



INDEPENDENT REVIEW
OF THE *EMERGENCY
MANAGEMENT ACT 2004*:
Final Report

JUNE 2024



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Executive Summary

The *Emergency Management Act 2004* (the EM Act) is mainly considered fit for purpose and works particularly effectively in the response phase of emergencies. Its breadth and lack of prescription provide flexibility to apply the Act to different types of emergencies, and this is core to its utility. The Review was mindful that for legislation that is infrequently used, it is key that users of an Act nevertheless have a high familiarity with it for it to work well. Therefore, the Review's starting point was that a suitably high threshold should apply in deciding to make any significant change to the EM Act. Notwithstanding this, the Review has endeavoured to make recommendations to strengthen the EM Act by improving clarity, strengthening roles and responsibilities and introducing new elements to support responding to future known and unknown events and emergencies. There are 28 recommendations and nine observations. These are provided below. The recommendations concern the EM Act. The report contains observations intended to highlight important issues that are not necessarily best addressed by the EM Act. There are two significant amendments sought:

- Introducing the role and powers of a Recovery Co-ordinator
- Introducing a new declaration category that would support the scale up and down of emergencies.

Also of note, the Review recommends integrating elements of the *COVID-19 Emergency Response Act 2020* (the COVID-19 Response Act) into the EM Act permanently; providing Ministers with powers to make temporary arrangements during a declaration; and modernising some of the language of the EM Act.

Several matters were tested as part of the consultation for which change is not recommended due to insufficient evidence or the view that reform would be better achieved outside of the EM Act. The Review has also provided observations that may inform future reviews or decisions for some of these matters.

The Review accepts that the increasing duration, severity and impact of climate events is concerning. The role of mitigation, environmental science and research, and resilience are themes stakeholders want elevated in South Australia's emergency management space. This is an example of where the Review identified an issue worthy of being addressed, but the preferred treatment is through other legislation, governance, subordinate or alternate documents and practice, and improved processes. Minimal changes to the EM Act have been suggested that directly speak to these matters, except for mitigation, which it has been proposed be included in the Objects of the EM Act.

Recommendations and Observations

Recommendations

- 1. Recommendation:** The EM Act's objectives and guiding principles be amended to reference:
 - Mitigation, including recognising that this is a shared responsibility.
 - That volunteers are key contributors to South Australia's emergency management efforts
 - That specific planning for vulnerable people is required.
- 2. Recommendation:** The definition of "recovery operations" be expanded to include activities on private property.
- 3. Recommendation:** References to the "scene" of an emergency should be recast to take account of all hazards.
- 4. Recommendation:** The prescription of membership of the State Emergency Management Committee (SEMC) and procedural matters should be removed from the EM Act and be dealt with via the Minister's guidelines and Chair's duties.
- 5. Recommendation:** The EM Act should assign responsibility for an assurance function to enhance the current arrangements for oversight and accountability.
- 6. Recommendation:** To support the evolving types of emergency responses required, the EM Act should add a fourth declaration category so that the State Co-ordinator may use section 25 powers in anticipation of, or in the scaling down of, a declared major emergency or disaster. The ACT and Tasmanian State of Alert models should inform this declaration category.
- 7. Recommendation:** Amend the EM Act to allow for an alternative extension process for a disaster if, due to the impact of the disaster, both Houses of Parliament are unable to approve an extension.
- 8. Recommendation:** Reinstate the temporary powers from the *COVID-19 Emergency Response Act 2020* to the EM Act for a comprehensive and flexible framework for managing declared emergencies.
- 9. Recommendation:** Amend section 25(3) of the EM Act so that the State Co-ordinator is not required to take advice from a particular source but may take advice from any source the State Co-ordinator considers appropriate.
- 10. Recommendation:** Provide the State Co-ordinator with an information gathering power to determine whether there is (or is likely to be) an emergency that warrants the making of a declaration. Regulations should be able to be made relating to the use of the power.
- 11. Recommendation:** The EM Act includes a section that provides Ministers with the ability to dispense with procedural requirements of another Act during a declaration period.

12. **Recommendation:** Incorporate an explicit mechanism in the EM Act to facilitate the mobilisation of the public sector workforce when necessary to respond to a declared emergency.
13. **Recommendation:** The EM Act should establish a (separate) position of Recovery Co-ordinator. The role should not be limited to a declaration period.
14. **Recommendation:** The Recovery Co-ordinator should be an authorised officer who reports to the State Co-ordinator during a declaration period.
15. **Recommendation:** Powers should be available to the Recovery Co-ordinator on the making of a regulation, which should specify the purpose, duration and any conditions on the use of powers. This could include the nomination of a Minister that the Recovery Co-ordinator will report to (outside of a declaration period). Recovery powers should include (but not necessarily be limited to) land access and powers for constructing or removing temporary structures.
16. **Recommendation:** The use of recovery powers should be time-limited, but an extension process subject to parliamentary scrutiny should be available.
17. **Recommendation:** Information sharing powers should be available to the Recovery Co-ordinator and be underpinned by the trusted access principles outlined in the *Public Sector (Data Sharing) Act 2016*.
18. **Recommendation:** The EM Act should be amended to clarify that section 25 powers retain primacy over other powers in the Act.
19. **Recommendation:** The Minister responsible for the administration of the *Electricity Act 1996* should be able to give a direction that is reasonably necessary to respond to an electricity supply emergency to any person or class of persons.
20. **Recommendation:** The electricity supply emergency declaration period and its extension arrangements should be amended to align with the process and timeframes for a major emergency declaration.
21. **Recommendation:** Amend section 27D to ensure that the type of information that may be requested is not inadvertently limited.
22. **Recommendation:** The EM Act should permit the Minister responsible for the administration of the *Electricity Act 1996* to share information with the State Co-ordinator.
23. **Recommendation:** The EM Act should provide equivalent protections to protected information as the *Security of Critical Infrastructure Act 2018* (SOCI Act).
24. **Recommendation:** The protections afforded by the EM Act should be expanded to address information that may be commercially sensitive and information that may be held by a person (not engaged in the administration or enforcement of the EM Act) as a result of a direction issued under the EM Act.
25. **Recommendation:** The penalty for confidentiality matters in section 31A of the EM Act should be increased to be commensurate with other legislation.

26. **Recommendation:** The EM Act make it clear that liability protections do not extend to worker's compensation claims which result in adverse outcomes for individuals following emergency management directions relating to their workplace.
27. **Recommendation:** The volunteer and employment protections should be strengthened to include a remedy.
28. **Recommendation:** The EM Act should have a review clause that requires it to be reviewed every seven years to ensure it remains fit for purpose and reflects contemporary emergency management practice.

Observations

1. **Observation:** The process for seeking an extension of a declaration should be included in the State Emergency Management Plan (SEMP).
2. **Observation:** The intent to coordinate with the Australian Energy Market Operator (AEMO) and other relevant entities during an electricity supply emergency should be reflected in operating procedures shared with all relevant parties or, alternatively, in the SEMP.
3. **Observation:** The State Government should ask the Commonwealth Government to prescribe the EM Act for the purposes of section 46 of the SOCI Act.
4. **Observation:** The next review of the State Emergency Management Plan (SEMP) should include reference to the Minister who has a designated emergency management role and powers under Part 4 Division 6 of the EM Act.
5. **Observation:** Future SEMP Reviews and SEMC funding discussions should consider the submissions received as part of this Review regarding the role, contribution and governance arrangements for Local Government in the South Australian emergency management arrangements.
6. **Observation:** The State Government should prioritise introducing cyber security legislation.
7. **Observation:** It would be good practice following any amendments to the EM Act to assess interfacing legislation for gaps or inconsistencies.
8. **Observation:** SEMC note the interest in consequence management being further integrated into the South Australian emergency management framework.
9. **Observation:** SEMC note the range of issues raised in the submissions that would contribute to improvements in the SEMP and broader emergency management arrangements in South Australia.

Introduction

The EM Act establishes the legislative framework and principles for coordinating activities before, during and after identified major incidents, emergencies and disasters; assigns key accountabilities; and provides authority to effect response and recovery operations.

The EM Act has been in place for nearly twenty years, superseding the *State Disaster Act 1980*. During this time, the EM Act has provided a sound basis for the State's ability to manage and respond to emergencies and incidents.

The EM Act has been amended on 13 occasions but has yet to be the subject of a full-scale review. Material amendments have included:

- The *Emergency Management (Miscellaneous) Amendment Act 2016* was initiated by the State Emergency Management Committee (SEMC). Updates included sections on the Objects and Guiding Principles, the State Emergency Management Plan (SEMP), the SEMC, and definitions.
- The *Emergency Management (Electricity Supply Emergencies) Amendment Act 2017*, following the state-wide blackout and via the *Emergency Management (Electricity Supply Emergencies) Amendment Act 2021*.
- The *COVID-19 Emergency Response Act 2020* and *Statutes Amendment (COVID-19 Permanent Measures) Act 2021*, as a result of the COVID-19 pandemic.

The operation of the EM Act - and its interaction with other legislation - was tested by the COVID-19 pandemic more than any previously declared emergency. The Major Emergency declaration was extended 25 times between March 2020 and May 2022 for 793 days. During this time, 289 legal directions were issued. South Australia was also subject to a second emergency declaration during part of this period (January/ February 2022) due to extreme weather. This was the first time the state operated under multiple emergency declarations for separate incidents.

The second-longest declaration period has also occurred recently, with an emergency declaration to address the 2022-23 River Murray flood event between October 2022 and February 2023. There have also been periods of threat of highly contagious animal diseases, which have seen amendments to the *Livestock Act 1997* and are to be incorporated into the proposed Biosecurity Act. Before the pandemic, the most common instance in which an emergency declaration was made was for bushfire events.

Therefore, it is timely to review the operation of the EM Act to ensure that the legislation empowers South Australia to prepare for, respond to, and recover from emerging hazards and extended events. Accordingly, the Department of the Premier and Cabinet appointed PEG Consulting to independently review the EM Act.

This independent review aims to make recommendations to ensure the legislative framework provides a basis for effectively managing all stages of emergencies into the future while considering the unique challenges presented by recent protracted emergency events and emerging hazards. The Reviewers have also reviewed the *Emergency Management (Electricity Supply Emergencies) Amendment Act 2017*, as required by section 11 of that Act.

Context

Terms of Reference

The Review was undertaken in accordance with the following Terms of Reference:

Purpose

The Review of *the Emergency Management Act 2004* (EM Act) (the Review) will identify opportunities to improve the EM Act, ensuring it remains fit for purpose and able to meet evolving challenges (e.g. COVID-19, mass bushfires, cyber-terrorism).

Context

The EM Act establishes, at a high level, the framework and principles for coordinating activities before, during and after emergencies; assigns key accountabilities; and enables necessary authorities to effect response and recovery operations.

The scale, impacts and consequences of the COVID-19 pandemic and the 2022 flood event have far exceeded all other events since the commencement of the EM Act. Prior to the COVID-19 outbreak, few Declarations (Division 3 of the EM Act) had been made in South Australia.

The prolonged nature of the COVID-19 pandemic, and to a lesser extent, the 2022 flood, caused South Australia to operate under a Major Emergency Declaration for an extended period and highlighted the need to address protracted events under the EM Act.

Background

The last wide-ranging changes to the EM Act were made in 2016 following a review led by South Australia Police. Several changes have been made to the EM Act since, on a more piecemeal basis.

Review Scope

The review addresses:

- the extent to which the objects of the EM Act are being achieved and continue to meet the needs of the South Australian community considering the changing hazard and threat context
- the extent to which additional legislative measures, if any, are considered necessary to achieve objects of the EM Act into the future, and
- such other matters that the Minister may consider relevant to the review of the EM Act.

Specific elements for consideration will include:

- Whether the principles of the EM Act reflect modern best practice and community expectations.
- How the EM Act interacts with, supplements and supports other emergency management legislation.
- Particular interdependencies with some legislation, for example, the proposed biosecurity legislation under development and the *Public Health Act 2011* (Parts 11 and 12)
- Potential relevance of the temporary COVID-19 legislative measures (*COVID-19 Emergency Response Act 2020 (SA)*) to future emergency events.
- Implications of the *National Emergency Declaration Act 2020 (Cth)* and the *Security of Critical Infrastructure Act 2018 (Cth)*.
- How the EM Act could better cater for:
 - long-term events (such as a pandemic or a biosecurity event)
 - the emergence of new 'invisible' threats such as cyber-attacks and foreign interference
 - catastrophic or compounding events which require more significant powers and structures to effect response and recovery.
- The types of authority required to deliver significant recovery programs, and where necessary, direct effort.
- How well the EM Act meets the expectations and requirements of key stakeholders, including Executive Government and the community.
- How the EM Act enables and meets increasing requirements associated with climate change, disaster risk reduction, mitigation and resilience building.
- Whether current compliance and enforcement measures, including expiations, are fit for purpose.
- The Review will also consider findings contained within relevant inquiries, debriefs and documented lessons learned processes.

Acknowledgements

The Review was conducted independently. However, the Reviewers appreciate the willing cooperation of members of SEMC, and the Senior Executive Reference Group established to support the work of the Review.

SA Police, under the leadership of Assistant Commissioner Stuart McLean, met with the Reviewers on several occasions and provided helpful information and context.

The input provided by the Department for Energy and Mining was critical to the component of the report which addresses Electricity Supply Emergencies.

More broadly, the Review deeply appreciated and valued the in-person engagement and considerable number of considered submissions by stakeholders, including the public.

The Reviewers are grateful for the quality of engagement and the ideas shared.

Ellie Stenner's excellent support as the Review secretariat, under the leadership of Kirsten-Leigh Barr in the Department of the Premier and Cabinet, was instrumental in delivering a comprehensive report.

Methodology

A review of the legislation and other related pieces of legislation and documentation relating to emergency management was initially undertaken. The Review also considered findings from previous independent reviews such as the Independent Review of the *Extreme Weather Event South Australia 28 September – 5 October 2016* (Burns Review) and the *Independent Review into South Australia's 2019-20 Bushfire Season* (Keelty Review), as well as the *Royal Commission into National Natural Disaster Arrangements* (the Royal Commission). A jurisdictional comparison was developed to understand how other states' and territories' emergency management legislation is framed.

The Review conducted initial stakeholder engagement sessions from June to July 2023 with members of SEMC, their delegates, and other key emergency management stakeholders as indicated in the Terms of Reference. Initial conversations elicited positive aspects and pain points within the current legislative environment. This helped to inform further conversations with a broader range of stakeholders, who were invited to meet with the Reviewers, as well as the content of the Discussion Paper. A total of 37 meetings were held, as listed in Appendix 1, noting that invitations were extended to others who did not take up the offer of a meeting. A Senior Executive Reference Group was also established to discuss issues arising from early consultation prior to the release of the Discussion Paper.

A Discussion Paper containing commentary and 35 consultation questions, and a supporting Community Information Sheet, containing a selection of questions most relevant to the public, were released via YourSAy on 15 November 2023. Submissions were accepted in written form via email or post or by accessing the short survey that replicated the questions in the Community Information Sheet. Formal consultation concluded on 30 January 2024, and the Review received 40 written submissions and 35 survey responses; a summary of responses to the consultation phase can be found in Appendix 2.

The Report and its recommendations have been prepared considering the feedback in submissions. Where required, further clarification has been sought from stakeholders to ensure that the recommendations will strengthen South Australia's emergency management arrangements.

Glossary of Terms and Acronyms

Term/Acronym	Definition
AEMO	Australian Energy Market Operator
AMTA	Australian Mobile Telecommunications Association
Burns Review	Independent Review of the Extreme Weather Event South Australia 28 September – 5 October 2016
Co-ordinating agency	<p>South Australia Police (SA Police) is the co-ordinating agency for all emergencies under section 19 (1) (2) of the EM Act.</p> <p>Co-ordination is undertaken by SA Police as the co-ordinating agency irrespective of any declaration that may be made by the State Co-ordinator or Governor.</p> <p>Opportunity exists under the EM Act for the appointment of other co-ordinating agencies.</p>
COVID-19 Response Act	<i>COVID-19 Emergency Response Act 2020 (SA)</i>
declaration / declaration period	A declaration of an identified major incident, a major emergency or a disaster made under Division 3 of the EM Act.
DPC	Department of the Premier and Cabinet
EM Act	<i>Emergency Management Act 2004 (SA)</i>
emergency	<p>An event whether occurring in the state, outside the state, or in and outside the state that causes or threatens to cause the death of, or injury or other damage to the health of, any person; or the destruction of, or damage to, any property; or a disruption to essential services or to services usually enjoyed by the community; or harm to the environment, or to flora or fauna (section 3 of the EM Act).</p> <p><i>Note— This is not limited to naturally occurring events (such as earthquakes, floods or storms) but would, for example, include fires, explosions, accidents, epidemics, pandemics, emissions of poisons, radiation or other hazardous agents, hijacks, sieges, riots, acts of terrorism and hostilities directed by an enemy against Australia.</i></p>

Emergency management	A range of measures to manage risks to communities and the environment. The organisation and management of resources for dealing with all aspects of emergencies. Emergency management involves the plans, structures and arrangements which are established to bring together the normal endeavours of government, voluntary and private agencies in a comprehensive and co-ordinated way to deal with the whole spectrum of emergency needs including prevention, risk reduction, preparedness, response and recovery.
FES Act	<i>Fire and Emergency Services Act 2005 (SA)</i>
Functional Support Group	Functional Support Groups (FSGs) are established by SEMC and are comprised of both government and non-government participating organisations to perform functional roles and capability that support the control agency and support agencies. Some FSGs also provide support for recovery operations.
hazard	A process, phenomenon or human activity that may cause loss of life, injury or other health impacts, property damage, social and economic disruption or environmental degradation. Hazards may be natural, anthropogenic (generated by human activity) or socionatural (natural events generated by human activity) in origin.
Identified Major Incident	An emergency that has occurred, is occurring or is about to occur and is declared to be an identified major incident by the State Co-ordinator (section 22 of the EM Act).
Major Emergency	An emergency that has occurred, is occurring or is about to occur and is declared to be a major emergency by the State Co-ordinator (section 23 of the EM Act).
NEL	National Electricity Law
NEM	National Electricity Market
NER	National Electricity Rules
NGO	Non-governmental Organisations
OCPSE	Office of the Commissioner for Public Sector Employment
Public Sector Act	<i>Public Sector Act 2009 (SA)</i>

(the) Review	The Independent Review of the <i>Emergency Management Act 2004</i> , undertaken by PEG Consulting on behalf of the Department of the Premier and Cabinet
Royal Commission into National Natural Disaster Arrangements / the Royal Commission	The Royal Commission into National Natural Disaster Arrangements was established on 20 February 2020 in response to the extreme bushfire season of 2019-20 which resulted in loss of life, property and wildlife and environmental destruction.
SAPH Act	<i>South Australian Public Health Act 2011</i>
SA Police/SAPOL	South Australia Police
SEMC	State Emergency Management Committee, South Australia's governance body tasked with leadership and oversight of activities associated with emergency management.
SEMP	The State Emergency Management Plan ensures the state has effective arrangements in place to enhance the safety and security of the South Australian community.
SERF	State Emergency Relief Fund
SOCI Act	<i>Security of Critical Infrastructure 2018 (Cth)</i>
SoNS	Systems of National Significance
State Co-ordinator	The person for the time being holding or acting in the position of Commissioner of Police and who has the strategic State level accountability for the management and co-ordination of declared emergencies.
Zone Emergency Management Committees	South Australia is divided into eleven emergency management zones, each overseen by a Zone Emergency Management Committee (ZEMC). A ZEMC is responsible for planning and implementation of Zone-level actions to build resilience and support state emergency management arrangements in line with the Principles of the EM Act and the SEMP.
2019-20 Bushfire Review/the Keelty review	The Independent Review into South Australia's 2019-20 Bushfire Season, undertaken by former Australian Federal Police Commissioner, Mr Mick Keelty.

Current Arrangements

The EM Act establishes the framework and principles for coordinating activities before, during, and after emergencies in South Australia. It also outlines the key responsibilities and legislative powers assigned to the people and organisations involved in emergency management.

Other legislation complements this framework either on a sector basis, such as the *Fire and Emergency Services Act 2005* (the FES Act) and the *Police Act 1998*; or on a hazard basis (such as the *Livestock Act 1997* and the *South Australian Public Health Act 2011* (the SAPH Act)). The EM Act is in addition to and does not limit the provisions of any other Act, but the EM Act prevails to the extent of any inconsistency.¹

The EM Act references the Prevention, Preparedness, Response and Recovery (PPRR) framework², has an all-hazards approach and outlines the key governance arrangements. These aspects of emergency management are more fully explored in the SEMP, and for specific hazards interfacing legislation expands on prevention, preparedness, response and recovery activities, responsibilities and powers.

The most significant components of the EM Act relate to response: the calling of a declaration and the powers which a declaration enlivens. The powers available to the State Co-ordinator, and for electricity supply emergencies the Minister responsible for the administration of the *Electricity Act 1996*, are extraordinary and extensive.

There have been only 10 Declarations made in the 20 years since the EM Act commenced.³ This is an indication of the high threshold applied for response powers under the EM Act to be used. **Preservation of this high threshold is central to the justification for the extensive powers available to the State Co-ordinator and others under a declaration.** These powers can have far-reaching consequences (including deprivation of liberty of movement). The use of the powers is generally not appealable nor easily reviewed.

¹ s5 of the *Emergency Management Act 2004*. The Parliament of Australia has recently entered the field and passed legislation that may also impact on the management of, or apply to, emergencies. This creates some issues which are canvassed later in the report.

² *Australian Emergency Management Arrangements Handbook*, Australian Institute for Disaster Resilience: <https://knowledge.aidr.org.au/resources/handbook-australian-emergency-management-arrangements/>

³ made under Division 3 of the *Emergency Management Act 2004*

Table 1: Summary of declared emergencies in South Australia under the EM Act

Duration	Type	Event	Extension/s ⁴
18 October 2022 – 19 February 2023 (118 days)	Major Emergency	River Murray High Flow – Flood	Extended three times, once for 14 days and twice after for 45-day periods. The final extension was revoked early.
28 January – 8 February 2022 (12 days)	Major Emergency	Extreme Weather – Ex Tropical Cyclone Tiffany	Revoked before 14-day (initial maximum) timeframe.
22 March 2020 – 24 May 2022 (793 days)	Major Emergency	COVID-19	Extended 25 times for 28-day periods. The final extension was revoked early.
24 January 2019 – 25 January 2019 (1 day)	Electricity Supply Emergency	Weather	Revoked before 14-day (initial maximum) timeframe
28 – 29 September 2016 (12 hours)	Identified Major Incident	Statewide System Blackout	
3 – 7 January 2015 (4 days)	Major Emergency	Sampson Flat Fires	Revoked before 14-day (initial maximum) timeframe.
7 – 8 November 2005 (12 hours)	Identified Major Incident	Virginia Floods	
12 – 14 January 2005 (48 hours)	Major Emergency	Wangarry Fires	Revoked before 14-day (initial maximum) timeframe.
11 – 12 January 2005 (12 hours)	Identified Major Incident	Mt Osmond Fires	
11 – 12 January 2005 (12 hours)	Identified Major Incident	Wangarry Fires	

⁴ See discussion on Part 4 Division 3 in relation to timeframes and extensions

Even though the significant powers under this Act are not regularly used, there is a degree of familiarity with the process for declarations and the powers under them. This familiarity peaked for the community during the COVID-19 pandemic, but it has been consistently understood within the emergency management sector for many years.

Future Context

In relation to the future operating context, the Review heard overwhelmingly that the EM Act would likely need to be used more rather than less.

“Emergency planning needs to be agile to change and adapt to new circumstances including more frequent, severe, and complex hazards and emergencies.”

- **Department for Environment and Water**⁵

The following subsections address submissions received in relation to future emergencies.

Climate Related Emergencies

Climate change was commonly referenced in submissions as being causal in the increased number, complexity and severity of many emergency events. In South Australia, this means it is likely more severe and more frequent climate-related events will occur, including bushfires, floods, heatwaves, droughts and pandemics.⁶

*“Climate projections for the State of South Australia show that the State will experience an increase in temperatures and time spent in drought, an increase in the severity of fire weather, the frequency and intensity of extreme rainfall events, and an ongoing rise in sea levels (SA Department for Environment and Water 2022, IPCC 2023). In combination with expected increases in the State’s population and the increasing development focus within areas of high fire risk, the cost of disasters related to natural hazards is expected to reach in excess of \$30 billion dollars in South Australia (Deloitte Access Economics 2021) ... In addition to increasing intensity and severity of these hazards that can be measured by a single variable, compound events are expected to increase in frequency and severity (Kirono 2017, Wu, Su & Singh 2023, Seneviratne et al. 2021) and have cascading impacts across South Australian communities (Lawrence, Blackett & Cradock Henry, 2020)”. - **Environment Institute, University of Adelaide***

⁵ A list of all submissions is in Appendix 2. Rather than footnote each quote in this Report the source appears in bold italics at the end of the relevant quote.

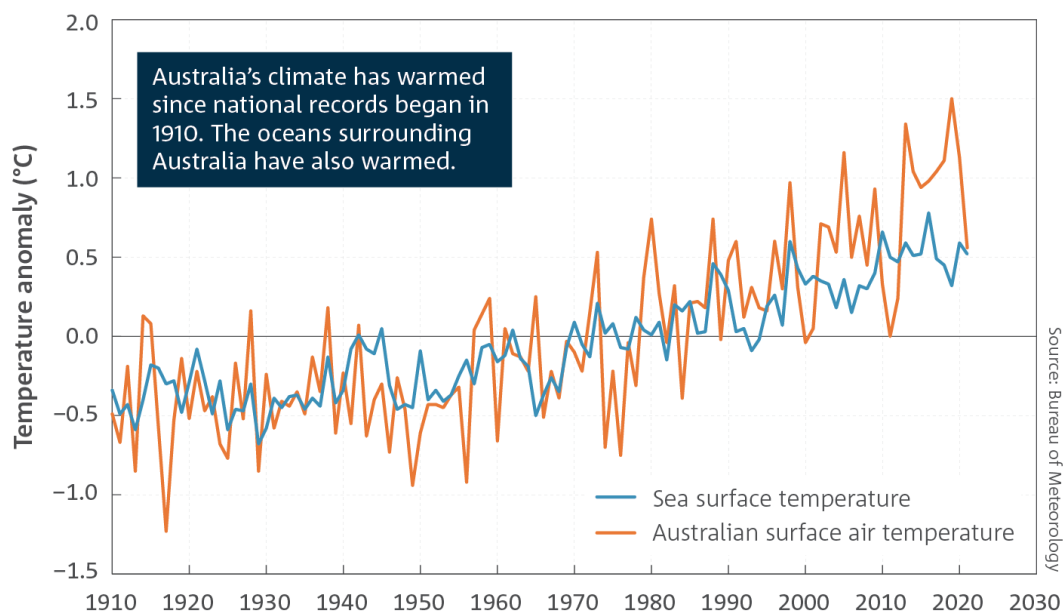
⁶ *Guide to climate projections for risk assessment and planning in South Australia 2022*, Department for Environment and Water: <https://data.environment.sa.gov.au/Content/Publications/Guide%20to%20climate%20projections%20for%20risk%20assessment%20and%20planning%20in%20South%20Australia%202022.pdf>

“In a changing climate, there is likely to be an increased frequency and severity of disaster-inducing natural hazards. The physical impacts of climate change in South Australia will manifest primarily through more frequent and severe heat waves, coastal erosion, floods, bushfires and storms, and changes to the distribution and abundance of pest plants and animals and transmission of human diseases. It also means more compounding, consecutive, cascading and protracted events are likely.” - Department for Environment and Water

Similarly, the data and research within the State of the Climate 2022 BOM Report found:

Observations, reconstructions of past climate and climate modelling continue to provide a consistent picture of ongoing, long-term climate change interacting with underlying natural variability. Associated changes in weather and climate extremes—such as extreme heat, heavy rainfall and coastal inundation, fire weather and drought—have a large impact on the health and wellbeing of our communities and ecosystems. These changes are happening at an increased pace—the past decade has seen record-breaking extremes leading to natural disasters that are exacerbated by anthropogenic (human-caused) climate change. These changes have a growing impact on the lives and livelihoods of all Australians. Australia needs to plan for, and adapt to, the changing nature of climate risk now and in the decades ahead.⁷

Figure 1: Anomalies in annual mean sea surface temperature, and temperature over land, in the Australian region



Declarations under the EM Act, and their duration, have increased in recent years. The EM Act adopts an all-hazards approach and PPRR framework, it does not go to causal issues.

The Review has prioritised the need for the EM Act to continue to be agile and flexible in responding to an increased number, breadth and complexity of emergency events.

⁷ State of the Climate Report 2022, Bureau of Meteorology: <http://www.bom.gov.au/state-of-the-climate/2022/documents/2022-state-of-the-climate-web.pdf>

Pandemics

Several submissions asserted that the current EM Act was not designed with emergencies, such as pandemics, in mind. However, while the EM Act has traditionally been used in the fire, flood, and heatwave context, the second reading speech shows that it was intended to be used during a range of events.

Emergency Management Bill 2004 Second Reading, Legislative Council 30 June 2004 Page 1895

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): *The terrorist attacks in New York on September 11, the devastating attacks in Bali, the bombings in Jakarta and on the transport system in Madrid, and the murder of one of our most senior public officials, have highlighted the fact that these types of events have no geographic or state loyalty, and do not recognise state or international boundaries. In addition, major floods and bushfires interstate have also demonstrated the significant human and financial costs of such events...This Government is committed to ensuring that South Australia has in place the best possible emergency management and protective security measures to prevent, respond and recover to a full range of potential emergencies, from natural events to human initiated or terrorist activities and to ensure the safety of our community and the infrastructure...*

The Emergency Management Bill will facilitate the required shift in culture from "disaster management" towards an "all hazards" framework and ensure appropriate strategies and systems are in place to enable a seamless emergency management transition from minor emergencies through to a disaster... Specific hazards include such issues as bushfires, flood, failure of an essential service, animal or plant disease, transportation and storage of hazardous or dangerous goods, human disease including pandemic or epidemic, transport infrastructure failure, information technology failure or natural disasters such as earthquake.⁸

The Review heard (particularly from government agency representatives) that the EM Act served South Australia well during COVID-19.

COVID-19 highlighted that the EM Act needs to be able to respond to unprecedented emergencies. It also highlighted that the EM Act needs to be able to respond to increased complexity or compounding events that may impact supply chain disruption, scarcity of goods and services, and matters related to South Australia's sovereign capability to achieve safety, health and well-being, food, and infrastructure security.

While COVID-19 was unprecedented, it is assumed that future pandemics pose a threat that the EM Act may need to respond to. The SAPH Act framework, due to the inclusion of principles that constrain action and appeal rights, did not afford the government a framework that was considered appropriate to deal with the challenges posed by the COVID-19 pandemic.⁹

⁸ *Emergency Management Bill 2004 Second Reading*, Parliament of South Australia:

https://www.pir.sa.gov.au/_data/assets/word_doc/0009/360378/Emergency_Management_Act_2004.docx

⁹ See discussion in the Discussion Paper at p 24-25

Other types of Emergencies

The approach of future proofing the EM Act for a changing emergency management landscape remains as relevant today as it did twenty years ago when the EM Act was passed. With rapid technological advances in areas such as artificial intelligence, cybercrime, and space exploration, new types of emergencies may need to be managed under this Act. The Australian Government's Crisis Management Framework lists a range of hazards that includes space junk, malicious critical infrastructure sabotage, kinetic terrorism, bioterrorism, non-naturally occurring radiological contamination events, space weather, asteroid or extra-terrestrial body impacting on the earth, pandemics and other biosecurity incidents as potential hazards for Australia.¹⁰ The types and scope of potential emergencies is therefore growing.

"We are concerned about the way that the EM Act and SEMP currently lack any consideration of low-likelihood, high-impact events, which are often associated with cascading impacts. For example, Natural Hazards Triggering Technological Accidents or 'natech' disasters occur when natural hazards such as earthquakes and floods initiate safety hazards at installations such as at power plants or along distribution networks. These safety hazards can cascade into technological emergencies such as major pollution incidents, dam failures and electrical fires that cause broader bushfires. Natech disasters are associated with some of the most extreme disasters in history (Krausmann & Necci 2021)." - **Environment Institute, University of Adelaide**

These hazards and the likelihood of more rather than fewer emergency events justify emergency management legislation providing a breadth of powers that can be used in case of extreme or unprecedented events.

The primary driver for amendment should be to improve clarity, flexibility and agility, which has been a foundational element of the EM Act and its use to date. There is a risk that too much specificity will limit the agility of the EM Act. Ensuring the powers available are appropriate in scope and assignment, and there is the right balance between the deployment of these powers and the high threshold to declare an emergency, have been the key considerations that have informed the Review's recommendations. Finally, consideration was given to where powers to respond to the increased likelihood of severe and complex emergencies may be needed.

¹⁰ Australian Government Crisis Management Framework, Department of the Prime Minister and Cabinet: <https://www.pmc.gov.au/sites/default/files/resource/download/australian-government-crisis-management-framework.pdf>

Consideration of the EM Act

Overwhelmingly the Review heard that the EM Act has largely served South Australia well in recent events such as the COVID-19 pandemic and the 2022-23 River Murray flood event - emergencies which unfolded on a scale that exceeds other emergencies since the EM Act's introduction 20 years ago.

It is also clear that the EM Act is well understood within the emergency services sector and those agencies that participate during times of declared emergencies.

"There are opportunities for improvement...but the underlying arrangements are still substantially sound... SAPOL is strongly of the view that the current response frameworks contained within the [EM] Act and SEMP are fit for purpose. Those arrangements have been practiced and tested and have worked well for many events." – **SA Police**

"It is acknowledged the EM Act in its current form needs improvement to deal with situations such as the COVID pandemic and emerging threats, like cyber events. The current EM Act is, however, fit-for-purpose for responding to bushfires, which will remain a significant hazard for South Australia. The elements that enable an efficient response to bushfire need to be retained in any future EM Act."
– **SA Country Fire Service**

"Emergency arrangements in South Australia have served the community exceptionally well in challenging circumstances. The [EM] Act and the SEMP are straightforward, easy to read and understand, and work well in practice. This review of the [EM] Act is timely given the expected challenges of climate change, and other non-natural hazards such as cybercrime, social emergencies, terrorism and war." – **SA Veterinary Emergency Management Inc**

The structure of this report follows the structure of the EM Act, as the Review's position is that the EM Act should be amended but not replaced.

Part 1 – Preliminary

Objects and guiding principles

The Review was tasked with considering whether the principles of the EM Act reflect modern best practices and community expectations. An Act's objects and principles section traditionally communicates the Parliament's intent about what the EM Act is seeking to achieve.

Section 2 sets out the objects of the EM Act, how they are to be achieved and what the guiding principles are for emergency management arrangements.

2—Objects and guiding principles

- (1) The objects of this Act are—
 - (a) to establish an emergency management framework for the State that—
 - (i) promotes prompt and effective decision-making associated with emergencies; and
 - (ii) makes provision for comprehensive and integrated planning in relation to emergencies; and
 - (b) to promote community resilience and reduce community vulnerability in the event of an emergency.
- (2) The objects of this Act are to be achieved through—
 - (a) establishing the State Emergency Management Committee; and
 - (b) providing for the appointment of a State Co-ordinator; and
 - (c) the preparation, review and maintenance of the State Emergency Management Plan; and
 - (d) making provision for declarations relating to emergencies and disasters; and
 - (da) making provision for declarations relating to electricity supply emergencies; and
 - (e) establishing structures for risk prevention and preparedness; and
 - (f) establishing structures to support a seamless transition from response to recovery in relation to an emergency.
- (3) The guiding principles under this Act are that emergency management arrangements must —
 - (a) be based on an all hazards approach in addressing emergency prevention, preparedness, response and recovery (PPRR); and
 - (b) reflect the collective responsibility of all sectors of the community, including both State and local government, the business and non-government sectors, and individuals; and
 - (c) recognise that effective arrangements require a co-ordinated approach from all sectors of the community, including both State and local government, the business and non-government sectors, and individuals.

Additional principles endorsed by the SEMC can be found in the SEMP¹¹:

SEMP PRINCIPLES

All agencies and stakeholders have a shared responsibility to carry out emergency management activities across prevention, risk reduction, preparedness, response, and recovery in accordance with the following principles:

1. Emergency management educates and empowers communities to build resilience through effective stakeholder engagement and collaborative efforts to reduce hazard risks
2. Emergency management safeguards people at risk during and following an emergency with specific consideration given to the needs of Aboriginal and Torres Strait Islander peoples, people from culturally and linguistically diverse backgrounds, older people, people living with disability and people who are experiencing family or domestic violence
3. Emergency management protects property, businesses and the environment through effective stakeholder engagement and detailed planning
4. Emergency management applies a systems approach to climate change to understand and plan for issues and pressures including increasing frequency, intensity, and duration of weather- related events
5. Emergency management is led collaboratively by state government in partnership with local government, non-government organisations, businesses and the community, and is supported by the Australian government
6. Emergency management employs strong governance and leadership to drive effective and sustainable outcomes
7. Emergency management uses comprehensive and integrated planning to enhance systems co-ordination, information sharing and outcomes
8. Emergency management is underpinned by contemporary knowledge, policy and strategy that supports continuous improvement drawn from assessment of risks and consequence thinking
9. Emergency management operations are conducted with scalable arrangements to address complexity and consequences
10. Emergency management knowledge-sharing and communication is integrated as no single agency on its own can address all aspects of hazard risk reduction or impacts from an emergency.

The Review invited feedback on whether the EM Act contains the right objects and guiding principles. Around 80% of respondents indicated the objects and guiding principles were largely fit for purpose and appropriate for the South Australian context.

The clarity and focus of the objects and guiding principles enable those with governance responsibilities or powers under the EM Act to clearly understand the legislation's intention.

Submissions noted that the objects and guiding principles were appropriate for the South Australian context. They capture the importance of the PRR framework- prevention, preparedness, response, and recovery - address community resilience, endorse an all-hazards approach, and by not being too prescriptive, they importantly support the flexibility and agility of the EM Act.

*“The objects and guiding principles of the Emergency Management Act 2004 (EM Act) align with recognised best practices in emergency management legislation”- **City of Adelaide***

*“Emergency arrangements in South Australia have served the community exceptionally well in challenging circumstances. The [EM] Act and the SEMP are straightforward, easy to read and understand, and work well in practice. This review of the [EM] Act is timely given the expected challenges of climate change, and other non-natural hazards such as cybercrime, social emergencies, terrorism and war.” - **SA Veterinary Emergency Management Inc***

*“The objects and guiding principles of the [EM] Act (Section 2) were inserted in one of the more recent reviews of the Emergency Management Act. The objects were developed to be consistent with the Public Sector Act 2009. This is the first opportunity for review of those principles. SAPOL submits that the objects and guiding principles are still best practice and do meet overall community expectations.” – **SA Police***

There were also suggestions for some improvements which the Review agrees with. These are discussed below.

Amendments

Mitigation and Sustainability

It was submitted that mitigation and consequence management are important and overlooked in the objects of the EM Act.

*“Mitigation, just like prevention, is a proactive step to doing something to reduce the impacts of an event and plays just as a big a part prior to and during the event occurrence. It is part of a long-term view of emergency management with the purpose of improving community capabilities to adapt and build resilience to emergencies. Just like prevention, mitigation should be BAU, with a shared responsibility at the different levels of community and government. Mitigation is part of the EM Framework, and it should have a place within the [EM] Act to highlight its importance moving forward where there is increasing uncertainty in the prediction and anticipation of where and how events will occur.” - **SA Country Fire Service***

¹¹ State Emergency Management Plan Part 2, Government of South Australia:
<https://www.dpc.sa.gov.au/responsibilities/security-emergency-and-recovery-management/state-emergency-management-plan/SEMP-Part-2-Strategies,-Guidelines-and-Frameworks.pdf>

“Domestically and internationally, some EM agencies are acknowledging the differentiation between prevention and mitigation. It is recognised that the impacts of climate change upon the frequency and intensity of hazards are inevitable. As emergency management and climate change adaptation are now inextricably linked, South Australia’s emergency management plans should recognise the difference between mitigating against those threats which are long term (climate change) and preparedness for short-term, direct threats from specific hazards. Mitigation measures accept that the event will occur and seek to reduce the inevitable impact, unlike prevention which seeks to eliminate the impact. As government agencies are required to consider the impact of climate change in their plans and actions, as per SEMP principle 4 and the EM assurance process, it is appropriate that mitigation is included in the EM Act as part of the emergency and disaster risk continuum, to address the need to consider longer-term mitigation strategies, plans and actions.” - SA Fire and Emergency Services Commission

“The [EM] Act should consider enhancing the State’s capacity to anticipate, prepare for and adapt to future climate conditions by including references to mitigation as a relevant consideration, for example in planning for risk management, prevention and recovery.... The issue could potentially be addressed through the objects of the [EM] Act...” - Department for Environment and Water

“In the current environment with climate change risk increasing, mitigation should become a mandatory component of emergency management planning for land and asset owners, and government agencies, particularly Hazard Risk Reduction Leaders. Experience has shown that relying on a ‘business as usual’ approach does not provide sufficient incentive for responsible agencies to prepare for emergencies. If there is no minimum standard to adhere to, responsible agencies will be understandably drawn away by competing priorities and disaster risk will inevitably increase. At a minimum the Hazard Risk Reduction Leaders should be mandated to produce hazard reduction plans on a defined schedule that incorporate the latest climate risk research and projections, including how these will affect the future management of their hazards. Explicit reference should be made in the [EM] Act to actions that recognise and attempt to mitigate climate risk for those agencies bound by the [EM] Act.” - City of Onkaparinga

With the cost of natural hazards forecast to rise dramatically over the next 30 years, mitigation of these hazards has never been more important, especially once the fact that every dollar spent on mitigation can save four dollars in recovery costs is factored in. In an effort to counter this, Bushfire and Natural Hazards CRC research is providing quantifiable evidence that will support mitigation options for a range of natural hazards, reducing the amount of money that government spends on emergency response and recovery. - Nathan Maddock, Senior Communications Officer, Bushfire and Natural Hazards CRC.¹²

¹² Reducing future risk starts now: integrated planning could hold the key to Australia’s mitigation of disasters, Nathan Maddock, Bushfire and Natural Hazards CRC: <https://knowledge.aidr.org.au/resources/ajem-oct-2016-reducing-future-risk-starts-now-integrated-planning-could-hold-the-key-to-australia-s-mitigation-of-disasters/>

The Review considers that as emergencies will likely become more frequent, complex and severe, mitigation is an important element that should be included in South Australia's emergency management arrangements.

The Review recommends that mitigation be referenced in the EM Act as this is important in ensuring that South Australia can best meet the challenge posed by future emergencies. Mitigation could be included within the objects and principles, such as an addition to statements relating to prevention; or in section 5A and the requirement for strategies under the SEMP. However, mitigation – like all the elements in the PRR framework – is not solely the government's responsibility. The EM Act should recognise personal responsibility and that all members of the South Australian community can contribute to mitigating the impact of many different types of emergencies.

Volunteers

Several submissions noted that volunteers are an important group in the emergency management sector and should be specifically referenced. The points made included that volunteers were critical contributors to each stage of the PRR model, and through their acknowledgement in the EM Act in this section, they were likely to have their roles and contributions elevated in the documents, plans, funding and efforts which cascade from the EM Act.

“Emergency response volunteering is a crucial component of our emergency management practices that supports communities before, during, and after emergency events...In its current form, the [EM] Act renders South Australia the only Australian state not to include volunteers in its Objects and Guiding Principles.”- Tammy Franks MLC, Member of Parliament

“Given the importance of volunteers in the state's emergency management arrangements and need to provide protections in the [EM] Act, the State Government should consider the decline in volunteering and how this will impact on the current emergency management arrangements... The University of Sydney 2022 report into the decline highlighted the traditional importance of volunteers in supporting Australia's crisis resilience, building community networks and mobilising community resources. With significant downturns in volunteering the current South Australian emergency management arrangements will continue to decline in sustainability. The State should consider its primary responsibility for emergency management for South Australia and invest in new concepts of community emergency management approaches to ensure undue burden is not placed on all tiers of government...Solutions should not be purely government-centric, they need to be adaptable to changes in society resulting in less time to contribute to traditional volunteer models and identify how spontaneous volunteers can be effectively utilised. Leveraging existing strengths and passions of local communities can better leverage local resources, build greater community engagement with emergency management, and actively participate in matters that are important to them. Positive examples already include the CFS Farm Fire Unit Project and how the CFS can better collaborate with members of the community to deliver advantageous outcomes.”
– **Local Government Association of SA**

Considering the significant role volunteers play in emergency management, the Review has concluded that there should be recognition of this within the EM Act. The inclusion of a reference to volunteers in section 2(3)(c) alongside “business and non-government sectors and individuals” would be appropriate. Alternatively, or in addition, the role and importance of volunteers could be referenced prior to employment protections in section 33.

Vulnerable People

The 2009 Victorian Bushfires Royal Commission considered the specific impacts of emergencies on vulnerable people. The Commission noted that nearly half of the people who died were classed as ‘vulnerable’ because they were aged less than 12 years or more than 70 years, or because they were suffering from an acute or chronic illness or disability.¹³

‘Shared responsibility’ does not mean ‘equal responsibility’. The Commission considers that in some areas the State should assume greater responsibilities than others; for example, the State and its fire authorities are likely to be more able than individuals to identify the known risks about bushfire. It is also necessary for the State, municipal councils and families to recognise the specific needs of vulnerable people, who might need early warning, assistance or separate consideration particularly on code red days.¹⁴

The USA’s National Centre for Disaster Preparedness notes:

One measure of the strength of a community’s response and recovery system is its attentiveness to its most vulnerable citizens—children, the frail elderly, the disabled, and the impoverished and disenfranchised. It is a cruel fact: disasters discriminate...¹⁵

The Centre points out, however, that defining vulnerability can be challenging as it is not necessarily a fixed characteristic of an individual or a group. Instead, it is a fluid state defined by timing, the hazard at hand, circumstances, and access to different types of capital.¹⁶

Despite this challenge, some submissions highlighted the importance of considering vulnerable people in the emergency management space.

“SAPOL notes there is discussion in the broader emergency management community, including within academia, for the need to specifically consider vulnerable communities, including culturally and linguistically diverse communities and specific indigenous needs in emergency management arrangements. While the objects, guiding principles and the other provisions of the Emergency Management Act are inclusive of all people, it may be appropriate to consider including these

¹³ *Final Report*, 2009 Victorian Bushfires Royal Commission: http://royalcommission.vic.gov.au/finaldocuments/summary/PF/VBRC_Summary_PF.pdf

¹⁴ *Ibid.*

¹⁵ *Vulnerable Populations*, Columbia Climate School National Center for Disaster Preparedness: <https://ncdp.columbia.edu/research/vulnerable-populations/>

¹⁶ *Ibid.*

groups into the guiding principles to reinforce their importance across the spectrum of prevention, preparedness, response, and recovery activities.” - SA Police

The Review agrees that a specific reference to vulnerable groups in the EM Act’s guiding principles would elevate the unique issues for those who are vulnerable.¹⁷

RECOMMENDATION

The EM Act’s objectives and guiding principles be amended to reference:

- Mitigation, including recognising that this is a shared responsibility.
- That volunteers are key contributors to South Australia’s emergency management efforts
- That specific planning for vulnerable people is required.

Greater prescription and specificity on the use of powers

The Review acknowledges the position put forward by some individuals who raised concerns about the breadth and duration of powers used during the COVID-19 emergency, along with general concerns raised by the Law Society of SA:

“The Society considers the current objectives of the [EM] Act are too narrow. There would be further benefit in the objects and guiding principles clarifying what an effective response to an emergency is; being targeted, evidence based, proportionate, of appropriate duration and subject to review and oversight. In this regard, the Committee considered many of the additional principles set out in the State Emergency Management Plan were of sufficient importance to be included in the Act itself.” - The Law Society of SA

The Review is concerned that requiring greater specification in the objects and guiding principles would limit and/or place a burden on the State Co-ordinator that could prove difficult to discharge in an emergency. In some scenarios, information or evidence may be lacking, and an emergency response is based on best practice and best endeavours. Review mechanisms have the potential to divert critical (and often scarce) resources from the task at hand.¹⁸

The EM Act is used as a last resort when other legislation is not fit for purpose for the scale of the emergency. However, the SEMP is applied across all emergencies and is an appropriate place to articulate these principles.

¹⁷ The Review is advised by SAPOL that the terminology used in the emergency management sector is developing and that “persons at risk in an emergency” is terminology gaining traction. For clarity, it is the Review’s intent that the reference in the EM Act is to consideration being given to those who are vulnerable outside of an emergency, or at a risk different to an ordinary member of the community during an emergency.

¹⁸ The review mechanisms in the SAPH Act are one of the reasons it was not considered suitable for use in COVID-19.

Interpretation

Recovery Definition

Discussions on recovery roles and powers outlined in Division 5 of the EM Act are more fully explored later in this report. However, Green Industries SA made a compelling argument for the definition of recovery in section 3 to be expanded:

“While it [the recovery definition] is fairly inclusive, there is no explicit reference to the support provided to property owners, in particular disaster debris clean-up support for a major disaster event. As part of the government-supported disaster waste clean-up program in both the Black Summer Bushfires 2019-20 and the River Murray Flood 2022-23, apart from assisting the recovery of the natural environment and business, support was also provided to property owners, including structural assessment, housing demolition, hazard reduction such as removal of mould and asbestos to enable safe repair to the existing dwelling, and disposal of fire/flood affected materials via a coordinated clean-up program. It is recommended that the ‘recovery operations’ definition be reviewed to include these elements of support.” – Green Industries SA

The Review also heard that many agencies were involved in supporting community members in their recovery, and assistance on private property is a common aspect of recovery efforts. The definition of recovery currently includes reference to assistance to the re-establishment of the normal pattern of life of individuals and families (amongst others). In recognition of this, and the proposal that a new Recovery Co-ordinator will have expanded powers, including potentially the ability to approve the establishment or removal of temporary structures, it is considered appropriate the EM Act is clear that recovery activities may encompass private property.

RECOMMENDATION

The definition of “recovery operations” be expanded to include activities on private property.

Scene

Whilst the EM Act does not define “scene”, there are references in the EM Act to the “scene” of an emergency. This suggests a physical location, which may be difficult to identify in relation to an emergency such as a cyber emergency event. The Review considered that using the term “scene” was inconsistent with an all hazards approach.

Section 19 (3) states the co-ordinating agency has the following functions in relation to an emergency (emphasis added):

- (a) to consult with the relevant control agency and take action to facilitate the exercise by the control agency of functions or powers in relation to the emergency; and
- (b) to determine whether other agencies should be notified of the emergency or called to the scene of the emergency or otherwise asked to take action in relation to the emergency

Section 36 states that (emphasis added):

All policies of insurance against damage or loss of property caused by, or occurring during the course of, an emergency will be taken to extend to damage or loss arising from measures taken by any person acting in pursuance of an authority conferred by or under this Act at the scene of the emergency.

Of the submissions which addressed this matter 92% agreed that the reference to a “scene” did not reflect an all-hazards approach and may be limiting.

RECOMMENDATION

References to the "scene" of an emergency should be recast to take account of all hazards.

Part 2 – State Emergency Management Committee

Section 6 – Establishment of State Emergency Management Committee

The EM Act establishes SEMC as the governance body overseeing emergency management planning.

The EM Act provides a high level of detail for a committee comprised of statutory office holders and public servants. It has restrictive elements (e.g., section 6 (4)(b)) and provides a level of detail about procedure that is unusual for non-corporate or government committees (e.g., section 10).

“Both the membership and proceedings of SEMC are very prescriptive in the [EM] Act. While DPC supports the legislative establishment of SEMC, it is suggested that much of the detail would be more adequately placed in the Membership Guidelines or Terms or Reference which is reviewed regularly.” - Department of the Premier and Cabinet

“SAPOL submits that the key aspects that should be retained are those that underpinned the initial development of the Emergency Management Act. Those key aspects were a requirement, reported annually in the SEMC Annual Report, for the nominated Chief Executive Officers to attend SEMC meetings. Attendance by these Chief Executives was also at the time included in the performance management contracts of the Chief Executives. This level of specification was applied to members of SEMC as it was recognised in the previous State Disaster Arrangements that an extended period of delegation and recurring sub-delegation had occurred leading to the then equivalent of the now SEMC being attended by members who did not have the required authority or decision-making authorities attending that is required for the work of SEMC. SAPOL would also seek to ensure that electronic meeting types remain authorised in recognition of the learnings from COVID-19 where face to face meetings could not always occur. The remaining provisions should be considered for inclusion in guidelines as used for other Government boards and committees.” – SA Police

Eleven submissions addressed this issue and just over half agreed that there was too much detail regarding SEMC in the EM Act. The Review has also concluded that the level of prescription is inconsistent with other aspects of the EM Act which provide flexibility and agility within the emergency management framework. The Review considers that membership, terms and conditions of appointment should be dealt with in Ministerial guidelines.

RECOMMENDATION

The prescription of membership of the State Emergency Management Committee (SEMC) and procedural matters should be removed from the EM Act and be dealt with via the Minister’s guidelines and Chair’s duties.

Section 9 – Functions and powers of SEMC

Assurance

SEMC are responsible for the SEMP and for monitoring the capacity of agencies to carry out their SEMP functions (section 9 (1) (f)). SEMC does not have the explicit responsibility to review and assess (i.e., assure) that plans are adequate, although this may be implied. The SEMP allocates responsibility to each Hazard Risk Reduction Leader who are, amongst other things, responsible for:

*“Participating in the SEMC assurance program and examining other plans prepared under the SEMP to ensure that all aspects of the assigned hazard have been addressed”.*¹⁹

The Burns Review also explored the issue of assurance roles and responsibilities:

*SEMC is responsible for providing assurance to the government and community of SA that the State has adequate emergency management arrangements and sufficient capability and capacity to manage hazards and associated risks, and effectively respond to and recover from emergencies and disasters...Currently there is no process to assess the effectiveness of SEMC, its Advisory Groups, Sub-committees and working groups/task forces. Committee Terms of Reference are regularly reviewed but these are reviewed independent of each other rather than holistically. A more holistic approach would ensure that there is no overlap or duplication of effort, and more importantly, no significant gaps. ... A number of States in Australia which experience significant emergency events have implemented a position of Inspector General for Emergency Management (IGEM) or similar. This framework would provide the minimum position South Australia should adopt regarding governance and assurance.*²⁰

Recommendation 41 of that Review was:

*An Emergency Management Assurance Framework should be established as soon as possible to support the emergency management arrangements and the State Emergency Management Plan. Consider establishing an Inspector General Emergency Management department or position.*²¹

The government’s response to this recommendation was to establish an emergency management assurance framework with an independently chaired advisory group.²² This advisory group is now known as the Emergency Management Assurance Subcommittee of SEMC.

¹⁹ *State Emergency Management Plan: Part 1*, South Australian Government (paragraph 6.2): <https://www.dpc.sa.gov.au/responsibilities/security-emergency-and-recovery-management/state-emergency-management-plan/State-Emergency-Management-Plan-2022.pdf>

²⁰ *Independent Review of the Extreme Weather Event South Australia 28 September – 5 October 2016*, Gary Burns: https://www.dpc.sa.gov.au/_data/assets/pdf_file/0003/15195/Independent-Review-of-Extreme-Weather-complete.pdf

²¹ Ibid.

²² 2017 Review of Emergency Management Arrangements undertaken by SEMC

The Review heard that assurance remains relevant and requires further attention. The Review asked - *Should the EM Act provide that SEMC (or some other body/position) has an assurance function, or are the current arrangements appropriate?* Of those who responded to this matter, over 90% believed a stronger assurance function was needed. Responses included:

“SAPOL would support consideration of a potential change to make the assurance function of SEMC more clearly stated within the already described functions, which may be achieved by amending Section 9(1)(a) to read “to provide leadership, maintain oversight and assure emergency management planning in the State” or similar.” - SA Police

“Oversight and accountability is key and should be a black and white process with no grey areas. There needs to be a level of confidence that all responsible agencies are meeting their responsibilities to the state.” - SA Country Fire Service

“To lift the level of assurance across the sector, DPC has recently undertaken an update of the Emergency Management Assurance Framework. However, and critically, there is no explicit legislative foundation for how agencies and organisations are held to account in complying with these assurance requirements. By legislating assurance, the [EM] Act can contribute to the fortification of agency and organisational capability and enable them to fulfill their responsibilities effectively in ways that are proactive, coordinated, consistent and strategic. Progress in this area is particularly important as the landscape of hazards and risks continues to evolve.”

- Department of the Premier and Cabinet

“There should be an assurance function at the level of SEMC. Current assurance arrangements without this oversight are ineffective if left to individual agencies when competing with other priorities.” - City of Onkaparinga

“There should be a clear body accountable for assurance as identified within the Burns Review - recommendation 41 - however it is not recommended that this assurance framework is to be part of SEMC as per current arrangement. The preferred option is for this body to be an external, impartial body or party that doesn't have functional alignment with EM however can play a broad governance and assurance role over the end-to-end EM framework in a way that is relevant and inclusive for all agencies. To ensure consistency and ‘fit for purpose’ for all agencies involved, assurance should be ‘right-sized’ and recognise the degree of an agency’s contribution to, and influence on, Emergency Management outcomes across the PPRR life cycle. Assurance should extend to areas such as (not limited to): risk management; training and exercising; toolkits.”

- SA Housing Authority

The Review is persuaded that the current emergency management arrangements would be strengthened by the EM Act's inclusion of a requirement for an assurance function. Whether this sits in the EM Act with SEMC, or it is described as a function which must be undertaken by another body such as the Auditor-General, the Review is agnostic. A discussion and recommendation from SEMC, with consideration of resourcing, would be beneficial.

RECOMMENDATION

The EM Act should assign responsibility for an assurance function to enhance the current arrangements for oversight and accountability.

Part 4: Division 3 – Declaration of Emergencies

The making of a declaration by the State Co-ordinator or the Governor enlivens exceptional powers for the State Co-ordinator and authorised officers. An emergency may be declared to be an identified major incident, a major emergency, or a disaster. There is no difference in the powers that are enlivened by the form of declaration, apart from section 25(2)(n), which is only available during a Major Emergency or Disaster declaration. The key differences between the declaration types relate to who makes the declaration, the duration of the declaration, and the form or category, of the declaration.

Electricity supply emergencies are also provided for in the EM Act. This type of declaration does differ from a Division 3 declaration and is discussed in Part 4: Division 6 Electricity Supply Emergencies.

Table 2: Summary of declaration types

Declaration type	Must not initially exceed	Form	Made by	Extended by
Identified Major Incidents (section 22)	12 hours	Can be made orally but must be reduced to writing and a copy provided to the Minister as soon as reasonably practical	State Co-ordinator	N/A
Major Emergencies (section 23)	14 days	Must be in writing and published in a manner and form determined by the Minister (typically via <i>Government Gazette</i>)	State Co-ordinator	Governor
Disasters (section 24)	30 days	Must be in writing and published in a manner and form determined by the Minister (typically via <i>Government Gazette</i>)	Governor	Both houses of Parliament
Electricity supply emergencies (section 27A)	14 days	Must be in writing and published in a manner and form determined by the Minister	Minister	Minister with advance approval of the Governor

During the extended COVID-19 emergency declaration period, commentators and others questioned the role of the Parliament and the Executive Government in an emergency. South Australia operated under a Major Emergency declaration for a total period of 793 days. The Government determined that this was an appropriate way to manage the pandemic. The original declaration, made on 22 March 2020, was extended by the Governor 25 times, and allowed for 289 legal directions to be issued that supported the management of the pandemic in South Australia.

The Review notes that within the period of the emergency declaration, the Parliament remained active and introduced alternative legislative measures but, more generally, did not see fit to change the existing arrangements for declarations. Parliament passed additional legislation to manage issues, including temporary amendments to the EM Act.

The Review asked whether there should be any changes to the permitted duration of declarations, the extension arrangements or processes relating to this. The responses to this question during consultation did not reveal a strong consensus for any fundamental change to the arrangements that most South Australians seem to consider served South Australia well during COVID-19.

The SAPOL submission outlined the process for how the extensions were requested:

“COVID-19 established a process for extension of a declaration consisting of:

- *A request from the Control Agency to the State Co-ordinator for an extension with reasons for the request*
- *Assessment by the State Co-ordinator against the SEMC approved Declaration Guidelines. A decision was then made taking into account the totality of the holistic information known to the State Co-ordinator, which included the information provided by all State Emergency Centre (SEC) agencies delivered during one of the many SEC briefings*
- *Preparation of a Cabinet Submission for consideration of the Premier and the Emergency Management Cabinet Committee*
- *Final consideration of the Governor based on information provided by the Premier and Cabinet before a formal decision was made to extend the declaration.” – SA Police*

In their submission, SAPOL recommended that this process be included in the SEMP to *“provide transparency in the extension process to government, non-government, and more importantly, community stakeholders.”* The Review agrees that the details of this process would be beneficial in the SEMP.

“Limited in duration, noting the desirability of avoiding rolling renewals without Parliamentary oversight and review. Instead, the 14-day declaration processes should be retained, but renewals should be limited to, for example, 12 months to ensure the review is not just of declaration criteria being met, but also for ongoing consideration to the proportionality of powers being exercised and adequacy of governance and oversight mechanisms.” – The Law Society of SA

OBSERVATION

The process for seeking an extension of a declaration should be included in the State Emergency Management Plan (SEMP).

New category of declaration

Response powers are significant and are designed to be used as a last resort - when all other emergency management arrangements are insufficient to manage the emergency. The current declaration categories have also only recently been used for extended periods, which, as discussed above, is likely to be a continuing overall trend as the State faces emergencies of increasing complexity, impact, and duration into the future.

A proposal to introduce a new declaration category to support future emergencies that might benefit from a scaling up and scaling down of powers was tested with stakeholders. This issue received high engagement being addressed in 51 submissions. Of these, 75% of respondents supported a new declaration category.

COVID-19 Experience

Emergencies such as fire and flood generally have a linear build-up. When they reach a point of severity, a threshold is met to warrant a declaration. The powers are required to respond to the situation at the height of the emergency. Once the emergency's severity reduces, so does the need for the powers required to manage it. Subsequently, the declaration expires or is revoked, with recovery becoming the focus. COVID-19, however, required powers to be in place that did not reflect a single peak scenario but one in which the threat created by the emergency was variable at times. COVID-19 provides an example of the potential future complexity of emergencies.

In 2020 case numbers reached an initial peak at the end of March. This was followed by a period of low case numbers. In mid-June 2020 case numbers started to increase before reaching a secondary peak in early August 2020. Case numbers gradually declined and remained low with spikes occurring in mid-late December 2020 and mid-late April 2021. From late June 2021, case numbers increased and peaked from late September to mid-October 2021. From mid-December 2021, case numbers increased sharply and peaked in January 2022.

- **Coronavirus at a glance - 2 August 2022**²³

This description aligns with the South Australian experience. There were periods during COVID-19 where general community activities and permitted movement did not reflect the restrictive major emergency state in place during other parts of the emergency declaration period.

For some of the emergency declaration period for COVID-19, South Australians were subject to relatively few restrictions even though they were living in a declared "major emergency". For example, a general election was held, sporting matches were held with crowds, and hospitality businesses were able to operate. However, some powers were still required, such as border closures, quarantining, and mask-wearing, which were judged as not able to be achieved with other legislation. All that was available was the current binary arrangement of being in a declared major emergency or not. The emergency was then only

²³ *Coronavirus at a glance – 2 August 2022*, Department of Health and Aged Care: <https://www.health.gov.au/resources/publications/coronavirus-covid-19-at-a-glance-2-august-2022?language=en>

able to be ended once the interfacing legislation – the SAPH Act- had been amended to be able to sustain the powers required to manage the public health emergency. Notably, these amendments specifically related only to COVID-19 and modified the way the SAPH Act normally operates.

*The Major Emergency Declaration in South Australia for COVID-19 has ended, effective immediately, after 793 days in an historic and significant step forward in the state’s management of the pandemic... The lifting of the declaration is only possible following the successful passage of the government’s legislation to amend the Public Health Act in Parliament last week.*²⁴

State of Alert

Part of the impact of an emergency declaration is the message it sends to communities about the seriousness of an emergency.²⁵ Implicit in this philosophy of “sending a message” to the community is that there is a high threshold for a declaration of an emergency.²⁶ The current declaration framework signals this with the terms used, being an identified major incident versus a major emergency versus a disaster. Each category brings with it an understanding of the severity of the situation, while the powers across all three categories remain the same, except for section 25(2)(n), which can only be used during a Major Emergency or Disaster declaration. The challenge with the COVID-19 situation is that there were “troughs” during the emergency where the traditional understanding of a major emergency declaration was at odds with the COVID-19 reality that South Australians were living.

Currently, best practice sees interfacing legislation being used to manage emergencies until a threshold is met that results in a declaration being called, and the EM Act’s declaration process remains a rarely used legislative tool. The suggested introduction of a new declaration category is not intended to usurp this - a new declaration should not be seen as a substitute to robust portfolio-based emergency management arrangements and legislation. Rather, it is intended to provide the powers under the EM Act be available in circumstances which may involve extended or multiple peak/trough emergencies; or where interfacing legislation is not yet in place or requires amendment to be able to manage the emergency better.

As discussed above, the COVID-19 pandemic experienced a level of threat and risk that came in waves over an extended period. The EM Act is not tailored for this scenario. The instrument available to the State for an extended emergency is blunt and binary - the state is either in a major emergency or disaster period or it is not. There is no step-down available

²⁴ COVID Major Emergency Declaration ends, Government of South Australia (24 May 2022):

<https://www.premier.sa.gov.au/media-releases/news-items/covid-major-emergency-declaration-ends>

²⁵ (n 10); *Evidence of policy learning in emergency declarations as communications tools in Australia*, Ben Beccari: <https://onlinelibrary.wiley.com/doi/pdf/10.1111/disa.12594>

²⁶ This threshold is also important given the powers that come with a declaration and that the EM Act overrides other laws.

under the EM Act, which preserves the use of the powers that may be needed while alternative legislation can be drafted or a threat is being managed.²⁷

The 2022–23 River Murray flood event also presented the state with advance notice of a likely declaration. It was known for some time before the emergency declaration was made that there was likely to be destructive flooding. Preparation, initial response, and recovery planning were undertaken. Several agencies felt that this preparation could have been enhanced if some form of declaration had been called.

Given these recent examples, the Review asked stakeholders to consider the potential benefit of a new type of declaration. The example of a State of Alert, which is a declaration type available in Tasmania and the ACT, was provided.

RELEVANT ASPECTS OF THE AUSTRALIAN CAPITAL TERRITORY STATE OF ALERT²⁸

Section 151 outlines that for the Minister to declare a State of Alert they need to be satisfied that an emergency is likely to happen; and the nature of the emergency calls for an urgent, significant and coordinated response to minimise or manage a substantial risk.

The Minister may be satisfied that an emergency is likely to happen if the Minister is satisfied that an event that has happened or is happening, or a circumstance that exists, gives rise to the likelihood of an emergency.

A declaration may be made for all or part of the ACT.

During a state of alert, the Minister must give the community regular situation reports, and other reports, in accordance with the community communication and information plan.

RELEVANT ASPECTS OF THE TASMANIA STATE OF ALERT²⁹

Section 29 outlines Tasmania's State of Alert arrangements. It includes details such as if the Director of Emergency Services is of the opinion an occurrence or an impending occurrence is likely to cause loss of life or injury to persons; and the evacuation and exclusion of persons from a place is necessary in order to avoid that loss of life or injury, but the declaration of a state of disaster or emergency is not in force, the Director may declare a state of alert in relation to that place.

Upon declaration of a state of alert in relation to a place, the Director may exercise in that place those powers that are exercisable during a state of disaster or emergency.

Upon a declaration of a state of alert in relation to a place, the Director may instruct any statutory service to prepare for a possible declaration of a state of emergency or disaster.

²⁷ This is also relevant in relation to recovery, discussed elsewhere in the report.

²⁸ S151 of the *Emergencies Act 2004 (ACT)*: <https://www.legislation.act.gov.au/a/2004-28/default.asp>

²⁹ s29 of the *Emergency Services Act 1976 (TAS)*: <https://www.legislation.tas.gov.au/view/whole/html/inforce/2000-08-14/act-1976-029>

The ACT and Tasmanian State of Alert powers have been used to “flex up” to take action to mitigate or counter the likely effects of an impending emergency.

The consultation tested:

- whether that category of declaration may have been useful for South Australia in the 2022–23 River Murray flood event, for which there was a long preparation time, and a Major Emergency Declaration was in place for 80 days
- whether, with the emergence of increased occurrence and intensity of climate-based events, risks of future pandemics and the emergence of new risks and threats, there may be a case that the EM Act should also have a declaration category that enables a flex-down period where aspects of the emergency remain a live risk that requires management powers- such as a pandemic where new or emerging variants remain a credible threat
- whether the step-up and step-down approach may allow for greater nuance in the messaging of the threat of the emergency to the public.³⁰

A range of responses supported a new declaration category.

*“...a new class of declaration could be helpful where it allows for certain powers and restrictions to be imposed without still calling the incident a major incident or major emergency. For example, a State of Alert provision would be useful as a step up/down mechanism during times of forecast high flow to SA that may result in flood warnings being issued. Any such declaration would need to be made specific to a relevant affected area. Processes should be linked to the nature of the emergency or incident and need for special powers.” - **Department for Environment and Water***

*“Messaging, the type of messaging, and how that message is understood is of great importance. To issue a state of emergency but not impose the restrictions that come with it waters down its effectiveness. A state alert model is a firm alternative and addition to the [EM] Act. It accounts for the changing and evolving risk scape that society is now facing due to many drivers of change where additional steps in readiness and standing down will be required. Whichever model is used, it needs to be clear and concise that is easily interpreted and understood by the public.”
- **SA Country Fire Service***

³⁰ A State of Alert can be declared under Division 3A of the *Emergency Management Act 2006 (TAS)* and s151 of the *Emergencies Act 2004 (ACT)*

“A State of Alert system that can be used for scaling up or down would be appropriate. In the example of the River Murray Flood, this system would have enabled activation of NGOs and emergency service personnel into the region to work with and prepare CALD (Culturally and Lingually Diverse) community members with whom mainstream services may be unable to communicate, and to ensure that all people in the affected area are able to respond to alerts or warnings. Deploying NGO and emergency management resources into the region early would also have enabled more targeted community education to occur through community meetings or door-knocking high-risk properties. This could have resulted in more residents knowing how to secure and safe-guard their properties. It would also have provided a platform for educating community members about how electricity supply and disconnection would be managed during the flood which would have enabled better preparation and reduced losses. Some community members have a limited ability to prepare themselves or their properties without support, and NGOs may have been able to provide the support they needed.” - SA Council of Social Service

“It has been the recent experience of the MFS, that as a support agency to the Hazard Leaders and Control Agencies responsible for emergency incidents that are increasing as a result of climate based events and emerging new risks and threats, that a new class of declaration that supports both agencies to enact increased levels of preparedness and the State Co-ordinator to enact more scalable community direction and messaging before a declaration of Major Incident, Major Emergency or Disaster, may be beneficial.”- SA Metropolitan Fire Service

*“A transition period may have been beneficial when the risk of COVID-19 was reducing. In the absence of a state notification process at that time, the LGA found it challenging to identify appropriate exit strategy measures as the lead of the LGFSG. If there had been a transition period process, the LGA could have complemented the state’s process and guidance methods. The LGA agrees that a State of Alert would have been useful in the lead up to the 2022-2023 River Murray flood, to enable greater resourcing to be deployed during the preparation phase. This was arguably the most resource intensive phase of the flood and impacted councils undertook significant preparation activities with limited physical resources from the State. Introducing a new type of declaration to facilitate scaling up of resources in these types of situations should be considered.”
- Local Government Association of SA*

If a new declaration type is introduced, it must be clear and have defined limits. It should include requirements that the use of a State of Alert or similar declaration is required to be clearly communicated and accessible for people so it can be understood by everyone in the community. It would need to strike the balance of increasing the agility of the EM Act and its powers, while maintaining appropriate safeguards and appropriately interfacing with other legislation.

“We consider that there would be significant value in having a set of declarations which reflect and support the scaling up and scaling down of an emergency response and more nuanced messaging to the community. ‘State of Alert’ would seem a good option. Care would need to be taken to ensure that a scaling up declaration could not be used for purposes not related to a disaster.... Having the Governor in Executive Council issue any scaling up declaration would provide increased assurance of appropriate use.” - Hon Steven Marshall and Hon Stephen Wade (former Premier and former Minister for Health and Wellbeing)

*“...preference is for a ‘State of Alert,’ as per Tasmania and the ACT. In developing such an option, consideration must be given as to how this type of arrangement would operate with arrangements implemented under hazard topic specific legislation to minimise administrative effort and community confusion.” – **Primary Industries and Regions SA***

*“We support the introduction of new forms of declaration, including in relation to a transition period, from emergency to recovery, and pre-emergency, as described in the Discussion Paper, with reference to the equivalent New Zealand and Tasmanian legislation. However, any new declarations that provide new or extended access to emergency powers must also be subject to accountability measures.” - **Environment Institute, The University of Adelaide***

The Review agrees that a State of Alert may have allowed for the powers required to manage the pandemic to be in place (e.g., border closures, quarantining etc), while community messaging around the threat could be more proportionate. For example, prior to the Omicron variant, there was a view that the COVID-19 threat was diminishing. A step down to a State of Alert may have allowed for the restrictions required to maintain certain protections, while simultaneously messaging that while at that time the risk to the community was not on par with a major emergency, the state was on alert for what could be a rapidly changing risk.

RECOMMENDATION

To support the evolving types of emergency responses required, the EM Act should add a fourth declaration category so that the State Co-ordinator may use section 25 powers in anticipation of, or in the scaling down of, a declared major emergency or disaster. The ACT and Tasmanian State of Alert models should inform this declaration category.

Disaster extensions

The Review also received a submission that posited that if a disaster declaration requires an extension, there may be a circumstance in which both Houses of Parliament may not be able to approve by resolution an extension.

“The disaster declaration should be able to be extended by the Executive Council if parliament is not scheduled to meet before the expected expiration of the deadline.” - David Basham MP, Former Minister of Primary Industries and Regional Development

The Review accepts that as the most extreme form of declaration, there may be a circumstance in which achieving this extension is challenging. The Review invited a submission from the Speaker, the President of the Legislative Council and the respective Clerks to understand what arrangements might be needed or might be in place but none was received.

RECOMMENDATION

Amend the EM Act to allow for an alternative extension process for a disaster if, due to the impact of the disaster, both Houses of Parliament are unable to approve an extension.

Part 4: Division 4 – Powers that may be exercised in relation to declared emergencies

Temporary COVID-19 Powers

While the EM Act was intended to be used for pandemics, the nature, duration and impact of COVID-19 was unprecedented. As a result, the COVID-19 Response Act was put in place to temporarily modify laws, including the EM Act.

A number of these modifications were expressed to clarify the powers of the State Co-ordinator. These amendments modified section 25 to:

- confirm that the State Co-ordinator could give a direction or make a requirement that applies to persons in the State generally and provide for the publication of such a direction and exemption from it.
- confirm that the State Co-ordinator could exercise a power or function under section 25 even if it would contravene another law and that the State Co-ordinator could require something of a person or class of persons that would see them acting in contravention of another law of the State.
- enable the State Co-ordinator or an authorised officer to use reasonably necessary force in the discharge of a power or to ensure compliance with it.

These amendments have since lapsed. It is notable that Parliament determined that these powers were required to manage COVID-19. If the EM Act is to be future proofed, given the experience of the recent pandemic, it is reasonable to expect that these powers may be required again in the future.

*“We consider that the temporary Section 25 powers from the COVID-19 Emergency Response Act 2020 should be reinstated to the Emergency Management Act.” - **Hon Steven Marshall and Hon Stephen Wade (former Premier and former Minister for Health and Wellbeing)***

*“With the arrival of COVID-19, the urgent development and passage of the COVID Response Act was necessary to make temporary modifications to the EM Act...It is considered that these modifications should be made permanent and are of significant future value, not only to the management of pandemics, but to any large-scale emergencies that the State might need to manage.” - **Attorney-General’s Department***

*“The additional Section 25 powers contained in the COVID-19 Emergency Response Act (Schedule 2, Part 1, Section 1) were implemented due to identified issues in the application of the current powers contained within the Emergency Management Act. SAPOL submits that these identified gaps are in fact lessons identified from applying the powers and the provisions and should be permanently added to the suite of powers available to both the State Co-ordinator and Authorised Officers (per Section 25 of the Emergency Management Act).” - **SA Police***

“It is reasonable to future proof the EM Act by expecting these powers from the COVID-19 Emergency Response Act 2020 may be required again in the future and therefore should be reinstated to the EM Act.” – Department for Education

RECOMMENDATION

Reinstate the temporary powers from the *COVID-19 Emergency Response Act 2020* to the EM Act for a comprehensive and flexible framework for managing declared emergencies.

Section 25 (3)

In 2009, amendments were made to the EM Act and the SAPH Act to prepare the state better to handle a pandemic.³¹ At this time section 25 (3) of the EM Act was included:

In addition, if, after considering the advice of the Chief Public Health Officer, the State Co-ordinator is of the opinion that the scope of an emergency is of such a magnitude that demand for medical goods or services cannot be met without contravening the laws of the State, the State Co-ordinator may, despite those laws, authorise authorised officers, or authorised officers of a particular class, to provide, or direct the provision of, such goods or services or a particular class of such goods or services on such conditions as the State Co-ordinator thinks appropriate.

Section 25 (3) is in some respects an anomaly, requiring the State Co-ordinator to take advice from a specific officer, namely the Chief Public Health Officer, if the State Co-ordinator proposes to exercise a power in a particular way in particular specific circumstances. However, there is no such requirement for the State Co-ordinator to take advice from other government officers in exercising powers – for example, in relation to economic matters, vulnerable groups, child protection or remote communities. Rather, the State Co-ordinator is reliant on the emergency management framework and the provision of advice and intelligence through this model to inform their decision making.

*“SAPOL submits that Section 25(3) of the [EM] Act is no longer required and can be removed.”
- SA Police*

“If the [EM] Act expressly provides that the State Co-ordinator is able to take advice from any source, there should be no need to expressly require advice from the Chief Public Health Officer on this specific topic.” – The Law Society of SA

³¹ via the *Statutes Amendment (Public Health Incidents and Emergencies) Act 2009*

“We consider that it is unhelpful to include in the Emergency Management Act designated sources of advice. Taking appropriate advice is implicit in the role and function of the State Co-ordinator and requiring advice from a specified source may discourage the State Co-ordinator from seeking advice from elsewhere or inappropriately give priority to the advice of one source. Further, advice should not be able to be read as being mandated – mandating advice would increase the risk of legal challenge.” - Hon Steven Marshall and Hon Stephen Wade (former Premier and former Minister for Health and Wellbeing)

The Review is not persuaded that requiring specific inputs to inform decision making during a declaration should be legislated. The State Co-ordinator should not be obliged to consult with any particular person or group in an emergency, as this could limit the speed at which the State Co-ordinator may act.

Stakeholders generally supported the proposal that the State Co-ordinator should be able to seek advice from any source that the State Co-ordinator considers appropriate. There was not unanimous agreement that this required legislating, as it may be implicit. On balance, the Review considers there would be a benefit in including this in the EM Act, not least because a primary avenue for challenging any decision is judicial review, which might examine what are relevant considerations of the State Co-ordinator.

RECOMMENDATION

Amend section 25(3) of the EM Act so that the State Co-ordinator is not required to take advice from a particular source but may take advice from any source the State Co-ordinator considers appropriate.

Section 25 - Additional Powers: Information sharing and gathering prior to a declaration

The State Co-ordinator currently has no information gathering powers that can be used prior to a declaration of an identified major incident, major emergency, or disaster. Some of these powers are covered under alternative legislation, such as the *Terrorism (Police Powers) Act 2005*. However, such powers could be beneficial or necessary in the case of cyber incidents, non-kinetic terrorism acts, or other emergency scenarios. Future technologies may also require data and information inputs to support critical pre-declaration mitigation activities.

The State Co-ordinator's information gathering powers sit in contrast to the powers the Minister holds in relation to an electricity supply emergency under section 27D of the EM Act:

- (1) The Minister may require a person—
 - (a) to give the Minister within a specified time, or at specified times, specified information; or
 - (b) to produce to the Minister within a specified time, or at specified times, specified documents,that the Minister reasonably requires—
 - (c) to determine whether there is, or is likely to be, an electricity supply emergency; or
 - (d) to plan for the future exercise of powers under this Division; or
 - (e) to otherwise administer or enforce this Division.

Emerging threats from climate change and cyber security will present new challenges. These threats can impact supply chains, resulting in social and economic disruption. As such, the ability to proactively seek and gather information may better assist the State Co-ordinator to make a timely decision as to whether an emergency declaration is required.

Of those who responded to this matter, over 95% supported making this power available to the State Co-ordinator.

*“Providing information-gathering powers to the State Co-ordinator or authorised personnel should be considered as it can enable early detection of potential emergencies. This early warning allows for more effective preparedness, response planning, and resource allocation. Timely and accurate information is crucial for a rapid and effective emergency response. Information-gathering powers can facilitate a quicker assessment of the situation, enabling authorities to take prompt and appropriate actions to address emerging threats. Transparent legal and ethical frameworks should accompany any information-gathering powers. Safeguards must be in place to protect individual rights privacy and ensure that the powers are used responsibly and transparently. Clearly defined criteria that would trigger the use of information-gathering powers should be developed. This could include specific indicators, thresholds, or circumstances that warrant such measures, preventing misuse or overreach... The decision to grant information-gathering powers should balance the need for proactive emergency management with protecting individual rights and privacy.” - **City of Adelaide***

*“SAPOL submits that a power to direct the provision of information in the same manner as Section 27 would benefit the role of the State Co-ordinator before an event has been subject to a declaration. SAPOL submits that a power to provide information should form part of Section 15 of the [EM] Act which would limit that power to the State Co-ordinator. The application of the existing Section 18 of the [EM] Act would then allow the State Co-ordinator to delegate that power to an individual Authorised Officer (or other person) on a case by case basis. SAPOL submits that the protection applied per Section 27D should also apply to any new power applied in Section 15 of the [EM] Act.” - **SA Police***

“Information sharing powers are essential as is the ability to revisit works undertaken during recovery activities once the defined recovery period has expired where it helps to reduce the level of ongoing risks to the public across multiple risk domains.”- SA Country Fire Service

“It is widely accepted that the emergency management and risk landscape is rapidly evolving, particularly in relation to cyber and technology-based emergencies. The emergence of new technologies, such as artificial intelligence, autonomous vehicles, and advanced manufacturing, combined with the increased reliance by the community on technology is introducing new and novel risks. It is critical for the [EM] Act to remain fit for purpose and where possible forward thinking. To achieve this there needs to be adequate provisions in the [EM] Act including those for information sharing, cooperation with private-sector entities, the cross-jurisdictional nature of information technology and associated mechanisms.”- Department of the Premier and Cabinet

The Review considers it appropriate that there is a power, but the ability to exercise powers of this nature should be limited, particularly in a pre-declaration period. It would be appropriate that Regulations be made to set out when the power might be exercised, by whom and any conditions that might attach to it (for example, to whom the power might be delegated).

The information should not be admissible in evidence against the person in proceedings for an offence, as in section 27D (2). This will serve as a natural fetter on the use of the power. Given its potential or likely sensitivity, consideration should be given to protecting/preventing access to such information under the *Freedom of Information Act 1991*.

RECOMMENDATION

Provide the State Co-ordinator with an information gathering power to determine whether there is (or is likely to be) an emergency that warrants the making of a declaration. Regulations should be able to be made relating to the use of the power.

In addition to the State Co-ordinator requiring information sharing powers, it was noted that recovery operations are often hampered by the lack of information sharing between agencies, jurisdictions, and response organisations, including not-for profit and insurance companies. This is explored further below in relation to recovery powers.

New Power for Ministers

The Review also heard that agencies would appreciate the opportunity to provide advice when decisions are made or directions are drafted. Through the restriction of movement, certain activities established by other legislation can be compromised. Requirements around witnessing documents, in-person observation in the child protection context, and inspections or requirements to present in person in the community corrections context are all examples.

The State Co-ordinator may take the advice of whomever they deem necessary, but it is recognised that sometimes there are consequences on other government operations when a direction is being issued. The Australian Government deals with one aspect of this challenge by allowing a Minister to determine that some provisions of Commonwealth laws can be modified in specified ways when a National Emergency Declaration is in force if certain conditions are satisfied. Part 3 of the *National Emergency Declaration Act 2020* provides as follows:³²

Part 3—Modification of administrative requirements during a national emergency

15 Ministers may modify administrative requirements during a national emergency

Power to modify affected provisions in relation to relevant matters

- (1) This section applies in relation to a provision (an ***affected provision***) of a law of the Commonwealth that requires or permits any of the following matters (a ***relevant matter***):
 - (a) the giving of information in writing;
 - (b) the signature of a person;
 - (c) the production of a document by a person;
 - (d) the recording of information;
 - (e) the retention of documents or information;
 - (f) the witnessing of signatures;
 - (g) the certification of matters by witnesses;
 - (h) the verification of the identity of a person;
 - (i) the attestation of documents;
 - (j) the reporting or notification of a matter to a Department, agency or authority of the Commonwealth.
- (2) If a national emergency declaration is in force, a responsible Minister for an affected provision may, by legislative instrument, determine that, to the extent that the affected provision relates to a relevant matter:

³² *National Emergency Declaration Act 2020 (Cth)*: <https://www.legislation.gov.au/C2020A00128/latest/text>

- (a) the affected provision is varied as specified in the determination in relation to a period specified in the determination; or
 - (b) the affected provision does not apply in relation to a period specified in the determination; or
 - (c) the affected provision does not apply, and that another provision specified in the determination applies instead, in relation to a period specified in the determination.
- (3) A determination under subsection (2) has effect accordingly.

Requirements relating to making determinations

- (4) A responsible Minister for an affected provision must not make a determination under subsection (2) in relation to the affected provision unless the responsible Minister is satisfied that:
- (a) the determination is in response to circumstances relating to the emergency to which the national emergency declaration relates; and
 - (b) making the determination will be of benefit to the public, or a section of the public.
- (5) The determination must specify the national emergency declaration to which it relates.

Other than what may lawfully come within the scope of the State Co-ordinator's directions, South Australian legislation does not contain a similar provision. Legislation can be (and has been) temporarily amended to address the challenge of unintended consequences of emergency management decisions. For example, during COVID-19, temporary legislation was required to provide flexibility to community visitor schemes so they could fulfil their roles in an adjusted manner to be consistent with the emergency declaration directions (example below). Similarly, there were provisions that related to amending the requirements relating to official documents during this period:

Section 10A — Provisions relating to certain community visitors³³

- (1) A community visitor may perform a function or exercise a power under a prescribed law to visit and inspect premises, or visit a patient, resident or other person contemplated by the prescribed law, by means of audiovisual or other electronic means that do not involve the community visitor physically entering the premises and, in relation to such visits and inspections—
- (a) a requirement under the prescribed law that the community visitor physically attend and inspect premises (however described)—

³³ COVID-19 Emergency Response Act 2020

- (i) if it is reasonably practicable to comply with the requirement by audiovisual or other electronic means—will be taken to be modified to the extent necessary to give effect to this subsection; or
 - (ii) if it is not reasonably practicable to comply with the requirement by audiovisual or other electronic means—will be taken to be suspended until the expiry of this section; and
- (b) a requirement under the prescribed law that such visits or inspections be conducted by more than 1 community visitor will be taken to be modified so that the visit or inspection may be conducted by a single community visitor; and
 - (c) a reference in the prescribed law that contemplates a community visitor visiting or otherwise being on premises is to be construed accordingly.

To facilitate better emergency management in future, the Review considers it important that there is appropriate flexibility to ensure that a temporary inability to comply with a legislative requirement during an emergency does not lead to an invalidity or breach of a law. Even when weight is given to the importance of the role of Parliament and the laws it passes, on balance it is appropriate for a Minister to have available to them the flexibility to adjust requirements in a timely way during an emergency declaration period.

RECOMMENDATION

The EM Act includes a section that provides Ministers with the ability to dispense with procedural requirements of another Act during a declaration period.

Role of Executive Government and Parliament during a declaration

The consultation asked whether any requirements should be attached to the making of a direction, such as publication or briefing Parliament. Of those who responded, there was overall support for transparency but a concern about not distracting from the task at hand by making any requirement burdensome. Some felt that this could be dealt with in the SEMP.

The role of the Executive Government was addressed in the joint submission of former Premier the Hon Steven Marshall and former Health Minister the Hon Stephen Wade:

“We consider that the emergency management arrangements should minimise the disruption to established democratic principles and accountability mechanisms. During the COVID-19 pandemic, the Parliament of South Australia continued to meet and Ministers accepted accountability, not only for the ongoing operations of Government and management of the emergency, but also for the written directions of the State Co-ordinator. The Police Commissioner regularly made himself available to give a public account for his decisions and his directions. We consider that it would be appropriate for the State Co-ordinator to be required to arrange for all written directions to be tabled in both Houses of Parliament. Further, we consider that the oversight of the elected government should be reflected in explicit powers of direction of the State Co-ordinator by the Government. There was little conflict between the State Co-ordinator and the Government during the COVID-19 pandemic. However, in the interests of transparency and clear accountability, if the

*State Co-ordinator would not be taking a certain action without the insistence of the government, it would be good practice for the matter to be the subject of a written direction. To this end, we consider that the Emergency Management Act should be amended to include a provision similar to ss. 6 and 8 of the Police Act 1998 to make the State Co-ordinator subject to written direction by the Minister or the Governor in Executive Council, with any written direction required to be gazetted and tabled in Parliament.” - **Hon Steven Marshall and Hon Stephen Wade (former Premier and former Minister for Health and Wellbeing)***

“The framework for the declaration of a major emergency under section 23 of the [EM] Act currently requires the declaration to be in writing and published in a form determined by the Minister and will remain in force for 14 days or further period approved by the Governor. The Society’s Human Rights and Administrative and Public Law Committees suggested a cap should be imposed on the maximum number of times the declaration of another emergency can be made without being subject to Parliamentary review, suggesting a maximum of 12 months total duration would be appropriate.

*The review or oversight should include ensuring the declaration criteria are still being met but in addition should consider issues relating to the proportionality of powers being exercised and the adequacy of governance and oversight mechanisms.” – **The Law Society of SA***

It is notable that prior to the COVID-19 emergency, written directions had not been issued. That situation may be an exception rather than the rule, in particular that directions were applied to such wide classes of people. It was the practice at the time that directions of wide application were published on a website. Publishing directions that are of general application is highly appropriate. At the other extreme, it is also imaginable that in a different type of emergency, a direction might be issued to an individual person and that publication of that direction would be inappropriate. It is also foreseeable that authorised officers may issue directions that are not in writing, or that there are so many authorised officers issuing directions “on the ground” that it is not practicable for them to be subject to a tabling requirement.

For this reason, the Review does not consider that the EM Act should require tabling of written directions in Parliament. We also do not consider it necessary for the EM Act to prescribe a manner and form for publishing directions that are of general application (such as those made during COVID-19), as the practical reality is that for them to be known and enforceable, publication (or an ability for them to be referred to by authorised officers) is necessary. The appropriate publication method might vary depending on the type of emergency. A method of publication could be dealt with via Regulation if considered desirable.

As to the suggestion that the State Co-ordinator be subject to direction by the Minister or the Governor in Executive Council, the Review has given this suggestion considerable thought. This proposal would fundamentally shift the overarching responsibility that the EM Act provides to the State Co-ordinator. The Review recognises the transparency arguments in favour of an explicit direction power that would require any direction to be made public. The Review also recognises that such a power would provide a safeguard for Executive Government if it has concerns about how the State Co-ordinator is exercising powers.

The consultation conducted by the Review revealed that the current framework of the EM Act with the Police Commissioner being at arm's length from politics and holding the role of State Co-ordinator is generally supported (including strongly supported by the former Premier and former Minister for Health and Wellbeing who suggested about a power of direction).

A direction at the behest of a Minister (or the Governor on the advice of Cabinet) has the potential to undermine or interfere with the ongoing management of the emergency by the State Co-ordinator. There is also potential in certain (e.g., terrorism-related) emergency situations for the Police Commissioner to be in possession of information that a Minister is not. This is significant as most of the powers of the State Co-ordinator (e.g., those in section 25 or the declaration of a Major Emergency) can only be exercised if the State Co-ordinator has formed a requisite state of mind about a factual situation. This would be hard to meet (or establish on any review) if the State Co-ordinator has been directed to exercise the power.

As to the suggestion that the length of an emergency should be subject to Parliamentary review, particularly if it exceeds 12 months, the Review is conscious that such a review by Parliament would inevitably consume resources that should be directed to the management of an emergency. There has not been a situation where Parliament has not been able to take review action, including legislative action, to address an emergency if required.³⁴

Mobilisation of the Public Sector

The EM Act does not deal with the issue of mobilisation of the public sector to apply effort to a declared emergency. Like other jurisdictions, this is addressed in the *Public Sector Act 2009* (Public Sector Act). The Premier's powers to direct come from section 10 of the Public Sector Act. The *South Australian Public Sector Mobilisation Policy* (Public Sector Mobilisation Policy) is an annex of the SEMP.

The Premier can activate the Public Sector Mobilisation Policy when a major emergency or disaster is declared under the EM Act or a public health incident or a public health emergency is declared under the SAPH Act. It enables the South Australian Government to temporarily deploy significant numbers of SA public sector employees for a:

- major emergency and disaster preparation, response, relief, and recovery
- the maintenance of critical functions.

³⁴ The Review invited a submission from the Speaker, the President of the Legislative Council and the respective Clerks to understand what arrangements might be needed or might be in place but none was received.

On 26 March 2020, the Premier issued a direction that gave effect to the Public Sector Mobilisation Policy³⁵. The Commissioner for Public Sector Employment was appointed as Mobilisation Co-ordinator by the Chief Executive of the Department of the Premier and Cabinet, consistent with the Public Sector Mobilisation Policy.

Regarding the success of public sector mobilisation, the *Office of the Commissioner for Public Sector Employment (OCPSE) Annual Report 2021-22* noted:

*The team has successfully mobilised more than 700 public sector employees in the last two years to support the government's COVID-19 response. Following the State Controller withdrawing the Major Emergency Declaration in May 2022, the OCPSE Mobilisation Team was deactivated on 30 June 2022.*³⁶

There was strong support for public sector mobilisation to be an embedded element of the emergency management framework rather than as an annex of the SEMP. Over 90% of those who responded to this issue supported this.

"...there is a clear need for direction and ultimately powers, for the mobilisation of the public sector to begin at the EM Act rather than from an annex of the SEMP as is currently. Provision of suited capability and seamless timely response for both state-based and inter-jurisdictional efforts is key during emergency events, within response, relief, and recovery and to maintain critical functions... In contrast to emergency services, SA Housing Authority, whilst a Functional Support Group Lead for Emergency Relief within the SEMP, does not have emergency management as its core function as an Authority and therefore has significant operational pressure when establishing relief and recovery centres. As an example of the operational impact of Emergency Relief, in 2022/2023 over 3,200 hours were logged in SAHA's timekeeping system by around 50 staff that were attributed to Emergency Relief support outside of their core roles. Powers within the EM Act would serve to reduce current work arounds within the broader Public Sector Act for deployment."
- **SA Housing Authority**

"The scale, duration, severity, and compounding of emergency events in recent years has necessitated a far greater response effort than required previously. As a result, agencies with emergency management responsibilities are finding it increasingly difficult to meet staffing capacity needs and sustain emergency campaigns whilst adequately managing staff fatigue and burnout. This challenge has been identified in both the Burns Review and the Independent Review into the 2019-20 Bushfire Season (Keelty Review), as well as the Royal Commission into National Natural Disaster Arrangements. At the start of the COVID-19 pandemic in South Australia, it was quickly determined that the level of response required to support emergency management activities far exceeded the capacity of the control agency. In accordance with the Public Sector Mobilisation Policy (the Policy), public servants from across government undertook temporary

³⁵ Direction of the Premier under section 10 of the Public Sector Act 2009 (26 March 2020):

https://www.publicsector.sa.gov.au/_data/assets/pdf_file/0007/213847/Direction-Public-Sector-Mobilisation-for-a-Major-Emergency.pdf

³⁶ 2020-21 Annual Report, Office of the Commissioner for Public Sector Employment:

<https://www.publicsector.sa.gov.au/about/Resources-and-Publications/annual-reports/documents-2020-21/2020-2021-Annual-Report-OCPSE.pdf>

*working arrangements to support the pandemic response, which was determined to be a whole of government priority. This was the first time that the Policy had been utilised and, whilst generally successful, was not without its challenges. Internal reviews undertaken since the pandemic have also identified a lack of support capacity across agencies. Further, the Policy can only be activated during the declaration of either a Major Emergency or Disaster under the [EM] Act which significantly narrows the scope of instances in which the Policy can be utilised. DPC supports the inclusion of a more explicit legislative mechanism that reinforces that emergency management is a shared responsibility across all public sector agencies.” - **Department of the Premier and Cabinet***

*“SAVEM believes such a provision could expedite mobilisation of the public sector even though the mechanism to do so exists in the Public Sector Act. Bringing such a provision under one umbrella – the EM Act – coupled with a deliberate move towards professionalisation of the EM sector is recommended given the expected increase in emergency incidents.”
- **SA Veterinary Emergency Management Inc***

*“An explicit, well mapped out and agreed mechanism to facilitate the mobilisation of public servants with relevant expertise when additional support is required to assist in responding to and recovering from emergencies will greatly assist government agencies and local government to fulfil their responsibilities in an emergency event.” - **Green Industries SA***

*“...if past recruitment calls for public sector volunteers for EM programs (such as the Logistics Functional Support Group) are anything to go by, active engagement will occur in the short-term but rapidly dwindle thereafter. In the case of the Logistics Functional Support Group example, a call recruited around 120 volunteers which within several years had reduced by around 40%. For this reason, the EM Act would benefit from a section that provides contingencies outside of, and under, a declaration to address public sector mobilisation.”- **Primary Industries and Regions SA***

It is noted that if the government adopts the State of Alert or equivalent emergency declaration recommendation, there would be greater opportunity for earlier preparations for public sector mobilisation.

RECOMMENDATION

Incorporate an explicit mechanism in the EM Act to facilitate the mobilisation of the public sector workforce when necessary to respond to a declared emergency.

Part 4: Division 5 – Recovery operations

Recovery Co-ordinator role

Recovery efforts have become an increasingly important element of emergency management. Governments, organisations, communities and individuals all contribute significantly to recovery efforts.

The EM Act states that its objects are to be achieved through establishing structures to support a seamless transition from response to recovery in relation to an emergency. However, previous reviews, such as the Burns Review, have found that recovery operations are somewhat ad-hoc and inconsistent. While steps have been taken to improve and respond to these concerns, material challenges remain in the recovery space.

Recovery operations are defined under section 3 of the EM Act as follows:

recovery operations means the conduct of any measures (such as human, economic and environmental measures) taken during or after an emergency, being measures necessary to assist the re-establishment of the normal pattern of life of individuals, families and communities affected by the emergency and includes—

- (a) the restoration of essential facilities and services; and
- (b) the restoration of other facilities, services and social networks necessary for the normal functioning of a community; and
- (c) the provision of information, material and personal needs; and
- (d) the provision of means of emotional support; and
- (e) the recovery of the natural environment; and
- (f) support to assist the recovery of business;

The definition has no reference to remediation of measures taken as part of the response phase (for example, construction of temporary structures).

Section 15 of the EM Act provides that the State Co-ordinator holds the function of managing and co-ordinating response and recovery operations in accordance with the EM Act and the SEMP. The State Co-ordinator does not need to make a declaration for response and recovery operations to occur.³⁷ However, if a declaration is made, the State Co-ordinator must, as soon as practicable, appoint an Assistant State Co-ordinator, Recovery to exercise powers and functions in relation to recovery operations, and this role may have powers and functions delegated to it.

³⁷ Absent a declaration, however, the powers in section 27 are not available.

SEMC has created the role of the State Recovery Co-ordinator within the SEMP. The State Recovery Co-ordinator is responsible for, among other tasks, leading state coordinated recovery planning and recovery operations when it is determined a state recovery response is required for an emergency outside of a declaration period.

The SEMP does not describe the relationship between the State Co-ordinator's responsibilities for recovery under the EM Act outside of a declaration period and this SEMP role.

The Review heard that the State's recovery efforts have been variable and often challenging. Of the 20 submissions received on this matter, all were in favour of a single recovery role (referred to for the purposes of this report as a Recovery Co-ordinator).

"Currently upon a declaration an Assistant State Co-ordinator – Recovery is appointed. Outside of a declaration a State Recovery Co-ordinator operates. Both roles are described in the SEMP. SAPOL notes that the roles are often confused. SAPOL submits that a single position is required. The position (title to be determined) would be similar to that of the State Co-ordinator in that it would exist at all times. The title selected would need to ensure that there is no confusion with the title or role of the State Co-ordinator. The incumbent would be required to ensure that recovery plans, policies and operations are prepared, published and able to be delivered to the community for events that are not subject to a declaration as well as events that have been declared... Powers and supporting resources (human and financial) are required for the new recovery lead position to implement recovery operations. Those powers are different to the response focused powers in Section 25 of the Emergency Management Act and would include provisions addressing damage and impact assessment, land clearing and cleanup post emergency, rebuilding, short and long term accommodation, information sharing, economic recovery, and social support type activities. It may be that different agencies support the new recovery lead as compared to the structures in place for response." – SA Police

"The legislated establishment of the role of State Recovery Co-ordinator, supported by appropriate functions and delegations (in a similar fashion to that of the State Co-ordinator) of the State Recovery Co-ordinator would bring South Australia in line with multiple other Australian jurisdictions including Queensland, New South Wales, Victoria, Tasmania and Western Australia; whose emergency management legislation identifies a position of coordination, leadership and advice for disaster recovery." - Department of the Premier and Cabinet

"Identifying a separate position of a State Recovery Co-ordinator could provide benefits by creating greater responsibility for the state to ensure that their responsibility for ensuring recovery is coordinated is achieved. The functions of the position should include the management and co-ordination of recovery operations in accordance with the [EM] Act and SEMP, work collaboratively with the State Co-ordinator to implement early recovery strategies, provide SEMC with information regarding recovery operations, and support recovery planning within zone and state levels... Outside emergency events, the State Recovery Co-ordinator should be ensuring recovery planning is being undertaken, relationships are established and recovery leaders identified and trained." – Local Government Association of SA

*“Recovery is a long process that would benefit from greater oversight from the State government. Historically, councils and not-for-profit agencies have assumed significant responsibility for recovery efforts, who may not have sufficient resources to fully implement recovery processes. There is substantial research available on how to support Recovery better and it requires an uplift in capability and focus. - **City of Onkaparinga***

*“The EPA would welcome the introduction of a State Recovery Co-ordinator role, the potential future importance of this should not be underestimated as we anticipate more complex and overlapping events. Consideration should also be given to the duration of powers of any Recovery Co-ordinator in relation to the length of time an incident or emergency is declared, noting that recovery operations can take years.” - **Environment Protection Authority***

*“The provision of a separate position of a State Recovery Co-ordinator is important and would be very beneficial. It will enable the Government to be better prepared and able to commence recovery planning and operations, even when an emergency event is still active. This position could also advise the State Co-ordinator when deciding about the declaration of a major emergency and when emergency relief and recovery responses should be triggered. The Council suggests that the State Recovery Co-ordinator play a key role in co-ordinating recovery efforts for natural disasters of any scale (not just large and complex events) as our experience has shown that the needs of impacted individuals are the same, regardless of the size and complexity of the overall event.” - **Adelaide Hills Council***

*“Provisions to support effective longer-term recovery are a significant weakness in the EM Act. There needs to be a broader consideration of how best to address this through the EM Act and other legislation. The [EM] Act talks about the appointment of an Assistant State Co-ordinator – Recovery (for declared emergency recovery) whilst the SEMP outlines the role of the State Recovery Co-ordinator (non-declared emergency recovery). There is often confusion about these roles and their powers -clarification of these roles is required. This should include outlining the State Recovery Co-ordinator role and their powers in the [EM] Act. The State Recovery Co-ordinator should be given the powers to direct State government agencies in a similar way the State Co-ordinator does in the response phase”. – **Primary Industries and Regions SA***

The Review considers that the provision for a Recovery Co-ordinator within the Act would strengthen emergency management arrangements.

RECOMMENDATION

The EM Act should establish a (separate) position of Recovery Co-ordinator. The role should not be limited to a declaration period.

Reporting

The current command and control arrangements that make the State Co-ordinator ultimately responsible during a declaration should be preserved. The Recovery Co-ordinator should report to the State Co-ordinator during a declared emergency and be an authorised officer for the purpose of delegations of section 25 of the EM Act. This would maintain the State Co-ordinator's overall responsibility for response and recovery during a declared emergency.

"A permanent State Recovery Co-ordinator should be appointed, reporting to the State Co-ordinator. The State Co-ordinator should be given the powers to set a Recovery declaration period. This role would be part of the professionalisation of the EM sector, which will be increasingly necessary due to climate change and the impact of frequent severe weather events and the commensurate increase in numbers and diversity of responders required to effectively manage an upscale of emergencies." - SA Veterinary Emergency Management Inc

"SAPOL would seek that for the duration of a declaration the new recovery lead has a reporting relationship to the State Co-ordinator. This 'during declaration' relationship would ensure that appropriate coordination and collaboration occurs without putting persons at risk during the event. Outside of a declaration the new recovery lead position would report to the Minister responsible for the [EM] Act in a similar way to the State Co-ordinator." - SA Police

RECOMMENDATION

The Recovery Co-ordinator should be an authorised officer who reports to the State Co-ordinator during a declaration period.

Recovery Powers

The scope of recovery powers under section 27 is untested but notably vests power primarily in the State Co-ordinator, who may direct authorised officers to take specified action to carry out recovery operations per the SEMP **at any time** after a declaration. The powers exercisable concerning recovery activities under section 27 are notably different from those available under section 25 for response.³⁸

If an emergency does not result in a declaration, the State Co-ordinator or any other person has no specific powers, except as may be provided for under general law.

³⁸ S25 of the EM Act provides a range of powers that may be required during the response phase including but not limited to the ability to enter and take possession of property, construct or destroy structures, direct or prohibit the movement of persons and animals, disconnect and reconnect essential services. During the recovery phase, activities are only able to be undertaken in accordance with what is outlined in the SEMP.

If a Recovery Co-ordinator role is established under the EM Act as recommended, this role should have its own powers. Even if a designated role is not specified in the EM Act, the recovery powers currently described in section 27 should be strengthened.

The Royal Commission raised the need for recovery powers to enable the construction of temporary structures. In a joint submission by the Communications Alliance and Australian Mobile Telecommunications Association (AMTA), it was submitted:

Following a disaster event there may be a need to install temporary facilities, such as Cells on Wheels (COWS), Mobile Exchange on Wheels (MEOWs), satellite base stations and other temporary infrastructure. Such resources may need to be in place from a few days to many months, depending upon the event, the suitability of temporary infrastructure to the terrain and the damage caused to the existing infrastructure. Recent changes to regulatory arrangements for such temporary facilities have improved flexibility, however in light of the severity of the 2020 bushfires, further refinements should be considered after service providers have had a chance to better assess current arrangements and any shortcomings. For example, current regulations impose time limits on the deployment of temporary infrastructure which can unnecessarily restrict service delivery post emergency. It may be that a mix of both swiftly deployable and semi-permanent equipment needs to be provided for with more flexible deployment timeframes.³⁹

There was strong support for the EM Act strengthening recovery roles and powers in consultation:

*“The Discussion Paper Case Study 2022/23 River Murray Flooding Event highlights an important aspect of utility access to land once an emergency declaration has ended. ElectraNet supports the extension of section 25 powers throughout the recovery phase to enable essential service providers / electricity entities to access land and waters to enable necessary works to be undertaken including removal of temporary structures, supply restoration, reconstruction or alteration of infrastructure and rehabilitation of land.” - **ElectraNet***

*“SASES also notes the provisions in Division 5 (Recovery Operations). It is unclear as to why this specific division exists. It is assumed that the intent of the EM Act is to provide for these powers to support recovery operations for when a declaration has been revoked or is no longer in force. SASES notes the limitation with respect to carrying out recovery operations on private land per s27(3) does not apply to powers exercised pursuant to s25(2). Recent experiences with River Murray Flooding highlight the need for coordinated approaches to recovery that are agnostic as to land tenure (e.g. rubbish removal, levee restorations).” - **SA State Emergency Service***

³⁹ Submission to the Royal Commission into National Natural Disaster Arrangements, Communications Alliance & Australian Mobile Telecommunications Alliance: https://www.commsalliance.com.au/_data/assets/pdf_file/0009/69687/200417_CA-AMTA-submission_Royal-Comm.-National-Natural-Disaster-Arrangements_SUBMITTED.pdf

“The review could explore provisions relevant to post-event recovery activities for streamlining approvals granted under other legislation such as development approvals, water affecting activity permits or native vegetation management clearance approvals etc. under the Landscape South Australia Act 2019, Native Vegetation Act 1991, River Murray Act 2003, Coast Protection Act 1972 and Planning, Development and Infrastructure Act 2016.”

- Department for Environment and Water

“In the face of increasing frequency and severity of natural and human-induced disasters, the need to strengthen recovery powers and enact supportive legislation is significant. The aftermath of emergency events often leaves communities grappling with immense challenges, including infrastructure damage, economic losses, and social upheaval. To enable the most robust environment for government to be able to effectively support communities through these challenges, DPC supports stronger recovery powers in the [EM] Act - in particular outside of a declared event... where an emergency does not result in a declaration, no specific powers are available to the State Co-ordinator, State Recovery Co-ordinator or any other person, except as may be provided for under the general law. This represents a significant reduction in powers available to deliver recovery operations from the time the declaration is in force... Review of the [EM] Act should consider an expansion of recovery powers, addressing:

- *Powers for recovery outside of a declaration;*
- *Powers for recovery following the conclusion of a declaration; and*
- *Powers for recovery in relation to the role of the State Recovery Co-ordinator (should this role become legislated).” - Department of the Premier and Cabinet*

“The Cherry Gardens fire in 2021 was small in area, about 2700 hectares, crossing three adjacent Local Government boundaries: Adelaide Hills, Onkaparinga and Mount Barker. PIRSA was not activated, State Recovery was not activated, and a recovery centre was not created. Instead, recovery was seconded to Local Government, in particular, Adelaide Hills Council. Consequently, there was confusion in the community about who was “doing” recovery, and who affected residents and landowners should talk to, causing considerable stress and angst in the community.”

- SA Veterinary Emergency Management Inc

Several submissions provide considerable detail supporting the need for the Recovery Co-ordinator role. For example, the City of Adelaide and other councils provided details of how such a role should operate, its scope, and reporting requirements.

In Queensland, under the *Queensland Reconstruction Authority Act 2011* a regulation may declare a part of the state to be a reconstruction area if the Minister is satisfied that this part of the State has been directly or indirectly affected by a disaster and the declaration is required to facilitate:

- the protection, rebuilding and recovery of an affected community; or
- mitigating against potential disasters for an affected community; or
- improving the resilience of an affected community for potential disasters through, for example, the betterment of the community.

The Review proposes that during a declaration period, as an authorised officer, the role will have powers available to it as delegated by the State Co-ordinator – similar to the current arrangements for the Assistant State Co-ordinator- Recovery. The State Co-ordinator would continue to be able to delegate other appropriate powers if a declaration is made.

Outside of a declared emergency, there will be questions about when a recovery power should be exercised that might take a matter outside of a usual approval process (for example, development approval). The scope and detail of powers required may vary depending on the type of emergency. For example, it might be appropriate that Regulations provide notice to a private landowner if recovery powers are to be used to erect a structure on private land. For this reason, the Review considers it appropriate that recovery powers are activated by Regulation. The Regulation could specify the powers that are available, the region(s) that are captured, the purpose for which the powers may be deployed, and the period for which the recovery declaration applies.

RECOMMENDATION

Powers should be available to the Recovery Co-ordinator on the making of a regulation, which should specify the purpose, duration and any conditions on the use of powers. This could include the nomination of a Minister that the Recovery Co-ordinator will report to (outside of a declaration period). Recovery powers should include (but not necessarily be limited to) land access and powers for constructing or removing temporary structures.

The use of recovery powers should be subject to appropriate checks and balances, noting that recovery operations can extend for a lengthy period, and the EM Act states in section 5(2) that “*where the provisions of this Act are inconsistent with any other act or law this Act prevails to the extent of the inconsistency*”.

The Review proposes that any initial recovery regulation provide that powers are available for a period not exceeding six months, with the option for extension. Parliament will have the opportunity to scrutinize and disallow the regulation or any extension.

“Recovery powers should be subject to an extension process, like existing powers under section 25; a range of factors need to be considered, including the nature of the emergencies, the potential duration of recovery efforts, and the need for flexibility in managing the aftermath of crises. An extension process allows for flexibility in cases where the recovery phase of an emergency is prolonged or encounters unforeseen challenges. It enables authorities to continue necessary recovery measures beyond the initial period. A structured extension process facilitates ongoing assessment of recovery needs. This ensures that recovery powers are extended based on a thorough evaluation of the evolving situation rather than automatically.” - City of Adelaide

RECOMMENDATION

The use of recovery powers should be time-limited, but an extension process subject to parliamentary scrutiny should be available.

Recovery: Information Sharing Powers

The consultation demonstrated a consensus that information sharing powers should also be included in the scope of recovery powers to support more coordinated, effective, and efficient response activities.

“Consistent feedback post state level emergency debriefs is the lack/level of data sharing between state agencies and from state agencies to non-government organisations (NGOs) when transitioning from response to recovery. The current Public Sector (Data Sharing) Act 2016 scope is arguably too narrow for emergencies and NGOs are excluded. It would be beneficial if there was a way under the EM Act this could be addressed.” – Primary Industries and Regions SA

“Data sharing, data sharing, data sharing.... In previous roles, this was the biggest issue we faced. People having to recount the trauma they had faced. It was traumatic for them and for the staff involved who had to hear stories time and time again. As I've said before, response to recovery is not well managed. There are clear boundaries during the response phase, but come recovery, things fall apart. An overarching body/person who has authority to make decisions is very important. The timeframe for this can't really be set and needs to be flexible. Some emergencies are quite short in their recovery time, however things like bushfires and floods have longer lasting effects.” - Nikki Becker, Chief Executive Officer, District Council of Elliston

“As noted in the discussion paper, information sharing prior to a declaration is currently restricted. In line with the proposed underlying theme of proactive activity, I recommend that the State Co-ordinator be vested with information gathering powers, and for these powers to be supplemented with appropriate information sharing across all levels of government, insurance providers and support organisations involved in disaster relief. This sharing of information must, however, be subject to a set of sufficient safeguards. Implementing the ability for enhanced data sharing would go some way in ensuring that future threats can be adequately managed by the EM Act.” – SA Small Business Commissioner

“SAPOL further notes that the recent Royal Commission into National Natural Disaster Arrangements has identified that powers relative to information sharing are required during the recovery from an emergency event. Those information sharing powers are equally required for declared and non-declared emergency events. Any separate recovery powers proposed should explicitly address information sharing between Government and non-government agencies due to the increasingly recognised role of non-government entities in recovery activities.” - SA Police

Relevant excerpts of the Royal Commission Final Report include:

*We heard from affected community members of their frustration and the trauma of repeatedly recounting their experience to access assistance. Individuals seeking assistance were often retraumatised and fatigued by providing the same information to multiple relief and recovery organisations to obtain help. This frustration appears to stem from the inability, or perceived inability, of different levels of government, organisations, and non-government organisations to share information with each other. We heard that the lack of information sharing significantly impacted the ability to plan recovery activities for communities, has hindered ‘certainty of assistance’ in recovery, and delayed support to some community members... Charities, government and the private sector told us that the legal requirements regarding privacy acted as a barrier in the sharing of personal information... Greater information sharing would improve the provision of recovery assistance and services. This would assist individuals in applying for government financial assistance, enable proactive contact of affected individuals, improve local government recovery support delivery, and support the verification of claims for support.*⁴⁰

The Insurance Council of Australia made the following submission to the Royal Commission which supported this observation:

*An important operational learning from the Black Summer Fires is that there needs to be greater sharing and co-ordination of data by and from State Governments. In our experience each State Government collects impact assessment data following disasters. However, due to real, or misplaced, concerns regarding the Privacy Act 1988 (Commonwealth) State Governments frequently demur in making that data available to insurers. This hesitation is detrimental to impacted residents. There is a tremendous community benefit in providing impact assessment data to insurers as it allows for funds and other benefits (such as emergency accommodation) to be made available to residents without the insurer having to wait until the property is accessible (which can take many weeks if a disaster is prolonged).*⁴¹

This is a sample of the submissions received that made the case for information sharing to support recovery efforts. Feasibly, section 10 of the Public Sector Act or the *Public Sector (Data Sharing) Act 2016* (Public Sector Data Sharing Act) could be used to facilitate information sharing in recovery operations, particularly if data sharing agreements were entered into as part of preparedness planning. However, the suitability of these Acts may be limited and not facilitate the sharing of information with non-government organisations, such as insurance companies or community organisations. However, the Review considers that any powers around information sharing in recovery should be underpinned by the trusted access principles outlined in the Public Sector Data Sharing Act.

⁴⁰ *Final Report*, Royal Commission into National Natural Disaster Arrangements (pages 466-8): <https://www.royalcommission.gov.au/system/files/2020-12/Royal%20Commission%20into%20National%20Natural%20Disaster%20Arrangements%20-%20Report%20%20%205Baccessible%5D.pdf>

⁴¹ *Submission to the Royal Commission into National Natural Disaster Arrangements*, Insurance Council of Australia: https://insurancouncil.com.au/wp-content/uploads/resources/Submissions/2020/2020_04/2020_04_SUB_RC_NNDA%20Consolidated.pdf

The Australian Government and Northern Territory have legislation facilitating information sharing for emergency recovery purposes. The Australian Government has the ability to make an emergency privacy declaration that allows Commonwealth agencies and private sector organisations to disclose information about affected individuals without their consent, provided that the agency or organisation reasonably believes that the individual may be involved in the emergency or disaster; the disclosure is for a permitted purpose; and the disclosure is to a relevant entity or agency.

RECOMMENDATION

Information sharing powers should be available to the Recovery Co-ordinator and be underpinned by the trusted access principles outlined in the *Public Sector (Data Sharing) Act 2016*.

Part 4: Division 6 – Electricity Supply Emergencies

This Division of the EM Act is committed to the Minister responsible for the administration of the *Electricity Act 1996* rather than the Premier, who is currently the Minister responsible for the administration of the EM Act. Division 6 of the EM Act was amended by the *Emergency Management (Electricity Supply Emergencies) Amendment Act 2017*, which was introduced following the state-wide electricity blackout on 8 February 2017. The Second Reading Speech explained the amendments were intended to:

*... ensure that, in times of an electricity supply emergency, the minister responsible for energy will be able to make directions to protect the needs of the South Australian community. The minister responsible for energy will be provided with the power to declare an electricity supply emergency if it appears, on reasonable grounds, that the supply of electricity to all or part of the South Australian community is disrupted to a significant degree or there is a real risk that it may be disrupted to a significant degree.*⁴²

Since the Electricity Supply Emergency (ESE) provisions were introduced in 2017, the Minister has only once declared an ESE and made a direction (see below). To date, the Minister has not utilised powers in the EM Act to seek information in the context of an electricity supply emergency.

Table 3: Summary of declared electricity supply emergencies in South Australia under the EM Act

Duration	Type	Event	Extension
24 January 2019 <i>(Declared for 14 days, revoked on 25 January 2019 after weather conditions became favourable and further action was not required)</i>	AEMO directed to take action to reduce total demand	Declared electricity supply emergency in the context of a heatwave event	Nil

As part of these amendments, a requirement to review them was included. Based on feedback via submissions and targeted stakeholder engagement, concerning how the powers under Division 6 have been used, the Review has found that, as intended, the powers and directions have been utilised as a last resort and the scope remains appropriate.

⁴² <https://hansardsearch.parliament.sa.gov.au/daily/uh/2017-04-11/36?sid=39ea2202115146a4a0>

The role of the Minister

The Review has heard that there is the potential for confusion between the powers of the Minister under the EM Act and the powers of the State Co-ordinator. For example:

“SAPOL notes that the provisions for Electricity Supply Emergencies may appear inconsistent with the remainder of the broad-based Emergency Management Act, however notes that placement in the [EM] Act does demonstrate the importance of the actions required. Upon review of the powers available to the Minister, or a designated person per Section 27C(2b)(a) there is the opportunity for inconsistency and conflict to arise with other provisions within the [EM] Act. Section 27C(2b)(a) allows for a designated person to give directions to or exercise authority over another person. Unlike the other provisions within Division 6 where the exercise of powers is restricted to a designated person (defined in Section 27A(1)(a)), Section 27C(2b)(a) allows the power to be more broadly applied. This could lead to confusion over the ability of the narrow electricity based powers to conflict with the application of the broader Section 25 powers. Other hazard based legislation such as the Fire and Emergency Services Act, 2005 ensures that the broader Section 25 powers retain primacy in any conflict. SAPOL submits that Section 27C(2b)(a) should be amended to recognise that a direction issued from powers within Division 6 of the [EM] Act does not override a direction issued from powers within Division 4.” - SA Police

The Review explored in what scenarios this might occur, and concluded that whilst the risk is low, it is possible that a conflict may arise. SAPOL offered this scenario:

“SAPOL submits that this [broad definition of designated persons] contributes to the opportunity for conflicting and confusing application of powers ... In particular, this may lead to the actions of a narrow electricity-based response to an emergency event having a compounding impact upon another key service within the State. For example requiring a designated person to disconnect their power may lead to key sites such as Telecommunications or other Cyber related sites, or Health Sites to be impacted.” – SA Police

Whilst this matter is likely to be addressed by appropriate collaboration in such a scenario, the Review is persuaded that the primacy of section 25 powers should be without doubt or confusion. If the powers associated with managing electricity supply emergencies were in their own Act or another piece of legislation, section 5 would apply for the purposes of any inconsistency between directions. If a conflict or inconsistency should occur, section 25 powers should be clearly understood as taking precedence over any other powers. The recommended change to the Minister’s power of direction discussed below may make the scenario more likely and, therefore, make the case for this change even more compelling.

RECOMMENDATION

The EM Act should be amended to clarify that section 25 powers retain primacy over other powers in the Act.

Section 27A – Interpretation (Scope of designated persons)

The scope of who can be directed as a designated person was expanded in 2021 from the Australian Energy Market Operator (AEMO), generators and retailers to include end users, transmission or distribution network businesses, metering co-ordinators and third-party electricity service providers.

Section 27A – Interpretation

designated person means—

- (a) AEMO;
- (b) any person who engages in generation of electricity;
- (c) any person who engages in retailing of electricity;
- (d) any person who engages in transmission or distribution of electricity;
- (e) a third party energy service provider;
- (f) a metering co-ordinator;
- (g) an end user;

The introduction of the term *third party electricity service provider* was intended to capture new parties involved in electricity demand and supply through the control of devices that use or generate electricity. Examples include virtual power plant operators and aggregators. These providers will often have visibility of the demand or supply of the devices they manage and may be able to make incremental changes to demand or supply. They can usually control the devices in a timely manner.

The list of designated persons in the EM Act is more detailed than that of other jurisdictions. In New South Wales and Queensland, legislation provides that ‘*any person*’ can be directed; in Victoria, there is slightly more detail, whereby the direction ‘*may be addressed and directed to people and bodies generally*’.

The approach in the EM Act provides clarity on the designated persons the Minister would expect to direct in an electricity supply emergency; however, given the evolving nature of the energy market, this could also result in a *person* or *body* being excluded.

Submissions on this aspect of the EM Act pointed to the evolving energy market and the need for the legislation to remain contemporary, including appropriate breadth as to who can receive a direction.

*“Section 27A of the EM Act defines a ‘designated person’ to include certain specified entities including ‘any person who engages in generation of electricity’. This definition doesn’t appear to include energy storage systems (e.g. batteries) and hybrid facilities (e.g. a battery and solar farm behind a single connection point). A battery energy storage system (BESS) doesn’t generate electricity as such, it operates as a load by drawing electricity from the network (i.e. charging) when there is low demand and dispatches electricity to the network when there is high demand. Under the National Electricity Rules (NER), a new registration category has been created for such facilities, namely ‘Integrated Resource Providers’ (IRP). Given the increasing uptake in BESS and hybrid facilities in the transition to net zero, they should be captured in the definition of ‘designated persons’ under s 27A of the EM Act to ensure that the Minister can issue directions to these entities in connection with an electricity supply emergency. Given the evolving nature of the energy market, consideration could also be given to including a catch-all provision for ‘any other person’ at the end of the definition of ‘designated persons’, consistent with legislative provisions for electricity supply emergencies in other jurisdictions. Consideration should also be given to amending s 27C(2)(d) of the EM Act which enables the Minister to make directions requiring ‘any specified persons who engage in generation of electricity, or any class of such persons’ to generate electricity, to also enable the Minister to direct energy storage systems and hybrid facilities to generate, dispatch and/or draw electricity as required.” – **ElectraNet***

The strength of the EM Act, more generally, is the agility that comes from broad application and the lack of prescription in many cases. The Review recommends this principle be adopted in relation to this section. The Minister should be able to give a direction to any person or class of persons that the Minister thinks is reasonably necessary to respond to the electricity supply emergency. This will ensure that new technologies and emerging practices in the energy market are adequately covered and assist in future-proofing the provisions.

This approach would also address a recommendation made by the AEMO to:

“Expand the scope of designated persons to include fuel providers, especially those operating gas powered generators. This inclusion would significantly bolster our emergency response capabilities by increasing capacity to ensure a secure and reliable energy supply during critical situations. Gas-powered generators play a pivotal role in maintaining essential services and critical infrastructure during emergencies. By empowering the Minister to direct fuel providers in their response efforts, we enhance the coordination and rapid deployment of resources necessary to mitigate the impact of emergencies. Recognising fuel providers as designated persons aligns with the interconnected nature of emergency management, where a resilient energy infrastructure is paramount. This step not only strengthens the collaboration between government authorities and fuel providers but also contributes to the overall preparedness and resilience of our energy systems.”
– **Australian Energy Market Operator**

If the section is re-cast as suggested, the Minister could issue a direction provided it is reasonably necessary to respond to an electricity supply emergency.

RECOMMENDATION

The Minister responsible for the administration of the *Electricity Act 1996* should be able to give a direction that is reasonably necessary to respond to an electricity supply emergency to any person or class of persons.

Section 27B – Minister may declare an electricity supply emergency

Section 27B of the EM Act provides that when it appears to the Minister, on reasonable grounds, that the supply of electricity to all or part of the South Australian community is disrupted to a significant degree, or there is a real risk that it may be disrupted to a significant degree, the Minister may declare an electricity supply emergency. Section 27B(2)(a) states a declaration period that cannot exceed 14 days. Under section 27B(2)(b), before the declaration expires, with the Governor's approval, an extension can be granted, which must not exceed 14 days. However, this extension can only occur once. No further extensions may be granted.

Conversely, under section 23(2), in the case of a major emergency, the State Co-ordinator can declare an emergency remains in force for the period specified in the declaration (which must not exceed 14 days) and for such further periods (which may be of any length) as may be approved by the Governor. There can be multiple extensions sought.

In comparison to other jurisdictions, the equivalent electricity supply declaration period in South Australia is quite restricted. In New South Wales and Queensland, for example, the declaration period is not limited. Considering the state and individuals' critical reliance on electricity and increased potential threats from climate and cyber risks, a future proofing amendment to allow multiple extensions would increase the flexibility available to the Minister and align an electricity supply emergency extension arrangement to be on par with the major emergency arrangements.

Submissions commenting on this issue supported a change. It was noted that owing to the increasing complexity of emergency events and their potential impact on core capabilities, such as electricity, declaration extensions that enable the robust delivery of electricity are important.

“SAPOL submits that with the increasing complexity of emergency events, and the compounding and cascading impacts that core common capabilities (such as electricity) should be made as robust as possible. To that end, SAPOL supports the proposal to allow extensions of an Electricity Supply Emergency Declaration. SAPOL submits that a similar procedure for extension as used for the recent COVID-19 emergency would be appropriate and provides a level of transparency of action.” – SA Police

In addition, reference was made to the need for flexibility, as longer periods of electricity shortfall can occur, particularly in remote locations or where multiple parts of the electricity network are affected.

“Consideration should be given to amending this so that it is consistent with the timeframe for a major emergency pursuant to section 23 of the EM Act – being an initial period not exceeding 14 days, and for such further periods of any length as may be approved by the Governor. This is particularly important given that both types of emergency may also be occurring at the same time... This would also provide greater flexibility in the event that a longer period is required to respond to an electricity supply emergency, particularly in remote locations or if multiple parts of the network are affected. There are historic events that have resulted in electricity shortfall and associated restrictions for several weeks or even months (for instance, the Longford gas plant explosion in Victoria in 1998)” – ElectraNet

The Review acknowledges that some felt the declaration period should be open for as long as required. However, the Review is not persuaded of the benefits of this and believes that the process required under a major emergency provides the right balance of flexibility, checks, and balances. Further, aligning the declaration of an electricity supply emergency to that of the EM Act more broadly is of value in that it results in a consistent process that takes uncertainty out of the operating framework and facilitates understanding of declaration categories and processes.

RECOMMENDATION

The electricity supply emergency declaration period and its extension arrangements should be amended to align with the process and timeframes for a major emergency declaration.

Section 27C – Minister’s power to give directions

Section 27C provides the Minister with powers to give directions to designated persons as part of responding to a declared electricity supply emergency:

- (1) On the declaration of an electricity supply emergency, and while that declaration remains in force, the Minister may give directions to any designated persons, or class of designated persons (or both), that the Minister thinks are reasonably necessary to respond to the electricity supply emergency.

Further, section 27C (2) stipulates the nature of a direction:

- (2) Without limiting subsection (1), directions may, for example—
 - (a) require AEMO to restrict electricity flow on an interconnector in accordance with requirements specified in the direction;
 - (b) require a designated person to give any directions of a kind that the designated person may lawfully give (which may include, for example, requiring a designated person to give directions to, or to exercise authority over, another person or body, whether or not that other person or body is also a designated person);
 - (c) require AEMO to suspend the spot market in South Australia;
 - (d) require any specified persons who engage in generation of electricity, or any class of such persons, to generate electricity in accordance with requirements specified in the direction.
- (2a) A direction to a designated person may—
 - (a) require the performance of specific acts or omissions; or
 - (b) require the exercise of specific powers or functions; or
 - (c) require specific outcomes or performance standards.

In giving a direction, the Minister must, to the extent that is reasonably practical to do so, consult with the designated person and avoid unduly interfering with the operation of the national electricity market, its Rules and Law.

In 2021, following consultation, amendments made were to broaden the scope of powers to:

- Enable the Minister to direct others best placed to coordinate the response more efficiently (e.g., direct AEMO to coordinate a response including electricity users and grid connected generators). For example, emergency response activities by electricity users and grid connected generators may need to be coordinated by AEMO to effectively address an electricity supply emergency, rather than the Minister managing that coordination through the issuance of directions.
- Articulate what kind of direction the Minister may give and provide that the Minister can direct a designated person to coordinate action toward an outcome, rather than the Minister determining which actions need to be taken to achieve that same outcome.
- Make it clear that a designated person, directed by the Minister, can exercise their authority over another person to act, whether the Minister's direction clearly states this or not.

Whilst the nature of directions the Minister may give in South Australia is broadly similar to that of other jurisdictions, the explicit inclusion of power for the Minister to direct toward an outcome and direct others best placed to act is unique.

The Review was not presented with any evidence to suggest that being able to direct toward an outcome should be amended. Further, stakeholder engagement and submissions indicated support for the broad definition of designated persons and the allowance for a designated person to give further directions, noting that this would for example, allow a transmission network service provider to give directions to employees or contractors to carry out actions required on the ground.

The practical interaction between any such direction and the operation of the National Electricity Market (NEM), National Electricity Rules (NER) and the National Electricity Law (NEL) was raised with the Review. Issues raised included:

- a) In addition to consulting with the designated person before giving a direction (Section 27C(4)), the Minister should also consult (or at minimum notify) the transmission network service provider where the direction may have a material impact on operations.
- b) Whether consideration should be given to a more definite position in relation to the interaction (and hierarchy) between the EM Act (ESE Provisions) and the NEM/NER/NEL and within this, whether the EM Act should oblige the Minister to coordinate any response to an electricity supply emergency with AEMO and other relevant entities.

The Review is concerned with ensuring that the EM Act provides the powers and ability to act that might be necessary in an emergency. The perfect process should not get in the way of the necessary actions to be taken, and the Review is concerned that a further requirement to consult has the potential to delay action being taken. The framing of section 27C(5) recognises to an appropriate extent the interplay with the NEM and the NER and NEL. The powers provided in the EM Act recognise South Australia's sovereignty and its Government's responsibility to its citizens.

These issues should be addressed in the SEMP and/or operating procedures, such as the Electricity Emergency Procedures, in place between the Department of Energy and Mining (DEM) and key electricity providers; and in advice provided to the Minister on the management of electricity supply emergencies in South Australia and in consideration of NEM operating procedures.

OBSERVATION

The intent to coordinate with the Australian Energy Market Operator (AEMO) and other relevant entities during an electricity supply emergency should be reflected in operating procedures shared with all relevant parties or, alternatively, in the SEMP.

Section 27D – Minister's power to require information or documents

The Minister has the power to require a person to provide information or documents in section 27D. The Minister does not have to declare an ESE to exercise this power, meaning that the Minister can also require a person to provide information or documents when the Minister considers it likely there will be an ESE.

The Minister may require a person—

- a. to give the Minister within a specified time, or at specified times, specified information; or
- b. to produce to the Minister within a specified time, or at specified times, specified documents,

that the Minister reasonably requires—

- c. to determine whether there is, or is likely to be, an electricity supply emergency; or
- d. to plan for the future exercise of powers under this Division; or
- e. to otherwise administer or enforce this Division.

There was general support for this power. An important point raised related to the need to broaden the concept of information:

"SAPOL submits that the power to require documents may be too narrow in the current environment. Information required may take the form of data, geospatial information or other means of storage or retrieval. SAPOL submits that the term 'documents' should be broadened to allow the seeking of any information source in any form that is held by the recipient of the direction. Consideration may be required to the provision of an ongoing data feed of key

information, for example a spatial dashboard of information relative to supply or outages that would best support the States ability to ensure ongoing service provision.” – SA Police

The Review notes that this power includes information or documents and that the formats referenced by SAPOL could potentially be captured by the requirement for information. However, technology is rapidly advancing, and information sources are evolving. For clarity, it may, therefore, be beneficial to have the broadest definition available relating to the provision of information and documents for the purposes of this power.

RECOMMENDATION

Amend section 27D to ensure that the type of information that may be requested is not inadvertently limited.

Interface with Commonwealth legislation

The interface with the *Security of Critical Infrastructure Act 2018 (Cth)* (SOCl Act) and section 27D of the EM Act was also raised with the Review.

The SOCl Act restricts the use and disclosure of ‘protected information’ relating to critical infrastructure assets and systems of national significance (SONS).⁴³ Protected information is broadly defined and includes any document or information that records the fact that an asset is declared to be a critical infrastructure asset or a SONS and certain information about risk management and business continuity with respect to the operation of those assets.⁴⁴

The SOCl Act permits the sharing of protected information to a Commonwealth or State Minister or Government agency head responsible for regulation or oversight of a critical infrastructure sector (such as electricity).⁴⁵ The Minister’s power to require information under the EM Act includes the ability to require information to plan for future exercise of powers under the Act.

The Minister can access protected SOCl information because the SOCl Act permits the sharing of information with a (State) Minister. However, it is unclear if information accessed in this way could be shared with the State Co-ordinator or others.

Section 44 of the SOCl Act permits certain secondary disclosure of the information by the receiving entity to another entity, provided that the protected information was initially obtained under section 41–44 of the SOCl Act and is for the same purpose as the initial disclosure. Section 27E puts an obligation on the Minister to preserve commercially sensitive information but does not apply to the disclosure of information between persons engaged in the administration of this Division.

⁴³ Part 4 Division 3 of the SOCl Act

⁴⁴ section 5 of the SOCl Act

⁴⁵ section 43E of the SOCl Act

In this context, a prescribed entity noted that if protected information cannot be disclosed under the SOCI Act, this may influence its ability to comply with section 27D of the EM Act.

Section 46(1)(b) of the SOCI Act provides that it will not be an offence to disclose protected information where that information is required or authorised under a law of the Commonwealth or a State or Territory law prescribed by the rules—however, no such laws have yet been prescribed. The Review recommends that the State Government advocate to the Commonwealth that the EM Act become a prescribed law for these purposes.

*“Where information is disclosed to the Minister under the EM Act, section 27E contains insufficient protections for sensitive operational information about electricity assets as it only requires the Minister to preserve the confidentiality of information that could affect the competitive position of a person or which is commercially sensitive. There also isn’t any express restriction on the Minister from disclosing the information received to other third parties. Consideration should also be given to the liability that an entity is exposed to as a result of complying with legislated disclosure obligations where the information is confidential / not in the public domain... Consideration should be given to clarifying the interaction of the EM Act and the SOCI Act within Part 4 Div 6 of the EM Act. If protected information is permitted to be disclosed to the Minister (and potentially the State Co-ordinator) under the EM Act, this sensitive information should enjoy equivalent protections as provided for in the SOCI Act.” - **ElectraNet***

If protected information is provided, the protections that apply under the Commonwealth legislation should, as far as possible, be mirrored in the EM Act.

RECOMMENDATION

The EM Act should permit the Minister responsible for the administration of the *Electricity Act 1996* to share information with the State Co-ordinator.

OBSERVATION

The State Government should ask the Commonwealth Government to prescribe the EM Act for the purposes of section 46 of the SOCI Act.

RECOMMENDATION

The EM Act should provide equivalent protections to protected information as the *Security of Critical Infrastructure Act 2018* (SOCI Act).

State Emergency Management Plan (SEMP)

The Review notes that the SEMP does not currently recognise the role of the Minister responsible for administering the *Electricity Act 1996*. This Minister holds several powers and responsibilities under Part 4 Division 6 of the EM Act. When referring to “the Minister,” the SEMP exclusively refers to or infers that the Minister is the Premier, to whom that Act is assigned.

The Review recognises that many Ministers play a role in the emergency management framework, including the Minister for Emergency Services, duty Ministers, and Ministers whose Acts allow for powers relating to managing emergency arrangements outside of an EM Act declaration.

However, the placement of the Minister’s powers and responsibilities within the EM Act means that the SEMP should reference the role of this Minister in Part 4 Division 6 and address how the powers in this Division relate to broader EM governance and powers.

OBSERVATION

The next review of the State Emergency Management Plan (SEMP) should include reference to the Minister who has a designated emergency management role and powers under Part 4 Division 6 of the EM Act.

Part 6 – Miscellaneous

Section 31A - Confidentiality

A few submissions noted the importance of proper processes to manage data and information obtained under the EM Act or in supporting the implementation of directions under the EM Act. In the case of the public sector, the Public Sector Act, Information Privacy Principles, specific confidentiality provisions in Acts and other protections exist. Where information comes into the possession of other parties during an emergency, the Australian Government *Privacy Act 1988* may apply in some cases. Issues surrounding protected information under the SOCI Act have been addressed earlier in this Report.

One example of a circumstance in which information was obtained that lacked a protective framework was during the COVID-19 emergency, where businesses were required to obtain and retain contact details for those on their premises.⁴⁶ In some cases, this information was stored electronically, and in other cases, paper sign-in records were used. There appear to be gaps in the protection of citizens from misuse of their information, which is becoming an increasingly important issue that society is grappling with.

“The Society expressed concerns as to adequacy of the approach to ensuring the use or disclosure of information gained through the use of the COVID-SAFE check-in app is appropriately restricted. This was first raised in a letter to the Premier in December 2020, in which the Society outlined its concerns that the State Government’s publicly made assurances as to the storage and deletion of data lacked a legislative basis. In response, the State Government noted section 31A of the Emergency Management Act, which creates an offence for the intentional disclosure of personal information in the course of administration or enforcement of that Act. Further, the State Government advised that QR related contact tracing data continued to be deleted on a rolling schedule and this, together with the section 31A offence, adequately regulated the collection and use of the data gained through the use of the COVID-SAFE Check-in app.

Despite this, the Society remains concerned that the privacy and restriction of use of data collected was not adequately protected. These concerns were confirmed by the Auditor-General in his COVID-SAFE Check-In Review report last year, which noted there were circumstances where subsets of QR code check-in data were being stored indefinitely in SA Health’s systems.

We are unaware as to the usefulness of the COVID-SAFE Check-in app as South Australia presently moves into the “living with COVID” phase, however the Society is of the view that its consistently held privacy concerns have not been adequately addressed. If South Australians are expected to use the COVID-SAFE Check-in app on an ongoing basis or in the early stages of a future pandemic, the Society strongly recommends that the collection, storage, and use of data be enshrined in legislation.” - Law Society of SA submission to the COVID-19 Response Committee dated 27 January 2022

⁴⁶ See s 7 of the Emergency Management (Activities – General) (COVID-19) Direction 2021

“Transparent legal and ethical frameworks should accompany any information-gathering powers. Safeguards must be in place to protect individual rights privacy and ensure that the powers are used responsibly and transparently. Clearly defined criteria that would trigger the use of information-gathering powers should be developed. This could include specific indicators, thresholds, or circumstances that warrant such measures, preventing misuse or overreach.”

- City of Adelaide

It is difficult to predict the circumstances in which information might be held by non-government parties. One approach to addressing this issue may be for section 31A to impose an obligation on a person (private parties) who may obtain information because of a direction issued under the EM Act. Another possibility might be to allow for Regulations to be made that provide a framework to manage and protect this information.

The Review considers that, at a minimum, the trusted access principles (five safes model) described in the Public Sector Data Sharing Act should inform how these issues are managed. There is a compelling argument for the expansion of section 31A of the EM Act to explicitly protect information that may be commercially sensitive and equally to increase the applicable penalty.⁴⁷

RECOMMENDATION

The protections afforded by the EM Act should be expanded to address information that may be commercially sensitive and information that may be held by a person (not engaged in the administration or enforcement of the EM Act) as a result of a direction issued under the EM Act.

RECOMMENDATION

The penalty for confidentiality matters in section 31A of the EM Act should be increased to be commensurate with other legislation.

Section 32A – Protection from Liability (COVID-19)

Section 32 of the EM Act provides some extraordinary protections regarding liability. Specifically, individuals are protected from civil or criminal liability when carrying out functions or powers related to the EM Act. Liability that would lie against an individual instead lies against the Crown. However, electricity supply emergencies (Part 4 Division 6) are excluded from this, as are directions carried out under that Part.

During the COVID-19 emergency, section 32A was added to the EM Act, which provided protections to the Crown from liability relating to functions and discharge of powers relating

⁴⁷ See the ElectraNet submission quoted above

to the management of COVID-19. It also clarified that individuals are protected from civil or criminal liability when carrying out functions or powers related to the EM Act relating to COVID-19. Whilst this section is limited to COVID-19, it was far-reaching.

“Section 32A of the EMA purports to provide an extremely broad exemption from any liability for the Crown or any person...

The AEA’s primary concern regarding section 32A is that its purported breadth resulted in it being inappropriately relied upon to escape liability in circumstances which could not conceivably have been within the scope envisaged by the South Australian Parliament. The AEA’s experience in this regard relates specifically to a reliance on the exemption by an employer to reject an individual member’s claim for workers compensation.

The relevant member works in a “healthcare setting” and was accordingly directed to be vaccinated against COVID-19 by their employer, consistently with an Emergency Management Direction. In compliance with the direction, our member received a COVID-19 vaccination. Unfortunately, they promptly developed a recognised complication from the vaccination and became indefinitely incapacitated for work.

Our member made a claim for compensation under the Return to Work Act 2014 (SA) (“RTW Act”). The employer rejected our member’s claim and maintained its rejection throughout proceedings in the South Australian Employment Tribunal (“SAET”) on the basis that even if our member had an injury which would otherwise be compensable under the RTW Act, the exemption from liability under section 32A of the EMA applied and it was therefore not required to accept their claim or compensate them.

After multiple failed attempts at conciliation resulting from the employer’s adamant reliance on section 32A, our member ultimately accepted an offer of settlement which represented a small proportion of what they would have been entitled to had their claim been accepted, in order to avoid the very real risk of litigation, while they were still unwell from their work injury.

It was and remains the AEA’s view that the employer’s reliance on section 32A was inappropriate and incorrect.

On 15 January 2024, the SAET handed down a judgment in a matter involving this same issue. That matter involved a public sector employee who suffered pericarditis secondary to a mandated COVID-19 vaccination and their public sector employer maintained rejection of their workers compensation claim, relying on section 32A. The SAET’s decision with regard to the section 32A issue was, effectively, that rejecting a worker’s compensation claim does not achieve the objects of the EMA, and well-established and foreseeable liabilities of the nature of workers compensation are not what Parliament sought to avoid in drafting section 32A. On that basis, the SAET found that the worker’s claim ought be accepted.

*Noting the above and given the possibility that the SAET’s recent decision may be appealed, creating further uncertainty, it is the AEA’s view that the scope and application of section 32A must be clarified and narrowed as part of this review.” - **SA Ambulance Employees Association***

The Attorney-General’s Department submitted to the Review:

“A recent decision of the SA Employment Tribunal has identified an issue in relation to the immunity in s 32A of the EM Act. Section 32A(1) provides that no liability attaches to the Crown in respect of acts or omissions in connection with inter alia the carrying out of any direction given in accordance with a prescribed Act. Despite this provision, the Tribunal has allowed a claim for workers compensation against the State in relation to an injury sustained by an employee after

receiving a dose of a COVID-19 vaccine in accordance with a direction under the EM Act. The Government may wish to consider clarification of the immunity provisions in the EM Act given the potential for significant losses to occur arising out of the exercise of powers especially in response to major incidents, major emergencies and disasters.”- Attorney-General’s Department

There are understandable reasons why Parliament has acted to limit the liability of the State in electricity emergency scenarios and during the COVID-19 emergency. There is a public interest in protecting the State's financial position, and these events have the capacity to cause significant damage to that position.

This scenario requires weighing the consequence/disadvantage to the individual versus the potential impact to the State. Effectively, Parliament has determined that the default position is that in these limited scenarios, the burden falls on the individual rather than the State. In the case of an electricity supply emergency, the impacts might fall on individuals and businesses.

In the case cited by the Ambulance Employees Association, the consequence of compliance with a direction rendered the individual unfit for work.

It does not seem consistent with the tenor of the EM Act (which protects employees from prejudice in employment in section 33) that in circumstances where a worker is complying with a direction, they should be denied access to worker’s compensation. The South Australian Employment Tribunal reasoned:

It is not clear to me that Parliament intended for s 32A to defeat a valid claim for compensation by a State employee, injured through complying with a direction designed to protect citizens of the State. For the following reasons, I am not satisfied that Parliament intended s 32A to take precedence over a valid RTW Act claim... It would be astonishing if Parliament intended that an employee of the State, injured adhering to an EM Act direction, was to be precluded from receiving worker’s compensation. I am not satisfied that Parliament intended to deny compensation to employees of the State injured by heeding a vaccination mandate designed to protect the health and welfare of citizens. The language used in a provision like s 32A must be ‘unmistakable and unambiguous’[36] and is not sufficient to justify the result the State seeks in my view.⁴⁸

RECOMMENDATION

The EM Act make it clear that liability protections do not extend to worker’s compensation claims which result in adverse outcomes for individuals following emergency management directions relating to their workplace.

⁴⁸ *Shepherd v The State of South Australia (in right of the Department for Child Protection) [2-24] SAET 2 (15 January 2024)*: <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/sa/SAET/2024/2.html>

Section 33 – Volunteers and Employment Protections

Section 33 of the EM Act currently provides for the following:

A person who is absent from employment on official duties in connection with response or recovery operations undertaken in accordance with this Act is not liable to be dismissed or prejudiced in employment by reason of that absence.

This mirrors the protection provided under the FES Act. It does not have any remedy attached to it.

Most other jurisdictions have more extensive protections. For example, in Western Australia, Part 9 of the *Emergency Management Act 2005* (WA) provides:

93. Victimisation because of emergency management response

An employer must not victimise an employee of the employer for the reason that, or reasons that include the reason that, the employee was temporarily absent from employment because the employee was carrying out an emergency management response.

It is a defence for the employer to show that —

- a. the absence was not reasonable having regard to all the circumstances; or
- b. that the victimisation did not occur for the reason, or for reasons that include the reason, referred to in subsection (1).

An employer victimises an employee if the employer —

- a. dismisses the employee from employment with the employer; or
- b. alters the employee's position in his or her employment with the employer, to the employee's disadvantage; or
- c. refuses to promote or transfer the employee; or
- d. does not provide the entitlements referred to in section 92; or

otherwise injures the employee in his or her employment with the employer.

Section 94 of the WA Act outlines the civil penalties, which include a court being able to order the employer to reinstate the person if he or she was dismissed from employment; or pay to the person compensation for any loss or injury suffered as a result of the contravention; or to pay to the Treasurer an amount not exceeding \$50,000 or do any one or more of those things. There is a fine of \$50,000 if a person does not comply with an order made under this section.

The Discussion Paper asked: *Do the employment protections for volunteers need to be strengthened? Should there be a remedy attached to these provisions?* The review received 45 submissions on this matter, with 75% in favour of strengthening the provisions.

“Although the current provisions preventing dismissal or other prejudice in employment are wide and arguably already include the matters expressly identified as victimisation within the Western Australian Act, the inclusion of a similar provision to that in Western Australia would make this clear to employers. Further, a remedy should also be specified.” - The Law Society of SA

*“We support the strengthening of employment protections for volunteers contained within the [EM] Act and propose that remedies, such as those contained within Emergency Management Act 2005 (WA)– and highlighted in the discussion paper - are adopted. Other state and Territory emergency management Acts contain similar protections...Providing these protections in legislation will assist in protecting current spontaneous volunteers as well as encouraging others to volunteer within their communities, particularly during times of crisis.” - **Volunteering SA&NT***

*“...we support the introduction of greater clarity and detail about the protection of employees who volunteer for emergency response activities. South Australian emergency managers will need volunteers who are available and protected in their volunteering roles, because there are simply not enough professional staff across the emergency services to respond to the kinds of events that we are likely to see in coming decades”. - **Environment Institute, University of Adelaide***

RECOMMENDATION

The volunteer and employment protections should be strengthened to include a remedy.

Further Matters

Local Government

There are few explicit references to local government in the EM Act, and those that do exist tend to be alongside other stakeholders. The objects and guiding principles reference local government as part of the collective responsibility for emergency management arrangements in section 2(3).

Local Government is referenced in relation to the SEMP, in section 5A (2) which states:

The SEMP may be comprised of 1 plan or a series of plans and may relate to all sectors of the community, including both State and local government, the business and non-government sectors, and individuals.

Section 5A (3) (d), which discusses the responsibilities of Zone Emergency Management Committees in relation to the SEMP, does contain the following note:

See also section 7 (d) of the *Local Government Act 1999* which provides that one of the functions of a council is to take measures to protect its area from natural and other hazards and to mitigate the effects of such hazards.

Within the SEMP, however, there is a dedicated section to the responsibilities of Local Government. This includes highlighting the role of local government in 4.3:

In line with the provisions of section 8 of the *Local Government Act 1999* (SA), which requires local governments to give due weight in their plans, policies and activities to regional, state and national objectives, councils are required to align their plans and activities to the objectives and strategies of the SEMP. According to the *Local Government Act 1999* (SA), the functions of a council include:

- Providing for the welfare, wellbeing and interests of individuals and groups within its community (section 7 (c))

Taking measures to protect its area from natural and other hazards and to mitigate the effects of such hazards (section 7 (d))

Local councils also have the role under the *Local Government Act 1999*:

to provide infrastructure for its community and for development within its area (including infrastructure that helps to protect any part of the local or broader community from any hazard or other event, or that assists in the management of any area)⁴⁹

⁴⁹ S 7(f) of the *Local Government Act 1999*

There was significant engagement with the Review on the topic of local government, but little consensus on what this should mean for the EM Act. It was agreed local government can and does play a significant role and is an important contributor to South Australia's emergency management framework. Issues of variable resourcing, skill sets, and experience were points made about the differences between local councils. It was also recognised that South Australia's Local Government sector is not comparable with other jurisdictions, so other models are not transferable to the South Australian context. These extracts provide an insight to the breadth of issues and perspectives the Review received:

"SAPOL submits that the role of local government does require some further specification, without necessarily moving to the same level of requirements that exist in other States and Territories... Where Local Government has a greater role is in prevention, preparedness of community members, infrastructure and systems, paired with a greater role in the recovery to smaller and medium sized emergency events. SAPOL submits that the role of Local Government to lead the Zone Emergency Management Committee (which is focused on prevention and preparedness and achieves a level of mitigation) should be strengthened." - SA Police

"While it would be desirable to clarify roles and responsibilities between state and local government for mitigation infrastructure such as levees, further work is required to determine the best policy or legislative framework and it is unlikely that this would be defined in the [EM] Act. Similarly, strengthening the role of local government in working with their community on disaster preparedness and resilience also in the context of climate change adaptation is worthy of further consideration but the best pathway for this is unlikely to be provisions in the [EM] Act." - Department for Environment and Water

"Legislating the roles and responsibilities of local government in emergencies would bring South Australia in line with a number of other international and interstate jurisdictions. It is noted that as the role of local government in emergency management varies between countries, so does the way in which roles and responsibilities are legislated. However, the common thread is that there are responsibilities detailed clearly including overarching functions of local government in emergency management, the establishment of emergency management committees and the requirement for emergency plans. In South Australia, the [EM] Act does not include roles and responsibilities outside that of the State Co-Ordinator, Co-ordinating agencies, Control agencies and Recovery. Stakeholder roles and responsibilities are instead included in detail within the SEMP. DPC notes that if roles and responsibilities of local government were to be included in the [EM] Act across the PRR spectrum, a more explicit reference to the roles and responsibilities of state government (either broadly or at agency level) may also be required." - Department of the Premier and Cabinet

"Local Government entities are not homogenous or standardised in terms of size, capability, and exposure to hazards. This makes it difficult and inequitable if imposing a certain legislated level of involvement for Local Government. Some Councils will be willing and able to participate in the emergency management sector, some will not." - City of Onkaparinga

“Local governments have an intense interest in emergency management but, in many cases, lack the specialist resources to play an active role in emergency responses. This is a similar situation to that which exists for climate change broadly, which resulted in the formation of regional Climate Partnerships (such as Resilient East), which allow councils to share resources to fill a shared need. A similar approach could be useful for emergency management, with councils participating in a regional partnership, together with state government agencies, to plan and coordinate emergency responses and recovery.” - Resilient East

“Most regional local government Councils are not resourced to deal with Emergency Management.” - Council Member/Employee, Port Lincoln

“Local council will have its part to play, but in my view this is more of a support role. For example in assisting in servicing and maintaining local areas in bushfire prevention and such like. But it is not a trained Emergency Service body, its principal reasons for existence are broad base local services to local communities.” - Stuart R., Emergency Services Worker

“Local Government responsibilities and foundations were Roads, rates and Rubbish! Regionally, they lack resources to deal with EM act!” - Nick McBride MP, Member of Parliament

While there were varying views and a range of suggestions regarding local government, ultimately, the Review assesses that the suggestions and evidence for change are more matters of governance, resourcing, and the SEMP than requiring changes to the EM Act, particularly given the functions of local councils set out in the Local Government Act.

OBSERVATION

Future SEMP Reviews and SEMC funding discussions should consider the submissions received as part of this Review regarding the role, contribution and governance arrangements for Local Government in the South Australian emergency management arrangements.

Interfacing State Legislation

As discussed above, powers within the EM Act are significant and should be used as a last resort. This has been the approach to date, and there is no indication there would be any deviation from this approach. However, the sparing use of the extraordinary powers partly depends on the appropriate subject area/portfolio legislation being in place.

Some of the issues raised with this Review are more relevant to subject area/portfolio legislation (or the lack of it), rather than the EM Act.

A specific concern is the lack of legislation to deal with cyber incidents - either that may not meet the threshold for a declaration or may require powers in the lead up to or following a

declaration that are currently not within the scope of the EM Act. Notwithstanding the responsibilities of the Commonwealth in this space, the Review agrees this is a notable gap in South Australia's emergency management legislative framework.

CYBER SECURITY AND AUKUS

The AUKUS partnership between Australia, the US and the UK includes an Information Exchange Agreement related to new advanced technologies. These include cyber capabilities, electronic warfare, quantum technology, hypersonics, artificial intelligence and autonomous military capabilities, and have been referred to as the "tech-transfer" component of AUKUS.

Since the AUKUS agreement, the Australian Government has committed to being a world-leader in cyber security by 2030. This includes proposed amendments to the *Security of Critical Infrastructure Act 2018 (SOCI Act)*.

With South Australia playing a central role in AUKUS, the government should consider what state based cyber legislation could contribute to the local cyber security environment; and how such legislation may support prevention and capability uplift to cyber threats.

While there is likely to be a range of Commonwealth and State legislation specific to AUKUS developed as the program continues, cyber-specific legislation in the immediate future would provide a strong foundation for future legislation in this area.

"Looking ahead and considering the warnings from the 'Chief Public Health Officer's Report,' we suggest that the State Government adopts a proactive approach to future emergency events. While recognising that each emergency requires a tailored response, developing protocols for certain scenarios, such as a cyber-attack leading to a state-wide telecommunication outage, could be beneficial. The recent 12-hour nationwide Optus outage highlighted the impact on businesses, emergency services, hospitals, and transport. The consequences could have been even more severe if all major telecommunications were offline. It raises the question: Does the State Government, including all government departments, have a strategy in place for such an event?" - Business SA

"Cyber threats have evolved to become one of the most serious and rapidly evolving risks facing governments, organisations, and society at large. Therefore, having the necessary tools and authority to both prepare for, prevent and respond effectively to these threats is essential for safeguarding the public, critical infrastructure, and vital services...."
– **Department of the Premier and Cabinet**

AEMO suggested that cyber incidents be addressed in the EM Act, but the Review considers portfolio-specific legislation as more appropriate. However, AEMO's suggestion highlights the growing awareness of the importance and need for cyber security legislation generally:

"Incorporating provisions related to cyber emergencies within the South Australian Emergency Management Act, particularly in the context of electricity supply emergencies would be prudent. As the reliance on digital infrastructure grows, the potential impact of cyber threats on the stability of the electricity supply becomes increasingly significant. Including cyber emergencies in the [EM] Act

will provide a structured and comprehensive framework to address potential disruptions to the electricity sector caused by cyber incidents. This proactive approach not only acknowledges the evolving nature of threats but also ensures a more resilient and adaptive response to safeguard our critical infrastructure. By explicitly addressing cyber emergencies, we strengthen the preparedness and coordination necessary to mitigate the impact on electricity supply during unforeseen digital disruptions. This addition aligns with the evolving landscape of emergency management, reflecting a holistic understanding of the interconnected systems that support our communities.”

– **Australian Energy Market Operator**

An example of good practice for interfacing legislation can be found in the recent consultation on the new Biosecurity Bill. If passed, the new Biosecurity Act will strengthen and improve the legal framework required to deal with biosecurity emergencies.⁵⁰ This will mean this new Act, as far as possible, will be able to manage the response to emergencies, supporting and reaffirming that the escalation to the EM Act is a matter of last resort.

In relation to this matter, Primary Industries and Regions SA noted:

To ensure South Australia’s biosecurity system remains effective and sustainable into the future, it is important to update and improve existing legislation... [The Bill] enables a biosecurity emergency response to a new pest or disease incursion which poses a significant risk of impact on wildlife or native plants.⁵¹

Another example that highlights the importance of interfacing legislation is found in the experience of COVID-19 and the SAPH Act. To allow for a transition out of the emergency arrangements for COVID-19 and to support the interface between the two Acts better, it was noted in the Chief Public Health Officer’s report:

...a new part (Part 11A) was added to the South Australian Public Health Act 2011 via the South Australian Public Health (COVID-19) Amendment Bill 2022 on 24 May 2022. This amendment allowed a limited number of measures to manage the ongoing risk of COVID-19 in the absence of a major emergency or public health emergency declaration for a six-month period. This new part included establishing the power for the Governor of South Australia to issue directions to impose requirements on cases and close contacts, continued any directions that were in place at the end of the major emergency declaration, and gave the power to the Minister for Health and Wellbeing to expire all or part of any direction.⁵²

⁵⁰ *Technical Directions Paper: Developing a new Biosecurity Act for South Australia*, Primary Industries and Regions SA: https://pir.sa.gov.au/data/assets/pdf_file/0014/430034/technical-directions-paper.pdf

⁵¹ *Draft Biosecurity Bill public consultation: Frequently Asked Questions*, Primary Industries and Regions SA: https://pir.sa.gov.au/data/assets/pdf_file/0011/439067/draft-biosecurity-bill-consultation-faqs.pdf

⁵² *The Chief Public Health Officer’s Report - Chapter 5*, Department for Health and Wellbeing: https://www.sahealth.sa.gov.au/wps/wcm/connect/5523243e-47cc-49f8-a68f-30e780e9d0d8/223022.2+CPHO+Report_Ch05.pdf?MOD=AJPERES&CACHEID=ROOTWORKSPACE-5523243e-47cc-49f8-a68f-30e780e9d0d8-oMturCP

It is noted that this new Part 11A remains limited to COVID-19 arrangements and would not apply to a pandemic of a different kind. Former Premier Steven Marshall and former Minister for Health and Wellbeing Minister Stephen Wade submitted:

“We consider that this review of the Emergency Management Act and future reviews of the South Australian Public Health Act 2011 should be underpinned by an assumption that larger outbreaks of communicable diseases and pandemics will be managed under the Emergency Management Act, rather than the Public Health Act.” – Hon Steven Marshall and Hon Stephen Wade (former Premier and former Minister for Health and Wellbeing)

By contrast, the Law Society of SA comments about the interface with the SAPH Act in relation to pandemics.

“[The EM Act’s] suitability in responding to public health emergencies should be considered. Other jurisdictions have enacted Public Health and Wellbeing Acts that contain specific structures, powers and oversight bodies that can respond effectively and proportionately to public health emergencies. The South Australian approach is currently split between the South Australian Public Health Act 2011 and the (EM) Act. This overlap can lead to confusion and concerns about the over authorisation of executive power giving rise to concerns about proportionality and oversight.” – The Law Society of SA

From the COVID-19 experience, the SAPH Act's framework is appropriate to manage many public health matters, but as presently drafted, it does not accommodate for a future pandemic or significant emergency event.

Arguably, the Act that has the greatest interface with the EM Act is the FES Act. The Review received multiple submissions about this:

“The Fire and Emergency Services Act 2005 contains provisions for councils to enforce the reduction of bushfire fuel hazards on private land. This enables a significant reduction in bushfire risk across the state through an established process of so-called s.105F Notices. The same provisions cannot be extended to Crown Land or land under the care and control of state government entities. The large volume of unmanaged land in this category includes National Parks, conservation parks, SA Water and Forestry SA landholdings. They collectively present the highest risk of fire starting or spreading through the landscape and yet there is no legislated mechanism for ‘encouraging’ these agencies to reduce vegetation hazards on their land to the same standard as Local Government or private land. Introducing enforcement provisions for owners of all land, whether within the FES Act or Emergency Management Act will go a long way to reducing landscape scale bushfire risk.” – City of Onkaparinga

“Frequent emergencies occur outside the scope of those defined in the SEMP that require a rescue function/role of some type or another and this responsibility is a function of multiple agencies under the Fire and Emergency Services Act 2005 (FES Act) with inconsistent function definitions contained within that legislation and consequently the control of such incidents and their response is not applied consistently for the safety of the public and emergency responders.... While likely outside the scope of the EM Act review, Question 33 highlights the ineffectiveness of the subordinate SEMP and the FES Act to consistently address the management of a frequently occurring emergency event that is often life threatening. This highlights a need under the powers of the EM Act in Parts 1A - State Emergency Management Plan and under the direction of the

SEMC to consider a further Capability Plan under section 5A(2) to cover emergency rescue situations that do not fall under the defined emergency types and Control Agencies in part 9.2 of the SEMP. This plan should identify a hierarchy of control to provide clearer direction to SAPOL as the coordinating agency under the current EM Act arrangements.” – SA Metropolitan Fire Service

*“Expiation fees for failure to comply with directions are clear in the EM Act but do not feature as an alternative to the maximum penalties available to SASES under s118(4) of the FES Act. During the River Murray Flood event, directions and authorities were issued pursuant to both the EM Act and the FES Act, however those under the FES Act could not be enforced by way of Expiation fees with penalties only available by pursuing a matter through the court system. Whilst not a matter for the EM Act per se, this issue should be addressed in any future amendments to the FES Act.”
– SA State Emergency Service*

The emergency management framework exists across a continuum of legislation. The recommendations in this report will hopefully strengthen the EM Act. However, the Review would encourage consideration of the types of matters that may require legislation on a portfolio basis to ensure the EM Act’s response and recovery powers are used only as a last resort and portfolio legislation remains fit for purpose in supporting South Australia’s emergency management framework.

OBSERVATION

The State Government should prioritise introducing cyber security legislation.

OBSERVATION

It would be good practice following any amendments to the EM Act to assess interfacing legislation for gaps or inconsistencies.

Review and Oversight

There was a consistent theme amongst submissions that the emergency management landscape is changing and that there is value in learning from past events to ensure the legislation in place best prepares for the future.

The Australian Law Reform Commission argues:

Good legislation isn’t a set and forget exercise. The world changes, and legislation must change with it. To keep legislation in good order, it is necessary to have systems of periodic review.⁵³

⁵³ *User-friendly legislation: Why we need it, and how to achieve it*, Australian Law Reform Commission: <https://www.alrc.gov.au/news/user-friendly-legislation/>

The Law Society of SA advocated for:

“clear oversight mechanisms for the exercise of power ... so as to enable genuine oversight of what are exceptional powers. By way of example,...the recently reviewed approach in Victoria. A robust approach to oversight should include a Standing Joint Committee of Parliament with full inquiry or information gathering powers.” – The Law Society of SA

The Review is of the view that the EM Act should have a review clause that requires it to be reviewed proactively at least every seven years to ensure it is fit for purpose for new challenges and that it has maintained its relevance and effectiveness. The Review is unconvinced that a Standing Joint Committee is necessary given the range of instances when an emergency declaration has been made. Parliament has convened Committees on occasion when necessary to review the management of particular events.⁵⁴

RECOMMENDATION

The EM Act should have a review clause that requires it to be reviewed every seven years to ensure it remains fit for purpose and reflects contemporary emergency management practice.

⁵⁴ Recent Committees include the 2022-23 River Murray Flood Event Select Committee, various COVID-19 Committees, and the State-wide Electricity Blackout and Subsequent Power Outages Select Committee

No Change

There were some matters that were tested in the consultation and stakeholder engagement process which the Review is satisfied warrant no change to the EM Act.

The Review has addressed a number of these issues to provide a record of the consideration given to the matter, even though there is no recommendation for change.

Hazard Definition

The consultation process asked: *Should a definition of hazard be included in the EM Act, and if so, how general or prescriptive should it be and why?* While a few submissions supported the inclusion of a hazard definition, there was a strong view that the definition of a Hazard best remained within the SEMP to maintain flexibility. The Review agrees that the SEMP is the appropriate document to define a hazard.

“The definition of Hazard is used in the description of the role of the Hazard Risk Reduction Leader... Ensuring that these provisions remain in the SEMP and not the [EM] Act allow for reviews in line with contemporary practice to occur and implementation in a timely manner without the additional requirements of a legislative change. SAPOL submits that it is appropriate that the definition of Hazard remain in the SEMP as currently published, and not the [EM] Act... In fact, listing each hazard type can in fact reduce the effectiveness of the overall Act and plan as it may negate or slow the implementation of arrangements required for a new or emerging (but currently unknown) risk.” - SA Police

“The State Emergency Management Plan (SEMP) under the EM Act and other supporting documents define "hazards" and are more readily amended or updated via the State Emergency Management Committee (SEMC) - MFS support retaining the definition in the SEMP rather than enshrining it in the EM Act.” - SA Metropolitan Fire Service

“Currently the [EM] Act highlights the need to address an 'all-hazards approach' in all areas of emergency management planning, with the State Emergency Management Plan providing greater clarity regarding the definition of a hazard and identifying relevant hazards to South Australia. This approach is appropriate and provides for greater flexibility for reviewing and amending nuances should it be required.” - Local Government Association of SA

The SEMP

The consultation process asked the question: *Is there a need for any parts of the SEMP to be given legislative force and protection? If so, what elements should this take, and in what form?*

The Review did not receive persuasive arguments or evidence to support changes to this aspect of the EM Act. It is also noted that the current provisions in the EM Act dealing with the SEMP provide a more detailed explanation of the role of the SEMP than when the EM

Act was originally passed. These provisions were included in 2016, when the second reading speech for the amending Bill explained:

Emergency Management (Miscellaneous) Amendment Bill 2016 Second Reading, House of Assembly 11 February 2016 Page 4292

The Hon. J.W. WEATHERILL (Cheltenham—Premier):

The SEMP is prepared by the SEMC to provide strategies for the prevention of emergencies in the state, and management of events that do occur. The SEMP is the primary mechanism for defining the roles of government agencies during an emergency. It forms the basis of actions taken by all agencies in response to an emergency incident in South Australia and therefore has far reaching impacts upon individual agency operations.

During the course of the Review a number of submissions were made seeking clarification of the legal status of the SEMP and the agencies and community groups it is intended to apply to.⁵⁵ Legal opinion obtained during the Review confirmed that the current role, function and authority of the SEMP is consistent with the [EM] Act and that its application to all sectors of the community is consistent with the intention of Parliament when the [EM] Act was passed.

Nevertheless, in the interests of ensuring the status and scope of the SEMP is clear, the Bill contains an amendment to specify that the SEMP applies to all levels of government, business, and the non-government sector.⁵⁵

However, it is noted that some key stakeholders believed minor amendments could be advantageous.

“SAPOL submits that the provisions of Part 1A of the [EM] Act are clear as to the role and authority of the State Emergency Management Plan (SEMP) in line with the outcomes of the 2016 Review. SAPOL supports building the understanding of users of these provisions but is conscious of the need to ensure that the [EM] Act, as a legislative instrument conforms to the best legal writing and interpretation standards... To this end some further explanatory terms may be appropriate within the SEMP, but the [EM] Act should remain legally clear and concise... In relation to Sections 29, 32 and 36, SAPOL submits that a simple addition to each provision would address this potential confusion. For example, Section 29 could be amended from “A person must not hinder or obstruct operations carried out in accordance with this Act” to “A person must not hinder or obstruct operations carried out in accordance with this Act or the SEMP” to address any potential confusion. Similar provisions could equally be applied to Sections 32 and 36.” - SA Police

“DPC notes that while the [EM] Act provides authority to the SEMP, the status of the legislative obligations and protections associated with the roles, responsibilities and actions that are delivered under the SEMP is not clear... While DPC agrees that the extent of information and level of detail outlined in the SEMP does not require legislating in its entirety, the reduction or removal of ambiguity, particularly regarding the relationship between the SEMP and the [EM] Act would be

⁵⁵ Emergency Management (Miscellaneous) Amendment Bill 2016 Second Reading, Parliament of South Australia: <https://hansardsearch.parliament.sa.gov.au/daily/lh/2016-02-11/57?sid=383925721a55453e8e>

*of value...The reviewers could consider wording in order of... 'Agencies or organisations to which the SEMP applies must, so far as is reasonably practicable, adhere to the Objectives, Principles and requirements of the SEMP [Part 1]' - **Department of the Premier and Cabinet***

"Members of the Administrative and Public Law Committees suggested that, without legislative force or a requirement to publish and make the State Emergency Management Plan publicly available, there is a perception of a lack of transparency and accountability. Any parts of the State Emergency Management Plan which apply to declared emergencies should have legislative force."
– **The Law Society of SA**

The Review accepts that there would be difficulties with expanding offence provisions to include matters addressed in the SEMP, which is not drafted like legislation. There may be opportunity to incorporate additional matters by way of Regulation, including the suggestion from DPC.

Consequence Management

The SEMP describes consequence management as:

the process of predicting, identifying, then managing and minimising, the negative social, economic, and environmental outcomes from an event. Consequence management involves planning for the outcomes to unforeseen and unlikely events, including multiple concurrent events and cascading events, which may have extreme or catastrophic consequences. Agencies and organisations are to ensure consequence management and consequence management thinking are applied to all aspects of emergency management.⁵⁶

The Primary Industries and Regions SA submission argued that "...the [EM] Act should specifically include consequence management, which is addressing and limiting consequences from emergencies." Consequence management also came up in discussion with a small number of stakeholders.

Consequence management is included in the Victorian EM Act. However, this Act does not support a direct comparison with South Australia's, as it is far more detailed, prescriptive, and consequently resourced differently. Equally, in a review, the Inspector General for Emergency Management found that while there is support for the concept, there are challenges in its practical implementation, particularly in relation to how it supported decision making and the lack of clarity around the concept.

Consequence management was formalised in Victorian emergency management through the 2013 Act. Consequence management is an 'approach' to thinking beyond immediate impacts to support effective coordination and has diffused across all tiers of the sector. IGEM found there is support for, and increasing adoption of, the approach across the sector in facilitating the dynamic and adaptive decision-making required during and after emergencies. Consequence management can also be adopted as an approach during response to mitigate and reduce the scale of relief and recovery efforts. The responsibility for consequence management under legislation falls to the Emergency Management Commissioner (EMC). The review highlighted that further clarity is

⁵⁶ SEMP 11.2.3

required regarding the roles and responsibilities for consequence management across and between the emergency management tiers in all phases of emergencies. Further, many of the consequence management products do not appear to align with audience requirements.⁵⁷

Emergency Management Australia has also published this:

The U.S.A.'s experience has raised practical concerns in relation to the distinctions between separate functions of crisis and consequence management. Evidence exists that these concerns have created artificial barriers, inefficiency, confusion and inertia in responding to events. Changes have seen a consolidation of the previously separate functions into a single approach. Drawing on the experience of others, Australian work in risk management (i.e. via National Emergency Risk Assessment Guidelines) must be connected to any work proposed in consequence management... True consequence management is not just an EM function; it is also a function of leadership, overlapping the usual EM plans, arrangements, responsibilities and even borders. Consequence management must be sufficiently flexible and robust to operate when 'business as usual' is not sufficient and when the 'rules of the game' have fundamentally changed. Planning and arrangements must account for this need.⁵⁸

When the Review explored the benefits of capturing consequence management within the EM Act, it was persuaded that its current placement in the SEMP was appropriate, noting that SEMC has also identified consequence management as one of its key themes in its Strategic Framework 2017-2022. The Review also notes that if functions such as assurance and recovery planning are strengthened, there will be opportunities for consequence management to further embed in emergency management practices.

OBSERVATION

SEMC note the interest in consequence management being further integrated into the South Australian emergency management framework.

⁵⁷ *Review of impact assessment and consequence management*, Inspector-General for Emergency Management (VIC): <https://www.igem.vic.gov.au/publications/igem-reports/review-of-impact-assessment-and-consequence-management>

⁵⁸ *Improving our capability to better plan for, respond to, and recover from severe-to-catastrophic level disasters*, Mark Croweller AFSM, Emergency Management Australia: <https://knowledge.aidr.org.au/resources/ajem-oct-2015-improving-our-capability-to-better-plan-for-respond-to-and-recover-from-severe-to-catastrophic-level-disasters/>

Appointment of the State Co-ordinator

The EM Act provides in section 14 that the person for the time being holding or acting in the position of Commissioner of Police is the State Co-ordinator. By virtue of the operation of the *Police Act 1998*, in the absence or illness of the Police Commissioner, the Deputy Commissioner may perform all the duties of the Police Commissioner under any Act.⁵⁹

Under the EM Act, the State Co-ordinator may appoint an Assistant State Co-ordinator and can delegate functions and powers to the Assistant State Co-ordinator. However, this does not relieve the State Co-ordinator of responsibilities. The Police Commissioner is not able to be relieved of the obligations of State Co-ordinator except by vacating the role of Police Commissioner.

The Review considered and consulted on whether it might be appropriate to have a Police Commissioner and a State Co-ordinator who hold separate roles in some situations, such as a longer-term emergency.

Ultimately, the Review determined no change need be made. Submissions varied on this matter. Those in favour of change argued that the powers of the State Co-ordinator demanded that the position should be a democratically elected role, accountable to the Parliament, or that there was merit in some emergency scenarios – due to their nature or duration - which could be better served by someone other than the Police Commissioner holding this role.

“SACOSS believes that it would be better for the role of State Co-ordinator to be held by an elected official. In a parliamentary democracy elected officials are required to provide a higher level of transparency and accountability for their decision making, with more avenues for questioning and parliamentary scrutiny. The current system enables a situation where political pressure may be applied behind the scenes, whether or not that pressure influences final decision making. Elected officials are likely to be subject to greater public scrutiny if it is thought (or suspected) that party politics have influenced decision making.” – SA Council of Social Service

“Whilst we view it right that the Commissioner should perform the role in the initial stages of a declared emergency, in the case of emergencies that extend for any considerable duration of time (i.e. the COVID-19 emergency), we believe that the Government of the day ought to appoint a suitable independent person or persons, whose decisions are reviewable - and disallowable - by the Parliament.” - Police Association of SA

⁵⁹ s 14 *Police Act 1998* (SA). This cascades further to a nominated (or the most senior) Assistant Commissioner. It is clearly fundamental to the structure and operation of the EM Act that there is always an identifiable State Co-ordinator (as it is likewise critical that there is always a person occupying the role of Commissioner of Police).

Alternatively, a range of arguments defended the current arrangement. SAPOL's submission indicated that this question had been actively considered, and it determined that the current arrangements were appropriate.

"The [EM] Act does allow for delegation of all or part of the role of State Co-ordinator while retaining a central decision making capability and responsibility. During the COVID-19 outbreak, a unique and long running emergency event that had not been previously considered, considerable discussion was undertaken about the role of State Co-ordinator and how that could be better achieved. A number of alternate models were considered. The conclusion at the time was that the role should remain with the Commissioner of Police. SAPOL notes that there are already delegation options within the Police Act to support the Commissioner of Police in re-allocating internal SAPOL tasks as required. SAPOL submits that the Commissioner of Police should remain as the State Co-ordinator." – **SA Police**

Former Premier Steven Marshall and former Minister for Health and Wellbeing Stephen Wade stated:

"We strongly hold the view that the Commissioner of Police should be the only person who can hold the role of State Co-ordinator...We hold the view that the risk of separating the roles is significant... and that delegations under the Police Act and Emergency Management Act and the Assistant State Co-ordinator role provide workable remedies to ensure that Police Commissioners can manage their time and energy between each role." – **Hon Steven Marshall and Hon Stephen Wade (former Premier and former Minister for Health and Wellbeing)**

Their position was framed within the context of the history of emergency management legislation debates, reviews, and evidence of past practice. Their main arguments can be summarised as:

- there is Parliamentary support for the current arrangements - which have been specifically considered and debated and have had consistent bi-partisan support.
- the role of the Police Commissioner is more arm's length from politics, which protects and strengthens their authority in decision making.
- the role of the Police Commissioner has inherent independence
- the Police Commissioner holds statutory powers which can support an emergency response
- the current arrangements avoid the Police Commissioner being subject to the direction of another office - and the risks if the Police Commissioner was to be subject to the direction by another officer acting as the State Co-ordinator
- police involvement is inevitable, as is the workload for the Commissioner and the police force.

The Review considers these to be persuasive arguments to maintain the status quo.

Offence Provisions

The Discussion Paper asked whether any changes were needed to the offence provisions in the EM Act. The Reference Group noted that the penalty for disclosure of medical or personal affairs information is not commensurate with the penalties in other similar provisions, and therefore, the Review has recommended an increase.

SAVEM provided a useful example of the type of activity that can occur around an emergency:

"In both response & recovery phases SAVEM has witnessed or experienced hindrance to emergency area activities. This has been largely due to unauthorised members of the public either "going to have a look" (disaster tourism) or attempting to "help" without training or safety equipment and clothing. Not only does this put at risk themselves and those who go to their aid, but it obstructs the efficacy of the response which could be time critical. SAPOL, if present, has the power to move people on, but SAVEM suggests the Act should include expiable offences relating to obstructing or hindering Tier 1 (i.e. first responders) or Tier 2 (e.g. SAVEM, PIRSA and essential services such as SA Power Networks and SA Water) operatives going about authorised activities. This would as well help secure the incident ground from anti-social behaviour.

*Practical example: Australia Day long weekend, 2021. A number of people drove to the Cherry Gardens fire ground as spectators. Road closures seemed not to be adequate or not policed. Several private vehicles obstructed an SA Power Networks truck attempting infrastructure repairs, as well as a SAVEM vehicle. The SAPN vehicle had considerable trouble manoeuvring to extricate itself so as to continue the crew's tasks in a timely and unencumbered manner, and the SAVEM crew was similarly delayed." **SA Veterinary Emergency Management Inc.***

Creating an additional offence requires several factors to consider. Even if an offence is expiable, the person authorised to issue an expiation needs to be appropriately trained. Systems need to be in place to support both the officer issuing an expiation and the process that follows.

The Review considers that SAPOL's powers, including the ability of an authorised officer under the EM Act to give a direction, are appropriate and adequate to address the situation described. An expiation fee for failing to comply with an authorised officer's direction was added as part of the amendments to the EM Act via the Statutes Amendment (COVID-19 Permanent Measures) Act 2021.

Other submission extracts of note

The following section provides a snapshot of the breadth of views and suggestions provided to the Review. Many of them had merit, but the Review considers that they are best dealt with outside of changes to the EM Act.

OBSERVATION

SEMC note the range of issues raised in the submissions that would contribute to improvements in the SEMP and broader emergency management arrangements in South Australia.

Practice Improvements

Non-government stakeholders and councils provided several submissions that would support improved communication, co-ordination and planning. The Review determined that while the recommendations made would contribute to improving South Australia's emergency management arrangements, these were not necessarily matters for the legislation. However, the Review notes that future reviews of emergency management documents, plans, policies, guidelines, toolkits and governance arrangements could be improved through a review of these submissions. E.g., City of Mount Gambier, Business SA, City of Adelaide.

“The South Australian Government should consider establishing a leading state emergency management agency that takes responsibility for the end-to-end needs of South Australia. This body can complement the roles and responsibilities of SEMC and the State Co-ordinator by developing all-encompassing emergency management methods, aim to reduce duplication of work between emergency services, other control agencies, functional support groups, NGOs and other bodies; and undertake zone planning (inclusive of PPRR) based on community emergency management methods; and assist in providing evidence for greater funding and resourcing measures. Ideally, the proposed standalone agency would be clearly visible to the public with a brand that builds confidence and promotes engagement within the emergency management sector... Considerations should be given to an independent and dedicated South Australian Emergency Management Agency that can complement NEMA, SEMC, the State Co-ordinator and State Recovery Co-ordinator with their respective roles and build a more sustainable community-based emergency management approach for South Australia.”

- Local Government Association of SA

“Our recommendation going forward is to establish a single website for emergency information. This website should be updated promptly after State Government announcements or any developments. This approach would enhance communication and the dissemination of relevant information for all stakeholders. ...we strongly recommend that the South Australian Government leverages industry bodies and their connection to the business community to adopt a quick and flexible approach to consultation and decision making during future emergency situations.”

- Business SA

“First responders (e.g. CFS/SES) see the event as to be completed as promptly as possible. Support agencies such as Primary Industries and Resources SA (PIRSA) have defined roles (support to primary producers) that can be fulfilled in a relatively short timeframe (days to a few weeks). PO’s like Department of Environment and Water (DEW) have on-going tasks beyond firefighting which can transition from emergency operations to routine departmental core business after weeks. A SAVEM response can last weeks to months, as animals, particularly wildlife, emerge from their known places of refuge emaciated, hungry, thirsty and injured. Over time, a SAVEM response can be scaled back, but it is still response, with concurrent recovery ongoing. There is rarely, if ever, community capacity to take over SAVEM’s role: private veterinarians do not have the time, training or skills, and affected communities have their own recovery issues to deal with. The critical point to note here is that while PPRR is a continuum, within that model a considerable amount of flexibility and fluidity needs to be acknowledged... One change in the EM sector which could make a very significant difference and improvement in efficacy is the move towards, and the achievement of, professionalisation of the sector. EM uplift to professional status and maintaining a professional EM workforce for whom EM is their day job, coupled with a greater emphasis on prevention and preparedness, could mean the difference between the ability to suppress a potentially devastating incident and being faced with managing an escalating emergency event.” - SA Veterinary Emergency Management Inc

The Role of Pharmacies

“Community pharmacies and pharmacists have always played an essential role in supporting communities by remaining accessible to the public and providing essential services in times of emergency. Despite the impacts of pandemics, fires, floods, cyclones and other emergencies, community pharmacies remain open and accessible. Community pharmacies maintain the supply of medicines and essential health products, provide dose administration aids and other services, deliver medicines to residential care facilities and to people living on their own, administer millions of vaccines, communicate constantly with medical, nursing and health colleagues, and pivot to introduce new services and programs at short notice.”- Pharmacy Guild of Australia

The Pharmacy Guild of Australia provided a submission to the Review which provides a strong example of how the private and non-government sectors can provide essential support during emergency management. It is also an example of how many of the submissions raised issues that went well beyond the EM Act and highlighted a desire to play a greater role in emergency planning. Specifically, their submission calls for:

- Incorporating community pharmacy in local and state planning for emergency response and recovery measures.
- Recognising community pharmacy capabilities to respond in times of emergency.
- Enhancing urgent medicine supply provisions for community pharmacies to ensure treatment continuity in times of emergency.
- Funding community pharmacy to plan, prepare and provide for effective responses in times of emergency.

“Failure to include community pharmacists in planning for emergency response and recovery measures risks under preparedness, confusion, and delays with managing health risks in a period of exceptional need and demand. The South Australian government should formally recognise and include community pharmacists in emergency, disaster and pandemic planning

and preparedness. This should be managed through the Guild as the representative body for community pharmacy.” - **Pharmacy Guild of Australia**

The Law Society of SA

The Law Society’s submission went to the issue of proportionality and protection of individual rights. For example:

“It is essential that South Australia has an effective emergency management framework in place which has regard to and is capable of protecting the human rights of the South Australian community. In this regard it is also essential that the powers given to the Executive during emergencies are subject to meaningful limits to guard against unjustifiable breaches of human rights and to ensure adequate oversight. Noting South Australia does not have a human rights framework in place, there could be a perceived risk that emergency management and pandemic frameworks are at risk of unjustifiably infringing human rights. Accordingly, there is benefit in enacting a Human Rights Act in South Australia to provide comprehensive guidance for government officials, authorised persons and Parliamentarians about many different aspects of South Australia’s emergency response framework and assist in increasing the public trust and confidence in this framework. This would provide particular guidance in assisting to ensure proportionality with respect to the right to privacy, freedom of movement, freedom from discrimination, the right to be free from arbitrary detention or arbitrary decision making and would also provide authorities with clear principles for justifying infringements of individual human rights when necessary to respond to emergencies.”

– **The Law Society of SA**

The Review notes that the Social Development Committee of the South Australian Parliament is undertaking an inquiry into the potential for a Human Rights Act for South Australia and that part of the Terms of Reference for this inquiry is:

the effectiveness of current laws and mechanisms for protecting human rights in South Australia and any possible improvements to these mechanisms;⁶⁰

The outcome of that Inquiry may inform future changes to the EM Act.

⁶⁰ *Potential for a Human Rights Act for SA*, Social Development Committee:
<https://www.parliament.sa.gov.au/committees/sdc>

Appendix 1: List of stakeholders (Direct engagement)

Attorney-General's Department (AGD)	Hon Nick Champion MP, Minister for Planning
Department for Education (Education)	Hon Susan Close MP, Deputy Premier & Minister for Environment and Water
Department for Energy and Mining (DEM)	Hon Tom Koutsantonis MP, Minister for Infrastructure and Transport, Minister for Energy and Mining
Department for Environment and Water (DEW)	Hon Zoe Bettison MP, Minister for Tourism, Minister for Multicultural Affairs
Department for Health and Wellbeing (DHW)	Local Government Association of SA (LGA)
Department for Infrastructure and Transport (DIT)	Office of the Commissioner for Public Sector Employment (OCPSE)
Department of Human Services (DHS)	SA Ambulance Service (SAAS)
Primary Industries and Regions (PIRSA)	SA Country Fire Service (CFS)
Department of the Premier and Cabinet (DPC)	SA Fire and Emergency Services Commission (SAFECOM)
Department of Treasury and Finance (DTF)	SA Metropolitan Fire Service (MFS)
Environment Protection Authority (EPA)	SA Police (SAPOL)
Green Industries SA (GISA)	SA State Emergency Service (SES)
Hon Chris Picton MP, Minister for Health and Wellbeing	State Emergency Management Committee (SEMC)
Hon Clare Scriven MLC, Minister for Primary Industries and Regional Development	Alex Zimmermann, Community Recovery Co-ordinator
Hon Joe Szakacs MP, (then) Minister for Police, Emergency Services and Correctional Services	

Appendix 2: List of submissions

Adelaide Hills Council	Police Association of SA (PASA)
Ambulance Employees Association of SA (AEASA)	Primary Industries and Regions (PIRSA)
Attorney-General's Department (AGD)	Resilient East
Business SA	Resilient South
City of Adelaide	SA Council of Social Service (SACOSS)
City of Holdfast Bay	SA Country Fire Service (CFS)
City of Mount Gambier	SA Fire and Emergency Services Commission (SAFECOM)
City of Onkaparinga	SA Housing Authority (SAHA)
CoVerse	SA Metropolitan Fire Service (MFS)
Department for Health and Wellbeing (DHW)	SA Police (SAPOL)
Department for Education (Education)	SA Power Networks (SAPN)
Department for Environment and Water (DEW)	SA State Emergency Service (SES)
Department of the Premier and Cabinet (DPC)	SA Veterinary Emergency Management Inc (SAVEM)
ElectraNet	SA Water
Environment Institute, University of Adelaide	Small Business Commissioner of SA (SBCSA)
Environment Protection Authority (EPA)	Hon. Steven Marshall and Hon Stephen Wade
Grant Reibel (CFS)	The Law Society of SA
Green Industries SA (GISA)	The Pharmacy Guild of Australia
Hon Tammy Franks MLC	Volunteering SA&NT
Local Government Association of SA (LGA)	
Office of the Commissioner for Public Sector Employment (OCPSE)	

YourSAy Survey Responses

Andrew Dul	Lesley Flora
Anne Gerard Halman	Mark
Anonymous (4)	Martin Borgas
Ashley Slade	Michael Arbon
Chris Bastian	Mike R
Chris Hooper	Nicholas Cook
Danny Fitzgerald	Nick Humphries
Daryl Curyer	Nick McBride MP, Member for Mackillop
David Basham MP, Member for Finnis	Nick Tellis
David Turner and Helen Grey-Smith	Nikki Becker, District Council of Elliston
Dianne Spillane	Rob England
Donna	SA Veterinary Emergency Management Inc (SAVEM)
Guy William Sadler, Outback Communities Authority (OCA)	Scott Letton
Ian Pope	Stuart Rees
James Zacharia, City of Salisbury	Sue-Ann Charlton, Department of Human Services (DHS)
John McGeachie	