.

The Review found that these procedures for determining which service has control of a fire in the bushfire abatement zone are cumbersome and potentially problematic. Requiring the officers in charge from each service at a fire to attempt to mutually agree which service should have control is an unnecessary distraction for these officers at a time when their efforts would be better served by directing fire response operations. The existing requirement unnecessarily impedes timely decision making for fires in this crucial urban interface. The ACT Auditor-General's 2013 Report into Bushfire Preparedness noted that it was essential in the 'command and control' environment of emergency management to have clarity on geographic responsibilities.

The Review proposed that a single service be given specific responsibility for fire control and response planning in the bushfire abatement zone. While the Review did not seek to identify which service should be given this responsibility, the Chief Officer (F&R) and Chief Officer (RFS) have agreed that it is appropriate that the RFS have responsibility for planning and response in this area.

Accordingly the Bill removes the concept of the bushfire abatement zone from the Act for the purposes of operational planning and response. Responsibility for fire planning and response will now be split between the rural area (the responsibility of the RFS) and the built-up area (the responsibility of ACTF&R). The rural area will incorporate the bushfire abatement zone.

This change will not alter the existing response arrangements, which are that first response to all grass and bush fires in the ACT will be by the nearest available most appropriate resource, irrespective of jurisdiction or Service. Both ACT fire services would continue to work together in responding to fires in the bushfire abatement zone.

This proposal would also see no change to the current processes for the appointment of an incident controller. Incident controllers and incident management teams will continue to be appointed from across the ESA (or even beyond the ACT if required) from suitably qualified officers. This reflects the ESA's unified and cohesive command and management structure.

While this Bill removes references to the bushfire abatement zone from the sections of the Act relating to operational responsibility for fire planning and response, the Commissioner will retain the power to declare a bushfire abatement zone. The bushfire abatement zone will remain relevant as a land planning and management tool, with owners and managers of land in the zone required under section 78 of the Act to prepare a bushfire operational plan. A bushfire operational plan sets out the tasks and activities that the landholder will undertake each year to manage the bushfire risk for that property.

Clarifying responsibility for operational planning

As previously mentioned, the Act currently assigns responsibility for fire control between ACTF&R and the RFS on a geographic basis. The Act also confers responsibility upon both ACTF&R and the RFS for operational planning for fire in their respective area of responsibility.

Operational planning is currently interpreted to include what may be termed as planning and development functions. For instance, the Chief Officer (F&R) and the Chief Officer (RFS) may be required to provide approvals in relation to the installation of any fire appliance in new buildings or new part of buildings under the *Building (General) Regulation 2008.*

The Review noted the risk with this approach that, by having two separate entities providing formal advice depending on where the building is located, any advice provided by the two Chief Officers may be inconsistent. While the obligation on each Chief Officer to consult with their counterpart in relation to the bushfire abatement zone and the rural area reduces the risk, it does not eliminate it. It is of vital importance from a public safety perspective that there is a coordinated and consistent approach to emergency planning and advice.

To achieve this, and to ensure that the ACT community receives the consistent and reliable advice, the Review proposed that the functions of ACTF&R and RFS in relation to operational planning for fire be amended so that the agencies have responsibility for "planning for fire response" in their respective areas. The Commissioner would be given explicit responsibility for planning and development advice functions. This Bill gives effect to that recommendation. The Bill also makes consequential amendments to other legislation such as the Building (General) Regulation 2008 to reflect the amended arrangements.

The preparation of planning and development advice will continue to be undertaken by members of ACTF&R and RFS with the applicable skills, qualifications and expertise. The Commissioner would act upon this advice, and the recommendation from the respective Chief Officer, in providing a planning and development approval.

Statutory recognition for Bushfire Management Standards

The Strategic Bushfire Management Plan, made by the Minister under section 72, prescribes that fuel management works must be undertaken in accordance with Bushfire Management Standards. These Standards prescribe the measurable outcomes for bushfire management works, as well as establish the process by which the widths of Asset Protection Zones are determined and applied, and details the standard that applies to the process. They also identify standards and classification for fire trails, public roads, rural fire trails and aerial access in the ACT.

These Standards are approved by the Commissioner. There is no current legislative basis for these standards. Given that landholders may face sanction under the Act if they fail to comply with their Bushfire Operational Plan, which in turn requires compliance with these Standards, it is appropriate that these Standards be given a legislative basis.

The Bill gives the Commissioner the power to approve these Standards. The Commissioner is required to consult with the Conservator of Flora and Fauna prior to approving the Standards. The Standards will be a notifiable instrument.

Adding "Service" to ACT Fire & Rescue in the Act

Section 43 of the Act establishes ACT Fire & Rescue (ACTF&R). ACTF&R is currently unique among the ACT emergency services in that, despite it being an emergency service, it is not legally referred to as an emergency service. This contrasts with the ACT Rural Fire Service, the State Emergency Service or the ACT Ambulance Service.

This lack of the word "service" in its title is not reflective of the important service role ACTF&R undertakes within the Territory. ACTF&R is a professional, highly-skilled provider of a wide spectrum of fire and rescue services, ranging from reactive response to incidents through to proactive planning and mitigation activities.

The Review recommended that the word "Service" be included after ACT Fire & Rescue in the Act, such that ACTF&R will be renamed as the ACT Fire & Rescue Service in the Act. This would ensure consistency with other ACT emergency services. The Review noted that there would be no costs associated with this amendment to the title and no changes to ACTF&R branding. The Bill gives effect to that recommendation by renaming ACT Fire & Rescue to the ACT Fire & Rescue Service.

Future review of the Act

Section 203 of the Act requires that the Minister review the operation of the Act as soon as practicable after the end of every fifth year after the day that section commenced. It also requires the Minister to present a report on the review to the Legislative Assembly within three months after the day the review is started.

The Review noted that the requirement that a report on the review must be presented to the legislative Assembly within three months is problematic. Imposing an arbitrary three month timeline may unnecessarily restrict future reviews, particularly where extensive stakeholder consultation is required. The Legislative Assembly sitting pattern also impacts upon and restricts this three month period.

The Review considered that a preferable approach was that the review be undertaken as soon as practicable at five yearly intervals, and that a report of the review be tabled in the Legislative Assembly at the finalisation of the review. This amendment would also deliver efficiencies within Government and Cabinet, as the current three month timeline prevents Government approval for legislative amendments identified as necessary by the report being obtained at the same time as the report itself is endorsed by the Minister. This necessitates a separate Cabinet approval being obtained for the legislative amendments recommended by this report, when it would be more efficient for Government to consider and endorse the report, and any resulting legislative amendments, at the same time.

This Bill amends section 203 so that the Minister must continue review the operation of the Act as soon as practicable after the end of every fifth year after the day section 203 commenced, but that the Minister must now present that review to the Legislative Assembly as soon as practicable after the review is completed.

Human rights implications

Section 28 of the HRA provides that human rights are subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society. Section 28 (2) of the HRA provides that in deciding whether a limit on a human right is reasonable, all relevant factors must be considered, including:

(a) the nature of the right affected;
(b) the importance of the purpose of the limitation;
(c) the nature and extent of the limitation;
(d) the relationship between the limitation and its purpose; and
(e) any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

The provisions of the Bill seen as potentially engaging human rights are considered having regard to the provisions of section 28 of the HRA.

Offences relating to total fire bans

Clause 41 introduces a new offence in section 116A of undertaking a high risk activity in the open air in an area during a total fire ban. New section 116A (2) provides that strict liability applies to the element in subsection 116A (1) (b). This is the element that a total fire ban is in force for the area.

This Bill also amends the penalty for the existing offence in section 116 (1) of the Act of lighting a fire during a total fire ban. It increases the maximum penalty to 200 penalty units, imprisonment for 2 years or both. Existing section 116 (2) provides that provides that strict liability applies to the element in subsection 116 (1) (b). This is the element that a total fire ban is in force for the area.

The nature of the right affected

The use of strict liability elements in offences may be seen in some contexts as engaging the right in criminal proceeding under section 22 of the HRA, in particular the right in section 22 (1) (the right to be presumed innocent).

The importance of the purpose of the limitation

Total fire bans are declared when conditions are such that controlling the spread of a bushfire would be extremely difficult and where the community is at significant risk of injury/death and loss of property as a result of fire. Given the significant difficulty in controlling a fire during a total fire ban period, it is of vital importance that fires be prevented from igniting in the first place during these high danger periods.

In the ACT, ACTF&R and/or RFS responded to 24 grass or bush fires on the 8 total fire ban days in the 2013/14 and 2014/5 bushfire season. It is an unfortunate reality that across Australia a significant number of bushfires occurring on total fire bans are deliberately lit. It is estimated that across Australia approximately 50 percent of bushfires are either deliberately lit, suspicious, or careless in origin. ACT data shows that 44% of grass and bush fires are either deliberately lit or are suspicious in origin. These figures show that lighting fires during total fire bans is a significant problem, and the prevalence of these fires poses a substantial risk to life, property and the environment within the ACT.

A requirement to prove fault, with respect to element that a total fire ban is in effect, would significantly undermine the effectiveness of the offence.

Strict liability offences are used frequently in offences forming part of a regulatory scheme relating to public safety, and the use of the strict liability element as proposed by this Bill is consistent with the use of strict liability offences in the Act.

The nature and extent of the limitation

Any limitation is not considered to be extensive. Strict liability attaches only to a particular element of the offence, rather than the entirety of the offence itself. Under the Criminal Code 2002, the defence of mistake of fact is available for strict liability offences. Whether a particular defendant has grounds to assert that defence, of course, will depend on the facts of each case. There are other defences in the Criminal Code 2002 (e.g. extraordinary emergency, duress) that may theoretically be available, but again this would depend on the facts of each case.

The offences only apply when a total fire ban is in force. There has been an average of three total fire ban days declared each year over the last five years. The offence applies to persons who light a fire, or who engages in a high risk activity, during a total fire ban.

The relationship between the limitation and its purpose

As previously mentioned, total fire bans are only declared when conditions are such that controlling the spread of a bushfire would be extremely difficult and where the community is at significant risk of injury/death and loss of property as a result of fire. Reflecting those risks, the declaration of a total fire ban is widely advertised around the ACT region.

The lighting of fires during these periods, either deliberately or inadvertently as a result of undertaking works which have been historically caused fires in the ACT, poses a significant danger to the community. Given the potentially devastating consequences to public health and safety, and property and the environment from fires during total fire bans it is appropriate that the element of the offence be one of strict liability. To do otherwise would undermine the effectiveness of the offence.

Any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

Noting the serious consequences that may result from a failure to comply, it is not considered that there are any less restrictive means available to achieve the purpose of the amendment. It is also considered that any limitation arising from this amendment is reasonable and proportionate.

Establishing the ACTAS Quality Assurance Committee

The nature of the right affected

The bill contains restrictions on the admissibility of protected information and statements given and documents prepared in relation to the ACTAS Quality Assurance Committee. These restrictions may engage the right to privacy (section 12), the right of freedom of expression (which has been found to include a freedom to seek, receive and impart information) (section 16) and the right to fair trial (section 21).

The importance of the purpose of the limitation

After any adverse event that occurred whilst a patient was by treated by ACTAS members, there is a risk that a patient who has sustained an injury or experienced economic loss may commence legal action against ACTAS. Seeking compensation for injuries that may have been the result of a breach in the expected standard of care is a patient's legal right.

This Bill creates a statutory immunity scheme that seeks to protect the confidential activities and the participants of the ACTAS quality assurance committee. Statutory immunity has the effect of rendering the activities of the prescribed committee inadmissible as evidence and preventing committee members from being subpoenaed to give evidence in legal proceedings.

The intent of the provisions is to promote full and open discussion of clinical quality issues and ensure that improvements can then be made without fear that the information obtained or derived can be produced before a court or tribunal.

The nature and extent of the limitation

Any limitation is not considered to be extensive.

The amendments provide that oral statements made to, or documents given to, or documents prepared for, the ACTAS quality assurance committee are not admissible as evidence in a proceeding before a court. This restriction on admissibility does not extend to all documents given to the quality assurance committee - only those documents prepared only for the committee.

The amendments also provide that a holder of protected information commits an offence if the information holder discloses personal information about another person in certain circumstances. Therefore, when an adverse event is referred to a prescribed committee for investigation, the subsequent information that can be provided to the patient for the purpose of open disclosure is limited.

Appropriate limitations on disclosure of information are required in the context of the functions and powers within the bill to obtain and create documents relating to individuals. However, the right to privacy must be balanced against the right of a party to a civil or criminal proceeding to access this information where appropriate. The right to a fair trial is safeguarded by the fact that most of the information available to the quality assurance committee will be available from other sources that are subject to the powers of courts and tribunals to compel disclosure.

The relationship between the limitation and its purpose

Any limitation seeks to ensure that ACTAS personnel who were providing ambulance services to patients when an incident occurred that led to adverse outcomes for the patient are able to share their experiences freely with the ACTAS quality assurance committee. The amendments are designed to reinforce the confidentiality of information, and therefore to reinforce the integrity of the quality assurance committee. Members of the committee should be encouraged to facilitate the gathering of information regarding a health incident, and may not do so if they fear that the information could be revealed in open court by another person.

Any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

Noting the public health benefits flowing from ACTAS's ability to fully investigate adverse clinical incidents, so as to ensure that similar incidents are not repeated, it is not considered that there are any less restrictive means available to achieve the purpose of the amendment. It is also considered that any limitation arising from this amendment is reasonable and proportionate. The quality assurance committee provisions substantially reflect similar provisions applying to quality assurance committees operated by ACT hospitals and other health care providers.

On this basis, any limitation of a person's human rights resulting from this amendment is considered reasonable and proportionate.

Strict liability offences

The Bill creates new offences relating to total fire bans that contain elements of strict liability; however, the Bill does not create any new strict liability offences.

A justification of the strict liability elements of the new offences is provided in the justification of offences relating to total fire bans.

In addition, clauses 31 and 39 create a new obligation (the requirement to comply with a bushfire management standard applying to an area) that the Commissioner or an Inspector may direct an owner or other person to comply with. The Commissioner and Inspectors already have the power, under sections 82 and 109 respectively, to direct an owner of land or other person to comply with a bushfire management requirement, or bushfire operational plan, applying to the area. Clauses 31 and 39 add an additional obligation (that the owner or person comply with a bushfire management standard) to the list of obligations that the Commissioner or Inspector may require the person to comply with. It is an offence, under sections 83 and 110 respectively, to fail to comply with such a direction. The maximum penalty for both offences is 50 penalty units, and the offences are both strict liability offences.

To the extent that creating a new obligation that a person can be directed to comply with is said to create a new offence, it is considered that the use of strict liability offences in this context is reasonable and proportionate. Strict liability offences are used frequently in offences forming part of a regulatory scheme relating to public safety. The use of strict liability offences is consistent with the use of strict liability offences in the Act.

It would be inconsistent for a direction issued by the Commissioner or Inspector to comply with a bushfire management standard not to be a strict liability offence when the existing offences applying to failing to comply with a direction to comply with a bushfire management requirement are strict liability offences.

There has been no change to the penalty for the offences in sections 83 and 110, which remain at a maximum penalty of 50 penalty units with no option for a period of imprisonment.

It is not considered that the other amendments made by this Bill have any human rights implications. Many of the amendments strengthen rights, by allowing for persons to seek approval for activities that may have previously constituted an offence. These include ensuring that all members of the emergency services have appropriate immunities for actions undertaken to protect life and property.

Climate Change Considerations

The climate change impacts of these amendments have been considered and no impacts have been identified.

CLAUSE NOTES

Part 1 Preliminary

Clause 1 Name of Act

This clause specifies the name of the Bill, once enacted, as the *Emergencies Amendment Act 2016.*

Clause 2 Commencement

This clause provides that the Act will commence on the day after its notification day.

Clause 3 Legislation amended

This clause names the legislation amended by this Bill. In addition to the Emergencies Act 2004, this Bill also amends the *Building (General) Regulation 2008*, the *Civil Law (Wrongs) Regulation 2003*, the *Crimes Act 1900*, the *Dangerous Substances Act 2004*, the *Dangerous Substances (Explosives) Regulation 2004*, the *Dangerous Substances (General) Regulation 2004*, the *Electrical Safety Act 1971*, the *Emergencies Regulation 2004*, the *Environment Protection Act 1997*, the *Environment Protection Regulation 2005*, the *Heritage Act 2004*, the *Legislation Act 2001*, the *Liquor Act 2010*, the *Liquor Regulation 2010*, the *Nature Conservation Act 2014*, the *Rail Safety National Law (ACT) Act 2014*, the *Road Transport (Safety and Traffic Management) Regulation 2000*, the *Road Transport (Vehicle Registration) Regulation 2000*, the *Security Industry Regulation 2003*, the *Taxation Administration Regulation 2004*, the *Territory Records Regulation 2009*, the *Tree Protection Act 2005*, the *Water Resources Act 2007*, the *Work Health and Safety Act 2011* and the *Work Health and Safety Regulation 2011*.

The vast majority of these amendments are consequential on the renaming of the ACTF&R to the ACT F&R Service, with no substantial amendments made.

Clause 4 Commissioner's functions
Section 8 (1) and (2)

This clause amends the functions of the Commissioner. There has been no substantive change to section 8 (1), with the section redrafted to reflect modern drafting practice. Section 8 (2) has been amended to clarify that the Commissioner is responsible for community education and awareness, and planning and development advice in relation to emergency related issues.

Clause 5 Commissioner may make guidelines
New section 11 (4A)

This clause inserts a new subsection 4A, which requires the Commissioner to consult the Bushfire Council before making a guideline on the standards and criteria required for the appointment of a volunteer member of the rural fire service to a senior rank of the service. Previously section 59C (3) required the Chief Officer (RFS) to consult with the Council before appointing a volunteer member of the RFS to a senior rank. This subsection has been removed. Rather than be consulted on individual appointments, this new provision provides for the Council to be consulted on the standards and criteria that will form the basis for these appointments.

Clause 6 Section 11 (7), new definition of *senior rank*

This clause is consequential on clause 5, and reallocates the definition of *senior rank*, for the RFS, from section 59C (4) to section 11 (7). There has been no substantive amendment to the definition.

Clause 7 Chief officer—ambulance service
Section 28 (3) (c)

This clause omits section 28 (3) (c), which referred to the Chief Officer (Ambulance Service) responsibility for community awareness, reflecting that responsibility for community awareness now rests with the Commissioner following the amendments made by clause 4.

Clause 8 Section 29 heading

This clause amends the heading of section 29 to reflect that ACTF&R has been renamed the ACTF&R Service, with the consequent amendment to the title of the Chief Officer (Fire and Rescue Service).

Clause 9 Section 29 (3) (c)

This clause amends the responsibilities of the Chief Officer (F&R) so that the Chief Officer is responsible for operational planning for fire response in built-up areas, including fire preparedness and control. While the Chief Officer (F&R) has always been responsible for fire response in built-up areas, this change reflects that responsibility for planning and response in the bushfire abatement zone will now rest with the RFS.

Clause 10 Section 29 (3) (f), except note

This clause omits section 29 (3) (f), which referred to the Chief Officer's (F&R) responsibility for community awareness, reflecting that responsibility for community awareness now rests with the Commissioner following the amendments made by clause 4.

Clause 11 Chief officer—rural fire service
Section 30 (1)

This clause forms part of the amendments to the consultation role of the Bushfire Council. Currently, the Director-General may only appoint someone to be the Chief Officer (RFS) after consultation with the Council. This clause removes the requirement to consult with the Council before the appointment is made.

Clause 12 Section 30 (3) (c)

This clause amends the Chief Officer's (RFS) responsibility for operational planning for fire response, so that the Chief Officer is responsible for operational planning for fire response in rural areas. While the Chief Officer (RFS) has always been responsible for fire response in the rural area, this change reflects that responsibility for planning and response in the bushfire abatement zone will now rest with the RFS. This clause also removes a reference to the term *city area*, which is no longer used in the Act.

Clause 13 **Section 30 (3) (e), except note**

This clause omits section 30 (3) (e), which referred to the Chief Officer's (RFS) responsibility for community awareness, reflecting that responsibility for community awareness now rests with the Commissioner following the amendments made by clause 4.

Clause 14 **Chief officer—SES**
Section 31 (3) (c), except note

This clause omits section 31 (3) (c), which referred to the Chief Officer's (SES) responsibility for community awareness, reflecting that responsibility for community awareness now rests with the Commissioner following the amendments made by clause 4.

Clause 15 **Deputy chief officers**
Section 32 (4)

This clause is similar to clause 5, and also forms part of the amendments to the consultation role of the ACT Bushfire Council. Currently, the director-general may only appoint someone to be the Deputy Chief Officer (RFS) after consultation with the Council. This clause removes the requirement to consult with the Council before the appointment is made.

Clause 16 **Directions by chief officer to service members**
Section 35 (2), (3), (4) and (5)

This clause relates to the power of the Chief Officer (Ambulance Service) to provide a direction to service members. The Chief Officer already had the power, in existing section 35 (2) to issue a direction to members about the provision of medical treatment (a *medical treatment direction*). This amendment confirms that the Chief Officer may also issue a direction about the scope of practice by an ambulance service member (a *scope of practice direction*).

Clause 17 **Functions of ambulance service**
Section 41 (2) (a), example

This clause is consequential on the renaming of ACTF&R the ACTF&R Service. There has been no change to the functions of the Ambulance Service, which remain to undertake assistance operations to support other entities in the exercise of their functions under this Act (an example of which is to assist fire and rescue service members in dealing with any incident or emergency).

Clause 18 **Part 4.2 heading**

This clause is consequential on the renaming of the ACTF&R the ACTF&R Service.

Clause 19 **Division 4.2.1**

This clause substitutes Division 4.2.1. That Division established ACTF&R. This amendment renames ACTF&R the ACTF&R Service.

This clause also amends the functions of the ACTF&R Service, to reflect the amendments to the functions of the Chief Officer (F&R). The amendments remove reference to the bushfire abatement zone, which no longer has any relevance to operational planning or response (previously the ACTF&R had responsibility for operational planning, in conjunction with the RFS, for fire in the bushfire abatement zone). The amendments made by this Bill provide that responsibility for fire planning and response is now split between the rural area (the responsibility of the RFS) and the built-up area (the responsibility of ACTF&R).

There is no change to the additional functions of ACTF&R.

The clause also makes minor amendments to the constitution of the ACTF&R Service and the power of the Chief Officer to give members of ACTF&R various ranks in accordance with the service's standards and protocols, consequential on the change of name of ACTF&R to ACTF&R Service. There is no substantial change to the existing provisions.

Clause 20 Functions of rural fire service
Section 52 (2)

This clause amends the function of the RFS to reflect the removal of references to the bushfire abatement zone from provisions relating to operational planning or response, as well as the removal of the concept of city area from the Act. This clause provides that the RFS is responsible for operational planning for fire and fire response in rural areas, and fire response in rural areas, other than for a fire that is in a building and at which a member of the ACTF&R is present. There is no change to the functions of the RFS in the rural area.

Clause 21 New section 52 (4)

This clause inserts new section 52 (4), which gives the RFS the power to respond to a fire in the built-up area, and provide first response to any other incident to which another emergency service may respond under this Act, if the emergency service is unavailable.

This amendment ensures that the RFS is able to respond to a fire in the built-up area. Noting the importance of protecting and preserving life, property and the environment, it is important that the RFS have the ability to respond to fire within the built-up area should the ACTF&R not be available or where a member of the ACTF&R is not present to direct the RFS. The amendment supports the existing Commissioner's guidelines which provide that first response to all bush and grass fires in the ACT will be by the nearest available most appropriate resource, irrespective of jurisdiction or Service. The ACTF&R retains primary for fires in buildings, whether in the built-up area or the rural area.

Clause 22 Functions of SES
Section 57 (2) (b), example

This clause amends a reference to ACTF&R, and is consequential on the renaming of the ACTF&R to ACTF&R Service. There is no substantive change to the provision.

Clause 23 **Volunteer appointments in accordance with guidelines**
Section 59C (3)

This clause removes the existing obligation in section 59C (3) for the Chief Officer (RFS) to consult with the Bushfire Council prior to appointing a volunteer member of the RFS to a senior rank within the service. This obligation is replaced with an obligation on the Commissioner to consult with the Council on the standards and criteria that will form the basis for these appointments, as inserted by clause 5 of this Bill.

Clause 24 **Section 59C (4), definition of *senior rank***

This clause is consequential on clause 23, and omits the definition of *senior rank*. That definition has been relocated to section 11 as a result of clause 6.

Clause 25 **What is a built up area and a *rural area***
Section 65, note 1

This clause amends a reference to ACTF&R to reflect its new title of the ACTF&R Service. There is no substantive change to the section.

Clause 26 **What is the *city area***
Section 66

This clause omits section 66, which defines *city area* for the purposes of the interpretation of chapter 5, which referred to the built-up area and the bushfire abatement zone. The term was not actually used in chapter 5, although the term was used elsewhere in the Act. The definition of *city area* is now redundant following the bushfire abatement zone no longer being used in the context of planning for fires or fire response. The Act now divides responsibility for operational planning in the ACT into two areas – the built-up area and the rural area. This avoids uncertainty and the confusion that had previously arisen where responsibility was assigned according to four different, but overlapping, areas defined in the Act – the built-up area, the bushfire abatement zone, the rural area and the city area.

Clause 27 **Fires in built-up area**
Section 67 (2) and note

This section specifies the powers available to the Chief Officer (F&R) for the purpose of extinguishing or preventing the spread of fire. Members of the ACTF&R may in turn use these powers in accordance with section 67 (5) where the powers are to be used for the protection of life or property or to control or extinguish the fire. This clause amends when the powers may be used by the Chief Officer, so that the Chief Officer may also use these powers when responding to the consequences of a fire. The Chief Officer's power to direct a person to leave any land or premises on fire or near the fire has also been amended to include the power to direct a person to leave any land or premises affected by the consequences of the fire.

This amendment will better allow to Chief Officer (F&R), and in turn ACTF&R members, to respond to the consequences of a fire, rather than just the fire itself. The need to be able to respond to the consequences of a fire was demonstrated during the September 2011 fire at Mitchell, where in addition to the fire itself, F&R members had to deal with the spread of chemicals from the factory, and a significant and potentially dangerous smoke plume that affected a significant part of northern Canberra. The powers in section 67 were not available to members of the ACTF&R as the spread of chemicals and the toxic smoke plume arose as a consequence of the fire.

There has been no change to the powers of the Chief Officer (F&R) themselves, only when they can be exercised (i.e when responding to the consequences of the fire).

Clause 28 Fires in rural area
Section 68 (2) and note

This clause is similar to clause 27, but confers the ability to exercise the powers when responding to the consequences of a fire upon the Chief Officer (RFS). This amendment ensures that the Chief Officer (RFS) and the Chief Officer (F&R) are both able to exercise their existing powers when responding to the consequences of the fire, rather than just the fire itself.

Clause 29 New section 77B

This clause inserts a new section 77B, which confers upon the Commissioner to power to make *bushfire management standards*. The bushfire management standards detail the measurable outcomes that are required to be achieved by rural land managers required under the Strategic Bushfire Management Plan to undertake certain bushfire mitigation activities to prevent the incidence and severity of bushfires on their land. The bushfire management standards are a notifiable instrument, and the Commissioner must consult with the Conservator of Flora and Fauna prior to making the standards.

New section 77B provides that the bushfire management standards may apply or adopt a law or instrument as in force from time to time. This subsection allow the standards to apply or adopt an Australian Standard or an Australian/New Zealand Standard, and land managers would be required to comply with that Standard. New subsection (5) disapplies section 47 (6) of the *Legislation Act 2001* in relation to any such Standard adopted or applied by the bushfire management standards. This means that future changes to such a Standard does not need to be notified on the Legislation Register in order to be applied under the bushfire management standards.

Clause 30 Directions by Minister to manager of land
Section 81 (1)

Section 81 provides that the Minister may give a written direction to the manager of an area of unleased Territory land or land occupied by the Territory requiring the manager to comply with a bushfire management requirement or bushfire operational plan applying to the area.

This clause provides that the Minister will also be able to direct a manager of an area of unleased Territory land or land occupied by the Territory to comply with a bushfire management standard applying to the area.

Clause 31 Directions by commissioner to owner of land Section 82 (1)

Section 82 provides that the Commissioner may, in writing, direct an owner of land or comply with a bushfire management requirement, or bushfire operational plan, applying to the area. It is an offence under section 83 to fail to comply with a direction issued under section 82. That offence is a strict liability offence.

This clause provides that the Commissioner will also be able to direct an owner of land to comply with a bushfire management standard applying to the area. The existing obligation that the Commissioner must consult with the Conservator of Flora and Fauna before issuing a direction (unless satisfied there are urgent circumstances) remains and will apply to a direction issued to comply with a bushfire management standard.

Clause 32 Section 84

Section 84 allows for the Chief Officer (RFS) to light a controlled fire in a rural area at any time for the purpose of reducing the risk of bushfire or the spread of bushfire. This clause amends section 84 to confer the power to light a controlled fire on the Chief Officer (F&R) as well as the Chief Officer (RFS). The clause provides that a controlled burn may be lit in any part of the ACT, not just in the rural area as the Act currently provides.

Clause 33 New section 85

This clause amends a new section 85. Section 85 defines *relevant chief officer* for the purposes of division 5.4.1 of the Act. The relevant chief officer means either the Chief Officer (F&R) – in relation to premises in a built-up area or a rural area, or the Chief Officer (RFS) – in relation to premises in a rural area.

Part 5.4.1 gives the Chief Officer (F&R) certain fire prevention related powers, including the power to issue improvement, occupancy or closure notices. This clause, and associated clauses 9 to 14, give an equivalent power to the Chief Officer (RFS) for premises in the rural area. The Chief Officer (F&R) retains the power to issue these notices in both a built-up area and a rural area.

Clauses 34 to 38

These clauses are consequential on the new section 85 inserted by clause 33. These clauses outline the power of the Chief Officer (F&R) to issue notice for premises if the chief officer believes on reasonable grounds that there is anything on the premises that may pose a risk to public safety or to people likely to be on the premises. These clauses amend references to the Chief Officer (F&R) to the *relevant chief officer*. This change will allow the Chief Officer (RFS) to issue such notices in relation to premises in the rural area. There is no change to the power of the Chief Officer (F&R) to issue notices, or to the grounds or other conditions on which such notices may be issued or revoked.

Clause 39 Directions to comply with fire prevention obligations etc
New section 109 (1) (c)

Section 109 provides that an inspector, who believes on reasonable grounds that a person is in breach of an obligation under section 120 or a bushfire management requirement or a bushfire operational plan, may direct the person in writing to comply with that obligation, requirement or plan. This clause adds a bushfire management standard to the list of obligations that an inspector may direct a person to comply with. It is an offence under section 110 for a person to fail to comply with a direction issued under section 109. The offence in section 110 is a strict liability offence.

Clause 40 Offence—lighting etc fire during total fire ban
Section 116 (1), penalty

This clause amends the maximum penalty for the existing offence in section 116 (1) of lighting, maintaining or using a fire, or using fireworks, in the open air in an area whilst a total fire ban is in force for the area. The new maximum penalty for the offence will be 200 penalty units, imprisonment for 2 years or both. There is no other change to the offence.

Clause 41 New section 116A

This clause inserts a new section 116A. The new section 116A creates a new offence of undertaking a high risk activity in the open air in an area when a total fire ban is in force for the area. The maximum penalty for the new offence is 100 penalty units, imprisonment for 1 year or both. New 116A (2) provides that strict liability applies to subsection (1) (b) (whether a total fire ban is in force for the area). This means that it is not necessary for the prosecution to establish that a person had actual knowledge that a total fire ban is in force for the area.

Subsection (3) outlines a number of instances when the new offence does not apply. These include high risk activities undertaken for fire prevention by anyone acting under the Act, high risk activities undertaken in accordance with a permit issued by the Commissioner, or high risk activities prescribed by regulation and undertaken in accordance with the regulation.

New subsection (4) defines high risk activity as any of the following: welding, grinding, soldering, gas cutting or any other activity prescribed by regulation. These activities have been identified as leading causes for ignition of fires when undertaking in the open, particularly in dangerous fire conditions associated with the declaration of a total fire ban.

Clause 42 Fire permits
Section 118 (1)

Section 118 allows the Commissioner to issue a permit to a person to light, maintain or use a fire, or use fireworks during a total fire ban. This clause amends the section so that the Commissioner may also issue a permit for a person to undertake a high risk activity during a total fire ban. The amendment is consequential on the creation of the new offence of undertaking a high risk activity during a total fire ban.

Clause 43 New section 118 (7)

This clause is consequential on clause 41, and provides a signpost definition for the term *high risk activity*, referring readers to section 116A (4).

Clause 44 **Bushfire council members**
Section 129 (2)

Section 129 deals with the membership of the Bushfire Council. Section 129 (2) provides that the Minister must try and ensure that persons with a range of specified experiences and backgrounds are appointed to the Council. While this clause does not amend the range of specified experiences and backgrounds, it imposes an obligation on the Minister to appoint the following persons to the Council:

(a) a person to represent the interests of rural lessees;
(b) a person with relevant skills or experience to represent the community's interest in the environment;
(c) a person to represent the community's interests generally.

Previously the Minister was only obliged to try to ensure that these people were appointed.

There is no change in relation to the appointment of persons with other skills and experiences. The Minister must continue to try and ensure that the following are among the other members appointed:

(a) a person with skills or experience in fire sciences;
(b) a person with experience in land management;
(c) a person with experience in fighting fires in built-up areas;
(d) a person with experience in fighting fires in rural areas;
(e) a person with experience in indigenous land management.

This amendment ensures that the interests of rural landholder, the community and the environment are appropriately represented on the Council.

Clause 45 **Section 129 (4), note**

This clause is consequential on clause 46 and deletes the note in subsection 129 (4).

Clause 46 **New sections 129 (5) to (7)**

Currently the only restriction in the Act relating to the term of appointments for members of the Bushfire Council is in subsection 129 (4), which provides that an appointment must be for a term of not longer than four years. This clause creates a new restriction on the appointment of members – that a person must not be appointed for more than two consecutive terms.

Subsection 129 (6) provides that this new requirement does not apply to a person who is a member of the Council immediately before the subsection commences. This ensures that existing members of the Council are not prevented from being reappointed for a further two consecutive terms should the Minister wish to do so. Subsection (7) is a sunset clause, providing that subsections (6) and (7) expire eight years after subsection (5) commences. All existing members will have the opportunity to have been reappointed for two more consecutive terms by that time, making the subsections redundant.

Clause 47 **Functions of bushfire council**
New section 130 (2A)

This clause confirms the power of the Bushfire Council to publish advice given by the Council to the Minister or the Commissioner, provided that the Council first consults the Commissioner about publishing the advice. Giving the Council an express power to publish its advice reflects the community's interest in ensuring that the community is appropriately prepared to manage the threat posed by bushfires in the ACT. It also fulfils an important oversight and monitoring role, allowing the community to assess and consider the advice presented by the Council. It is also consistent with the intent as expressed by the then Minister for Police and Emergency Services when the Act was originally introduced that Council "decision-making processes are transparent and that the Council and the [ESA] are accountable for their decisions and actions".

Clause 48 **Interfering with fire appliance, hydrant, alarm etc**
Section 190 (2)

This clause is consequential on the amendments made by clause 49 below. Section 190 (2) previously allowed for a member of ACTF&R, the RFS or a police officer to give permission to a person to do something to, or near, a fire appliance that prevents or hinders the effective use of the appliance. Clause 49 extends the power to give permission to all the actions that would otherwise be an offence in section 190 – not just 190 (2) – making section 190 (2) redundant.

Clause 49 **New section 190 (4A)**

This clause creates a new section 190 (4A). This section provides that a person does not commit an offence under sections 190 (1), (3) or (4) if the person has the permission of a member of ACTF&R, the RFS or a police officer to do the thing that would otherwise be an offence.

Clause 50 **Section 190 (5)**

This clause is a stylistic amendment and is consequential on the creation of new subsection 190 (4A). There is no substantive amendment to the section.

Clause 51 **New section 195A**

This clause establishes the ambulance service quality assurance committee. The committee provides expert advice and recommendations on all clinical matters relevant to the functions of the Chief Officer (Ambulance Service).

Clause 52 **Protection of officials from liability**
New section 198 (4) (f)

This clause extends the existing provisions in the Act protecting officials from liability to past and present members of the ambulance service quality assurance committee, as well as persons who acted under the direction of a member of the ambulance service quality assurance committee. Any liability that would have otherwise attached to those persons attaches instead to the Territory.

Clause 53 Review of Act
Section 203 (2)

Section 203 currently obliges the Minister to review the operation of this Act as soon as practicable after the end of every fifth year after the day the section commenced. Section 203 (2) then obliges the Minister to present a report on the review to the Legislative Assembly within three months after the day the review is started. In practice this means that the review must be completed and presented within three months of the review commencing.

This clause amends the requirement as to when the report of the review must be presented to the Legislative Assembly. Rather than presenting the report within three months after the day the review is started, the report must now be presented as soon as practicable after the review is completed.

Clause 54 New schedule 1A

This clause inserts a new schedule 1A into the Act. The schedule provides information on the operation of the ambulance service quality assurance committee. These provisions reflect similar provisions applying to the operation of quality assurance committees established under the *Health Act 1993*.

The schedule provides that the Minister must appoint the members of the committee, and that the appointment must be for a term of not longer than three years. Members of the committee must disclose any material interest that they may have in an issue being considered by the committee.

This clause provides that the committee must comply with natural justice but is not bound by the rules of evidence. The committee has the power to ask anyone to give the committee information relevant to the committee carrying out its function. A person who provides false or misleading information to the committee commits an offence against section 338 of the *Criminal Code 2002*. A person who provides information to the committee does not breach confidence, professional etiquette or ethics, or breaches any rule of professional conduct, and either do they incur any civil or criminal liability only because of the giving of the information. This provisions ensures that the committee has access to all information necessary to allow it to fulfil its function of improving clinical services provided by the ACTAS.

Information provided to the committee is not admissible as evidence in a proceeding before a court, although the committee may give protected information to the Coroners Court, a health board or the Minister if it is satisfied that giving the information would be likely to facilitate the improvement of clinical services provided by ACTAS. This ensures that persons are able to freely provide information to the committee without fear that the information they provide may be subsequently used in a court.

The holder of protected information about someone else who is reckless about whether the information is protected information or does something that divulges protected information and is reckless about whether the information is protected and the action results in the information being divulged to another person commits an offence, punishable by 50 penalty units, imprisonment for six months or both. This ensures that information provided to the committee is appropriately protected.

Clause 55 Dictionary, new definitions

This clause is consequential the establishment of the ambulance service quality assurance committee and inserts new definitions into the dictionary.

Clause 56 Dictionary, definition of *chief officer (fire and rescue)*

This clause is consequential on the change of the name of ACTF&R to the ACTF&R Service.

Clause 57 Dictionary, definition of *chief officer (fire and rescue) service*

This clause is consequential on the change of the name of ACTF&R to the ACTF&R Service.

Clause 58 Dictionary, definition of *city area*

This clause removes a redundant definition for the term *city area*, which is no longer used in the Act.

Clause 59 Dictionary, new definition of *committee*

This clause is consequential on the establishment of the ambulance service quality assurance committee and inserts a definition of *committee* into the dictionary..

Clause 60 Dictionary, definition of *fire and rescue*

This clause is consequential on the change of the name of ACTF&R to the ACTF&R Service.

Clause 61 Dictionary, new definitions

This clause inserts new definitions into the dictionary.

Clause 62 Further amendments, mentions of *fire and rescue*

This clause is consequential on the change of the name of ACTF&R to the ACTF&R Service.

Clause 63 Further amendments, mentions of *(fire and rescue)*

This clause is consequential on the change of the name of ACTF&R to the ACTF&R Service.

Schedule 1 Other amendments

Part 1.1 Building (General) Regulation 2008

[1.1] Section 7 (1), example 3

Clause 1.1 is consequential on the change of the name of ACTF&R to the ACTF&R Service.

[1.2] Section 35 (b)

This amendment forms part of the reforms to clarify responsibility for operational planning, and clarifies that responsibility for providing fire-related building approvals rests with the Commissioner, rather than the Chief Officer (RFS) or Chief Officer (F&R).

[1.3] Schedule 2, part 2.2, items 6 and 7

This amendment forms part of the reforms to clarify responsibility for operational planning, and clarifies that responsibility for providing fire-related building approvals rests with the Commissioner, rather than the Chief Officer (RFS) or Chief Officer (F&R).

[1.4] Dictionary, note 2

This clause makes a technical amendment to add a reference to *emergency services commissioner* to the list of terms used in the regulation that are defined in the *Legislation Act 2001*.

Part 1.2 Civil Law (Wrongs) Regulation 2003

Clauses 1.5 and 1.6 are consequential on the change of the name of ACTF&R to the ACTF&R Service.

Part 1.3 Crimes Act 1900

Clauses 1.7 and 1.8 are consequential on the change of the name of ACTF&R to the ACTF&R Service.

Part 1.4 Dangerous Substances Act 2004 24

Clauses 1.9 and 1.10 are consequential on the change of the name of ACTF&R to the ACTF&R Service.

Part 1.5 Dangerous Substances (Explosives) Regulation 2004 25

Clauses 1.11 to 1.14 are consequential on the change of the name of ACTF&R to the ACTF&R Service.

Part 1.6 Dangerous Substances (General) Regulation 2004 26

Clauses 1.15 and 1.16 are consequential on the change of the name of ACTF&R to the ACTF&R Service.

Part 1.7 Electrical Safety Act 1971

Clause 1.17 is consequential on the change of the name of ACTF&R to the ACTF&R Service.

Part 1.8 Emergencies Regulation 2008

[1.18] New section 2

This clause is consequential on a dictionary being inserted into the regulation by clause [1.22]. It is a technical clause confirming that the dictionary forms part of the regulation.

[1.19] Section 5 (2), definition of *factory*

This clause omits the definition of factory from this section as the term is now defined in the dictionary inserted by clause [1.22].

[1.20] New section 5A

This clause prescribes what activities are exempt high risk activities for the purposes of new section 116A of the Act. That new section creates an offence of undertaking high risk activities during a total fire ban. The offence does not apply to activities that are prescribed as exempt high risk activities.

[1.21] Section 8

This clause is consequential on the change of the name of ACTF&R to the ACTF&R Service. There is no substantive change to this provision.

[1.22] New dictionary

This clause adds a dictionary into the regulation to bring this regulation in line with standard drafting practice.

Part 1.9 Environment Protection Act 1997

[1.23] Section 6

This clause updates the meaning of relevant person. Section 6 provides that the *Environment Protection Act 1997* does not apply to the exercise or purported exercise by a relevant person of a function under the Emergencies Act for the purpose of protecting life or property or controlling, extinguishing or preventing the spread of a fire.

This clause ensures that all members of an ACT emergency service are given an exemption for actions they undertake in an emergency, where undertaking those actions may otherwise see the emergency service member commit an offence under the Environment Protection Act.

Part 1.10 Environment Protection Regulation 2005

Clauses 1.24 and 1.26 are consequential on the change of the name of ACTF&R to the ACTF&R Service.

[1.25] Schedule 1, part 1.2

This clause forms part of the amendments designed to clarify responsibility for operational planning. Section 9 of the *Environment Protection Regulation 1997* provides that a person commits an offence if the person lights, uses or maintains a fire in the open air, unless the fire is light, used or maintained for an activity listed in schedule 1, part 1.2. This clause updates the list of approved activities in schedule 1, part 1.2 to include a fire lit, used or maintained for a display, ceremony, celebration or similar activity that is authorised by the emergency services commissioner. Previously approval was required of either the Chief Officer (F&R) or the Chief Officer (RFS).

[1.27] Dictionary, note 2

This clause inserts a reference to emergency services commissioner into the dictionary, note 2. Note 2 lists the terms used in the *Environment Protection Regulation 2005* that are defined in the *Legislation Act 2001*.

Part 1.11 Heritage Act 2004

[1.28] Section 7

This clause updates the meaning of relevant person. Section 7 provides that the *Heritage Act 2004* does not apply to the exercise or purported exercise by a relevant person of a function under the Emergencies Act for the purpose of protecting life or property or controlling, extinguishing or preventing the spread of a fire.

This clause ensures that all members of an ACT emergency service are given an exemption for actions they undertake in an emergency, where undertaking those actions may otherwise see the emergency service member commit an offence under the Heritage Act.

Part 1.12 Legislation Act 2001

Clauses 1.29 to 1.33 are consequential on the change of the name of ACTF&R to the ACTF&R Service.

Part 1.13 Liquor Act 2010

Clauses 1.34 and 1.35 are consequential on the change of the name of ACTF&R to the ACTF&R Service.

Part 1.14 Liquor Regulation 2010

Clause 1.36 is consequential on the change of the name of ACTF&R to the ACTF&R Service.

Part 1.15 Nature Conservation Act 2014

Clauses 1.37 and 1.38 are consequential on the change of the name of ACTF&R to the ACTF&R Service.

Part 1.16 Rail Safety National Law (ACT) Act 2014

Clause 1.39 is consequential on the change of the name of ACTF&R to the ACTF&R Service.

Part 1.17 Road Transport (Safety and Traffic Management) Regulation 2000

Clauses 1.40 and 1.41 are consequential on the change of the name of ACTF&R to the ACTF&R Service.

Part 1.18 Road Transport (Vehicle Registration) Regulation 2000

Clauses 1.42 and 1.43 are consequential on the change of the name of ACTF&R to the ACTF&R Service.

Part 1.19 Security Industry Regulation 2003

Clause 1.44 and 1.45 are consequential on the change of the name of ACTF&R to the ACTF&R Service.

Part 1.20 Taxation Administration Regulation 2004

Clause 1.46 is consequential on the change of the name of ACTF&R to the ACTF&R Service.

Part 1.21 Territory Records Regulation 2009

Clauses 1.47 to 1.49 are consequential on the change of the name of ACTF&R to the ACTF&R Service.

Part 1.22 Tree Protection Act 2005

[1.50] Exceptions—tree damaging and prohibited groundwork offences Section 19 (1) (f)

Section 19 provides for various exceptions for activities that would otherwise constitute a tree damaging or prohibited groundwork offence under the *Tree Protection Act 2005*. This includes anything done in the exercise or purported exercise by a relevant person of a function under the Emergencies Act for the purpose of protecting life or property or controlling, extinguishing or preventing the spread of a fire. The section has been amended to reflect modern drafting practice, and there has not been a substantive change to this section.

[1.51] Section 19 (2) definition of *relevant person*

This clause is related to clause [1.50], and amends the definition of *relevant person* to include all members of an ACT emergency service. This change ensures that all members are given an exemption for actions they undertake in an emergency, where undertaking those actions may otherwise see the emergency service member commit an offence under the Tree Protection Act.

Clause 1.52 is consequential on the change of the name of ACTF&R to the ACTF&R Service.

Part 1.23 Water Resources Act 2007

[1.53] Licence to take water--requirement Section 28 (2) (d)

Section 28 provides that a licence is not required under the *Water Resources Act 2007* to take water from a place where the water is taken in the exercise or purported exercise by a relevant person of a function under the Emergencies Act for the purpose of protecting life or property or controlling, extinguishing or preventing the spread of a fire. The section has been amended to reflect modern drafting practice, and there has not been a substantive change to this section.

[1.54] Section 28 (3) definition of *relevant person*

This clause is related to clause [1.53], and amends the definition of *relevant person* to include all members of an ACT emergency service. This change ensures that all members are given an exemption for taking water in an emergency, where taking that water may otherwise see the emergency service member commit an offence under the Water Resources Act.

Part 1.24 Work Health and Safety Act 2011

Clause 1.55 is consequential on the change of the name of ACTF&R to the ACTF&R Service.

Part 1.25 Work Health and Safety Regulation 2011

Clauses 1.56 and 1.57 are consequential on the change of the name of ACTF&R to the ACTF&R Service.