

DISASTER MANAGEMENT BILL 2003

EXPLANATORY NOTES

Short title

The short title of the Bill is “Disaster Management Bill 2003” which is a Bill to provide for matters relating to disaster management in the State, and for other purposes.

Policy objectives of the Bill and the reasons for them

The policy objective of the Bill is to help communities to mitigate the potential adverse effects of an event, to prepare for managing the effects of an event and to effectively respond to and recover from a disaster or emergency situation. These events can be natural, including cyclones, floods, storms or epidemics, or caused by human acts of omissions, such as failure of an essential service or a terrorist attack.

The Bill is designed to provide for effective disaster management for the State and to establish frameworks for management of the State Emergency Service (SES) and Emergency Services (ES) Units to ensure the effective performance of their functions.

The Bill replaces the *State Counter-Disaster Organisation Act 1975* (SCDO Act) which has a response-focused philosophy and does not reflect current policies and practices underpinning disaster management in Queensland and nationally. The Bill encompasses the comprehensive approach to disaster management through disaster mitigation, prevention, preparedness, response and recovery.

How the policy objectives will be achieved

The Bill provides a clearer framework for structures, functions and powers supporting the disaster management system in Queensland, enabling improved service delivery. It also clarifies the role and responsibilities of the SES in providing a volunteer local emergency service function. The Bill establishes volunteer ES Units that could perform rural fire, SES and first aid functions in rural and remote areas,

including Indigenous communities. With limited resources in those communities, ES Units could provide improved service delivery by offering a broader volunteer emergency service, well targeted to the specific requirements of the community.

The current three-tiered whole-of-Government disaster management arrangements and the partnership between the State and Local Governments and Indigenous Community Councils (referred to as Councils) for support to SES volunteers will continue. The Bill streamlines the current administrative arrangements by replacing the current State level peak disaster committee, known as the State Counter-Disaster Organisation, and its executive, the Central Control Group, with a single committee to be known as the State Disaster Management Group (State group), to be appointed by the Governor in Council.

The legislation requires the State group to prepare a State Disaster Management Plan. This Plan would continue to be a whole-of-Government process coordinated by Department of Emergency Services (DES). Existing requirements for District and Local counter disaster planning will continue in the form of disaster management plans consistent with guidelines which will be prepared to support the planning process.

The Bill requires Councils to establish a Local Disaster Management Group (local group). The local group is responsible for the development of the Local Disaster Management Plan, to include mitigation and counter disaster planning.

The Bill empowers the Premier and the Minister for Emergency Services at the State level, or the District Disaster Coordinator with approval of the Minister at the district level, to declare a disaster situation. As is the case with the current legislation, these declarations permit the use of special powers that may be required to safeguard a community from the effects of a natural or technological disaster or in the aftermath of a terrorist incident.

Currently the SCDO Act prevails over other Acts in the event of inconsistency. In contrast, the Bill enables declarations and powers to be exercised under other Acts in tandem with the proposed legislation. Special provision is made for directions to be given about the circumstances in which powers under other Acts may be exercised for the effective management of a declared disaster, after reasonable steps are taken to consult with the CEOs of other State government agencies. The *Police Powers and Responsibilities Act 2000* and the provisions of the *Public Safety Preservation Act 1986* for chemical, biological and radiological emergency powers are exempted from this provision.

The establishment of ES Units provides Councils with a more cost effective option for the delivery of emergency service functions. The ES Unit concept enables emergency service functions to be delivered through one integrated emergency service unit headed by an ES Unit Coordinator. It is proposed that the functions of the ES Unit would be aligned with existing SES search and rescue, Rural Fire Service fire fighting and prevention and Queensland Ambulance Service first responder activities. Such functions would be undertaken in accordance with the standards and policy of the relevant division of the DES. Recruitment of key officers would also be undertaken through established processes. The immediate benefits to Councils are that they are able to access and utilise the resources of three DES divisions, whilst removing the duplication of operating costs associated with independent “stand alone” emergency service entities.

The Bill retains provisions for a level of immunity for the State, other entities and individuals for acts and omissions in good faith and without reckless disregard for personal injury or property loss or damage which may be caused. Provisions for compensation for damage incurred in the course of disaster operations are also retained in the Bill.

SES and ES volunteers are protected from dismissal as a result of undertaking authorised response to emergencies. A further initiative also extends the *Industrial Relations Act 1999* to protect the employment of DES honorary ambulance officers, rural fire brigade members and HAZMAT advisers. The provision would extend the grounds for unfair dismissal claims to protect these volunteers where temporarily absent from work to perform functions in emergency situations.

Alternative policy approaches considered

The Bill is predicated on the continuation of the whole of government disaster management arrangements and the partnership between the State and Councils for support to SES volunteers and continues to provide for the SES to have a primary response role.

The Bill represents a shift from the SCDO Act, which does not fully reflect contemporary disaster management, mitigation and volunteer arrangements, updating many of the existing legislative provisions.

Long experience with the current administrative structural arrangements highlighted opportunities for enhancement, particularly in the evolving areas of prevention and preparedness for disaster, in accordance with the national trend emphasizing mitigation. The Bill clarifies structures, functions, powers, roles and responsibilities. While policy discussions

about these matters were robust, the approach proposed in the Bill brings those issues together in the most cogent manner.

It is proposed that the SCDO Act be repealed and replaced with the Bill. The Office of the Queensland Parliamentary Counsel supported the development of a new Bill, as opposed to making multiple amendments to a large number of sections of the SCDO Act.

Administrative costs to government of implementing the Bill

An independent cost-benefit analysis in accordance with the Public Benefit Test – Minor was undertaken.

The cost-benefit analysis concluded that all policy proposals contained in the Bill will have positive impacts for the State Government, Councils, Commonwealth Government, State Government Agencies, SES and the community.

Although the preparation of a State Disaster Management Plan (State plan) is now a requirement in the Bill, the cost-benefit analysis indicated that no additional capital and operational costs would result from enabling a State plan.

The following minor potential administrative costs were identified:

The analysis identified that there would continue to be small costs to support the State Level Committee. DES currently absorbs these costs and would expect this to continue.

The analysis acknowledged that Local Disaster Management Groups (local groups) are required in the new Bill and as such could cause incremental costs to Councils if they did not exist. However, as these committees are already in place, there are no actual costs to be identified from this policy.

The identification of authorised persons is indicated as a policy that may incur some small costs. However, most authorised officers would be uniformed police officers, ambulance officers, fire officers or health officers, and as such, would not require identification in order to exercise powers enabled under the Act. In isolated incidents where other persons would be required to be made authorised persons, DES would issue them with appropriate identification.

The initial establishment of ES Units could require small capital expenditure, which might include the re-badging of uniforms and equipment, the development of administrative instructions and common

training arrangements. However, these costs would be offset by savings such as reduced duplication of training and equipment. As such, DES would be able to absorb the costs of establishing these units.

The expanded provision for compensation may result in small costs as a result of an increase in claims. However, the potential for increased costs will be reduced by the extension of the insurance provision and restriction on claims to exclude losses contributed to by the conduct of the claimant and damage that would have been sustained as a result of the disaster itself. The types of costs reimbursed include operational costs incurred such as repairs, maintenance or replacement of plant and equipment used as a direct consequence of relief operations.

The proposed immunity provision is intended to protect the State and relevant individuals from claims arising from acts and omissions made under the Bill in good faith. This would ensure that the State and others are not exposed to any greater liability than under the existing Act.

The introduction of the Bill will require a comprehensive training and awareness program to be delivered to Councils, State Government agencies and non-government organisations with a role in the disaster management system. This program will be incorporated into existing disaster management training. This training will continue to be funded by DES as an element of core business. DES will develop subordinate instruments including guidelines to assist Councils and districts to prepare disaster management plans. The development of these guidelines will include extensive consultation with State Government agencies and Councils. This initiative will be funded from within DES's existing funding allocation.

Consistency with fundamental legislative principles

The legislation does breach some fundamental legislative principles (FLPs), however, contemporary checks and balances to protect the rights and liberties of citizens have been incorporated in the Bill.

Sufficient regard to rights and liberties of individuals

There is potential for infringements of individual rights and liberties by the exercise of the powers provided by the Bill upon a declaration of a disaster situation. To a lesser extent, rights and liberties could be impacted by the exercise of powers of SES and ES rescue officers, and other authorised rescue officers.

The Bill authorises the exercise of extraordinary powers only when circumstances warrant, with appropriate safeguards. For example, a

declaration of a disaster situation, which makes available special powers, must be authorised at two levels: in the case of the district level by the DDC with approval of the Minister, and for the State level, by the Premier and the Minister.

The definition of disaster in the Bill, together with the mechanism to trigger a declaration of a disaster situation, provides an appropriate threshold for the authorisation of the exercise of special declared disaster powers. The term “disaster” requires a serious disruption in a community that requires a significant coordinated multi-agency response to help the community recover. The declaration of a disaster situation must be in the approved form, which includes the time and date of the declaration and the declared area. Also, as soon as practicable after the disaster situation is declared the Minister must give notice of the declaration by Gazette notice.

The Bill provides extensive powers to declared disaster officers, including, for example, powers to enter premises or direct the movement of persons in certain circumstances. These powers are limited by providing for their use only if they are required to prevent loss of life or injury to persons, for public safety or public order, or to prevent significant property loss or damage, or to prevent damage to the environment. Further, declared disaster officers may only exercise a power subject to conditions, if any, on which the person is authorised. A declared disaster officer may only exercise a power to remove, dismantle, demolish or destroy a building or other structure in the declared area with the written approval of a relevant DDC.

An authorisation to exercise declared disaster powers for the disaster situation may be general or limited to a particular class of ambulance officer, fire officer, health officer or other person, may be given on conditions and may be given orally or in writing. If the authorisation is given orally, it must be put in writing as soon as reasonably practicable.

In all cases, those given responsibility for appointing persons to exercise powers must be satisfied that they have the necessary experience or expertise to exercise those powers.

OPC has advised that the powers under the Bill appear reasonable because of the circumstances in which the powers may be used (for example in disaster operations or in emergency situations) and other limitations placed on their exercise (for example, for the purpose of preventing loss of human life).

Does not confer immunity from proceeding or prosecution without adequate justification.

The protection from liability provision releases the State, Councils and listed individuals from civil liability for certain acts or omissions made under the Act in good faith without reckless disregard for the possible occurrence of personal injury or loss or damage to property from which liability would arise, if the section did not apply.

It is contended that this protection from liability is justified by the unique position of emergency services in being called on to make crucial decisions on an urgent basis. If no immunity were provided, there could be exposure to substantial liability in carrying out these functions, for example, in a catastrophic event. A lack of protection could give rise to uncertainty and undue hesitation in the making of vital decisions for the benefit of communities, such as evacuations.

However, the compensation provision can serve to alleviate the effect of the immunity provision by providing a mechanism to provide relief to those who are eligible to claim. The compensation provision in the Bill enables compensation to be sought for loss or damage resulting from the exercise or purported exercise of all powers in the Bill (including declared disaster powers and rescue powers).

Does not confer power to enter a premises without a warrant issued either by a judge or other judicial officer.

The Bill includes provision for the power to enter places without a warrant or the consent of the occupier of the place. In all cases, those given responsibility for appointing persons to exercise such powers must be satisfied that they have the necessary experience or expertise to exercise those powers.

This power is conferred on declared disaster officers, by the District Disaster Coordinator (DDC) or the Chair of the State Group during a declared disaster situation. A DDC is a senior police officer (the district officer of police in almost all cases), appointed by the Governor in Council. Declared disaster officers may exercise powers only subject to the conditions, if any, on which the person is authorised.

This power is conferred on SES and ES rescue officers, who have current competency in, for example, road accident rescue, flood and vertical rescue. SES and ES rescue officers may enter a place only for the purposes of performing an emergency related function and to protect a person who is trapped or endangered in another way to protect the officer or another person from danger, potential danger or assault.

In an emergency situation, persons may be authorised to exercise rescue powers by the Chair of the State Group or the DDC if they are satisfied on reasonable grounds that it is necessary to act to ensure rescue or similar operations are carried out effectively. Other operations may be carried out in an emergency to help injured persons or protect persons or property from danger or potential danger. Also, if the occupier is present at the place, before entering, the person must, or must make a reasonable attempt to, tell the occupier the purpose of the entry, seek the occupier's consent to enter and tell the occupier that they are permitted to enter the place without consent.

It is contended that the power to enter a premises without a warrant under the Bill is reasonable because of the limited circumstances in which the power may be used and the limitations placed on its exercise (for example, to prevent loss of human life).

Delegation of administrative power only in appropriate cases and to appropriate persons.

The Bill ensures that only persons deemed to have the necessary expertise or experience are given declared disaster powers or rescue powers, and that these powers cannot be delegated. The Bill provides that the Chair of the State Group or the DDC can give directions about the circumstances in which a power under another Act may be exercised during the period of a disaster situation. This power can only be delegated to the Commissioner of Police, who cannot further delegate the power. A disaster resulting from a terrorist related event could present a circumstance where this power would be delegated to the Commissioner of Police.

Similarly, the power to authorise the exercise of powers under the Act can be delegated only to a limited range of officers. During a declared disaster situation, or an emergency situation, the Chair of the State Group and the DDC can authorise persons to exercise declared disaster powers. Delegation is restricted to the Chair of the State Group authorising an appropriately qualified member of the State Group. Membership of the State Group is limited to chief executive officers of State government departments, with the exception of the executive officer, who must be an appropriately qualified officer of DES. Police Officers in the relevant area are automatically authorised with declared disaster powers once a disaster situation is declared. The chief executive of the department can appoint SES and ES members as authorised rescue officers. This power must only be delegated to an appropriately qualified officer of DES.

Penalties

The Bill provides for offences for breaches of a number of provisions. For example, it is an offence to obstruct, or to fail to comply with a direction of, a declared disaster officer in the exercise of powers conferred under the Bill. This imposes a maximum penalty of 100 penalty units (which is the highest penalty imposed under the Bill). All of the penalty provisions in the Bill are commensurate with similar provisions in other recently enacted Queensland legislation.

Consultation

Extensive consultation has occurred at several stages in the development of the Bill. A public discussion paper entitled “Review of the State Counter-Disaster Organisation Act 1975” was released in early 2003. Targeted discussions were held with the Local Government Association of Queensland, the Department of Local Government and Planning, the Department of Aboriginal and Torres Strait Islander Policy, the Queensland Police Service, the Department of Natural Resources and Mines, Queensland Transport, the Brisbane City Council and other emergency services responders.

Feedback received indicated support for the legislation. In particular, there is strong support for the inclusion of contemporary disaster management and SES volunteer support arrangements. The collective view has been that the SCDO Act is out of date and that proposed legislation is needed to reflect the current State and national disaster management arrangements.

In mid 2003, all government departments were consulted in the development of the drafting instructions and the Authority to Prepare Cabinet submission as well as in the development of the Bill itself. A number of responses received indicated a need to ensure that the proposed disaster management legislation would not conflict with the powers or arrangements under other Acts. All issues raised have been addressed.

A “ground truthing” session held in September 2003, which tested the provisions of the draft Bill against a number of scenarios, involved consultation with representatives of the Local Government Association of Queensland, the Brisbane City Council, the Gold Coast City Council and the Volunteer Executive Committee of the SES as well as representatives from a number of government agencies, particularly those with functional lead agency roles.

An independent cost benefit analysis, which was conducted in accordance with the Public Benefit Test – Minor, involved consultation with agencies impacted by the proposed legislation. The analysis indicated that the policy proposals in the Bill would benefit the State, with efficiency, effectiveness and community safety and security gains far outweighing minor capital and operational costs to the Government.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Division 1—Introduction

Section 1 states the short title of the Act.

Section 2 provides that the Act commences on a day to be fixed by proclamation.

Division 2—Objects

Section 3 defines the main objects of the Act to help communities to mitigate the potential adverse effects of an event; to prepare for managing the effects of an event and to effectively respond to and recover from a disaster or emergency situation.

This Act is also designed to provide for effective disaster management for the State and to establish a framework for management of the State Emergency Service and Emergency Services units to ensure the effective performance of their functions.

Section 4 outlines that the objects are to be achieved primarily by making provisions about the following - establishing disaster management groups at State, disaster district and local government levels; preparing disaster management plans and guidelines; ensuring communities receive appropriate information about preparing for, responding to and recovering

from a disaster; declaring a disaster situation; establishing the State Emergency Service and Emergency Service Units; and ensuring the State Emergency Service and Emergency Services Units can effectively perform their functions.

Division 3—Application

Section 5 provides that the Bill binds all persons including the State and, as far as the legislative power of the Parliament permits, the Commonwealth and the other States.

However, this does not make the State, the Commonwealth or another State liable for an offence.

Section 6 states that there is nothing in this Act that prevents a person declaring an emergency under another Act. For example, the powers provided in the *Public Safety Preservation Act 1986* and the *State Transport Act 1938* can still be invoked regardless of whether there has been a declaration of a disaster situation under this Act. In the same manner, an emergency declared under another Act does not stop a declaration under this Act.

Section 7 provides specifically that this Act is in addition to and does not limit the *Public Safety Preservation Act 1986*, Part 3.

Section 8, which applies to a person exercising declared disaster or rescue powers under this Act, sets out examples to provide that the declared disaster powers and rescue powers are in addition to, and do not limit the powers a person may have under another Act.

Section 9 applies if a disaster situation is declared under this Act. This section enables the chairperson of the State group (who is currently, and would continue to be after passage of the Bill, the Director-General of the Department of the Premier and Cabinet by Governor-in-Council appointment) or a relevant DDC to give directions about the circumstances in which a power under another Act may be exercised during a disaster situation, except the powers under *Police Powers and Responsibilities Act 2000* or the chemical, biological and radiological (CBR) emergency powers under the *Public Safety Preservation Act 1986*.

The intention of this power is to ensure the person charged with coordination of the disaster situation has the capacity to ensure that the actions of all responding agencies vested with statutory powers are properly coordinated to deal effectively with the disaster, including the

consequences of the disaster. It is not the intention to interfere in how agencies exercise emergency powers in their own areas of expertise.

Subsection 3 states that the chairperson or relevant district disaster coordinator must not give directions about the way in which the power may be exercised. This prohibition together with the limitation that restricts the power to give directions to circumstances where it is necessary for the effective management of the disaster, means that the power is restricted as narrowly as possible. This is consistent with allowing effective coordination by one person or other persons with powers under other legislation.

A direction under subsection 2 may be given only to the person who may exercise the power under the other Act; and only if it is necessary for effective management of the disaster for which the disaster situation is declared.

Also, a direction under subsection 2 may be general or limited to a particular class of persons and may be given on conditions.

Before giving a direction under subsection 2 about the exercise of a power under another Act, the chairperson or relevant district disaster coordinator must take reasonable steps to consult with the chief executive of the department or other agency in which the Act is administered.

The Bill provides that a failure to consult does not affect the validity of the direction.

Subsection 2 does not apply to the *Police Powers and Responsibilities Act 2000* or CBR powers under the *Public Safety Preservation Act 1986*.

Section 10 places some other specific limitations on the powers provided under this Bill. The Bill cannot be the source of powers to do, or make preparations to engage in armed combat against an enemy, put down a riot or other civil disturbance or end a strike or lockout.

Division 4—Interpretation

Subdivision 1—Dictionary and notes in text

Section 11 identifies Schedule 2 as containing definitions for particular words used in this Act.

Section 12 states that a note in the text of this Act is a part of this Act.

Subdivision 2—Particular Definitions

Section 13 defines a “disaster” in terms of a serious disruption in a community caused by the impact of an event. The serious disruption requires a significant coordinated response by the State and other entities to help the community to recover from the disruption.

The term “serious disruption” means loss of human life, or injury or illness to humans, or widespread or severe property loss or damage, or widespread or severe damage to the environment.

The intent of the definition is to capture the impact, or potential impact of an event which would significantly affect the normal functioning of the community. It is not intended to cover low level incidents which do not require a significant coordinated response, such as a localised traffic accident.

Section 14 defines “disaster management”, as the arrangements required to manage the potential adverse effects of an event, including for example, arrangements for mitigating, preventing, preparing for, responding to and recovering from a disaster.

Section 15 defines the meaning of “disaster operations” as activities undertaken before, during or after an event happens to help reduce the loss of human life, illness or injury to humans, property loss or damage or damage to the environment, including for example, activities to mitigate the adverse effects of the event.

Section 16 defines event. An “event” means a cyclone, earthquake, flood, storm, tornado, tsunami, volcanic eruption or other natural happening. It may include an explosion or fire, chemical, fuel or oil spill or gas leak, an infestation, plague or epidemic. It may also include a failure of, or disruption to, an essential service or infrastructure or an attack against the State. Any other event similar to any event mentioned in subsection (1)(a) to (e) is also defined as an “event” for the purposes of this Act. An event may be natural or caused by human acts or omissions.

PART 2—DISASTER MANAGEMENT GROUPS AND COMMITTEES

Division—State disaster management group

Subdivision 1—Establishment and functions

Section 17 outlines the establishment of the State Disaster Management Group (the “State group”).

Section 18 outlines the functions of the State group. These are:

- developing a strategic policy framework for disaster management for the State;
- ensuring that effective disaster management is developed and implemented for the State;
- ensuring arrangements between the State and the Commonwealth about matters relating to effective disaster management are established and maintained;
- identifying the resources, in and outside the State, that may be used for disaster operations;
- providing reports and making recommendations to the Minister about matters relating to disaster management and disaster operations;
- preparing under section 49, the State disaster management plan;
- performing other functions given to the group under this or another Act; and
- performing a function incidental to a function mentioned in the paragraphs above.

Subdivision 2—Membership

Section 19 identifies the members of the State group including the chief executive of the department, a number of persons, each being the chief

executive of another department and an appropriately qualified officer of the department.

Subsection 2 outlines the members mentioned in subsection (1)(b) and (c) that are to be appointed by the Governor in Council.

Subsection 3 outlines the member mentioned in subsection (1)(c) (an appropriately qualified officer of the department) is also the executive officer of the State group.

Subsection 4 defines the term “appropriately qualified” as including having the qualification, experience or standing appropriate to perform the functions of the executive officer of the State group.

Section 20 defines the appointment of the chairperson and the deputy chairperson to the position of the State group and outlines the situation in which a deputy chairperson can act in the position of chairperson. This Section also outlines the conditions under which a person can be appointed as the chairperson or deputy chairperson.

Section 21 outlines the functions of the executive officer of the State group. These functions include:

- regularly reviewing and assessing of the effectiveness of disaster management by the State, including any State disaster management plan;
- regularly reviewing and assessing the effectiveness of disaster management by district groups and local groups;
- establishing and maintaining arrangements between the State and the Commonwealth about matters relating to effective disaster management;
- ensuring that disaster management and disaster operations in the State are consistent with the State group’s strategic policy framework for disaster management for the State;
- managing and coordinating the business of the State group;
- coordinating State and Commonwealth assistance for disaster management and disaster operations;
- ensuring that persons performing functions under this Act in relation to disaster operations are appropriately trained;
- appointing the executive officers of district groups;
- reporting regularly to the State group about the performance of the executive officer’s functions under previous paragraphs; and
- supporting of the State group in the performance of its functions.

Division 2—District disaster management groups***Subdivision 1—Establishment and functions***

Section 22 outlines the establishment of the District Disaster Management Group (a “district group”) for each disaster district.

Section 23 outlines the function of the district group as:

- ensuring that disaster management and disaster operations in the district are consistent with the State group’s strategic policy framework for disaster management for the State;
- developing effective disaster management for the district, including a district disaster management plan, and regularly reviewing and assessing that disaster management;
- providing reports and making recommendations to the State group about matters relating to disaster management and disaster operations in the district;
- regularly reviewing and assessing the disaster management of local groups in the district;
- ensuring that any relevant decisions and policies made by the State group are incorporated in its disaster management, and the disaster management of local groups in the district;
- ensuring the community is aware of ways of mitigating the adverse effects of an event, and preparing for, responding to and recovering from a disaster;
- coordinating the provision of State resources and services provided to support local groups in the district;
- identifying resources that may be used for disaster operations in the district;
- making plans for the allocation, and coordination of the use of resources mentioned above;
- establishing and reviewing communications systems in the group, and with and between local groups in the district, for use when a disaster happens;

- ensuring information about an event or a disaster in the district is promptly given to the State group and each local group in the district;
- preparing, under section 53, a district disaster management plan;
- performing other functions given to the group under this Act; and
- performing functions incidental to functions above.

Subdivision 2—Membership

Section 24 outlines the members of the district group which include a person appointed as the district disaster coordinator of the district group under section 25(1)(a); a person appointed as the deputy chairperson of the district group under section 25(1)(b); a person or persons appointed by the relevant local government or local governments (which term in the Bill includes Indigenous Community Councils), and a number of other persons, each of whom represents a Government department that the executive officer of the State group considers appropriate to be represented on the group, having regard to effective disaster management for the disaster district. The executive officer of the State group may appoint any other person that he or she considers appropriate to be a member of the district group, having regard to effective disaster management for the disaster district.

Subsection 3 notes that the members in subsection (1)(d) are to be appointed by the chief executive of the department the member represents.

Subsection 4 states that in considering the departments that are appropriate to be represented on a district group, the executive officer of the State group must consult with the district disaster coordinator for the disaster district.

Subsection 5 states that before appointing a person under subsection (1)(e), the executive officer of the State group must consult with the district disaster coordinator for the disaster district.

Subsection 6 states that as soon as practicable after a local government or a combined local government appoints a person under subsection (1)(c), the local government or combined local government must inform the executive officer of the State group, and the district disaster coordinator of the district group, about the appointment.

Subsection 7 details that as soon as practicable after a chief executive appoints a person under subsection (3), the chief executive must inform the executive officer of the State group, and the district disaster coordinator of the district group, of the appointment.

Section 25 outlines that the appointment of the district disaster coordinator and the deputy chairperson of a district group are to be made by the Governor in Council.

Subsection 2 states that the Minister may recommend the person to be appointed as the district disaster coordinator only if that person has the necessary expertise or experience to perform the functions, and exercise the powers, of a district disaster coordinator.

Subsection 3 states that the district disaster coordinator of a district group is the chairperson of the group.

Section 26 details the functions of the district disaster coordinator of a district group as:

- managing and coordinating of the business of the district group;
- ensuring, as far as practicable, that the district group performs its functions;
- coordinating disaster operations in the disaster district for the group; and
- reporting regularly to the State group about the performance of the district group's functions.

Section 27 outlines the position and appointment of the executive officer of the district group including that the executive officer of the district group is to be appointed by the executive officer of the State group.

However, the executive officer may appoint a person only if satisfied the person has the necessary expertise or experience to perform the functions of the executive officer of the district group. The executive officer of the State group must consult with the district disaster coordinator of the district group before making the appointment.

Section 28 outlines the functions of the executive officer of a district group which are:

- advising the district disaster coordinator and the district group about matters relating to disaster management that are relevant to the disaster district;

- advising and providing other support services to the district group or a local group to facilitate disaster management in the district;
- regularly reviewing and assessing the district disaster management plan and local disaster management plans for the district, ensuring the plans are consistent with any relevant disaster management guidelines;
- advising the district disaster coordinator during disaster operations; and
- reporting regularly to the group about the performance of the executive officer's functions.

Division 3—Local government disaster management groups

Subdivision 1—Establishment and functions

Section 29 outlines the establishment of a Local Disaster Management Group (“local group”) for the local government’s area.

Section 30 states the functions for local groups. These are:

- ensuring that disaster management and disaster operations in the area are consistent with the State group’s strategic policy framework for disaster management for the State;
- developing effective disaster management, and regularly reviewing and assessing disaster management;
- helping the local government for its area to prepare a local disaster management plan;
- identifying, and providing advice to the relevant district group about support services required by the local group to facilitate disaster management and disaster operations within the area;
- ensuring the community is aware of ways of mitigating the adverse effects of an event, and preparing for, responding to and recovering from a disaster;
- managing disaster operations within the area in accordance with policies and procedures decided by the State group;

- providing reports and making recommendations to the relevant district group about matters relating to disaster operations;
- identifying, and coordinating the use of, resources that may be used for disaster operations in the area;
- establishing and reviewing communications systems in the group, and with the relevant district group and other local groups in the disaster district of the relevant district group, for use when a disaster happens;
- ensuring information about a disaster within the area is promptly given to the relevant district group;
- performing other functions given to the local groups under this Act; and
- performing functions incidental to a function mentioned above.

Further, subsection 2 defines the relevant district group for a local group as the district group for the disaster district in which the area of the local group is situated.

Subdivision 2—Application of sections 29 and 30 in particular circumstances

Section 31 states that in spite of section 29, two or more local governments (to be called combined local governments) may, with approval of the Minister and the district disaster coordinator for the disaster district in which the local governments are situated, agree to unite for the purpose of establishing local groups.

Section 32 provides that section 29 and 30 apply to the combined local government as if a reference to a local government were a reference to a combined local government; and a reference to the local government's area or the local group's area were a reference to the area of the combined local government.

Subdivision 3—Membership

Section 33 provides for the membership of local groups. The membership of local groups is to include the persons appointed as

members of the local groups by the relevant local government for the local groups. At least 1 person appointed under subsection (1) must be a councillor of a local government and the relevant local government for local groups may appoint a person as a member only if satisfied the person has the necessary expertise or experience to be a member.

Section 34 states that the relevant local government for a local group is to appoint a member of the group as the chairperson of the group and a member of the group as the deputy chairperson of the group. Further, the member appointed as the chairperson must be a councillor of a local government.

Section 35 provides for the appointment by the relevant local government of a member of the local group as the executive officer.

Section 36 provides that the function of the executive officer of a local group is to help the local group manage and coordinate its business.

Section 37 establishes that each relevant government for a local group must, at least once a year, give written notice of the members of the local groups to the executive officer of the State group and to the district disaster coordinator for the disaster district in which the local group is situated.

Division 4—Business and meetings for disaster management groups

Section 38 states that subject to this division, a disaster management group may conduct its business including its meetings in a way it considers appropriate.

Section 39 provides that the disaster management group meetings must be held at least every six months, at the times and places decided by the chairperson of the group.

However, subsection 2 states that the chairperson of the State group must call a meeting if asked in writing to do so by the Minister or at least one half of members. As well, a the chairperson of a district group must call a meeting if asked in writing to do so by the chairperson of the State group or at least one half of the district group. Further, a chairperson of a local group must call a meeting if asked in writing to do so by the district disaster coordinator for the disaster district in which the local group is located or at least one half of the members of the local group.

Section 40 explains a quorum. A quorum for a meeting of a disaster management group is the number equal to one half of its members for the

time being holding office plus one, or if one-half of its members for the time being holding office is not a whole number, the next highest whole number.

Section 41 provides that the chairperson is to preside at all meetings of a disaster management group at which the chairperson is present. Should the chairperson be absent from a meeting, but the deputy chairperson is present, the deputy chairperson is to preside at the meeting.

Subsection 3 details that if the chairperson and deputy chairperson are both absent from a meeting of the group, a member of the group nominated by the chairperson is to preside, or if a person has not been nominated by the chairperson, then a member nominated by the deputy chair is to preside. Should the offices of the chairperson and deputy chairperson be vacant, the members present are to choose a member to preside.

Section 42 outlines the conduct of meetings of disaster management groups. This allows that every member participating in the meeting may take part by using technology that reasonably allows members to hear and take part in discussions as they happen (e.g. by teleconference).

Section 42(2) states that every member of the disaster management group who takes part in the meeting is to be taken as being present at the meeting.

Subsection 3 sets out that a resolution of the disaster management group is valid, even if not passed at a meeting, if a majority of the members of the group give written agreement to the resolution and a notice of the resolution is given under procedures approved by the group.

Section 43 provides that disaster management groups must keep minutes of their meetings.

Division 5—Annual report, and directions about performance of functions

Subdivision 1—Annual Report

Section 44(1) and (2) state that the State group must prepare and provide for the Minister a written report on disaster management in the State as soon as practicable after the end of the financial year, including information on the activities undertaken during the financial year to maintain or enhance the State's disaster management, details of disaster

operations performed during the year, information about priorities for disaster management and other matters about disaster management considered appropriate by the Minister.

Subdivision 2—Directions about functions

Section 45 states that the Minister may give the State group written directions about the performance of its functions if satisfied that it is necessary for these directions to be given to ensure the functions are performed appropriately. Prior to giving the direction, the Minister must consult with the chairperson of the State group and in turn, the State group must ensure the direction is complied with.

Section 46 provides that the chairperson of the State group may give written directions to the district group about the performance of its functions if satisfied that it is necessary to ensure the functions are being performed appropriately. Prior to giving the direction, the chairperson must consult the district disaster coordinator.

Section 47 states that the disaster district coordinator for a disaster district may give the local groups in that district written direction about the performance of their functions should it be necessary to ensure the functions are performed appropriately. Prior to giving the direction the district disaster coordinator must consult with the chairperson of the local groups, and the local groups must ensure the direction is complied with.

Division 6—Committees for disaster management groups

Section 48 establishes that the Minister may establish committees to perform specific functions. These may include helping a disaster management group perform its functions, advising and making recommendations to the Minister or a disaster management group about matters relating to disaster management referred by the Minister or disaster management group to the committee, or to perform another function decided by the Minister, incidental to the aforementioned functions.

Subsection 2 provides that the Minister may appoint an individual to a committee if the Minister is satisfied that the individual has the necessary expertise or experience to assist the committee to perform its functions.

Subsection 3 sets out that the committee may conduct its business, including its meetings, in the way it considers appropriate.

PART 3—DISASTER MANAGEMENT PLANS AND GUIDELINES

Division 1—State disaster management plan

Section 49 provides that the State group must prepare a State disaster management plan for disaster management.

Subsection 2 states that the plan must include provision for the following:

- the group’s strategic policy framework for disaster management for the State;
- the roles and responsibilities of entities involved in disaster operations and disaster management for the State;
- the coordination of disaster operations and activities relating to disaster management;
- events that are likely to happen in the State;
- priorities for disaster management for the State;
- the matters stated in the disaster management guidelines as matters to be included in the plan; and
- other matters about disaster management the group considers appropriate or that are prescribed under a regulation.

Subsection 3 states that, the chairperson of the State group must give a copy of the State disaster management plan to each district group and local group.

Section 50 states that the State disaster management plan must be consistent with the disaster management guidelines.

Section 51 covers the reviewing and renewing of the State disaster management plan. The State disaster management plan can be reviewed or renewed at any point considered appropriate by the State group. Should

the plan be renewed, the chairperson of the State group must give each district group and local group a copy of the new plan.

Section 52 denotes that a copy of the State disaster management plan must be available for inspection, free of charge by members of the public at the department's head office and any other location that the chairperson of the State group considers appropriate. It may also made available in written and electronic form. The State group must, on payment of the appropriate fee, give a person a copy of the plan. The fee is decided by the chairperson of the State group and must be no more than the reasonable cost of providing the copy.

Division 2—Disaster management plans for disaster districts

Section 53 provides for a plan to be made for disaster management in a disaster district by the district group.

Subsection 2 states that the plan must include provision for the following:

- the State group's strategic policy framework for disaster management for the State;
- the roles and responsibilities of entities involved in disaster operations and disaster management in the district;
- the coordination of disaster operations and activities relating to disaster management;
- events that are likely to happen in the district;
- priorities for disaster management for the district;
- the matters stated in the disaster management guidelines as matters to be included in the plan; and
- other matters about disaster management in the disaster district, the group considers appropriate.

Section 54 states that the district disaster management plan must be consistent with the disaster management guidelines.

Section 55 provides that the district group may review and renew a district disaster management plan at any time it considers appropriate, however, the district group must review the effectiveness of the plan at least once a year.

Section 56 states that the district group must keep a copy of its district disaster management plan available for inspection, free of charge, by members of the public at the places the district disaster coordinator considers appropriate.

The plan may be made available in written or electronic form and the district group must, on payment of the appropriate fee, give a person a copy of the plan.

Division 3—Disaster management plans for local governments

Subdivision 1—Disaster management plans

Section 57 requires that the local government prepare a local disaster management plan for managing disasters in the local government's area.

Subsection 2 states that the plan must include provision for the following:

- the State group's strategic policy framework for disaster management for the State, and the local governments policies for disaster management;
- the roles and responsibilities of entities involved in disaster operations and disaster management in the area;
- the coordination of disaster operations and activities relating to disaster management;
- events that are likely to happen in the area;
- strategies and priorities for disaster management for the area;
- the matters stated in the disaster management guidelines as matters to be included in the plan; and
- other matters about disaster management in the area the local government considers appropriate.

Section 58 states that the local disaster management plan must be consistent with disaster management guidelines.

Section 59 states that a local government may review, or renew, its local disaster management plan when the local government considers

appropriate. However, the local government must review the effectiveness of the plan at least once a year.

Section 60 states that the plan must be made available, free of charge, for inspection by members of the public at the local government's head office and other places the chief executive officer of the local government considers appropriate.

The plan should be available in written or electronic form and the local government must, on payment of the appropriate fee, give a person a copy of the plan.

Subdivision 2—Application of subdivision 1 in particular circumstances

Section 61 states that despite section 57(1), two or more local governments may with the approval of the district group in which the local government is situated and the Minister, agree to unite for the purpose of preparing a local disaster management plan.

Section 62 defines the application of subdivision 1, that if two more local government agree to unite for the purpose of preparing a local disaster management plan, that the reference to a local government is a reference to the combined local government, that the reference to the local government's area is a reference to the area of the combined local government and the reference to the local government's head office is a reference to the head office of each local government that is part of the combined local government and the reference to the chief executive officer of the local government is a reference to the chief executive officer of each local government that is part of the combined local government.

Division 4—Guidelines

Section 63 provides that the chief executive may prepare guidelines to inform the State group, district groups and local governments about matters relating to the preparation of disaster management plans, matters to be included in disaster management plans and other matters relating to the operation of the district group or local group the chief executive considers appropriate having regard to disaster management for the State.

Subsection 2 states that if the chief executive prepares a guideline under subsection 1, the chief executive must give a copy of the guideline to the

State group where they relate to the State group, to each district group if the guidelines relate to district groups, or if the guideline relates to local governments, each local government.

Subsection 3 denotes that if the chief executive amends a guideline, the chief executive must give a copy of the amendment or the amended guideline to the State group, each district group or each local government as appropriate.

Subsection 4 denotes that the chief executive must keep a copy of each guideline, as in force from time to time, available for inspection, free of charge, by members of the public at both the department's head office; and other places the chief executive considers appropriate.

Subsection 5 states that the guideline may be made available in written or electronic form.

PART 4—PROVISIONS FOR DECLARATIONS OF DISASTER SITUATION

Division 1—Declarations

Subdivision 1—Declaration of disaster situation by district disaster coordinator

Section 64 states that the district disaster coordinator for a disaster district may, with the approval of the Minister, declare a disaster situation for the disaster district, or a part of it, if satisfied that a disaster has happened, is happening or is likely to happen, in the disaster district; and it is necessary for the district disaster coordinator or a declared disaster officer to exercise declared disaster powers to prevent or minimise the loss of human life; or illness or injury to humans; or property loss or damage; or damage to the environment.

Subsection 2 states that prior to declaring the disaster situation, the district disaster coordinator must take reasonable steps to consult with the district group for the disaster district; and each local government whose area is in, or partly in, the declared area for the disaster situation.

Subsection 3 states that a failure to consult under subsection 2 does not affect the validity of the declaration.

Section 65 states that the declaration of a disaster situation under section 64(1) must be in the approved form.

Subsection 2 states that the approved form must include provision for the time and date of the Minister's approval, and the time and date of the declaration; and the declared area for the disaster situation.

Subsection 3 and 4 state that as soon as practicable after the disaster situation is declared, the Minister must give notice of the declaration by gazette notice and that the gazette notice must include the time and date of the declaration; and details of the declared area for the disaster situation.

Section 66 outlines the duration of a disaster situation which starts when it is declared under section 64(1), and ends seven days after the day it is declared with the exception that the Minister may end the disaster situation sooner under section 68(1). A regulation may extend, under section 67, the period of the disaster situation beyond the end of the seven days.

Section 67 provides that a declared disaster situation can be extended, or from time to time further extended by regulation made under this section. Such a regulation commences on the day it is made, whether or not it is gazetted on that day.

Subsection 3 states that a regulation extending the period of a disaster situation expires 14 days after the disaster situation is declared unless it is sooner repealed or it expires under section 68(4).

Subsection 4 states that in addition, a regulation further extending the period of a disaster situation must state the period, of not more than seven days, by which the disaster situation is extended; and expires at the end of the stated period unless it is sooner repealed or it expires under section 68(4).

Subsection 5 states that Subsection 2 applies despite the *Statutory Instruments Act 1992*, section 32. The *Statutory Instruments Act 1992*, Part 5 does not apply to a regulation made under this section.

Section 68 states that as soon as the Minister is satisfied it is no longer necessary for the district disaster coordinator or a declared disaster officer to exercise declared disaster powers for the disaster situation, the Minister must end the disaster situation.

Subsection 2 states that if the Minister ends the disaster situation under subsection 1, the Minister must make a written record of the time and date

the disaster situation ended, and immediately inform the chairperson of the State group and the relevant district disaster coordinator of the ending of the disaster situation, and the district disaster coordinator must promptly inform the declared disaster officers of the ending of the disaster situation.

Subsection 3 provides that the Minister must as soon as practicable give notice of the ending of the disaster situation, and when it ended, by gazette notice.

Subsection 4 provides that a regulation extending, or further extending a disaster situation expires when the disaster situation ends under this section.

Subdivision 2—Declaration of disaster situation by Minister and Premier

Section 69 states that the Minister and the Premier may declare a disaster situation for the State, or a part of the State, if satisfied a disaster has happened, is happening or is likely to happen, in the State; and it is necessary for a district disaster coordinator or a declared disaster officer to exercise declared disaster powers to prevent or minimise loss of human life, or illness or injury to humans, or property loss or damage, or damage to the environment.

Section 70 provides that the declaration of a disaster situation must be in the approved form.

Subsection 2 states that the approved form must include provision for the time and date of the declaration, and the declared area for the disaster situation.

Subsection 3 states that as soon as practicable after the disaster situation is declared, the Minister must give notice of the declaration by gazette notice.

Subsection 4 states that the gazette notice must include the time and date of the declaration; and details of the declared area for the disaster situation.

Section 71 states that the disaster situation starts when it is declared under section 69, and ends 7 days after the day it is declared unless the Minister and the Premier end the disaster situation under section 73(1) sooner, or a regulation extends, under section 72, the period of the disaster situation beyond the end of the 7 days after the day it is declared.

Section 72 provides for the extension of a disaster situation, where a regulation may extend, or from time to time further extend, the period of the disaster situation.

Subsection 2 states that a regulation made under this section commences on the day it is made whether or not it is gazetted on that day.

Subsection 3 states that a regulation extending the period of a disaster situation expires 14 days after the disaster situation is declared unless it is sooner repealed or it expires under section 73(4).

Subsection 4 outlines that in addition, a regulation further extending the period of a disaster situation must state the period, of not more than 7 days, by which the disaster situation is extended, and expires at the end of the stated period unless it is sooner repealed or it expires under section 73(4).

Subsection 5 states that subsection 2 applies despite the *Statutory Instruments Act 1992*, section 32.

Subsection 6 states that the *Statutory Instruments Act 1992*, Part 5 does not apply to a regulation made under this section.

Section 73 states that as soon as the Minister and the Premier are satisfied it is no longer necessary for a district disaster coordinator or a declared disaster officer to exercise declared disaster powers for the disaster situation, the Minister and the Premier must end the disaster situation.

Subsection 2 states that if the Minister and the Premier end the disaster situation under subsection 1, the Minister must make a written record of the time and date the disaster situation ended, and immediately inform the chairperson of the State group of the ending of the disaster situation. The chairperson of the State group must immediately inform the relevant district disaster coordinators and declared disaster officers exercising declared disaster powers for the disaster situation, of the ending of the disaster situation.

Subsection 3 denotes that the Minister must as soon as practicable, give notice of the ending of the disaster situation, and when it ended, by gazette notice.

Subsection 4 states that the regulation extending or further extending a disaster situation expires when the disaster situation ends under this section.

Division 2—Authorising persons, and powers, for disaster situation***Subdivision 1—Preliminary***

Section 74 states that this division applies if a disaster situation is declared under division 1.

Subdivision 2—Authorising persons to exercise declared disaster powers

Section 75 states that the chairperson of the State group, or a relevant district disaster coordinator for the disaster situation, may authorise an ambulance officer, a fire officer, a health officer, or any person who is a member of a class of persons the chairperson or relevant district disaster coordinator is satisfied has the necessary expertise or experience to exercise declared disaster powers in a disaster situation.

Subsection 2 states that a police officer may exercise declared disaster powers for the disaster situation.

Police officers are given declared disaster powers automatically upon the declaration of a disaster situation and do not need to be specifically authorised.

Subsection 3 states that the authorisation made under subsection 1 may be general or limited to a particular class of ambulance officer, fire officer, health officer, or other persons, and may be given on conditions, and may be given orally or in writing but if given orally must be put in writing as soon as reasonably practicable.

Subsection 4 states that failure to put an authorisation in writing under subsection (3)(c) does not invalidate the authorisation or anything done under the authorisation.

Subdivision 3—Powers of district disaster coordinators and declared disaster officers

Section 76 states that a relevant district disaster coordinator, or a declared disaster officer for the disaster situation, has the powers given under this subdivision.

Subsection 2, however, states that a relevant district disaster coordinator or a declared disaster officer may exercise a power only during the period of the disaster situation, to ensure public safety or public order, prevent or minimise loss of human life, or illness or injury to humans or animals, prevent or minimise property loss or damage, or damage to the environment.

Subsection 3 states that the declared disaster officer may exercise a power only subject to the conditions, if any, on which the person is authorised.

Subsection 4 provides that if the declared disaster officer is a non-government ambulance officer, the officer is subject to the directions of a government ambulance officer; and if the declared disaster officer is a non-government fire officer, the officer is subject to the directions of a government fire officer; and if the declared disaster officer is a non-government health officer, the officer is subject to the directions of a government doctor.

Section 77, Subsection 1, states that a relevant district disaster coordinator or a declared disaster officer may:

- control the movement of persons, animals or vehicles within, into, out of or around the declared area for the disaster situation;
- give a direction to a person to regulate the movement of the person, an animal or a vehicle into, within, out of or around the declared area;
- evacuate persons or animals from the declared area or a part of the area;
- enter a place in the declared area;
- take into a place in the declared area the equipment, persons or materials the officer reasonably requires for exercising a power under this subdivision;
- contain an animal or substance within the declared area;
- remove or destroy an animal, vegetation or substance within the declared area;
- remove, dismantle, demolish or destroy a vehicle, or a building or other structure, in the declared area;
- use, close off or block a facility for drainage;

- shut off or disconnect a supply of fuel, gas, electricity or water, and take and use the fuel, gas, electricity or water;
- turn off, disconnect or shut down any motor or equipment;
- open a container or other thing, or dismantle equipment;
- excavate land or form tunnels;
- build earthworks or temporary structures, or erect barriers;
- close to traffic any road;
- maintain, restore, or prevent destruction of, essential services; and
- require a person to give the relevant district disaster coordinator or declared disaster officer reasonable help to exercise the coordinator's or officer's powers under this subdivision.

Subsection 2, however, provides that a declared disaster officer may exercise a power under subsection (1)(h) in relation to a building or other structure only with the written approval of a relevant district disaster coordinator.

Subsection 3 states that a relevant district disaster coordinator or a declared disaster officer may enter a place in the declared area without a warrant or the consent of the occupier of the place.

Subsection 4 states that a relevant district disaster coordinator or a declared disaster officer may also exercise a power under this subdivision with the help, and using the force that is reasonable in the circumstances.

Subsection 5 states that when giving a direction or making a requirement regulating or preventing a person's movement or requiring a person's help, a relevant district disaster coordinator or a declared disaster officer must warn the person it is an offence to fail to comply with the direction or requirement unless the person has a reasonable excuse.

Subsection 6 defines "road" to mean a road under the *Transport Operations (Road Use Management) Act 1995*.

Section 78 states that a relevant district disaster coordinator or a declared disaster officer may direct the owner of any property, by notice in the approved form given to the owner, to put the property under the control, or at the disposal, of a person stated in the notice.

Subsection 2 however, states that if the property is residential or business premises, a declared disaster officer may give a person a direction under

subsection 1 in relation to the property only with the written approval of a relevant district disaster coordinator.

Subsection 3 states that when giving a direction under subsection 1, a relevant district disaster coordinator or a declared disaster officer must warn the person it is an offence to fail to comply with the direction unless the person has a reasonable excuse.

Section 79 outlines the requirements for direction about property from section 78(1), which must be in the approved form.

This approved form must include: provision for information about the nature of the disaster situation; identify the property for which the direction relates; information about the purpose for which the property is to be used; and information about applying for compensation under this Act in relation to any loss or damage incurred because of the use of the property. The form must also state the provision of this Act under which the direction is given and that the person to whom the direction is given must comply with the direction.

PART 5—FUNCTIONS OF LOCAL GOVERNMENTS

Section 80 outlines that the functions of local governments under this Act are to: ensure it has a disaster response capability; approve its local disaster management plan required under part 3; ensure information about an event or a disaster in its area is promptly given to the district disaster coordinator for the disaster district in which its area is situated; and perform other functions given to the local government under this Act.

It is intended that the implementation of the Local Disaster Management Plan will be dependant on the financial resources of the Local Government.

Subsection 2 defines “disaster response capability” for a local government as the ability to provide equipment and a suitable number of persons, using the resources available to the local government, to effectively deal with, or help another entity to deal with, an emergency situation or a disaster in the local government’s area.

PART 6—STATE EMERGENCY SERVICE

Division 1—Establishment and functions

Section 81 is the establishment of the SES.

Section 82 outlines the functions of the SES as to perform rescue or similar operations in an emergency situation; search operations in an emergency or similar situation; other operations in an emergency situation to help injured persons or protect persons or property from danger or potential danger associated with the emergency; and other activities appropriate to helping communities prepare for, respond to, and recover from an event or a disaster.

Division 2—Responsibilities of chief executive for the SES

Section 83 outlines the responsibilities of the chief executive. These include the establishment of management and support services for the SES; and the development of policies to help the SES perform its functions effectively and efficiently, including, for example, policies about training for SES members.

Division 3—Membership

Section 84 states that membership of the SES consists of the persons appointed by the chief executive as SES members.

Subsection 2 states that the chief executive may appoint a person as an SES member only if the chief executive is satisfied the person has the appropriate abilities to be an SES member.

Section 85 details that the chief executive is to appoint the local controller of an SES unit.

Subsection 2 states that the SES member appointed as a local controller of an SES unit is to be nominated by the local government, for whose area the unit performs the functions of the SES.

Subsection 3 states that a person may be appointed as a local controller at the same time the person is appointed as an SES member.

Section 86 outlines the functions of a local controller of an SES unit, which include the maintenance of the operational effectiveness of the unit by ensuring the unit's members have the necessary skills to competently perform their roles within the unit; and the unit's equipment is maintained in an appropriate condition; and the unit performs its functions and other activities in a way that is consistent with any departmental or local government policies about the performance of the functions and activities.

Division 4—Functions of SES units

Section 87 states that an SES unit has any SES functions the chief executive considers appropriate for the unit.

Subsection 2 states that to decide the functions of an SES unit, the chief executive must have regard to the needs of the community in the area of the local government in which the unit will perform the functions; whether the members of the unit have the abilities to competently perform the functions; and the resources available to the unit to perform the functions; the resources available to the unit; and whether the unit can appropriately maintain the equipment necessary for the unit to perform the functions.

Subsection 3 states that before deciding the functions of an SES unit, the chief executive must consult with the local government, or combined local government, for the area in which the unit performs the functions.

Section 88 states that the chief executive must, by written notice, inform each SES unit of its functions.

PART 7—EMERGENCY SERVICE UNITS

Division 1—Establishment and functions

Section 89 states that the chief executive may establish an Emergency Service unit (an "ES unit") for an area of the State (an "emergency service area") if satisfied that the area is in a remote or rural location; and the establishment of the unit would help the community in the area to use

resources available to it to provide for the effective and efficient performance of its functions.

Subsection 2 provides that before establishing an ES unit for an area, the chief executive must consult with each local government whose area is completely or partly within the area; and other entities the chief executive is satisfied represent the interests of the community in the area.

Section 90 states that an ES unit has any of the following functions that the chief executive considers appropriate for the unit including an SES function, and fire fighting or fire prevention.

Subsection 2 states that to decide the functions of an ES unit, the chief executive must have regard to the needs of the community in the emergency service area for the unit; whether the members of the unit have the abilities to competently perform the functions; the resources available to the unit; and whether the unit can appropriately maintain the equipment necessary for the unit to perform the functions.

Subsection 3 states that before deciding the functions of an ES unit, the chief executive must consult the local government whose area is completely or partly in the area in which the unit performs its functions.

Section 91 states that the chief executive must, by written notice, inform each ES unit of its functions.

Division 2—Responsibilities of chief executive for ES units

Section 92 details the responsibilities of the chief executive in relation to an ES unit. These include the establishment of management and support services for the unit and the development of policies to help the unit perform its functions effectively and efficiently, including, for example, policies about training members of the unit.

Division 3—Membership

Section 93 outlines that the membership of an ES unit consists of those persons appointed by the chief executive as members of the unit.

Subsection 2 states that the chief executive may appoint an SES member, an honorary ambulance officer under the *Ambulance Service Act 1991*, a member of a group registered as a rural fire brigade under the Fire Act,

section 79, or another person the chief executive is satisfied has the abilities to be an ES unit member.

Section 94 states that the chief executive is to appoint a member of an ES unit as the ES unit coordinator.

Subsection 2 states that the ES unit member appointed as a coordinator of an ES unit is to be nominated by the local government for whose area the unit performs its functions.

Subsection 3 states that a person may be appointed as an ES unit coordinator at the same time the person is appointed as an ES unit member.

Section 95 outlines the functions of a coordinator of an ES unit. Their function is to maintain the operational effectiveness of the ES unit. This includes confirming that the unit's members have the necessary skills to competently perform their roles within the unit; the unit's equipment is maintained in an appropriate condition; and that the unit performs its functions and other activities in a way that is consistent with departmental or local government policies about the performance of the functions and activities.

Division 4—Matters about ES units with function of fire fighting or fire prevention

Section 96 states that division 4 applies to an ES unit that, under section 90(1), has fire fighting or fire prevention functions.

Section 97 provides that the chief executive is to appoint a member of the ES unit as the fire coordinator for the unit.

Subsection 2 states that the chief executive may appoint a person as the fire coordinator only if satisfied the person has the necessary expertise or experience to exercise the powers of the fire coordinator.

Section 98 applies to a person appointed, under section 97(1), as a fire coordinator for an ES unit.

Subsection 2 states that subject to subsections 3 and 4, the person has, for the purposes of controlling and extinguishing a fire in the unit's emergency service area, the powers of an authorised fire officer under the Fire Act.

Subsection 3 states that the commissioner of the Queensland Fire and Rescue Service under the Fire Act may impose conditions on the exercise of the powers by the person by written notice given to the person.

Subsection 4 states that the person may only exercise the powers subject to the conditions.

Section 99 provides that this section applies if an ES unit is assisting in operations under the Fire Act for controlling or extinguishing a fire.

Subsection 2 states that the members of the unit who are assisting in the operations are subject to the direction of the person who, under the Fire Act, is in charge of the operations.

PART 8—AUTHORISED RESCUE OFFICERS

Division 1—Appointment

Section 100 states that the chief executive may appoint a person as an authorised rescue officer if the person is a member of an SES unit or an ES unit that the chief executive considers has the necessary equipment to perform rescue or similar operations; or a person who performs emergency related functions or similar functions under a law of another State or country; or a member of a class of persons prescribed under a regulation; and the chief executive is satisfied the person has the necessary expertise or experience to be an authorised rescue officer.

Section 101 states that the conditions and limitations on the powers an authorised rescue officer holds are based on any conditions stated in the officer's instrument of appointment or a signed notice given to the officer, or a regulation.

Subsection 2 states that the instrument of appointment, a signed notice given to the officer or a regulation may limit the officer's powers under this Act.

Subsection 3 states that in this section "signed notice" means a notice signed by the chief executive.

Section 102 outlines that the chief executive must issue an identity card to each authorised rescue officer. The identity card must contain a recent

photo of the officer; a copy of the officer's signature; identify the person as an authorised rescue officer under this Act; and state an expiry date for the card.

Section 103 provides that in exercising a power under this Act in relation to a person, an authorised rescue officer must produce the officer's identity card for the person's inspection before exercising the power; or have the identity card displayed so it is clearly visible to the person when exercising the power.

Subsection 2 states that subsection 1 does not apply if, having regard to the circumstances in which the power is exercised, it is not practicable for the authorised rescue officer to comply with the subsection 1.

Section 104 provides that an authorised rescue officer stops holding office if the term of office stated in a condition of office ends; under another condition of office, the officer stops holding office; or the officer's resignation under section 105 takes effect.

Subsection 2 states that subsection 1 does not limit the ways an authorised rescue officer may stop holding office.

Subsection 3 states that in this section "condition of office" means a condition on which the officer holds office.

Section 105 states that an authorised rescue officer may resign by signed notice given to the chief executive.

Section 106 provides that when a person stops being an authorised rescue officer, the officer must return the person's identity card to the chief executive within 21 days unless the person has a reasonable excuse. The maximum penalty for not complying with this section is 50 penalty units.

Division 2—Powers of authorised rescue officers

Section 107 details the general provision about powers.

Subsection 1 outlines that for the purpose of performing an emergency related function, an authorised rescue officer may take reasonable steps to protect, a person who is trapped, or endangered in another way, in a place, or to protect the officer or another person from danger, potential danger or assault.

Subsection 2 states that if it is reasonable in the circumstances for the purpose of giving the protection mentioned in subsection 1 the authorised officer may:

- enter a place using reasonable force;
- or search any part of a place;
- open using reasonable force, a container or other thing;
- remove any thing from a place;
- destroy or damage premises, a vehicle, container or other thing;
- take into or onto a place the equipment, persons or material the authorised rescue officer reasonably requires to exercise a power under this section;
- direct a person to leave, or not to enter, an area in or near a place if the authorised rescue officer reasonably considers the direction is necessary to protect a person's life or health; or
- require a person at, or near the place to give the authorised rescue officer reasonable help to exercise the officer's powers under paragraphs (a) to (f).

Subsection 3 states that when giving a direction or making a requirement mentioned in subsection (2)(g) or (h), the authorised rescue officer must warn the person it is an offence to fail to comply with the direction or requirement unless the person has a reasonable excuse.

Section 108 outlines the provisions about power of entry.

Subsection 1 states that an authorised rescue officer may enter a place under section 107(2) without a warrant or the consent of the owner or occupier of the place.

Subsection 2 however states that if the occupier is present at the place, the authorised rescue officer must do, or make a reasonable attempt to tell the occupier before entering the place, the purpose of entry, seek the consent of the occupier to enter and tell the occupier the authorised rescue officer is permitted under this Act to enter the place without the occupier's consent.

Subsection 3 states that subsection 2 does not require the authorised officer is not required to take a step that the officer reasonably believes may frustrate or otherwise hinder the officer's ability to give the protection mentioned in section 107(1).

Section 109 outlines that the exercise of powers by an authorised officer who is not an SES or ES unit member is subject to directions of an authorised rescue officer who is an SES member or an ES unit member.

PART 9—AUTHORISING PERSONS TO EXERCISE RESCUE POWERS IN PARTICULAR CIRCUMSTANCES

Division 1—Authorising persons to exercise rescue powers

Section 110 applies if the chairperson of the State group or a district disaster coordinator is satisfied on reasonable grounds that it is necessary to act as mentioned in subsection 2 to ensure the following are carried out effectively - rescue or similar operations in relation to the emergency situation; or to ensure other operations in an emergency situation are effective to help injured persons, or to protect persons or property from danger or potential danger associated with the emergency situation.

Subsection 2 states that a chairperson or district disaster coordinator may authorise a person to exercise rescue powers in relation to the emergency situation if satisfied the person has the necessary expertise or experience to exercise the rescue powers.

Subsection 3 states that an authorisation may be given on certain stated conditions and may be given orally or in writing but if given orally must be put in writing as soon as reasonably practicable. This section enables the authorisation of persons who may have specialist skills to respond to a disaster or an emergency where a disaster situation is not declared.

Subsection 4 states that a failure to put an authorisation in writing does not invalidate the authorisation or anything done under the authorisation.

Subsection 5 states that a person authorised by the chairperson or district disaster coordinator may exercise the rescue powers only under the authorisation and subject to the directions of the chairperson or district disaster coordinator.

Division 2—Powers of authorised persons under Division 1

Section 111 states that a person authorised under section 110(2) may enter a place if the person is satisfied on reasonable grounds it is necessary to enter the place to avoid an imminent risk of death or injury of a person.

Subsection 2 states that a person has the power to enter a place using reasonable force, without a warrant or the consent of the owner or occupier of the place.

Subsection 3 however, states that if the occupier is present at the place, before entering the place, the person must do, or make a reasonable attempt to do, the following things - tell the occupier the purpose of the entry; seek the consent of the occupier to the entry; and tell the occupier the person is permitted under this Act to enter the place without the occupier's consent.

Subsection 4 states that subsection (3) does not require the person to take a step that the person reasonably believes may frustrate or otherwise hinder the person's ability to protect a person's life or health.

Section 112 outlines the general powers that apply under section 111(1), if a person enters a place.

Subsection 2 states that the person may take reasonable steps to avoid the imminent risk of death or injury of a person.

Subsection 3 states that if it is reasonable in the circumstances, the person may do all of the following having regard to the purpose of the entry:

- search any part of the place;
- open, using reasonable force, a container or other thing at the place;
- remove any thing from the place;
- destroy or damage premises, a vehicle, container or other thing;
- take into or onto the place the equipment, persons or materials the person reasonably requires to exercise a power under this section;
- direct another person to leave, or not to enter, an area in or near the place if the person considers the direction is necessary to protect a person's life or health; or

- require someone at or near the place, to give the person reasonable help to exercise the person's powers described above.

Subsection 4 states that when giving a direction or making a requirement mentioned in subsections (3)(f) or (g), the person must warn the other person it is an offence to fail to comply with the direction or requirement unless the other person has a reasonable excuse.

PART 10—OFFENCE PROVISIONS

Division 1—Preliminary

Section 113 defines an “authorised person” to mean a district disaster coordinator; a declared disaster officer; an authorised rescue officer; a person authorised under section 110(2); an SES member; or an ES Unit member.

Division 2—Offences

Section 114 outlines that if a person commits the offence of pretending to be an authorised person, the maximum penalty is 100 penalty units.

Section 115 outlines that the maximum penalty is 100 penalty units for the offence of obstruction of an authorised person in the exercise of a power unless the person has a reasonable excuse.

Subsection 2 states that if a person has obstructed an authorised person and the authorised person decides to proceed with the exercise of the power, the authorised person must warn the person that it is an offence to obstruct the authorised person unless the other person has a reasonable excuse; and the authorised person considers the person's conduct an obstruction.

Subsection 3 defines “obstruct” as including assault, hinder, resist and attempt or threaten to obstruct.

Section 116 states that a person given a direction under any of the following provisions must comply with the direction unless the person has

reasonable excuse. The maximum penalty is 100 penalty units. The sections included are:

- (a) section 77(1)(b);
- (b) section 78(1);
- (c) section 107(2)(g);
- (d) section 112(3)(f).

Section 117 states that if a person is required give reasonable help under any of the following provisions, they must comply with the requirement unless the person has a reasonable excuse. The maximum penalty is 100 penalty units. The sections included are:

- (a) section 77(1)(q);
- (b) section 107(2)(h);
- (c) section 112(3)(g).

Section 118 deals with the misuse of the SES and ES names.

Subsection 1 states that if a person who is not an SES member uses the words 'State Emergency Service' or 'SES' in a context which suggests the person, is an SES member without the chief executive's approval, the maximum penalty is 40 penalty units.

Subsection 2 states that if a person who is not an ES unit member uses the words 'Emergency Service unit', 'ES unit' or 'ESU' in a context which suggests the person is an ES unit member without the chief executive's approval, the maximum penalty is 40 penalty units.

Subsection 3 states that a person must not use the words 'State Emergency Service' or 'SES' to advertise or otherwise promote goods or services provided by the person without the written approval of the chief executive; the maximum penalty for this is 40 penalty units.

Subsection 4 states that a person must not use the words 'Emergency Service unit', 'ES unit' or 'ESU' to advertise or otherwise promote goods or services provided by the person without the approval of the chief executive, the maximum penalty for this is 40 penalty units.

PART 11—PROVISIONS ABOUT COMPENSATION AND POLICIES OF INSURANCE

Division 1—Compensation

Subdivision 1—Preliminary

Section 119 states that subject to this division, a person who suffers loss or damage because of the exercise, or purported exercise, of a power under section 77, 78, 98, 107, 111 or 112 in relation to a disaster, is entitled to be paid just and reasonable compensation for the loss or damage.

Section 120 provides that compensation is not payable to the person for loss or damage to the extent that it is recovered or recoverable by the person under a policy of insurance; or the conduct of the person contributed to the loss or damage.

Subsection 2 provides that compensation is not payable if the loss or damage would have happened in any event irrespective of the exercise, or purported exercise of the power.

Subdivision 2—Application and decision about compensation

Section 121 states that a person who suffers loss or damage because of the exercise, or purported exercise, of a power under this Act, including declared disaster powers and rescue powers, may apply to the chief executive for compensation for the loss or damage.

Subsection 2 provides that the application must be made in writing within 90 days after the person suffers the loss or damage.

Subsection 3 requires the application to state the details of the person's loss or damage, and the amount of compensation claimed and the grounds for the amount claimed.

Subsection 4 states that the applicant also must provide any other relevant information reasonably required by the chief executive to decide the application.

Subsection 5 provides that in spite of subsection 2, the chief executive has discretion to accept an application for compensation made more than

90 days after the loss or damage is suffered, if the chief executive is satisfied it would be reasonable in all the circumstances to accept the application.

Subsection 122 allows the chief executive to make a requirement for information to decide the application by giving the applicant a notice stating the required information, the time by which the information must be given to the chief executive; and that, if the information is not given to the chief executive by the stated time, the application will lapse.

Subsection 2 provides that that the stated time by which information must be given to the chief executive must be reasonable and, in any case, at least 21 days after the requirement is made.

Subsection 3 provides that the chief executive may give the applicant a further notice extending or further extending the time if the chief executive is satisfied it would be reasonable in all the circumstances to give the extension.

Subsection 4 states that a notice may be given under subsection 3 even if the time to which it relates has lapsed.

Subsection 5 provides that if the applicant does not comply with the requirement within the stated time, or any extension, the application lapses.

Section 123 states that the chief executive must consider and decide an accepted application within 60 days after receiving the application, or within 60 days after receiving all necessary information to decide the application, whichever is the last to happen.

Subsection 2 states that if the chief executive has not decided an accepted application within the period stated in subsection 1 for the application, the chief executive is taken to have refused to pay compensation.

Subsection 3 defines the term “accepted application”.

Section 124 provides that as soon as practicable after deciding the application, the chief executive must give the applicant a written notice stating the decision and the reasons for it. If compensation is granted then the notice must state the details of the amount and how the amount was assessed; and if the amount is less than the amount claimed, that the applicant may appeal against the decision, and how the applicant may appeal.

If the chief executive decides not to pay compensation, the notice must state that the applicant may appeal against the decision, and how the applicant may appeal.

Subdivision 3—Appeals

Section 125 outlines who is able to appeal if dissatisfied with the chief executive's decision to refuse payment of compensation or only allow partial payment of compensation.

Section 126 outlines the process for an appeal to be commenced at the Magistrates Court nearest the place where the person lives or carries on business; or a Magistrates Court at Brisbane.

Subsection 2 states that the notice of appeal under the *Uniform Civil Procedure Rules 1999* must be filed with the registrar of the court within 28 days if the person is given notice of the decision under section 124—the day the person is given the notice; or if such a notice is not given — the day the person otherwise becomes aware of the decision.

Subsection 3 states that the court may, at any time, extend the time for filing the notice of appeal.

Section 127 states that in hearing the appeal, the court is not bound by the rules of evidence and must comply with natural justice.

Subsection 2 provides that the appeal is by way of rehearing, unaffected by the chief executive's decision, on the material before the chief executive and any further evidence allowed by the court.

Section 128 states that in deciding the appeal, the court may confirm the chief executive's decision or substitute another decision the chief executive could have made for the chief executive's decision.

Subsection 2 provides that the chief executive must give effect to the court's decision.

Section 129 states that an appeal lies to the District Court from a decision of a Magistrates Court under section 128, but only on a question of law.

Division 2—Policies of insurance

Section 130 provides for an extension to a policy of insurance for damage to property if the damage is caused because of the exercise of a power, or performance of a function, under this Act by a person, honestly and without negligence, in relation to a disaster or an emergency situation. The exercise of the power, or performance of the function must be for the purpose of protecting the property from damage; or a person or an animal from death or injury.

Subsection 2 states that for the purposes of the policy of insurance, the damage is taken to be damage caused by the happening of the event for which the policy provides insurance cover.

Subsection 3 provides that a term of a policy of insurance that purports to vary or exclude the operation of subsection (2) is void.

PART 12—LEGAL PROCEEDINGS***Division 1—Evidence***

Section 131 states that the following division applies to a proceeding under this Act.

Section 132 provides for the following presumptions unless a party to the proceeding requires proof of it:

- the appointment of the chairperson of the State group; a district disaster coordinator; and an authorised rescue officer;
- the authorisation, under section 75(1), of a person to exercise declared disaster powers;
- the authorisation, under section 110(2), of a person to exercise rescue powers; and
- the authority of a person mentioned in paragraph (a), (b) or (c) to do anything under this Act.

Section 133 states that a signature purporting to be the signature of the chief executive, the chairperson of the State group, a district disaster

coordinator or a declared disaster officer is evidence of the signature it purports to be.

Section 134 provides that a certificate purporting to be signed by the chief executive and stating any of the matters as listed in the section is evidence of the matter.

Division 2—Offence proceedings

Section 135 states that a proceeding for an offence against this Act must be taken in a summary way under the *Justices Act 1886*.

Subsection 2 provides that the proceeding must start within 1 year after the commission of the offence; or 6 months after the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

Section 136 states that in a complaint starting a proceeding for an offence against this Act, a statement that the matter of the complaint came to the complainant's knowledge on a stated day is evidence the matter came to the complainant's knowledge on that day.

PART 13—MISCELLANEOUS

Division 1—Codes of practice for SES and ES Units

Section 137 provides that the chief executive may make codes of practice to provide guidance to SES members or ES Unit members about the operation of SES units or ES units, including, for example, performance appraisals for local controllers of an SES unit. Codes of practice may also be made about appropriate conduct or practice for SES members, or ESU members as well as other matters the chief executive considers appropriate for the effective performance of the functions of the units.

Subsection 2 states that the chief executive may review a code of practice when the chief executive considers it appropriate.

Subsection 3 states that a code of practice is a statutory instrument within the meaning of the *Statutory Instruments Act 1992*.

Section 138 details the availability of the codes of practice to SES and ES units and members and the requirement that the chief executive must give a copy of the code of practice to each SES unit or ES unit, whichever is applicable.

Subsection 2 states that if the chief executive amends the code of practice, the amendments must be given to each SES unit or ES unit, whichever is applicable.

Subsection 3 provides that the chief executive must keep a copy of each code of practice as in force from time to time, available for inspection, free of charge, by members of the public at the department's head office; and other places the chief executive considers appropriate.

Subsection 4 states that a code of practice may be made available in written or electronic form.

Division 2—Other matters

Section 139 applies to any SES or ES vehicles if a warning device or warning lights are fitted to the vehicle.

Subsection 2 states that it is prohibited for a person other than an SES or ES Unit member to activate the warning devices or lights. The maximum penalty for a breach of this subsection is 40 penalty units.

Subsection 3 states that an SES or ES Unit member must not activate the warning device or warning lights unless the warning device or warning lights are activated in relation to the performance of an SES or ES Unit function; and the SES or ES Unit member considers it necessary to activate the warning device or warning lights to ensure a person's safety. The maximum penalty for breach of this subsection is 40 penalty units.

Section 140 provides that if an SES or ES Unit member is travelling in an SES or ES unit vehicle in their capacity as an SES or ES Unit member, and the warning device or lights are activated, the vehicle is exempt from payment of a toll for the use of a road, bridge or ferry.

Section 141 refers to section 73 of the *Industrial Relations Act 1999* for SES and ES unit members, which provides that dismissal of an employee for temporary absence from work to perform an SES or ES unit function in an emergency situation (which includes a disaster) is unfair under that Act.

Section 142 states that the chief executive must enter into a contract of insurance with WorkCover or another entity for insurance for SES members and ES Unit members and persons required to give reasonable help under section 77(1)(q), 107 (2)(h) or 112(3)(g).

Subsection 2 states that the contract of insurance must cover SES and ES unit members while they are performing an activity under this Act in their capacity as an SES member or an ES unit member; or involved in another activity related to the carrying out of disaster operations, an SES function or, an ES Unit function, including for example, training for disaster operations. The policy must also cover the persons mentioned in subsection (1)(b) while they are giving the reasonable help.

Subsection 3 defines “WorkCover” as WorkCover Queensland established under the *Workers’ Compensation and Rehabilitation Act 2003*.

Section 143 gives the Minister the ability to delegate the Minister’s powers under this Act, other than a power under section 45(1), 64(1), 68(1), 69 or 73(1) to the chief executive or an appropriately qualified officer of the department.

Subsection 2 gives the chief executive the ability to delegate the chief executive’s powers under this Act to an appropriately qualified officer of the department.

Subsection 3 gives the chairperson of the State group the ability to delegate the chairperson’s powers under this Act, other than a power to give directions under section 9, to an appropriately qualified other member of the group.

Subsection 4 gives the chairperson of the State group the ability to delegate the chairperson’s powers to give directions under section 9, to the commissioner of the police service.

Subsection 5 gives the district disaster coordinator of the district group the ability to delegate the district disaster coordinator’s powers under this Act, other than a power under section 9, 64, 75, 77, 78 or 110 to an appropriately qualified other member of the group.

Subsection 6 defines that in this section “appropriately qualified” includes having the qualifications, experience or standing appropriate to exercise the power.

Section 144 states that other than as provided for under part 11, the civil liability does not attach to the State, a Minister, a local government or an official because of anything done or omitted to be done under this Act in good faith without reckless disregard for the possible occurrence of the

personal injury or loss or damage to property from which liability would arise, if this section did not apply.

This section does not stop a person further limiting the person's liability for an act or omission by relying on a provision of the *Civil Liability Act 2003*.

Subsection 3 states that "official" means all of the following –

- (a) a member of the State group, a district group or local groups;
- (b) a declared disaster officer;
- (c) an authorised rescue officer;
- (d) a person authorised under this Act to exercise rescue powers;
- (e) a person required to give reasonable help under section 77(1)(q), 107(2)(h) or 112(3)(g);
- (f) an SES member or an ES unit member.

Section 145 states that an appointment provided for by this Act is to be made under this Act and not under the *Public Service Act 1996*.

Section 146 states that the chief executive may make arrangements in relation to the identification of persons exercising powers under section 77, 78, 98, 111 or 112.

Section 147 states that the chief executive may approve forms for use under this Act.

Section 148 defines the regulation making power of the Governor in Council under this Act. Regulations may be made about dividing the State into disaster districts for the purpose of disaster management, or imposing a penalty of no more than 20 penalty units for contravention of a regulation.

Subsection 3 states that a regulation under subsection (2)(a) must name each disaster district; and identify the area of each disaster district.

PART 14—REPEAL AND TRANSITIONAL PROVISIONS***Division 1—Repeal***

Section 149 states that this Act repeals the *State Counter-Disaster Organisation Act 1975* No. 40.

Division 2—Transitional provisions***Subdivision 1—Preliminary***

Section 150 defines the definitions for division 2 of part 14.

Subdivision 2—Transitional references

Section 151 states that any reference to the repealed SCDO Act in an Act or other document, may, if the context permits, be taken as a reference to this Act.

Section 152 states that any references in an Act or other document to the former SES may, if the context permits, be taken as a reference to the SES.

Subdivision 3—Other transitional provisions

Section 153 provides that any persons other than the chief executive who was a member of the central control group immediately before the commencement, is taken to be appointed as a member of the State group under section 19(2), on commencement.

Section 154 provides that the person who, immediately before the commencement, was the chairperson of the central control group is taken to be appointed as the chairperson of the State group under section 20(1)(a), on commencement.

Section 155 provides that the person who, immediately before the commencement, was the executive officer of the central control group, is taken to be the executive officer of the State group, on commencement.

Section 156 provides that a person who, immediately before the commencement, was a member of the former SES is taken to be appointed under section 84 as an SES member, on commencement.

Section 157 provides that a person who, immediately before the commencement, was an authorised officer under the repealed Act is taken to be appointed under section 100 as an authorised rescue officer, on commencement.

Section 158 provides that until a regulation under this Act first provides for disaster districts, a former disaster district is taken to be a disaster district under this Act, on commencement.

Section 159 provides that a person who, immediately before the commencement, was the disaster district coordinator for a former control group is taken to be appointed, under section 25(1)(a), as the district disaster coordinator of the district group that is established for the disaster district in relation to which he or she was the disaster district coordinator, on commencement.

Section 160 provides that a person, other than a disaster district coordinator, who was a member of a former control group immediately before the commencement is taken to be appointed, under section 24, as a member of the district group that is established for the disaster district in relation to which he or she was a member of the former control group, on commencement.

Section 161 provides that where immediately before this provision commenced, local governments were united under section 26(2) of the SCDO Act for the purposes of arranging and carrying out counter disaster measures, then they are taken to have agreed to unite for the purpose of establishing a local group and for the purpose of preparing a local disaster management plan under Parts 2 and 3 of this Act.

Section 162 applies if a declaration, under section 23 or 24 of the repealed Act, that a state of disaster exists is in force immediately before the commencement.

Subsection 2 states that in spite the repeal of the repealed Act; the declaration continues in force; and the repealed Act continues to apply as if this Act had not commenced.

Subsection 3 states that the declaration continues in force, and the repealed Act continues to apply, until the declaration is revoked by a regulation under this Act or otherwise ends under the repealed Act.

Subsection 4 states that for subsection 2, the *Acts Interpretation Act 1954*, section 20 applies, but does not limit the subsection.

Section 163 applies if a declaration under section 23 or 24 of the repealed Act is continued in force under section 162; and a person suffers loss or damage to the person's property because of the exercise, or purported exercise, of a power under section 25(2)(a)(i) or (b)(iii) of the repealed Act in relation to the declaration.

Subsection 2 states that in spite of section 25(4) and (5) of the repealed Act, the person may apply for compensation for the loss or damage under section 121 of this Act.

Subsection 3 states that part 11, division 1, of this Act applies to the application as if it were an application for loss or damage because of the exercise, or purported exercise, of a power under section 77(1)(h) or 78(1) of this Act.

Subsection 4 states that section 25(4) and (5) of the repealed Act does not apply in relation to an application for compensation for the loss or damage.

Section 164 applies if, immediately before the commencement a person is entitled to apply for compensation under the repealed Act section 25(4), for loss or damage to the person's property, and section 163 of this Act does not apply to the loss of damage. The person may apply for compensation under the repealed Act as if this Act had not commenced.

Section 165 defines that a regulation (a "transitional regulation") may make provision of a saving or transitional nature for which it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition from the operation of the repealed Act to the operation of this Act, and this Act does not make provision or sufficient provision.

Subsection 2 states that a transitional regulation may have retrospective operation to a day not earlier than the commencement.

Subsection 3 states that a transitional regulation must declare it is a transitional regulation.

Subsection 4 states that this section and any transitional regulation expire 1 year after the commencement.

PART 15—AMENDMENTS***Division 1—Amendment of Fire and Rescue Service Act 1990***

Section 166 provides that this division amends the *Fire and Rescue Service Act 1990* (Fire Act).

Section 167 amends a reference to the functions of the council.

Section 168 outlines the replacement of Part 5 of the Fire Act on the Rural Fire Council.

Section 47 of the Fire Act is inserted to make reference to the Rural Fire Advisory Council.

Section 48 of the Fire Act continues the existence of the Rural Fire Council under the name of the Rural Fire Advisory Council (the council).

Section 49 of the Fire Act provides that the council's function is to advise the Minister on :

- (a) preparing for, and responding to, fire in rural areas including the operation of rural fire brigades and the fire fighting or fire prevention function of emergency service units;
- (b) fire safety, fire prevention and the reduction of fire danger in rural areas;
- (c) using fire as a means of sustainable land management in rural areas;
- (d) the extent to which the delivery of rural fire services in rural areas meets community needs; contributes to the achievement of the government's desired outcomes for the community; meets community expectations about the use of fire as a means of hazard reduction and sustainable land management; and impacts on the environment; and
- (e) any other matters referred to it by the Minister.

Section 50 of the Fire Act provides that:

- (1) the council is to consist of not more than 12 members appointed by the Governor in Council by gazette notice;

- (2) the Minister may nominate a person for membership of the council only if the Minister considers the person is competent to assist the council to perform its function; and
- (3) an appointment starts on the later of the following, either the day the gazette notice is published or the day, if any, stated in the gazette notice.

Section 51 of the Fire Act provides that appointments of council members are to be for a term of not more than 3 years as stated in the instrument of appointment.

Section 52 of the Fire Act states that a member's office becomes vacant if the member resigns by signed notice to the Minister or if the member is removed from office under section 52A.

Section 52A of the Fire Act provides that the Governor in Council may remove a member if the member is mentally or physically incapable of performing their duties or the Minister is satisfied the member has neglected their duties or performed those duties incompetently or inefficiently.

Section 52B of the Fire Act makes provision for the Governor in Council to appoint a member as chairperson of the council.

Section 52C of the Fire Act makes provision for a quorum for the council.

Section 52D of the Fire Act states that the council may conduct business as it considers appropriate.

Section 52E of the Fire Act provides that the council must keep minutes of meetings.

Section 52F of the Fire Act provides for the remuneration for members of the council.

Section 169 of this Act provides for the insertion of a new part 12, division 4 of the Fire Act.

Section 189 of the Fire Act makes provision for a person who was a member of the Rural fire Council immediately before the commencement of the section to be taken to be a member of the Rural Fire Advisory Council on commencement.

Section 170 of this Act provides for the omission of schedule 4 of the Fire Act.

Section 171 of this Act amends schedule 6 (Dictionary) of the Fire Act.

Division 2—Amendment of Industrial Relations Act 1999

Section 172 of the Act provides for amendment of the *Industrial Relations Act 1999*.

Section 173 inserts a provision for an additional ground for a claim for unfair dismissal in section 73(2) of the *Industrial Relations Act 1999* on the basis of temporary absence from work if the absence is:

- by an SES member or an ES Unit under the *Disaster Management Act 2003* and for the purpose of performing an SES function or an ESU function under that Act in an emergency situation; or
- by a member of the rural fire brigade under the *Fire and Rescue Service Act 1990* and for the purpose of performing a function of a rural fire brigade under that Act in an emergency situation; or
- by an honorary ambulance officer under the *Ambulance Service Act 1991* and for the purpose of performing a function of an honorary ambulance officer under that Act in an emergency situation; or
- by a hazmat advisor under the *Dangerous Goods Safety Management Act 2001* and for the purpose of performing a function of hazmat advisor under that Act in an emergency situation.

Having regard to all circumstances the period of absence must be reasonable. The reference to an emergency situation in the *Industrial Relations Act 1999* includes disasters.

Division 3—Consequential amendments

Section 174 provides for amendments to Acts mentioned in schedule 1.

SCHEDULE 1

CONSEQUENTIAL AMENDMENTS

The *Environmental Protection Act 1994* is amended to replace a reference to the SCDO Act with a reference to this Act.

The *Fire and Rescue Service Act 1990* is amended to make provision for emergency service units.

The *Police Powers and Responsibilities Act 2000* is amended to replace a reference to the SCDO Act with a reference to this Act.

The *Public Safety Preservation Act 1986* is amended to make reference to this Act instead of the SCDO Act.

The *Workers' Compensation and Rehabilitation Act 2003* is amended to enable provision of insurance cover for members of the SES or an ES unit, a person required to give reasonable help in the exercise of certain powers or another person forming a function or exercising a power under this Act.

SCHEDULE 2

Schedule 2 contains a dictionary defining the terms used in the Act.