

INDEPENDENT REVIEW
OF THE *EMERGENCY
MANAGEMENT ACT 2004*:
Government Response

JUNE 2024



Government
of South Australia

Foreword

The Emergency Management Act 2004 (the EM Act) is South Australia's principal legislation for emergency management arrangements. It is a critical piece of legislation in times of emergency, to support the South Australian Government's prevention, preparedness, response and recovery efforts. It provides the framework and principles for coordinating activities before, during and after emergencies; assigns key responsibilities; and gives the necessary powers for response and recovery operations. It is, rightly, used as a last resort, once the powers of all the other Acts it works with have been exhausted.

The scale, impacts and consequences of recent events such as the 2019-20 Black Summer bushfires, the COVID-19 pandemic and the 2022-23 River Murray Flooding event have far exceeded all other events since the commencement of the EM Act. Prior to COVID-19, very few emergency events had reached the significant threshold required to declare an emergency under Division 3 of the EM Act.

In recent years, the state has witnessed disaster events begin to occur in increasing frequency, intensity, and duration, often creating poly-crises that have redefined how the state needs to respond to emergencies. The increasing complexity of existing and emerging disaster risks also will also present new challenges for the emergency management sector and the state more broadly.

To ensure the state is adequately equipped to respond to the evolving emergency management challenges into the future, the government considered it necessary for the EM Act to be reviewed. Managing Partners of PEG Consulting, Dr Tahnya Donaghy and Ingrid Haythorpe, were engaged by the Department of the Premier and Cabinet (DPC) to independently review the EM Act in accordance with the Terms of Reference. The government commend PEG Consulting for their thorough review of the EM Act, as detailed in the Independent Review of the Emergency Management Act 2004: Final Report (the Review) (the Final Report).

The government has considered the recommendations and observations contained within the Final Report and has chosen to publish the Final Report with an accompanying Government Response which accepts, or accepts in principle, all of its recommendations.



Peter Malinauskas MP
Premier

Recommendations and Observations

The Review contained 28 recommendations to enhance the state's emergency management arrangements. The government's response to individual recommendations can be found below:

Recommendations

#	Recommendation	Accepted/ Not Accepted	Comments
1	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	Accepted	This recommendation will be included within the drafting instructions for the EM Act Amendment Bill (the Amendment Bill).
2	The definition of "recovery operations" be expanded to include activities on private property.	Accepted	This recommendation will be included within the drafting instructions for the Amendment Bill.
3	References to the "scene" of an emergency should be recast to take account of all hazards.	Accepted	This recommendation will be included within the drafting instructions for the Amendment Bill.
4	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.	Accepted	This recommendation will be included within the drafting instructions for the Amendment Bill. Following assent to the Amendment Bill, the Minister's guidelines and Chair's duties will be revised to reflect the changes in the EM Act.

#	Recommendation	Accepted/ Not Accepted	Comments
5	To enhance the current arrangements for oversight and accountability, the EM Act should assign responsibility for an assurance function.	Accepted	The government has determined that SEMC should be responsible for an assurance function within the EM Act. Accordingly, this recommendation, including the identified assurance function, will be included within the drafting instructions for the Amendment Bill.
6	Introduce a new class of declaration that provides powers in anticipation of a declared emergency or to support the scaling down of a declared emergency, based on the ACT and Tasmanian State of Alert models. It should be clear that the State of Alert declaration can be used prior or following a major emergency or disaster declaration.	Accepted	This recommendation will be included within the drafting instructions for the Amendment Bill. Further consideration will be given to the name of the new declaration category.
7	Amend the EM Act to allow for an alternative extension process for a disaster, should, as a result of the impact of the disaster, both Houses of Parliament be unable to approve an extension.	Accepted	This recommendation will be included within the drafting instructions for the Amendment Bill.
8	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.	Accepted	This recommendation will be included within the drafting instructions for the Amendment Bill.

#	Recommendation	Accepted/ Not Accepted	Comments
9	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.	Accepted	This recommendation will be included within the drafting instructions for the Amendment Bill.
10	Provide the State Co-ordinator with an information gathering power to determine whether there is (or is likely to be) an emergency that warrants a declaration being made. Regulations should be able to be made relating to the use of the power.	Accepted	This recommendation will be included within the drafting instructions for the Amendment Bill. A back-pocket regulation will also be drafted to ensure the government is able to quickly enact these powers, if required.
11	The EM Act include a section that provides Ministers with the ability to dispense with procedural requirements of another Act during a declaration period.	Accepted	This recommendation will be included within the drafting instructions for the Amendment Bill.
12	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.	Accepted in principle	This recommendation will be included within the drafting instructions for the Amendment Bill. It is proposed that this mechanism will also specify the need for public sector mobilisation response outside of a declared emergency, in accordance with amendments being made to the South Australian Public Sector Mobilisation Policy.

#	Recommendation	Accepted/ Not Accepted	Comments
13	A (separate) position of a Recovery Co-ordinator should be established by the EM Act. The role should not be limited to a declaration period.	Accepted in principle	This recommendation will be included within the drafting instructions for the Amendment Bill. The government is supportive of the establishment of a permanent Recovery Co-ordinator role. To better emphasise the focus of this role and reflect existing arrangements, the government will refer to this role as the State Recovery Co-ordinator as outlined in the SEMP.
14	The Recovery Co-ordinator should report to the State Co-ordinator during a declaration period. The Recovery Co-ordinator should be an authorised officer.	Accepted	This recommendation will be included within the drafting instructions for the Amendment Bill.
15	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 the construction or removal of temporary structures.	Accepted	This recommendation will be included within the drafting instructions for the Amendment Bill. A back-pocket regulation will also be drafted to ensure the government is able to quickly enact these powers, if required.

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16	The use of recovery powers should be time limited but have an extension process available that is subject to parliamentary scrutiny.	Accepted	This recommendation will be included within the drafting instructions for the Amendment Bill.
17	Information sharing powers should be available to the Recovery Co-ordinator and be underpinned by the trusted access principles outlined in the <i>Public Sector (Data Sharing) Act 2016</i> .	Accepted	This recommendation will be included within the drafting instructions for the Amendment Bill.
18	The EM Act should be amended to clarify that section 25 powers retain primacy over other powers in the Act.	Accepted	This recommendation will be included within the drafting instructions for the Amendment Bill.
19	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.	Accepted	This recommendation will be included within the drafting instructions for the Amendment Bill.
20	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.	Accepted	This recommendation will be included within the drafting instructions for the Amendment Bill.
21	Amend section 27D to ensure that the type of information that may be requested is not inadvertently limited.	Accepted	This recommendation will be included within the drafting instructions for the Amendment Bill.
22	The EM Act should permit the Minister responsible for the administration of the Electricity Act 1996 to share information with the State Co-ordinator.	Accepted	This recommendation will be included within the drafting instructions for the Amendment Bill.

#	Recommendation	Accepted/ Not Accepted	Comments
23	The EM Act should provide equivalent protections to protected information as the Security of Critical Infrastructure Act 2018 (SOCI Act).	Accepted	This recommendation will be included within the drafting instructions for the Amendment Bill.
24	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.	Accepted	This recommendation will be included within the drafting instructions for the Amendment Bill.
25	The penalty in section 31A of the EM Act should be increased to be commensurate with other legislation.	Accepted	This recommendation will be included within the drafting instructions for the Amendment Bill.
26	The EM Act make it clear that liability protections do not extend to workers compensation claims which result in adverse outcomes for individuals following emergency management directions relating to their workplace.	Accepted	This recommendation will be included within the drafting instructions for the Amendment Bill.
27	The volunteer and employment protections should be strengthened to include a remedy.	Accepted	This recommendation will be included within the drafting instructions for the Amendment Bill.
28	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.	Accepted	This recommendation will be included within the drafting instructions for the Amendment Bill.

Observations

In addition to the recommendations made by the Review, an additional nine observations were also made in relation to the emergency management arrangements surrounding the EM Act. The government has also responded to these observations below:

#	Observation	Accepted/ Not Accepted	Comments
1	The process for seeking an extension of a declaration should be included in the State Emergency Management Plan (SEMP).	Accepted	This observation will be considered as a part of the next SEMP Review.
2	The intent for coordination to occur with the Australian Energy Market Operator (AEMO) and other relevant entities during an electricity supply emergency should at a minimum be reflected in operating procedures that are shared with all relevant parties or alternatively in the SEMP.	Accepted	This observation will be considered as a part of the next SEMP Review.
3	The State Government should ask the Commonwealth Government to prescribe the EM Act for the purposes of section 46 of the SOCI Act.	Accepted in principle	The government supports this observation and will work with the Commonwealth to ensure that the EM Act is captured as a prescribed law of a State or Territory in the rules, which are yet to be established. If required, further Regulations may be made to align the EM Act to such rules.
4	The next review of the 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.	Accepted	This observation will be considered as a part of the next SEMP Review.

#	Observation	Accepted/ Not Accepted	Comments
5	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.	Accepted	This observation will be considered as a part of the next SEMP Review.
6	The State Government should prioritise introducing cyber security legislation.	Accepted	The government notes the importance of ensuring cyber security is adequately considered within the State's emergency management arrangements and will prioritise introducing cyber security legislation.
7	It would be good practice following any amendments to the EM Act to assess interfacing legislation for gaps or inconsistencies.	Accepted	The government supports this observation. DPC will notify agencies to review their interfacing legislation following the passage of the Amendment Bill.
8	SEMC note the interest in consequence management being further integrated into the South Australian emergency management arrangements.	Accepted	A paper will be provided to SEMC on this subject.
9	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.	Accepted	A paper will be provided to SEMC on this subject. This observation will further be considered as a part of the next SEMP Review.

Feedback can be provided:

Via email

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By post

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**Government
of South Australia**

We acknowledge this land.
The Dreaming is still living.
From the past, in the present,
into the future, forever.