

## CLAUSE NOTES

### *Emergency Management Amendment Bill 2018*

#### **Background:**

The Bill introduces amendments to the *Emergency Management Act 2006* that address a number of recommendations arising from an independent review of Tasmania's emergency management arrangements, undertaken by the Department of Justice in 2015-16.

#### **Clause 1: Short title**

Specifies the name of the proposed Act as *Emergency Management Amendment Act 2018*.

#### **Clause 2: Commencement**

Specifies that the Act commences on the day on which it receives Royal Assent.

#### **Clause 3: Principal Act**

This clause provides that a reference in this Act to the Principal Act is a reference to the *Emergency Management Act 2006* (No.12 of 2006).

#### **Clause 4: Section 3 amended (Interpretation)**

This clause amends section 3 of the Principal Act with consequential definitions by:

- Defining *arrangements document*, which refers to the Tasmanian Emergency Management Arrangements (TEMA)
- Adding to the definition of *emergency management* that measures taken to resist or adapt to an emergency (which relate to disaster resilience) can also be defined as emergency management
- Changing the term *Tasmanian Emergency Management Plan* to Tasmanian Emergency Management Arrangements (TEMA)
- Defining a new term, *evacuation centre*, which relates to new recovery provisions and the functions for municipal authorities
- Defining a new term, *Ministerial Committee*, which relates to the new provisions for a standing Ministerial Committee for Emergency Management
- Defining new recovery-related terms: *Municipal Recovery Coordinator*, *recovery*, *recovery centre*, *Recovery Task Force*, *Recovery Coordinator*, *Secretary responsible to the Premier* and *State Recovery Advisor*

**Clause 5: Sections 6A, 6B and 6C inserted – Ministerial Committee for Emergency Management**

This clause makes new administrative provisions for a standing Ministerial Committee, including:

- Establishment and membership: Established by the Premier, with membership described as the Premier, Deputy Premier, Minister responsible for the Principal Act, State Controller and any other Minister, person or holder of a position that the Premier considers appropriate. Unless otherwise determined by the Premier, the Premier is the chairperson
- Procedure: The Premier may specify the terms of reference. The chairperson may invite, allow or require a person to attend a meeting to give advice and opinions.
- Functions and powers: Functions are determined by the Premier, imposed by this or any other Act, or as included in the Ministerial Committee terms of reference. Powers include:
  - Impose functions relating to emergency management on the State Emergency Management Committee, State Recovery Coordinator or State Recovery Advisor;
  - Require the State Controller to provide any necessary information;
  - Establish sub-committees for the purpose of assisting the Ministerial Committee; and
  - Do all other things necessary or convenient to be done in connection with the performance and exercise of its functions and powers.
  - These functions and powers may be performed by the Premier alone if a state of emergency has been declared, the Premier is satisfied on reasonable grounds that a function or power of the Ministerial Committee must be performed or exercised within a limited period, and a quorum of the Ministerial Committee is unable to be formed within that period.

**Clause 6: Section 8 amended (Membership of State Committee)**

This clause amends section 8 of the Principal Act and requires the State Controller (SEMC Chairperson) to appoint any member of the State Emergency Management Committee (SEMC) as the SEMC Executive Officer instead of the role automatically going to the Director State Emergency Service if no appointments are made. The instrument of appointment is to specify a period for the appointment and include the functions.

**Clause 7: Section 9 amended (Functions and powers of State Committee)**

This clause changes the term “Tasmanian Emergency Management Plan” to Tasmanian Emergency Management Arrangements (TEMA) in accordance with revised interpretations.

**Clause 8: Section 10 amended (State Emergency Management Controller and Deputy)**

This clause updates nomenclature to reflect current emergency management structures within the Department of Police, Fire and Emergency Management. Instead of the Deputy State Controller role being allocated to the “Deputy for the Head of Agency for the Department”, it is allocated to the Deputy Commissioner of Police.

**Clause 9: Section 12 repealed**

This repeals section 12 of the Principal Act, which makes provision for a Ministerial Committee, and has been replaced with new provisions at clause 5.

**Clause 10: Section 15 amended (Membership of Regional Committees)**

In line with clause 6, this clause amends section 15 of the Principal Act by requiring the State Controller (SEMC Chairperson) to appoint any member of the Regional Emergency Management Committee (REMC) as the REMC Executive Officer instead of the role automatically going to a member of the State Emergency Service if no appointments are made. The instrument of appointment is to specify a period for the appointment and include the functions.

**Clause 11: Section 16 amended (Functions and powers of Regional Committees)**

This clause amends section 16 of the Principal Act by:

- Requiring the Regional Committee to report to the State Controller on any regional matters that relate to functions and powers of the State Controller or SEMC instead of just “functions”.
- Including the power for a Regional Committee to establish subcommittees for the purpose of assisting it in the performance and exercise of its functions and powers.

**Clause 12: Section 17 amended (Regional Emergency Management Controllers and Deputies)**

This clause amends section 17 of the Principal Act to clarify that the State Controller approves appointments of Regional Controllers and Deputy Regional Controllers on occasions these appointments are not made by the Minister.

**Clause 13: Section 21 amended (Membership of Municipal Committees)**

This clause amends section 21 of the Principal Act to:

- Include the Municipal Recovery Coordinator as a member of the Municipal Emergency Management Committee.
- Require the Municipal Chairperson to appoint any member of the Municipal Emergency Management Committee (MEMC) as the MEMC Executive Officer instead of the role automatically going to the Municipal Coordinator. The instrument of appointment is to specify a period for the appointment and include the functions.

**Clause 14: Section 22 amended (Functions and powers of Municipal Committees)**

This clause amends section 22 of the Principal Act by:

- Requiring the Municipal Committee to report to the Regional Controller on any municipal matters that relate to functions and powers of the Regional Controller or Regional Committee instead of just “functions”.

- Including the power for a Municipal Committee to establish subcommittees for the purpose of assisting it in the performance and exercise of its functions and powers.

**Clause 15: Section 24 amended (Functions and powers of Municipal Coordinators)**

This clause amends section 24 of the Principal Act by including the Municipal Coordinator functions to:

- Establish and coordinate municipal-level evacuation centres and recovery centres; and
- Other functions imposed by a Municipal Emergency Management Plan.

**Clause 16: Part 2, Division 3A inserted (Administration of Recovery)**

This clause introduces to the Principal Act a new Division on the administration of recovery. It covers provisions on:

- The establishment of a State Recovery Advisor, who, unless determined by the Premier, will be the Secretary responsible to the Premier;
- Functions and powers of the State Recovery Advisor:
  - Preparation and maintenance of plans and arrangements for recover;
  - Support to the State Controller, Regional Controllers and State Recovery Coordinator;
  - Advice to the Premier or the Ministerial Committee;
  - Oversight of transition of responsibility for recovery; and
  - Other functions imposed by the Premier, Ministerial Committee, the principal Act or as prescribed.
- The establishment of a Recovery Taskforce by the Secretary responsible to the Premier when determined necessary by the Premier, or Ministerial Committee in the Premier's absence.
- The establishment of a State Recovery Coordinator, appointed by the Premier for a specified term and with specific functions described in the instrument of appointment. The State Controller is to be notified of the appointment. The amendment adds that, if the appointee is a State Service officer or employee, he/she may be appointed at State Recovery Coordinator in conjunction with his/her State Service employment.
- The establishment of Recovery Committees with direction on chairperson, membership and terms of reference by the Ministerial Committee, State Controller, State Recovery Advisor, or State Recovery Coordinator for the coordination of recovery, engagement with affected communities and any other purpose related to recovery.
- The provision of transition of responsibility arrangements for when responsibility for recovery needs to shift from the State Controller to the relevant recovery authority.

- The establishment of a Municipal Recovery Coordinator, appointed by the General Manager of a council for a specified term. The position may hold office in conjunction with any other appointment, position or office. If no appointment is made the functions and powers of the Municipal Recovery Coordinator are to be performed by the Municipal Coordinator.
- Functions and powers of the Municipal Recovery Coordinator with respect to the municipal area:
  - Ensure recovery arrangements are in place to implement recovery, including the establishment and coordination of evacuation centres and recovery centres;
  - Ensure instructions and decisions are transmitted and carried out;
  - Advise the Regional Controller if any powers or declarations under the Act should be used for recovery;
  - Request resources of another municipal area to implement recovery processes;
  - Assist a recovery committee within the municipal area;
  - Assist and advise the Municipal Chairperson, Municipal Committee or the council on matters with respect to recovery; and
  - Other functions imposed by the Municipal Committee, Municipal Coordinator, Municipal Plan, the principal Act or as prescribed.
  - Power to do all things necessary or convenient to perform the above functions.
  - Keep the Municipal Coordinator informed.

**Clause 17: Section 30 amended (Delegation by committees and persons)**

This clause amends section 30 of the Principal Act by including the new recovery positions described in clause 16 and existing Deputy positions on the list of positions who have the power of delegation under the Act.

**Clause 18: Section 30A inserted**

This clause provides a new section 30A within the Principal Act. It allows the State Controller, Deputy State Controller, Regional Controllers, Deputy Regional Controllers, Municipal Coordinator and Deputy Municipal Coordinators to subdelegate any function or power delegated to them, other than this power of subdelegation. This does not apply to any delegated functions or powers if the delegation specifically states that the functions or powers are not to be subdelegated.

**Clause 19: Section 31 amended (Authorised officers)**

This clause amends section 31 of the Principal Act by updating the list of authorised officers or persons who may authorise another person to act as an authorised officer with the new recovery positions: State Recovery Advisor, State Recovery Coordinator and the Municipal Recovery Coordinator.

**Clause 20: Part 3, Division 1: Heading amended**

This clause amends the heading for Part 3, Division 1 to reflect the inclusion of emergency management “arrangements” to “plans” within this Division.

**Clause 21: Section 32 amended (TEMA)**

This clause amends section 32 of the Principal Act to reflect the change in terminology from “Tasmanian Emergency Management Plan” to Tasmanian Emergency Management Arrangements, or “TEMA”.

**Clause 22: Section 40 amended (Authorisation of emergency powers)**

This clause amends section 40 of the Principal Act to:

- Clarify, per existing, but often misunderstood interpretation of “emergency” that emergency powers can be authorised on occasions where there is a “significant threat” of an emergency;
- Broaden the area from which an emergency may impact on Tasmania from “elsewhere in Australia” to “outside Tasmania”; and
- Clarify that the authorisation for the exercise of all emergency powers, instead of specific emergency powers can be made, if required.

**Clause 23: Part 3, Division 3A inserted (State of alert)**

This clause makes provision for a new declaration of a state of alert by the State Controller if satisfied that there is a significant threat of an emergency, or an emergency is occurring outside Tasmania that may impact on Tasmania. In line with authorisations of emergency powers, the declaration:

- May initially be oral, providing it is confirmed in writing as soon as practicable;
- Must specify that it is made under the Principal Act;
- Must describe the general nature of the emergency;
- Is to describe the area of Tasmania involved;
- Is to describe the emergency powers exercisable by Regional Controllers or other person;
- Is to specify that it takes effect immediately, or specify the date and time, or occasion that it takes effect; and
- Is to specify the period of time it has effect, the date and time that it ceases to have effect, or the event which marks the occasion where it ceases to have effect.

Additionally a declaration of a state of alert:

- May not be made to have effect for a period exceeding 7 days;

- May be extended by the State Controller for up to 7 days at a time, if satisfied that there are reasonable grounds to do so;
- May be revoked by the State Controller at any time;
- Is automatically revoked if a state of emergency is declared in respect of the emergency to which the state of alert relates;
- The extension, amendment or revocation of a declaration of a state of alert may be oral, but must be confirmed in writing as soon as practicable.

The new Division also makes related provision for:

- Authority under a declaration of a state of alert has certain limits: Persons authorised under the declaration to exercise emergency powers may only exercise those powers for the purpose of making preparations, or to mitigate the risks, in relation to the emergency to which the declaration relates. They may authorise another person to use all or any part of an emergency power if required.
- Duties if a state of alert is declared:
  - While in effect, the State Controller and applicable Regional Controller are to implement emergency management in relation to the emergency that the declaration relates as he/she considers appropriate, or in accordance with any relevant emergency management plan.
  - Subject to directions from the Premier, Minister or State Controller, the Regional Controller is to take action as he/she considers appropriate per any relevant emergency management plan, or take immediate action to use, direct and coordinate all available resources so as to counter the likely effects of the relevant emergency.
  - The Municipal Coordinator within the affected area is to advise and assist the relevant Regional Controller.
- Unless the State Controller has directed otherwise, a Regional Controller may authorise the exercise of all, or any, emergency powers within his/her region if:
  - The state of alert has been declared in respect of that region, part of that region, or the whole State.
  - The state of alert has been declared outside the region, but the Regional Controller is satisfied that the potential emergency that is the subject of the state of alert, may impact on that region to the extent that emergency powers may be required to protect persons from distress, injury or death; to protect property or environment from damage or destruction; or to mitigate the impact of the emergency on that region. Regional Controllers must keep the State Controller fully informed and if the State Controller is of the opinion that there is conflict between an authorisation under this section, and a separate authorisation of emergency powers under section 40 of the Principal Act, the State Controller may amend or revoke either authorisation as he/she considers appropriate.

**Clause 24: Section 42 amended (Declaration of state of emergency)**

This clause amends section 42 by simplifying the pre-conditions that need to be considered by the Premier when determining whether a state of emergency needs to be declared. The Premier no longer needs to be satisfied that the authorisation of emergency powers without a declaration of a state of emergency is insufficient, or may be insufficient, to manage the emergency. The other two pre-conditions for the Premier will remain, but with added clarity that there need only be a “significant threat” of an emergency: to be satisfied that an emergency, or significant threat of an emergency is occurring or has occurred in Tasmania; and/or the exercise of special emergency powers may be required.

The clause also provides an amendment to sub-section (3) (a) and (b) of the Principal Act by removing the work “not”, which corrects a drafting error within the Principal Act.

**Clause 25: Section 46 amended (Councils to use resources in emergency)**

This clause amends section 46 of the Principal Act to clarify that, when an emergency affects a municipal area, council resources are to be used in accordance with the Municipal Emergency Management Plan whether or not a state of emergency or a state of alert have been declared. On occasions where the plan is not applicable, directions on the use of council resources can be provided by the Municipal Chairperson, Municipal Coordinator or Municipal Committee. If the plan is not applicable and a state of emergency or alert has been declared in respect to the municipal area, the Regional Controller can also provide directions on the use of council resources for the purposes of managing the emergency.

**Clause 26: Section 56 amended (Workers’ compensation to or in respect of volunteers)**

This clause amends section 56 of the Principal Act and ensures volunteer emergency management workers who are registered in Tasmania receive the same workers compensation protections as employees when participating in authorised emergency management, or rescue and retrieval operations outside Tasmania.

**Clause 27: Section 67 inserted (Savings and transitional provisions on commencement of *Emergency Management Amendment Act 2018*)**

This clause inserts a new section 67 to the Principal Act to provide transitional provisions for the:

- Ministerial Committee, which takes effect on “commencement day”. At this time, the Ministerial Committee established under the existing section 12 (to be revoked) is abolished and the appointment of each member revoked to make way for the standing Ministerial Committee established per clause 5.
- Transition from a Tasmanian Emergency Management Plan to Tasmanian Emergency Management Arrangements (TEMA). Upon commencement day, the existing Tasmanian Emergency Management Plan will be approved and identified as the TEMA, which may be amended on or after that day. This document must be reviewed and updated for approval as the new TEMA within 365 days of commencement day.



**Clause 28: Schedule 1 amended (Emergency powers)**

This clause includes a new emergency power to Schedule 1 of the Principal Act to remove debris from, or demolish, premises if, in the opinion of the authorised officer, the removal or demolition is necessary to avert an emergency, or to minimise the possibility of aggravating an emergency or effects of an emergency. The reasonable notice provisions under sub-section (3) of Schedule 1 of the Principal Act shall apply to this new emergency power.

**Clause 29: Schedule 3 amended (Membership and meetings of committees)**

This clause amends the definition of “committee” to include the Ministerial Committee as a consequence of clause 5.

**Clause 30: Schedule 4 amended (Membership and meetings of committees)**

This clause amends section 12 of Schedule 4 by replacing Tasmanian Emergency Management Plan with TEMA to reflect the name change.

**Clause 31: Repeal of Act**

This clause repeals the *Emergency Management Amendment Act 2018* on the 365th day after commencement.