

South Australia

Emergency Management Act 2004

An Act to establish strategies and systems for the management of emergencies in the State; and for other purposes.

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Emergency Management Act 2004*.

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
 - (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.

3—Interpretation

In this Act, unless the contrary intention appears—

Assistant State Co-ordinator—see section 16;

authorised officer means a police officer or a person appointed as an authorised officer under section 17;

Chief Public Health Officer means the Chief Public Health Officer under the *South Australian Public Health Act 2011* and includes a person for the time being acting in that position;

control agency—see section 20;

co-ordinating agency—see section 19;

disaster—see section 24;

emergency means an event (whether occurring in the State, outside the State or in and outside the State) that causes, or threatens to cause—

- (a) the death of, or injury or other damage to the health of, any person; or

- (b) the destruction of, or damage to, any property; or
- (c) a disruption to essential services or to services usually enjoyed by the community; or
- (d) harm to the environment, or to flora or fauna;

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.

identified major incident—see section 22;

major emergency—see section 23;

PPRR—see section 2(3)(a);

preparedness, in relation to an emergency, means arrangements made to ensure that, should an emergency occur, the resources and services needed to cope with the effect of the emergency can be mobilised and deployed efficiently;

prevention, in relation to an emergency, means measures taken to eliminate or reduce the incidence or severity of the emergency;

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;

response operations means any measures taken in anticipation of, during or immediately after an emergency to ensure that the effect of the emergency is minimised and that affected individuals are given immediate relief and support;

SEMC means the State Emergency Management Committee established under Part 2;

State Co-ordinator—see section 14;

State Emergency Management Plan or **SEMP**—see Part 1A;

vehicle includes an aircraft or vessel.

4—Application of Act

This Act does not authorise the taking of measures to bring an industrial dispute to an end or to control civil disorders (not being civil disorders resulting from, and occurring during the continuance of, a declared major emergency or disaster).

5—Interaction with other Acts

- (1) Subject to this section, this Act is in addition to and does not limit, or derogate from, the provisions of any other Act.
- (2) Where the provisions of this Act are inconsistent with any other Act or law, this Act prevails to the extent of the inconsistency.

Part 1A—State Emergency Management Plan

5A—State Emergency Management Plan

- (1) SEMC must prepare, keep under review and maintain the State Emergency Management Plan (*SEMP*) which must detail strategies for dealing with emergencies in the State, including strategies—
 - (a) for the prevention of emergencies; and
 - (b) relating to preparedness for emergencies; and
 - (c) for the containment of emergencies; and
 - (d) for the co-ordination of response and recovery operations; and
 - (e) for the orderly and efficient deployment of resources and services in connection with response and recovery operations.
- (2) 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.
- (3) Without limiting the generality of subsection (1), the *SEMP* may make provision for—
 - (a) the establishment of a committee to provide a forum to plan for and address emergency management (PPRR) training and other requirements for organisations; and
 - (b) the appointment of a specified agency to take the lead in planning emergency management activities for inclusion in the *SEMP* relating to the prevention of, preparedness for, response to and recovery from a particular hazard; and
 - (c) the division of the State into zones (*Emergency Management Zones*) (which may be comprised of 1 or more, or a part of 1 or more, areas of a council and any other area of the State); and
 - (d) for each Emergency Management Zone—the establishment of a management committee with responsibility for preparing, keeping under review and maintaining local planning for the Zone for the purposes of the *SEMP*; and

Note—

See also section 7(d) of the *Local Government Act 1999* which provides that 1 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.

- (e) the appointment of a co-ordinator for each Emergency Management Zone; and
- (f) the designation of specified locations for the purposes of the *SEMP*; and

- (g) any other matter consistent with the objects and guiding principles of this Act that should, in the opinion of SEMC, be included in the SEMP.

Part 2—State Emergency Management Committee

6—Establishment of State Emergency Management Committee

- (1) The State Emergency Management Committee (SEMC) is established.
- (2) The Minister must prepare guidelines (the *SEMC membership guidelines*) setting out—
 - (a) the members of SEMC (other than the members referred to in subsection (4)(a)(i) and (ii)) who will hold office *ex officio*; and
 - (b) in the case of members appointed to SEMC by the presiding officer (*appointed members*)—
 - (i) the qualifications and expertise of those members; and
 - (ii) procedural matters governing the appointment of those members; and
 - (c) the terms and conditions under which members will hold office, including—
 - (i) the term of office of appointed members and their eligibility for reappointment; and
 - (ii) conditions of membership of appointed members; and
 - (iii) allowances and expenses of members; and
 - (iv) removal of appointed members; and
 - (v) circumstances under which the office of an appointed member becomes vacant; and
 - (d) any other prescribed matters.
- (3) The SEMC membership guidelines must be published in a manner and form determined by the Minister.
- (4) SEMC consists of—
 - (a) the following persons, who will hold office *ex officio*:
 - (i) the presiding member, being the person for the time being holding or acting in the position of chief executive of the administrative unit that has, subject to the Minister, responsibility for administering this Act; and
 - (ii) the State Co-ordinator; and
 - (iii) such other persons specified in the SEMC membership guidelines as in force from time to time as members who will hold office *ex officio*; and
 - (b) at least 2, but not more than 4, persons appointed by the presiding member in accordance with the SEMC membership guidelines as in force from time to time.
- (5) A member of SEMC may appoint a suitable person to be the member's deputy and that person may, in the absence of that member, act as a member of SEMC.

- (6) Members of SEMC will hold office on terms and conditions set out in the SEMC membership guidelines as in force from time to time.

7—Application of Public Sector (Honesty and Accountability) Act

The *Public Sector (Honesty and Accountability) Act 1995* applies to the members of SEMC as if the committee were an advisory body and the Minister responsible for the administration of this Act were the relevant Minister.

8—Vacancies or defects in appointment of members

- (1) An act or proceeding of SEMC is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.
- (2) On the office of an appointed member of SEMC becoming vacant, a person must be appointed in accordance with this Act to the vacant office.

9—Functions and powers of SEMC

- (1) SEMC has the following functions:
- (a) to provide leadership and maintain oversight of emergency management planning in the State;
 - (b) to prepare and keep under review the SEMP;
 - (c) to provide advice to the Minister in relation to the operation of this Act and the management of emergencies in the State;
 - (d) to undertake risk assessments relating to emergencies or potential emergencies where SEMC thinks fit or where requested by the Minister;
 - (e) to ensure that agencies and organisations with functions under the SEMP are aware of those functions and are provided with adequate information for the purpose of understanding and carrying out those functions;
 - (f) to monitor the capacity of agencies and organisations with functions under the SEMP to properly carry out those functions;
 - (g) to co-ordinate the development and implementation of strategies and policies relating to emergency management (including strategies and policies developed at a national level and agreed to by the State);
 - (h) to monitor and evaluate the implementation of the SEMP and the response and recovery operations taken during or following—
 - (i) any identified major incident, major emergency or disaster declared under this Act; and
 - (ii) any other emergency as SEMC thinks fit;
 - (i) to perform any other functions assigned to SEMC by this Act or by the Minister.
- (2) SEMC may, for the purposes of preparing and implementing the State Emergency Management Plan—
- (a) create such offices as it thinks fit and appoint persons to those offices; and
 - (b) assign additional functions to the State Co-ordinator and, with the approval of the State Co-ordinator, assign functions to any Assistant State Co-ordinators.

10—Proceedings of SEMC

- (1) The presiding member will, if present at a meeting of SEMC, preside at that meeting and in the absence of that member—
 - (a) if the State Co-ordinator is present at the meeting, the State Co-ordinator will preside; or
 - (b) if the State Co-ordinator is not present at the meeting—the members present will decide who is to preside.
- (2) A quorum of SEMC consists of one half the total number of its members (ignoring any fraction resulting from the division) plus one.
- (3) A decision carried by a majority of the votes cast by the members present at a meeting is a decision of SEMC.
- (4) Each member present at a meeting of SEMC has one vote on a matter arising for decision and, if the votes are equal, the member presiding at the meeting may exercise a casting vote.
- (5) A conference by telephone or other electronic means between the members of SEMC will, for the purposes of this section, be taken to be a meeting of SEMC at which the participating members are present if—
 - (a) notice of the conference is given to all members in the manner determined by SEMC for the purpose; and
 - (b) each participating member is capable of communicating with every other participating member during the conference.
- (6) A proposed resolution of SEMC becomes a valid decision of SEMC despite the fact that it is not voted on at a meeting of SEMC if—
 - (a) notice of the proposed resolution is given to all members of SEMC in accordance with procedures determined by SEMC; and
 - (b) a majority of the members express concurrence in the proposed resolution by letter, telegram, telex, facsimile transmission or other written communication setting out the terms of the resolution.
- (7) SEMC must have accurate minutes kept of its meetings.
- (8) Subject to this Act, SEMC may determine its own procedures.

11—Establishment of advisory groups by SEMC

- (1) SEMC may, at any time, establish advisory groups—
 - (a) to advise SEMC on any matter; or
 - (b) to carry out functions on behalf of SEMC.
- (3) The membership of an advisory group will be determined by SEMC and may, but need not, consist of, or include, members of SEMC.
- (4) SEMC will determine who will be the presiding member of an advisory group.
- (5) The procedures to be observed in relation to the conduct of the business of an advisory group will be—
 - (a) as determined by SEMC; and

- (b) insofar as a procedure is not determined under paragraph (a)—as determined by the advisory group.

12—Delegation

- (1) SEMC may delegate any of its functions or powers under this Act—
 - (a) to a member of SEMC; or
 - (b) to an advisory group established by SEMC; or
 - (c) to the person for the time being holding or acting in a particular office or position; or
 - (d) to any other person or body.
- (2) A delegation under this section—
 - (a) must be by instrument in writing; and
 - (b) may be absolute or conditional; and
 - (c) does not derogate from the power of SEMC to act in any matter; and
 - (d) is revocable at will by SEMC.
- (3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

13—Annual report by SEMC

- (1) SEMC must, on or before 30 September in each year, present a report to the Minister on the operations of SEMC during the preceding financial year.
- (2) The Minister must, within 12 sitting days after receipt of a report under this section, cause copies of the report to be laid before both Houses of Parliament.

Part 3—The State Co-ordinator

14—Appointment of State Co-ordinator

The person for the time being holding or acting in the position of Commissioner of Police is appointed as the State Co-ordinator.

15—Functions and powers of State Co-ordinator

The State Co-ordinator has the following functions:

- (a) to manage and co-ordinate response and recovery operations in accordance with this Act and the SEMP;
- (b) if an identified major incident, a major emergency or a disaster is declared under this Act—to ensure SEMC is provided with adequate information in order to fulfill its monitoring functions under this Act;
- (c) to carry out other functions assigned to the State Co-ordinator under this Act.

16—Assistant State Co-ordinators

- (1) The State Co-ordinator may, at any time, appoint one or more Assistant State Co-ordinators to exercise powers and functions under this Act in relation to—
 - (a) specific parts of the State; or
 - (b) specific types of hazards; or
 - (c) specific events.
- (2) The State Co-ordinator must, as soon as practicable after the declaration of an identified major incident, a major emergency or a disaster under this Act, appoint an Assistant State Co-ordinator to exercise powers and functions in relation to recovery operations.
- (3) An Assistant State Co-ordinator will be appointed for such term and on such conditions as the State Co-ordinator may determine.
- (4) An Assistant State Co-ordinator has the functions and powers delegated to the Assistant Co-ordinator by the State Co-ordinator or assigned to the Assistant Co-ordinator by SEMC with the approval of the State Co-ordinator.

17—Authorised officers

- (1) The State Co-ordinator may appoint, individually or by class, such persons to be authorised officers for the purposes of this Act as the State Co-ordinator thinks fit.
- (1a) An appointment under subsection (1) may be subject to conditions specified by the State Co-ordinator.
- (2) An authorised officer, other than a police officer, must be issued with an identity card in a form approved by the State Co-ordinator—
 - (a) containing the person's name and a photograph of the person; and
 - (b) stating that the person is an authorised officer for the purposes of this Act.
- (3) An authorised officer must, at the request of a person in relation to whom the authorised officer intends to exercise any powers under this Act, produce for the inspection of the person—
 - (a) in the case of an authorised officer who is a police officer and is not in uniform—his or her certificate of authority; or
 - (b) in the case of an authorised officer who is not a police officer—his or her identity card.
- (4) An authorised officer must, on ceasing to be an authorised officer for any reason, surrender his or her identity card and any insignia or special apparel or equipment issued to the authorised officer for the purposes of this Act to the State Co-ordinator or a person nominated by the State Co-ordinator.

Maximum penalty: \$1 250.

18—Delegation

- (1) The State Co-ordinator may delegate any of his or her functions or powers under this Act—
 - (a) to an Assistant State Co-ordinator; or

- (b) to the person for the time being holding or acting in a particular office or position; or
 - (c) to any other person or body.
- (2) A delegation under this section—
- (a) must be by instrument in writing; and
 - (b) may be absolute or conditional; and
 - (c) does not derogate from the power of the State Co-ordinator to act in any matter; and
 - (d) is revocable at will by the State Co-ordinator.

Part 4—The management of emergencies

Division 1—Co-ordinating agency

19—Co-ordinating agency

- (1) Subject to subsection (2), South Australia Police will be the co-ordinating agency for all emergencies.
- (2) The SEMP may designate a different body or organisation as the co-ordinating agency in relation to an emergency of a specified kind.
- (3) The co-ordinating agency has the following functions in relation to an emergency:
 - (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; and
 - (c) to advise the State Co-ordinator, in accordance with any requirements of the State Co-ordinator, in relation to the emergency; and
 - (d) to exercise any other functions assigned to the co-ordinating agency under this Act or the SEMP.

Division 2—Control agency

20—Control agency

- (1) Subject to subsection (2), the control agency in relation to an emergency will be determined as follows:
 - (a) if, under an Act or law or the SEMP, a particular person or agency is assigned the function of exercising control of persons and agencies involved in response operations relating to such an emergency then that person or agency is the control agency for that emergency;
 - (b) if, under an Act or law or the SEMP—

- (i) 2 or more persons or agencies are assigned the function of exercising control of persons and agencies involved in response operations relating to such an emergency; or
- (ii) it is unclear which person or agency is assigned that function in relation to such an emergency; or
- (iii) no person or agency is assigned that function in relation to such an emergency,

then the control agency for that emergency will be a person or agency determined by the co-ordinating agency.

- (2) Despite any other Act or law, where the senior police officer involved in response operations in relation to an emergency forms a reasonable suspicion that the emergency has resulted from, or is related to, a terrorist act, South Australia Police will be the control agency in relation to the emergency.
- (3) Except as otherwise provided by this Act, all other persons and agencies involved in response operations in relation to an emergency are, in carrying out those operations, subject to the control of the control agency.
- (4) In this section—

terrorist act has the same meaning as in the *Terrorism (Commonwealth Powers) Act 2002*.

Division 3—Declaration of emergencies

21—Publication of guidelines

SEMC may publish guidelines setting out circumstances in which an emergency should be declared, under this Division, to be an identified major incident, a major emergency or a disaster.

22—Identified major incidents

- (1) If it appears to the State Co-ordinator that the nature or scale of an emergency that has occurred, is occurring or is about to occur is such that it should be declared to be an identified major incident, the State Co-ordinator may declare the emergency to be an identified major incident.
- (2) A declaration under this section—
 - (a) may be made orally (but if made orally must, as soon as is reasonably practicable, be reduced to writing and a copy provided to the Minister); and
 - (b) subject to this section, remains in force while response operations are being carried out in relation to the emergency (but not for a period exceeding 12 hours).
- (3) The State Co-ordinator may, at any time, revoke a declaration under this section.

23—Major emergencies

- (1) If it appears to the State Co-ordinator that a major emergency has occurred, is occurring or is about to occur, the State Co-ordinator may declare the emergency to be a major emergency (whether or not the emergency has previously been declared to be an identified major incident under section 22).
- (2) A declaration under this section—
 - (a) must be in writing and published in a manner and form determined by the Minister; and
 - (b) 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.
- (3) The State Co-ordinator may, at any time, revoke a declaration under this section.

24—Disasters

- (1) If it appears to the Governor that a major emergency has occurred, is occurring or is about to occur and the Governor is satisfied that the nature or scale of the emergency is, or is likely to be, such that it should be declared to be a disaster under this section, the Governor may (whether or not the emergency has previously been declared to be an identified major incident under section 22 or a major emergency under section 23) declare the emergency to be a disaster.
- (2) A declaration under this section—
 - (a) must be made in writing and published in a manner and form determined by the Minister; and
 - (b) remains in force for the period specified in the declaration (which must not exceed 30 days) and for such further periods (which may be of any length) as may be approved by resolution of both Houses of Parliament.
- (4) The Governor may, at any time, revoke a declaration under this section.

24A—Public health incidents and emergencies

An emergency may be declared to be an identified major incident, a major emergency or a disaster whether or not the emergency has previously been declared to be a public health incident or a public health emergency under the *South Australian Public Health Act 2011*.

Division 4—Powers that may be exercised in relation to declared emergencies

25—Powers of State Co-ordinator and authorised officers

- (1) On the declaration of an identified major incident, a major emergency or a disaster under Division 3, and while that declaration remains in force, the State Co-ordinator must take any necessary action to implement the SEMP and cause such response and recovery operations to be carried out as he or she thinks appropriate.

- (2) Without limiting or derogating from the operation of subsection (1), but subject to the regulations, the State Co-ordinator or an authorised officer may, if of the opinion that it is necessary to do so, do or cause to be done all or any of the following things:
- (a) enter and, if necessary, break into any land, building, structure or vehicle (using such force as is necessary);
 - (b) take possession of, protect or assume control over any land, body of water, building, structure, vehicle or other thing;
 - (ba) remove or destroy, or order the removal or destruction of, any building, structure, vehicle, vegetation, animal or other thing;
 - (bb) carry out, or cause to be carried out, excavation or other earthworks;
 - (c) construct, or cause to be constructed, barriers, buildings or other structures;
 - (ca) subject a place or thing to a decontamination procedure;
 - (d) direct the owner of, or the person for the time being in charge of, any real or personal property to place it under the control or at the disposition of a specified person;
 - (e) remove, or cause to be removed, to such place as the State Co-ordinator or authorised officer thinks fit, any person or animal, or direct the evacuation or removal of any person or animal;
 - (f) direct or prohibit the movement of persons, animals or vehicles;
 - (fa) direct a person to submit to a decontamination procedure;
 - (fb) direct a person to remain isolated or segregated from other persons or to take other measures to prevent the transmission of a disease or condition to other persons;
 - (fc) direct a person to undergo medical observation, examination (including diagnostic procedures) or treatment (including preventative treatment);
 - (g) remove flammable material or any other hazardous material or cause flammable material or any other hazardous material to be removed from any place, building or structure;
 - (h) cause any supply of fuel or other flammable liquid, any gas or electricity or any other hazardous material to be connected, reconnected, disconnected or shut off;
 - (i) direct a person who is in a position to do so—
 - (i) to stop any work or operation; or
 - (ii) to close any premises or other place; or
 - (iii) to contain the escape of any hazardous material, or to nullify the effects of the escape of any hazardous material; or
 - (iv) to shut off or remove any plant, equipment, apparatus or device or to perform any operation in relation to any plant, equipment, apparatus or device;
 - (j) connect, disconnect, reconnect, shut off or cut off the supply of water or any drainage facility;

- (k) make use of the gratuitous services of any person;
 - (ka) require a person to furnish such information as may be reasonably required in the circumstances (other than information that may be required to be furnished under section 6 of the *Essential Services Act 1981*);
 - (l) remove to such place as he or she thinks fit any person who obstructs or threatens to obstruct response or recovery operations;
 - (m) direct, insofar as may be reasonably necessary in the circumstances, any person (other than a control agency or other person referred to in paragraph (n)) to assist in the exercise of any power under this section;
 - (n) in the case of a major emergency or disaster—give directions to any control agency or person whose responsibilities require him or her to engage in response or recovery operations, or who is so engaged;
 - (o) exercise any prescribed power.
- (3) 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.

26—Supply of gas or electricity

A person or company supplying gas or electricity to any premises or other place must, at the direction of the State Co-ordinator or an authorised officer under this Division, send a competent person to connect, reconnect, disconnect or shut off the supply of gas or electricity to the premises or other place, or to any adjacent premises or place (and the person so attending must then comply with any direction that may be given in the exercise of powers under this Division).

26A—Modification of Controlled Substances Act

- (1) The Minister may, by notice in the Gazette, modify the operation of section 18, 26 or 31 of the *Controlled Substances Act 1984* for the duration of the declaration of an identified major incident, a major emergency or a disaster if satisfied that it is necessary to do so in order to meet—
 - (a) the demand for drugs for medical purposes arising from the incident, emergency or disaster; or
 - (b) the ordinary demand for drugs for medical purposes despite interruptions to medical services or supplies or other difficulties arising from the incident, emergency or disaster.
- (2) The Minister may, by subsequent notice in the Gazette, vary or revoke a notice under subsection (1).
- (3) Before a notice is made under this section, the Minister must consult with the Minister responsible for the administration of the *Controlled Substances Act 1984*.

Division 5—Recovery operations

27—Recovery operations

- (1) The State Co-ordinator may, at any time after the declaration of an identified major incident, a major emergency or a disaster under Division 3, direct authorised officers to take specified action for the purposes of carrying out recovery operations in accordance with the SEMP.
- (2) An authorised officer may be assisted by volunteers in carrying out recovery operations under this section and may give such directions to a volunteer as the officer thinks necessary for that purpose.
- (3) A recovery operation under this section cannot be carried out on private land unless—
 - (a) the owner of the land consents to the operation being carried out on the land; or
 - (b) the State Co-ordinator is satisfied that it is not reasonably practicable to seek the consent of the owner of the land (because the owner cannot be located or for any other reason) or that the consent of the owner is being unreasonably withheld.
- (4) Where—
 - (a) the State Co-ordinator is satisfied that it is necessary or expedient that particular work be carried out in the course of a recovery operation under this section; and
 - (b) a person has (apart from this section) a duty to carry out the work or a legal liability in respect of carrying out the work,

the State Co-ordinator may cause the work to be carried out and recover, as a debt from the person, the reasonable costs of carrying out the work.

- (5) For the purposes of subsection (4)—
 - (a) if an independent contractor is engaged for the purpose of carrying out the work—the reasonable costs of carrying out the work will be taken to be the actual costs of engaging the contractor (and in any proceedings under subsection (4) a certificate apparently signed by the State Co-ordinator certifying the costs of engaging the contractor is, in the absence of proof to the contrary, to be accepted as proof of the costs so certified); or
 - (b) in any other case—the reasonable costs of carrying out the work are to be assessed by reference to the reasonable costs that would have been or would be incurred in having the action taken by an independent contractor engaged for that purpose.

Part 5—Offences

28—Failure to comply with directions

- (1) A person must not, without reasonable excuse, refuse or fail to comply with a requirement or direction of the State Co-ordinator or of an authorised officer given in accordance with this Act during a declared identified major incident, major emergency or disaster.

Maximum penalty:

- (a) if the offender is a body corporate—\$75 000;
 - (b) if the offender is a natural person—\$20 000.
- (2) If a body corporate is guilty of an offence against this section, each director and the manager of the body corporate are guilty of an offence and liable to the same penalty as is prescribed for the principal offence when committed by a natural person unless the director or the manager (as the case may be) proves that he or she could not by the exercise of due diligence have prevented the commission of the offence.
- (3) A person may be prosecuted and convicted of an offence under subsection (2) whether or not the body corporate has been prosecuted or convicted of the offence committed by the body corporate.

29—Obstruction

A person must not hinder or obstruct operations carried out in accordance with this Act.

Maximum penalty: \$10 000.

30—Impersonating an authorised officer etc

- (1) A person must not falsely represent that he or she is an authorised officer or other person with responsibilities under this Act.

Maximum penalty: \$10 000.

- (2) A person must not, without lawful authority—

- (a) wear any insignia or special apparel issued to an authorised officer for the purposes of this Act; or
 - (b) use any special equipment issued to an authorised officer for the purposes of this Act,

in circumstances where to do so would lead to a reasonable belief that he or she was an authorised officer.

Maximum penalty: \$10 000.

31—Disclosure of information

- (1) An authorised officer may direct a person who the authorised officer reasonably suspects has committed, is committing or is about to commit, an offence against this Act to state the person's full name and usual place of residence and to produce evidence of the person's identity.

- (2) A person to whom a direction is given under subsection (1) must immediately comply with the direction.

Maximum penalty: \$5 000.

31A—Confidentiality

If a person, in the course of the administration or enforcement of this Act, obtains—

- (a) medical information relating to another; or
- (b) information the disclosure of which would involve the disclosure of information relating to the personal affairs of another,

the person must not intentionally disclose that information unless—

- (c) the disclosure is made in the course of the administration or enforcement of this Act; or
- (d) the disclosure is made with the consent of the other person; or
- (e) the disclosure is required by a court or tribunal constituted by law.

Maximum penalty: \$5 000.

Part 6—Miscellaneous

32—Protection from liability

- (1) No civil or criminal liability will attach to the State Co-ordinator, an authorised officer or other person for an act or omission in good faith—

- (a) in the exercise or discharge, or purported exercise or discharge, of a power or function under this Act; or
- (b) in the carrying out of any direction or requirement given or imposed in accordance with this Act in relation to an emergency.

- (2) A liability that would, but for subsection (1), lie against a person lies instead against the Crown.

33—Employment

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.

34—Evidentiary

In any proceedings, a document—

- (a) purporting to be signed by the State Co-ordinator and certifying that a person named, or referred to, in the document was, on a specified date, an authorised officer; or
- (b) purporting to be signed by the State Co-ordinator and certifying that a declaration of an identified major incident or major emergency was in force in respect of a specified emergency on a specified day or during a specified period; or

- (c) purporting to be signed by the Minister and certifying that a declaration of a disaster was in force in respect of a specified emergency on a specified day or during a specified period,

is, in the absence of proof to the contrary, proof of the facts so certified.

36—Insurance policies to cover damage

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.

37—State Emergency Relief Fund

- (1) The State Disaster Relief Fund continues in existence as the State Emergency Relief Fund (the *fund*).
- (2) Any money received by the Minister for the relief of persons who suffer injury, loss or damage as a result of a declared emergency or proclaimed situation, or otherwise to assist communities adversely affected by the impact of a declared emergency or proclaimed situation (in response to a public appeal), must be paid into the fund.
- (3) The Minister may appoint a committee of persons to administer the fund.
- (4) A committee appointed for the purposes of this section will administer the fund subject to the directions of the Governor.
- (5) Subject to this section, no money received by the fund in respect of a particular declared emergency or proclaimed situation may be disbursed otherwise than to, or for the purpose of the relief of, persons who suffered injury, loss or damage as a result of that declared emergency or proclaimed situation, or to assist communities adversely affected by that declared emergency or proclaimed situation.
- (6) If the committee is satisfied that it has made sufficient payment to persons or communities on account of a particular declared emergency or proclaimed situation, the committee may, with the approval of the Governor, leave the balance of the money in the fund to be applied under this section for the purpose of responding to some future declared emergency or proclaimed situation.
- (7) Where the committee is of the opinion that a person who suffered injury, loss or damage as a result of a declared emergency or proclaimed situation has been overcompensated for that injury, loss or damage by reason of being paid—
 - (a) money from the fund; and
 - (b) damages or compensation from another source,the committee may, by notice in writing given personally or by post to the person, require the person to pay to the fund the amount of the overcompensation as determined by the committee and specified in the notice.
- (8) A person who is given a notice under subsection (7) is liable to pay to the fund, as a debt due to the Crown, the amount specified in the notice within the time specified in the notice (being a period of not less than one month from the day on which the notice is given).

- (9) Money paid to the fund pursuant to subsection (8) may be disbursed for the purpose of responding to the declared emergency or proclaimed situation in respect of which the money was first paid, or for the purpose of responding to a future declared emergency or proclaimed situation.
- (10) No money in the fund may be used to defray the administrative costs of administering the fund.
- (11) In this section—
- declared emergency*** means an emergency in respect of which a declaration under this Act has been made;
- proclaimed situation*** means a situation or circumstance that is within the ambit of a proclamation made by the Governor for the purposes of this section.
- (12) A proclamation made for the purposes of the definition of ***proclaimed situation***—
- (a) may apply by reference to any factor specified by the proclamation, including by limiting the scope of the proclamation by area or a period of time; and
 - (b) may, from time to time as the Governor thinks fit, be varied or substituted by a new proclamation.

38—Regulations

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act or as are necessary in consequence of conditions directly or indirectly caused by an emergency in respect of which a declaration under this Act is made.
- (2) Without limiting the generality of subsection (1), the regulations may—
 - (a) apply generally or to a particular case or class of case; and
 - (b) apply throughout the State or within a particular part of the State; and
 - (c) prescribe penalties, not exceeding a \$5 000 fine, for breach of or non-compliance with a regulation.
- (3) The Governor may, by regulation, make additional provisions of a saving or transitional nature consequent on the enactment of the *Statutes Amendment (Boards and Committees—Abolition and Reform) Act 2015*.
- (4) A provision of a regulation made under subsection (3) may, if the regulation so provides, take effect from the commencement of this subsection or from a later day.
- (5) To the extent to which a provision takes effect under subsection (4) from a day earlier than the day of the regulation's publication in the Gazette, the provision does not operate to the disadvantage of a person by—
 - (a) decreasing the person's rights; or
 - (b) imposing liabilities on the person.

Schedule 1—Transitional provisions

Part 3—Transitional provisions

7—Continuation of State Disaster Plan

- (1) The State Disaster Plan prepared under the *State Disaster Act 1980*, as in force immediately before the commencement of this clause, continues as the State Emergency Management Plan under this Act until altered or replaced by SEMC in accordance with this Act.
- (2) SEMC must, as soon as reasonably practicable after the commencement of this Act, cause a review of the plan continued in operation under subclause (1) for the purpose of determining whether it should be altered or replaced.

Legislative history

Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Legislation repealed by principal Act

The *Emergency Management Act 2004* repealed the following:

State Disaster Act 1980

Legislation amended by principal Act

The *Emergency Management Act 2004* amended the following:

Electricity Act 1996

Essential Services Act 1981

Gas Act 1997

Local Government Act 1999

Summary Offences Act 1953

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2004	30	<i>Emergency Management Act 2004</i>	29.7.2004	25.11.2004 (<i>Gazette</i> 25.11.2004 p4406)
2005	70	<i>Terrorism (Police Powers) Act 2005</i>	8.12.2005	Sch 2 (cl 2)—8.12.2005
2006	42	<i>Emergency Management (State Emergency Relief Fund) Amendment Act 2006</i>	14.12.2006	14.12.2006
2009	29	<i>Statutes Amendment (Public Health Incidents and Emergencies) Act 2009</i>	25.6.2009	Pt 3 (ss 4—12)—25.6.2009
2011	21	<i>South Australian Public Health Act 2011</i>	16.6.2011	Sch 1 (cll 3—5)—16.9.2012 (<i>Gazette</i> 30.8.2012 p3945)
2013	16	<i>Statutes Amendment (Directors' Liability) Act 2013</i>	23.5.2013	Pt 14 (ss 28 & 29)—17.6.2013 (<i>Gazette</i> 6.6.2013 p2498)
2015	8	<i>Statutes Amendment (Boards and Committees—Abolition and Reform) Act 2015</i>	18.6.2015	Pt 12 (ss 69—72)—17.8.2015 (<i>Gazette</i> 25.6.2015 p3076)

2016 18 *Emergency Management (Miscellaneous) Amendment Act 2016* 26.5.2016 1.7.2016 (*Gazette 23.6.2016 p2617*)

Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	8.12.2005
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	8.12.2005
s 2	inserted by 18/2016 s 4	1.7.2016
s 3		
<i>appointed member</i>	<i>deleted by 8/2015 s 69</i>	17.8.2015
<i>Chief Medical Officer</i>	<i>inserted by 29/2009 s 4(1)</i>	25.6.2009
	<i>deleted by 21/2011 Sch 1 cl 3</i>	16.9.2012
Chief Public Health Officer	inserted by 21/2011 Sch 1 cl 3	16.9.2012
emergency	substituted by 29/2009 s 4(2)	25.6.2009
PPRR	inserted by 18/2016 s 5(1)	1.7.2016
preparedness	inserted by 18/2016 s 5(1)	1.7.2016
prevention	inserted by 18/2016 s 5(1)	1.7.2016
recovery operations	substituted by 18/2016 s 5(2)	1.7.2016
response operations	substituted by 18/2016 s 5(2)	1.7.2016
State Emergency Management Plan	substituted by 18/2016 s 5(3)	1.7.2016
Pt 1A	inserted by 18/2016 s 6	1.7.2016
Pt 2		
s 6		
s 6(2)—(6)	substituted by 8/2015 s 70	17.8.2015
s 7	substituted by 8/2015 s 71	17.8.2015
s 9		
s 9(1)	amended by 18/2016 s 7(1)—(4)	1.7.2016
s 11		
s 11(2)	<i>deleted by 18/2016 s 8</i>	<i>1.7.2016</i>
Pt 3		
s 15	amended by 18/2016 s 9	1.7.2016
s 17		
s 17(1a)	inserted by 29/2009 s 5	25.6.2009

Emergency Management Act 2004—1.7.2016 to 25.4.2017
Legislative history

Pt 4

s 19

s 19(2) **amended by 18/2016 s 10(1)** **1.7.2016**

s 19(3) **amended by 18/2016 s 10(2)** **1.7.2016**

s 20

s 20(1) **amended by 18/2016 s 11(1), (2)** **1.7.2016**

s 23

s 23(2) amended by 29/2009 s 6(1) 25.6.2009

(c) deleted by 29/2009 s 6(1) 25.6.2009

s 23(3) inserted by 29/2009 s 6(2) 25.6.2009

s 24

s 24(2) amended by 29/2009 s 7(1) 25.6.2009

s 24(3) *deleted by 29/2009 s 7(2)* 25.6.2009

s 24A

inserted by 29/2009 s 8 25.6.2009

amended by 21/2011 Sch 1 cl 4 16.9.2012

s 25

s 25(1) **amended by 18/2016 s 12(1)** **1.7.2016**

s 25(2) amended by 70/2005 Sch 2 cl 2(1), (2) 8.12.2005

amended by 29/2009 s 9(1)—(4) 25.6.2009

amended by 18/2016 s 12(2) **1.7.2016**

s 25(3) inserted by 29/2009 s 9(5) 25.6.2009

amended by 21/2011 Sch 1 cl 5 16.9.2012

s 26

amended by 29/2009 s 10 25.6.2009

s 26A

inserted by 29/2009 s 11 25.6.2009

s 27

s 27(1) **amended by 18/2016 s 13** **1.7.2016**

Pt 5

s 28

s 28(1) s 28 redesignated as s 28(1) by 16/2013 s 28 17.6.2013

s 28(2) and (3) inserted by 16/2013 s 28 17.6.2013

s 31A

inserted by 29/2009 s 12 25.6.2009

Pt 6

s 35

deleted by 16/2013 s 29 17.6.2013

s 37

s 37(2) substituted by 42/2006 s 3(1) 14.12.2006

s 37(5) and (6) substituted by 42/2006 s 3(2) 14.12.2006

s 37(7) amended by 42/2006 s 3(3) 14.12.2006

s 37(9) substituted by 42/2006 s 3(4) 14.12.2006

s 37(11) and (12) inserted by 42/2006 s 3(5) 14.12.2006

s 38

s 38(3)—(5) inserted by 8/2015 s 72 17.8.2015

Sch 1

Pts 1 and 2

*omitted under Legislation Revision and
Publication Act 2002*

8.12.2005

Transitional etc provisions associated with Act or amendments

Emergency Management (Miscellaneous) Amendment Act 2016, Sch 1—Transitional provisions

1—Continuation of State Emergency Management Plan

The State Emergency Management Plan in force under the *Emergency Management Act 2004* immediately before the commencement of section 6 of this Act continues, after that commencement, as the State Emergency Management Plan under section 5A of the *Emergency Management Act 2004*.

2—Recovery operations advisory group

- (1) An advisory group established under section 11(2) of the *Emergency Management Act 2004* and in existence immediately before the commencement of section 8 of this Act continues, after that commencement, as an advisory group to advise the State Emergency Management Committee in relation to recovery operations as if it were an advisory group established under section 11(1)(a) of the *Emergency Management Act 2004*.
- (2) An advisory group continued in existence under subclause (1) retains the same membership, presiding member, procedures for the conduct of business and any delegation in place immediately before the commencement of section 8 of this Act, subject to any determination of the State Emergency Management Committee after that commencement under section 11 of the *Emergency Management Act 2004*.

Historical versions

8.12.2005

14.12.2006

25.6.2009

16.9.2012

17.6.2013

17.8.2015