

2020

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

EMERGENCIES AMENDMENT BILL 2020

**EXPLANATORY STATEMENT
and
HUMAN RIGHTS COMPATIBILITY STATEMENT
(*Human Rights Act 2004, s 37*)**

**Presented by
Mick Gentleman MLA
Minister for Police and Emergency Services**

EMERGENCIES AMENDMENT BILL 2020

This explanatory statement relates to the Emergencies Amendment Bill 2020 (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.

This explanatory statement must be read in conjunction with the Bill. It is not, and is not intended to be, a comprehensive description of the Bill. What is written 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.

The Bill is a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

BACKGROUND

The *Emergencies Act 2004* (the Act) establishes the whole of ACT government framework for all-hazards emergency planning and response in the ACT. It provides the framework and authority for ACT Government and Government agencies to undertake prevention, preparation, response and recovery activities before, during and after an emergency. A key aspect of that framework is the power of the Chief Minister to declare a state of alert, a state of emergency or appoint an emergency controller to manage the response to emergencies that, because of their scale or nature, present a significant danger to the people, property, essential services or the environment.

The 2019-20 bushfire and storm season produced some of the most unprecedented weather conditions in Australia's history. Large parts of Australia were impacted by significant fires with unpredictable and dangerous fire behaviour fuelled by hot, dry and windy conditions. This resulted in – for the first time – elements of the Territory's emergency framework being activated, including the appointment of an emergency controller.

The ACT Emergency Services Agency deployed firefighters and specialist emergency management personnel to Queensland and Northern NSW through September, October and November of 2019 to assist with the fires in those states. Bushfires to the east of the ACT at Braidwood and on the NSW South Coast caused thick smoke in the ACT and region for a continuous period from late December 2019 through February 2020.

Between 1 October 2019 and 4 February 2020, the ACT declared a record 24 Total Fire Ban (TOBAN) days. To put this into context, the ACT on average sees 5 – 6 TOBANs per bushfire season.

A state of alert was declared for the ACT on 2 January 2020 to assist community preparedness and organisational response and coordination with fires burning near our borders and forecast extreme weather. The Emergency Services Commissioner was appointed as emergency controller to coordinate and manage ACT's response to the fires. This appointment ultimately lasted for 39 consecutive days.

On 23 January 2020, the ACT then experienced its first significant bush and grass fire of the season. This fire started at the Pialligo Redwood Forest and quickly spread across to Beard, threatening Oaks Estate and Queanbeyan. An additional fire started in Pialligo the following day that joined with the first, eventually taking the fire to 424 hectares. The fire was deemed out on 29 January 2020.

On 27 January 2020, the Orroral Valley fire commenced. This fire threatened the southern rural areas of the ACT, most notably Tharwa, and the southern suburbs of Canberra. With the ACT facing its worst bushfire threat since the 2003 bushfires and a combination of extreme heat, wind and a very dry landscape, a state of emergency was declared for the ACT on 31 January 2020. The Orroral Valley fire remained 'out of control' until 8 February 2020, when, after receiving some much-needed rainfall, the status of the fire was downgraded to 'being controlled'. The Orroral Valley burned over 86,000 hectares of land and approximately 30% of the ACT.

This unprecedented fire activity heavily impacted large swathes of the ACT and surrounding region and were the toughest our region has had to contend with since 2003. A timely coordination and response from all areas across government assisted in no loss of life or residences resulting from these fires.

The unprecedented activity was reflected in this bushfire season being the first instance in the ACT of an emergency controller being appointed, the first declaration of a state of alert and the first declaration of a state of emergency since the commencement of the Act.

On 29 April 2020, the ACT Government announced a whole of ACT Government review of the bushfire season to be focused on the effectiveness of the whole of Government response. The Final Report concluded that the overall view of stakeholders was that the legislative framework was sound, and that the Act fulfilled its functions during the 2019-20 bushfire season. The Report did recommend amendments to the Act, to clarify roles, and provide greater support to the emergency controller. This Bill gives effect to the recommendations of that report.

The review report is available on the ESA website at www.esa.act.gov.au

OVERVIEW OF THE BILL

The Bill amends the *Emergencies Act 2004* (the Act) to implement the recommendations of the interim report on the whole of ACT Government review of the effectiveness of the response to the 2019-20 bushfire season.

The amendments primarily relate to the appointment an emergency controller.

The Act currently has two pathways for the appointment of an emergency controller. Section 150A of the Act provides that an emergency controller may be appointed if the Chief Minister is satisfied that an emergency has happened, is happening or is likely to happen. This appointment applies where the Chief Minister has not declared a state of emergency under section 156. The Act provides that the appointment must be reviewed no later than 48 hours after it was made and ends 7 days after the day the appointment was made.

Alternatively, an emergency controller must be appointed under section 159 if a state of emergency is declared under section 156 of the Act. There is no requirement to review that appointment, nor is there a time limit placed on the appointment, as the appointment is dependent on the existence of the state of emergency.

On 2 January 2020 the ACT Emergency Services Commissioner was appointed as the emergency controller. Due to the extended nature of the emergency, the appointment ultimately lasted for 39 consecutive days. As a result, the review and reappointment of the emergency controller occurred multiple times. Whilst all legislative and time requirements were met in this instance, in the case of extended emergencies the current process raised the risk of administrative error in the appointment process.

The Bill extends the maximum appointment period (where the appointment is not made in conjunction with declaring a state of emergency) to be a maximum of 28 days. The Bill also removes the current obligation on the Chief Minister to review the appointment of the emergency controller (where a state of emergency has not been declared) no later than 48 hours after the appointment was made. This requirement has been replaced with a requirement for the emergency controller to advise the Chief Minister and the Minister for Police and Emergency Services at least every 7 days about the status of the emergency and (for a declared state of emergency) whether the emergency controller considers the declaration is still justified. The Bill imposes a further requirement that if the Chief Minister or Minister decide, based on the advice from the emergency controller, that the declaration or appointment is no longer justified, they must revoke the declaration or appointment. This obligation to revoke is in addition to their existing discretion to amend the period of appointment or revoke the appointment at any time. These requirements significantly strengthen the human rights framework for the Act, ensuring that any emergency declaration or appointment of an emergency controller, which may see a reasonable limitation on a number of human rights, is limited in duration.

The Bill also establishes a power for the Chief Minister to appoint a deputy emergency controller. The deputy emergency controller works under the direction of the emergency controller to support the emergency controller, as well as acting for the emergency controller when the emergency controller is unable to exercise their functions. This may occur if the emergency controller is absent due to illness or to

rest. The deputy emergency controller may exercise all the powers of the emergency controller whilst acting for the emergency controller.

Creating the power to appoint a deputy emergency controller brings the ACT into line with the majority of Australian jurisdictions.

The Bill also makes a number of changes to consolidate the provisions for the appointment, functions and powers of the emergency controller. Currently the Act differentiates these depending on whether the appointment is made in conjunction with the declaration of a state of emergency or not. This creates an unnecessary complexity in determining which section applies at any particular point in time. For instance, currently the emergency controller draws their powers from either section 150C or 160A of the Act. The applicable section depends on whether a state of emergency has been declared or not. The powers granted to the emergency controller under either scenario are identical. The practical effect of conferring powers on the emergency controller in this manner means that any delegations given by the emergency controller under section 150C lapse if a state of emergency is declared and the emergency controller is given their powers under section 160A.

Consolidating these provisions provides certainty in planning and will simplify administrative processes during those emergencies for which an emergency controller has been appointed. There are no changes to the actual powers available to the emergency controller from this change. There has also been no substantive change to the appointment requirements or functions of the emergency controller – the provisions have simply been consolidated.

The Bill also amends the immunity provisions applying across relevant ACT legislation to include the emergency controller and any person under the control of the emergency controller. The Act confers broad powers on the emergency controller and chief officers and members of the emergency services to protect and preserve life, property and the environment. Exercising those functions may see those personnel commit an offence under other ACT legislation. For this reason, relevant legislation contains an exemption for actions taken by certain members of any emergency service in an emergency.

This Bill extends that exemption to include the emergency controller and persons under the control of the emergency controller. While the powers of the emergency controller already operate despite any other territory law, this amendment removes any uncertainty as to whether the exemption extends to persons acting under the control of the emergency controller. The legislation amended is the *Tree Protection Act 2005*, the *Lakes Act 1976*, the *Water Management and Resource Recovery Act 2016*, *Nature Conservation Act 2014*, *Environment Protection 1997*, the *Water Resources Act 2007*, the *Heritage Act 2004*, and the *Fuels Rationing Act 2019*.

CONSULTATION ON THE PROPOSED APPROACH

The whole of ACT Government review of the bushfire season saw broad consultation with members of the Security and Emergency Management Senior Officials Group, incorporating representatives of all ACT Government Directorates and relevant external agencies.

The Legislation, Policy and Programs and Security and Emergency Management Branches in the Justice and Community Safety Directorate were consulted in relation to the amendments, as were ACT Policing and the ACT Human Rights Commission.

CONSISTENCY WITH HUMAN RIGHTS

Rights engaged

The Bill may be considered to engage the following rights under the *Human Rights Act 2004* (HRA):

- Section 8 – right to equality and non-discrimination;
- Section 9 – right to life;
- Section 12 – right to privacy;
- Section 13 – freedom of movement;
- Section 15 – peaceful assembly and freedom of association; and
- Section 18 – right to liberty and security of person

Section 28 (1) 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) 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 purposes; and
- (e) Any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

The limits that are placed on human rights by the Bill are reasonable and justifiable in a free and democratic society. An assessment of the Bill's impact on relevant provisions of the HRA, against all factors in section 28 (2), is provided below.

Rights Promoted

The Bill engages and promotes a number of rights, particularly the right to life pursuant to section 9 of the HRA. The primary purpose of the Bill is to strengthen the emergency management framework within the ACT, which has the goal of protecting life, property and the environment. This purpose supports the right to life for everyone in the ACT.

Rights Limited

This Bill may limit the following rights:

- Section 8 – right to equality and non-discrimination;
- Section 12 – right to privacy;
- Section 13 – freedom of movement;
- Section 15 – peaceful assembly and freedom of association; and
- Section 18 – right to liberty and security of person.

1. Nature of the right and the limitation (s28 (a) and (c))

Section 8 (2) of the HRA provides that everyone has the right to enjoy his or her human rights without distinction or discrimination of any kind. Section 12 provides that everyone has the right not to have his or her privacy or home interfered with unlawfully or arbitrarily. Section 13 provides that everyone has the right to move freely within the ACT and to enter and leave it. Section 15 provides that everyone has the right of peaceful assembly and the right to freedom of association. Section 18 provides that everyone has the right to liberty and security of person. In particular, no-one may be arbitrarily detained. No-one may be deprived of liberty, except on the grounds and in accordance with the procedures established by law.

In addition, article 17 of the Universal Declaration of Human Rights provides that no one shall be arbitrarily deprived of his property.

The amendments in the Bill have the potential to limit each of these rights, as the amendments allow an emergency controller to be appointed for a longer period of time than currently provided for. The Bill also provides for the appointment of a deputy emergency controller who may exercise the powers of the emergency controller when the emergency controller is unable to exercise their functions.

An emergency controller or deputy emergency controller may be appointed when there is an emergency that, because of its scale or nature, presents a significant danger to the health or safety of people, animals or property in the ACT or to the environment of the ACT; or presents a significant risk of disruption of essential

services in the ACT. Once appointed, the emergency controller may exercise a broad range of powers to manage the response to the emergency.

These powers include the ability to:

- direct the movement of people, potentially limiting freedom of movement, freedom of association and the right to liberty;
- direct the owner of property to place the property under the control of the emergency controller, or take possession of premises, both potentially limiting the right to privacy and the right to property under the Universal Declaration of Human Rights
- direct a person to give information or produce documents, potentially limiting the right to privacy; and
- use any necessary and reasonable force to remove a person obstructing response operations to another place, potentially limiting the right to liberty and security of person.

The application and enforcement of these emergency powers has the potential to result in discrimination against a number of vulnerable groups, including Aboriginal and Torres Strait Islander people, people with disabilities or mobility issues, women, children and young people, or people living in poverty. The potential discrimination against these categories of people may arise due to their higher rates of engagement with law enforcement, the increased likelihood that they may need to escape or secure protection from violence or abuse in their place of residence, or because their socio-economic status, including homelessness, makes them more likely to be present in public places. Any directions made by the emergency controller could result in an adverse impact on people in these categories.

At international law it is recognised that during a state of public emergency which threatens the life of the nation, that governments may take measures which significantly limit or derogate from certain human rights, to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.¹ The Bill does not seek to derogate from any human rights obligations, and the limitations imposed by the Bill are justifiable and compatible with the HRA given the emergency contexts in which they are applicable. As discussed below, the amendments introduced in this Bill pursue the legitimate aim of protecting and preserving life and property, and are necessary and

¹ Article 4 of the International Covenant on Civil and Political Rights; UN Human Rights Committee, *CCPR General Comment No. 29: Article 4: Derogations during a state of emergency*, 72nd sess, UN Doc CPR/C/21/Rev.1/Add.11 (31 August 2001) ('General Comment No. 29').

proportionate to respond to the particular threat posed to the ACT community during emergency situations to which these amendments apply.

2. *Legitimate purpose (s28 (b))*

The objective sought to be achieved by the Bill is to protect and preserve life and property.

The appointment of an emergency controller can only occur where there is an emergency that, because of its scale or nature either presents a significant danger to the health or safety of people, animals or property in the ACT or to the environment of the ACT, or presents a significant risk of disruption of essential services in the ACT. The limited scope for appointment is reflected in the fact there has been only one appointment of an emergency controller since the Act was introduced in 2004.

The amendments made by this Bill allow for the appointment of an emergency controller for an extended period of up to 28 days (up from 7) where the appointment is not made in conjunction with the declaration of a state of emergency.

The amendments allows for greater certainty and planning during the emergency response. It also ensures continuity of powers to manage the response to the emergency. It is a fundamental tenant of emergency response operations that there needs be clear and unambiguous arrangements to provide for decisive leadership and accountability.

3. *Rational connection between the limitation and the purpose (s28 (d))*

The limitations on the right to property, equality and non-discrimination, right to privacy, freedom of movement, freedom of association and the right to liberty and security of person are all necessary to ensure the purpose of the Bill – to protect and preserve life and property – is achieved.

The powers available to an emergency controller are broad and comprehensive, reflecting the all-hazards approach to emergency management in the Territory which may see an emergency controller appointed in response to a myriad of emergencies. In an emergency situation, it may be necessary for an emergency controller to order evacuations or close roads and buildings. Evacuations from an area of danger or potential danger is a critical potential risk mitigation strategy to lessen the impact of any hazard. Information may be sought about the nature of hazardous materials stored on a premise to inform planning. Emergency responders acting under direction from the emergency controller may need to enter land or premises to rescue people or to access the hazard.

Any restrictions on any rights are necessary to ensure the emergency controller can plan for, and respond to, any emergency situation which is threatening life and property in the Territory.

4. Proportionality (s28 (e))

The amendments are considered to be the least restrictive means reasonably available to achieve the objective of the Bill. The unprecedented fire behaviour experienced over the previous bushfire season demonstrated that the current provision in the Act allowing for an emergency controller to be appointed for only up to 7 days is ineffective. Climate change modelling has forecasted that the ACT is likely to experience more unpredictable weather. This is expected to lead to an increase in both the frequency and severity of severe weather conditions which may directly result in, or increase the likelihood of, natural disasters impacting the Territory which may give rise to the declaration of a state of emergency or the appointment of an emergency controller.

The amendments in the Bill are necessary to preserve life and respond in a reasonable and proportionate way to an emergency.

While the powers enlivened by the appointment of an emergency controller or deputy emergency controller are significant, the Act already includes safeguards to minimise the limitations on human rights.

There is a statutory time limit on the appointment of an emergency controller where a state of emergency has not been declared. While this Bill extends that time limit to 28 days, the time limit remains a safeguard. The ACT is the only Australian jurisdiction that places a legislated timeframe on the appointment of the equivalent role where it exists.

The Chief Minister may revoke the appointment of an emergency controller or deputy emergency controller at any time.

The Chief Minister may direct that an emergency controller or deputy emergency controller is not have a power, or part of a power, otherwise conferred on them by the Act. The Chief Minister may also give written directions to the emergency controller or deputy emergency controller about the exercise of their functions. The emergency controller or deputy emergency controller must also give the Chief Minister or Minister for Police and Emergency Services any information about their operations that they may ask for.

The Act also contains a simplified scheme to provide reasonable compensation to those persons who suffer loss because of an act or omission by the emergency controller or deputy emergency controller. Section 169 provides that

those persons may simply apply to the Minister for Police and Emergency Services, particularising their loss, the amount claimed and the basis for the amount claimed. The Minister is obliged to consider the request for compensation, and should a request be denied, the person retains the right to seek compensation through court proceedings.

The power in section 150C to direct a person to give information, answer questions, or produce documents or anything else is limited to information or documents that is reasonably needed. Similarly, the power in section 168 to remove persons – thereby potentially infringing their right to liberty and security of person – only applies if the emergency controller believes on reasonable grounds that the person is obstructing or threatening to obstruct response or recovery operations. Any force used must be limited to what is necessary and reasonable. This power expressly excludes any power to detain following the removal.

The Act also provides that an emergency controller or deputy emergency controller may not be appointed in relation to ending an industrial dispute or dealing with a riot or other disturbance.

As a public authority under the HRA the emergency controller or deputy emergency controller must give proper consideration to relevant human rights in exercising their powers and must not make act in a way that is incompatible with a human right (section 40B of the HRA).

Finally, this Bill confers two new safeguards, with new section 166A requiring the emergency controller to advise the Chief Minister and the Minister for Police and Emergency Services at least every 7 days about the status of the emergency, and (if a declaration of a state of emergency has been made) whether the emergency controller considers the declaration of the state of emergency is still justified. New section 166B obliges the Chief Minister and Minister for Police and Emergency Services to revoke the emergency declaration or appointment of an emergency controller if they decide, based on the advice provided under section 166A, that the appointment or declaration is no longer justified.

These new provisions will ensure the Chief Minister and Minister for Police and Emergency Services remain informed about the emergency response efforts, and that the Chief Minister has the appropriate information to make an informed judgement about whether to end the appointment or state of emergency.

There is no requirement to make public the advice provided by the emergency controller, noting that in a national security incident that led to the appointment of an emergency controller or a state of emergency the emergency controller's advice may be of a sensitive or classified nature.

Emergencies Amendment Bill 2020

Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Emergencies Amendment Bill 2020**. In my opinion, having regard to the Bill and the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly is consistent with the *Human Rights Act 2004*.

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Gordon Ramsay MLA
Attorney-General

CLAUSE NOTES

Clause 1 Name of Act

This is a technical clause that names the short title of the Act. The name of the Act will be the Emergencies Amendment Act 2020.

Clause 2 Commencement

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

Clause 3 Legislation amended

This clause provides that the Act amends the *Emergencies Act 2004*. Consequential or related amendments are also made to the *Tree Protection Act 2005*, the *Lakes Act 1976*, the *Water Management and Resource Recovery Act 2016*, the *Nature Conservation Act 2014*, the *Retirement Villages Act 2012*, the *Environment Protection 1997*, the *Water Resources Act 2007*, the *Heritage Act 2004* and the *Fuels Rationing Act 2019*.

Clause 4 Division 7.3.1A heading

This clause amends the heading for division 7.3.1.A to reflect changes made by clauses 5 to 11 of this Bill. Those clauses consolidate the provisions relating to the appointment of an emergency controller, and their functions and powers, into the one division. Previously those provisions were contained into 2 divisions (division 7.3.1.A and 7.3.1B) dependant on whether the appointment coincided with the declaration of a state of emergency.

Clause 5 Section 150A

This clause substitutes the existing section 150A of the Act. Existing section 150A confers a power on the Chief Minister to appoint an emergency controller, and prescribes the appointment requirements and conditions, when a state of emergency has not been declared. Separately, existing section 159 required the Chief Minister to appoint an emergency controller if a state of emergency was declared.

This clause consolidates the power to appoint an emergency controller, and the appointment requirements and conditions for that appointment, into the one section, regardless of whether the appointment is made in conjunction with the declaration of a state of emergency or not.

The clause also extends the maximum period for which an emergency controller may be appointed when a state of emergency has not been declared from the existing 7 days to not longer than 28 days. This change will provide certainty for emergency response operations for emergency response efforts and reduce administrative

burden in emergency situations. The 2019/20 bushfires demonstrated that natural disasters may lead to emergencies impacting the Territory for longer than 7 days. A power to appoint an emergency controller for no more than 28 days provides flexibility in appointment and will be sufficient for the majority of emergency situations. The Chief Minister has the power to reappoint the emergency controller should the emergency extend for longer than 28 days.

There has been no change to the preconditions for appointing an emergency controller, nor to the requirement that an emergency controller must be appointed if a state of emergency has been declared.

There has also been no change to the existing provision declaring that the requirement in division 19.3.3 for the *Legislation Act 2001* for a Minister to consult with the appropriate standing committee of the ACT Legislative Assembly prior to appointing someone to a statutory appointment does not apply to the appointment of an emergency controller. As noted in the Explanatory Statement for the Emergencies Amendment Bill 2018, which introduced the existing provision disapplying the consultation requirement, a requirement to consult creates the risk of a delay in the appointment of an emergency controller. It also creates the risk that where this requirement is not complied with, and the Chief Minister fails to consult with the appropriate Legislative Assembly standing committee, the appointee would not have access to the necessary powers and protections under the Act.

New subsection (7) details when the appointment of an emergency controller ends. Subsection (7) (a) describes when the appointment ends in relation to an appointment outside a declared state of emergency, while subsection (7) (b) relates to an appointment in conjunction with a declared state of emergency.

Clause 6 Sections 150B and 150C headings

This clause replaces the headings for existing sections 150B and 150C.

The new heading reflects that section 150B and 150C, because of their relationship to section 150A, now applies to the appointment of an emergency controller both in conjunction with the declaration of a state of emergency and separately to. Previously sections 150B and 150C only applied to the appointment of an emergency controller outside of the declaration of a state of emergency.

Clause 7 Section 150C (2) (c)

This clause corrects a grammatical error, to refer to ‘the emergency controller’ rather than ‘an emergency controller’.

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

This clause inserts an example of ‘information’ that the emergency controller can direct a person to provide under section 150C (2) (d). Under this section the

emergency controller may direct a person to give information, answer questions, or produce documents or anything else, reasonably needed. The example inserted relates to the meaning of *information* and is ‘personal health information or a health record’. This reflects the broad scope of information which the emergency controller may direct to be produced, which includes health records or personal health information under the *Health Records (Privacy and Access) Act 1997* and personal information under the *Information Privacy Act 2014*.

The power to access information or documents may be crucial for the emergency controller to undertake their functions of managing the response to the emergency. An example of when this may occur is in relation to a nursing home that is in the path of a fastmoving bushfire. The emergency controller may require access to personal or health data to ensure that appropriate plans are in place to safely evacuate the residents and ensure that any medical needs of those residents are met.

While the power of the emergency controller to direct a person to provide this information is not subject to any other Territory law, meaning that the emergency controller is not required to use that information in accordance with any requirement of the *Health Records (Privacy and Access) Act 1997* or the *Information Privacy Act 2014*, the power to access information is limited. The power is limited to accessing information or documents that are reasonably needed, and the exercise of the power must be related to the management of the emergency.

Clause 9 Section 150C (2) (e)

This clause corrects a grammatical error by inserting a missing comma.

Clause 10 New sections 150CA and 150CB

This clause inserts new sections 150CA and 150CB.

Section 150CA creates a new power for the Chief Minister to appoint a deputy emergency controller. The prerequisites for appointing a deputy emergency controller (set out in new 150CA (1)) are the same as for the appointment of an emergency controller. There is no obligation on the Chief Minister to appoint a deputy emergency controller, even if a declared state of emergency.

Consistent with the appointment of an emergency controller, a deputy emergency controller appointed outside a declared state of emergency may only be appointed for a term of no longer than 28 days, although the person may subsequently be re-appointed.

If a deputy emergency controller is appointed outside a state of emergency, new 150CA (5) provides that they are taken to remain in that role if a state of emergency is declared, although the Chief Minister may appoint someone else to the role.

The section also imposes an obligation on the Chief Minister to appoint someone only if they have the management, professional and technical expertise to undertake

the role, and to consult with either the emergency controller or the Minister for Police and Emergency Services, the Security and Emergency Management Senior Official Group, or both prior to making the appointment.

New section 150CB details the two functions of the deputy emergency controller. The first function is to support the emergency controller to perform the emergency controller's functions, as directed by the emergency controller. The deputy emergency controller must act under the direction of the emergency controller and cannot act or exercise powers independently. This ensures accountability and certainty of command arrangements.

The second function of the deputy emergency controller is to act as the emergency controller when the emergency controller is unavailable or for any other reason is unable to perform their functions. This could occur if the emergency controller is ill or resting.

Section 150CB (b) has the effect of creating a standing acting arrangement for the deputy emergency controller which takes effect when the emergency controller is unavailable or unable to exercise their functions. Division 19.3.2A of the *Legislation Act 2001* deals with standing acting arrangements. Section 225B of that Act provides that a person acting under a standing acting arrangement has all the functions of the occupant of the position, and that all territory laws apply in relation to the person as if the person were the occupant of the position.

That means that the deputy emergency controller has the functions of the emergency controller when acting as emergency controller, and has all the powers, exemptions and obligations of the emergency controller during that period. This ensures there is a seamless transfer of power between the emergency controller to the deputy emergency controller when the emergency controller is unavailable or unable to exercise their functions.

Clause 11 Sections 159 to 160A

This clause omits sections 159, 160 and 160A. Those sections created a power to appoint an emergency controller for a declared state of emergency and specified the functions and powers of the emergency controller appointed under that provision.

Those sections are redundant and so have been removed following the consolidation of the provisions conferring the power to appoint an emergency controller, and the functions and powers they may exercise, into sections 150A, 150B and 150C. Those sections now apply irrespective of whether the emergency controller is appointed independently of the declaration of a state of emergency or in conjunction with such a declaration.

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

This clause is consequential on the omission of section 160A and amends section 164 (1) to remove a redundant reference to section 160A.

Clause 13 New sections 166A and 166B

New subsection 166A (1) imposes a requirement on an emergency controller to advise the Chief Minister and the Minister for Police and Emergency Services at least every 7 days about the status of the emergency, whether the emergency controller considers the declaration of a state of alert / state of emergency (if one was declared) is still justified, and whether the emergency controller considers their appointment is still justified. Subsection 166A (2) provides that a failure of the emergency controller to advise on whether a declaration of a state of emergency is still justified does not affect the validity of the declaration itself. Subsection (1) is an important safeguard that provides a mechanism for review and minimise any limitations of the Bill on human rights.

New section 166B is another important human rights safeguard. Noting the significant powers that may be exercised by an emergency controller, this section places an obligation on the Minister for Police and Emergency Services and the Chief Minister to revoke an emergency declaration and the appointment of an emergency controller if they decide that the appointment is no longer justified. In doing so, the section provides that the Minister for Police and Emergency Services and the Chief Minister would consider the advice provided by the emergency controller under new section 166A.

These related provisions work together to oblige the emergency controller and the Chief Minister/Minister to actively consider whether the emergency declaration and/or appointment is still justified, and if not, to revoke the declaration/appointment. These provisions are important safeguards to ensure that any emergency declaration/appointment remains in place only for as long as it is justifiable.

Clause 14 Compensation—emergencies
Section 169 (1)

This clause makes a consequential change to section 169 (1) by removing a redundant reference to section 160A (which has been omitted by this Bill) and updating the reference to the heading for section 150C. There has been no substantive change to this section.

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

This clause is consequential on the amendment of the heading of section 150C and the omission of section 160A. It removes a redundant reference to section 160A and

amends a reference to section 150C to refer to the new heading of that section. Those sections were amended to consolidate the appointment provisions, and the functions and powers, of an emergency controller into the one provision. There is no substantive change to the section, and a person's right to seek compensation has not been altered.

Clause 16 Section 199 (1), note

This clause is consequential on the omission of section 160A and removes a redundant reference to that section in the note to subsection 199 (1).

Clause 17 Dictionary, new definition of *deputy emergency controller*

This clause inserts a definition of deputy emergency controller to the dictionary of the Act. The definition refers to the person appointed under section 150CA (2). That new section confers a power for the Chief Minister to appoint a deputy emergency controller.

Clause 18 Dictionary, definition of *emergency controller*

This amendment to the definition of emergency controller in the Act is consequential on the consolidation of the power to appoint an emergency controller into section 150A, which will apply both in conjunction with the declaration of a state of emergency as well as any other time. It removes a reference to the omitted section 159.

Schedule 1 Consequential amendments

Parts 1.1 to 1.5, 1.7 to 1.9

Part 1.1 amends section 6 of the *Environment Protection Act 1997*. That section provides that that Act 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 member of an emergency service, a person under the control of a chief officer of an emergency service, and a police officer.

Section 6 recognises that the *Emergencies Act 2004* confers broad powers on members of the emergency services to protect and preserve life, property and the environment. Exercising those functions may see those personnel commit an offence under other ACT legislation, or otherwise breach a legislative requirement. For this reason, section 6 contains an exemption for actions taken by certain members of any emergency service in an emergency. Similar or identical exemption provisions exist in a number of territory laws.

This part amends the exemption to include the emergency controller as well any person under the control of the emergency controller. It also inserts a signpost definition for *emergency controller*. This ensures that the exemption applies to all persons exercising a function under the *Emergencies Act 2004*, including when an emergency controller has been appointed.

It is not considered that there are any human rights implications arising from these amendments. The amendments exempt the person from the operation of regulatory offences, and it is not considered that exempting persons operating under the control of the emergency controller would infringe any individual's human rights. Any limitation if in fact it did occur would be minor and justifiable, noting that any limitation would only occur for the purpose of protecting life or property.

Part 1.2 makes a similar amendment to section 16 (2) of the *Fuels Rationing Act 2019*.

Part 1.3 makes a similar amendment to section 7 of the *Heritage Act 2004*.

Part 1.4 makes a similar amendment to section 7 of the *Lakes Act 1976*.

Part 1.5 makes a similar amendment to section 7 of the *Nature Conservation Act 2014*.

Part 1.7 makes a similar amendment to section 19 of the *Tree Protection Act 2005*.

Part 1.8 makes a similar amendment to section 6 of the *Waste Management and Resource Recovery Act 1976*.

Part 1.9 makes a similar amendment to section 28 of the *Water Resources Act 2007*.

Part 1.6 Retirement Villages Act 2012

This part is a consequential amendment and removes redundant references to omitted section 160A.