

**THE *EMERGENCY
MANAGEMENT
ACT 2004* REVIEW:**
Discussion Paper



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Executive Summary

The *Emergency Management Act 2004* (the EM Act) establishes the legislative framework and principles for co-ordinating activities before, during and after emergencies. It assigns key accountabilities and enables necessary authorities to effect response and recovery operations for the management of emergencies in South Australia.

This consultation paper has been prepared to support a comprehensive independent review 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.

The Review Terms of Reference can be found at:

www.dpc.sa.gov.au/responsibilities/security-emergency-and-recovery-management/emergency-management-act-review.

The Reviewers are also reviewing the *Emergency Management (Electricity Supply Emergencies) Amendment Act 2017* as required by section 11 of that Act.

Reading and responding to this Discussion Paper

The Discussion Paper follows the structure of the EM Act. Relevant sections are briefly discussed and in some cases examples of how other jurisdictions have approached the issue are provided. Relevant questions are then posed for consideration and advice.

The questions posed in the paper are a guide only. You do not need to respond to every question. You can provide a comment which does not relate to a specific question. If you are responding to a specific question or section, please include the reference to enable easy identification of responses. If you would like a hard copy of this paper, please contact the Secretariat using the information provided below.

Submissions should be relevant to the Terms of Reference and about the content of the EM Act itself. This is not a review of actions previously taken under the EM Act.

Where possible, submissions should provide reasoning for the position that is advocated and examples or evidence that supports this position.

Feedback can be provided via email to:

EmergencyManagementActReview@sa.gov.au

Via YourSAy:

www.yoursay.sa.gov.au/emergency-management-act-review

Or by post to:

Emergency Management Act Review Secretariat
c/-Ellie Stenner
Department of the Premier and Cabinet
GPO Box 2343
Adelaide SA 5001

Submissions are due by **Tuesday, 30 January 2024**.

Your submission or its contents may be made publicly available. Submissions may be subject to Freedom of Information and other laws. If you would like your submission to remain confidential, please clearly state this in the submission and provide a reason.

Discussion Questions

For convenience, the list of questions asked throughout the discussion paper appears below. Please refer to the appropriate section of the discussion paper for further clarity on the questions.

Part 1—Preliminary

1. Does the EM Act contain the right objects and guiding principles?
2. Should a definition of hazard be included in the EM Act, and if so, how general or prescriptive should it be and why?
3. Should the references to the “scene” of an emergency be amended to take account of broader emergency contexts?

Part 1A—State Emergency Management Plan

4. Is there a need for any parts of the SEMP to be given legislative force and protection? If so what elements and what form should this take?
5. Should the EM Act include a reference to mitigation? If so, what form should this take?
6. Should there be greater reference to local government in the EM Act? If so, what form should this take?

Part 2—State Emergency Management Committee

7. Does the EM Act provide too much prescription in relation to the composition and procedures of SEMC?
8. Does SEMC have the appropriate functions and powers?
9. Should the EM Act provide that SEMC (or some other body/position) has an assurance function or are the current arrangements appropriate?

Part 3—The State Co-ordinator

10. Should the position of Commissioner of Police (or person acting as Commissioner) be the only person who can hold the role of State Co-ordinator?

Part 4: Division 3—Declaration of emergencies

11. Should there be any change to who has the power to declare an identified major incident, major emergency or state disaster?
12. Should there be any changes to the permitted duration of declarations, the extension arrangements or processes relating to this? Why or why not?
13. Would it be desirable for there to be a new class of declaration that supports the scaling up and down of emergency messaging? If so, should it be based on a State of Alert model, or another alternative?

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

- 14.** Should the temporary (section 25) powers from the *COVID-19 Emergency Response Act 2020* be reinstated to the EM Act?
- 15.** Should the EM Act make it clear that the State Co-ordinator is able to take advice from any source the State Co-ordinator considers appropriate?
- 16.** Should section 25 (3) of the EM Act be amended to remove the need to consider advice, if this is implicit in the role and function of the State Co-ordinator? Or should the reference to the Chief Public Health Officer be amended to the Chief Executive of the Department (for Health and Wellbeing)?
- 17.** In recognition of emerging threats, should the State Co-ordinator or another authorised person have information gathering powers to determine whether there is (or is likely to be) an emergency that warrants a declaration being made?
- 18.** Should there be any specific requirements attached to written directions, such as the requirement to brief Members of Parliament or to publish information or advice in connection with a written direction?

Part 4: Division 5—Recovery operations

- 19.** Should the EM Act provide for a separate position of State Recovery Co-ordinator, and if so what role, functions and reporting arrangements should it have?
- 20.** Are recovery powers sufficient, and if not, what powers should be included?
- 21.** Should recovery powers be subject to an extension process, similar to the existing powers under section 25?

Part 4: Division 6 – Electricity Supply Emergencies

- 22.** Should there be any change to the electricity supply emergency declaration period or the extension arrangements?
- 23.** Are the powers of direction appropriate to manage an electricity supply emergency?
- 24.** Are the powers to require documents or information fit for purpose?
- 25.** Is the coverage of designated persons appropriate and does the scope adequately future proof the EM Act?

Part 5—Offences

- 26.** Are any changes needed to the offence provisions in the EM Act?

Part 6—Miscellaneous

- 27.** Are any changes needed to liability and insurance protections detailed in the EM Act?
- 28.** Do the employment protections for volunteers need to be strengthened? Should there be a remedy attached to these provisions?
- 29.** Are any changes to section 37 relating to the State Emergency Relief Fund required?
- 30.** Can the Regulations be repealed? Is there a need for the Regulations to deal with any other matters?

Other Matters

- 31.** Should the EM Act provide an explicit mechanism to facilitate the mobilisation of the public sector workforce when additional support is required to assist in responding to and recovering from emergencies?
- 32.** What future threats may not be able to be adequately managed by the EM Act and what changes would be needed to address this?
- 33.** Are there areas where other legislation interacts with the EM Act which results in gaps or problems in the management of emergency events?
- 34.** Are any changes needed to the EM Act framework to take account of Commonwealth legislation?
- 35.** Please provide any other comments about the EM Act.

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 , undertaken by former South Australia Police Commissioner, Mr Gary Burns
Co-ordinating agency	South Australia Police (SA Police) is the co-ordinating agency for all emergencies under section 19 (1) (2) of the EM Act. 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. Opportunity exists under the EM Act for the appointment of other co-ordinating agencies.
COVID-19 Response Act	<i>COVID-19 Emergency Response Act 2020 (SA)</i>
Declaration / Declaration	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	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). <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>
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.

Term/Acronym	Definition
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).
OCPSE	Office of the Commissioner for Public Sector Employment
Public Sector Act	<i>Public Sector Act 2009 (SA)</i>
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	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	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>
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.

Context

The *Emergency Management Act 2004* (the EM Act) is the foundation for the framework and principles for co-ordinating activities before, during and after emergencies in South Australia. The EM Act also outlines the key responsibilities and legislative powers assigned to the people and organisations involved in emergency management, to allow for effective response and recovery operations.

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.

Three events in the last three years have seen declarations made under the EM Act – the COVID-19 pandemic, the extreme weather event caused by Ex Tropical Cyclone Tiffany in 2022 and the 2022/23 River Murray Flooding Event. This is unusual for both the regularity of a major emergency declaration being made and the diversity of events that have led to the declaration. Outside of this period the dominant reason for a major emergency declaration has been to manage fire.

Before COVID-19, only seven declarations had been made in the fifteen years since the EM Act commenced. This is an indication of the high threshold required for the powers under the EM Act to be used (as opposed to use of the operating framework, in particular the SEMP). The continuous public health risk presented by COVID-19 saw South Australia under a Major Emergency Declaration that continued for an extended period.

A list of all declarations made under the EM Act can be found at the table below:

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

Duration	Type	Event	Extension/s
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 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 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 maximum timeframe.

Duration	Type	Event	Extension/s
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 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	

The Independent Review into South Australia's 2019-20 Bushfire Season stated:

The EM Act provides a clear pathway for elements of emergency management decision making. As can be seen the function of emergency management is a well thought through process that is consistent with other Australian jurisdictions...The Emergency Management Framework has delivered excellent outcomes during the current COVID-19 crisis where the South Australian Department for Health and Wellbeing has been the 'Control Agency' and the rest of the structure has worked well to support the government and the community.¹

This Review will examine whether the EM Act is fit for purpose, and if it has generally served South Australia well in the management of various emergencies it has faced. The Review will also consider how the EM Act can be improved and future proofed.

Discussion and questions for consideration

As noted earlier, the Discussion Paper generally follows the structure of the EM Act – outlining relevant issues and posing questions for response. You are free to respond to as many or as few questions as you choose. You are also free to provide additional comments to questions and issues not posed here.

¹ Independent Review into South Australia's 2019-20 Bushfire Season (Burns Review) - <https://safecom-files-v8.s3.amazonaws.com/current/docs/Independent%20Review%20into%20SA%2527s%25202019-20%2520Bushfire%2520Season%2520-%2520Web%2520Upload.pdf>

Part 1—Preliminary

Objects and guiding principles

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

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.

The objects of this Act are to be achieved through—

- (c) establishing the State Emergency Management Committee; and
- (d) providing for the appointment of a State Co-ordinator; and
- (e) the preparation, review and maintenance of the State Emergency Management Plan; and
- (f) making provision for declarations relating to emergencies and disasters; and
 - (da) making provision for declarations relating to electricity supply emergencies; and
- (g) establishing structures for risk prevention and preparedness; and
- (h) establishing structures to support a seamless transition from response to recovery in relation to an emergency.

The guiding principles under this Act are that emergency management arrangements must —

- (i) be based on an all hazards approach in addressing emergency prevention, preparedness, response and recovery (PPRR); and
- (j) 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
- (k) 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 State Emergency Management Committee (SEMC) can be found in the State Emergency Management Plan (SEMP)²:

² State Emergency Management Plan, page 5 - www.dpc.sa.gov.au/responsibilities/security-emergency-and-recovery-management/state-emergency-management-plan/State-Emergency-Management-Plan-2022.pdf -

SEMP Principles

1. 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:
2. Emergency management educates and empowers communities to build resilience through effective stakeholder engagement and collaborative efforts to reduce hazard risks
3. 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
4. Emergency management protects property, businesses and the environment through effective stakeholder engagement and detailed planning
5. 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
6. 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
7. Emergency management employs strong governance and leadership to drive effective and sustainable outcomes
8. Emergency management uses comprehensive and integrated planning to enhance systems co-ordination, information sharing and outcomes
9. Emergency management is underpinned by contemporary knowledge, policy and strategy that supports continuous improvement drawn from assessment of risks and consequence thinking
10. Emergency management operations are conducted with scalable arrangements to address complexity and consequences
11. 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 is to consider whether the principles of the EM Act reflect modern best practice and community expectations. The objects and principles section of an Act traditionally communicates the Parliament's intent about what the Act is seeking to achieve.

The focus of the current objects is partly directed at **output** objectives:

- “prompt and effective decision-making” and
- “comprehensive and integrated planning”

and partly at **outcome**:

- “promote community resilience and reduce community vulnerability”.

Each State and Territory has its own emergency management legislation, and the objects in each differs to reflect the focus, priority and circumstances of the legislative framework. A contrasting approach appears in Victoria's *Emergency Management Act 2013*, where the first objective is more descriptive about the outcome sought and provides that the object is to:

“foster a sustainable and efficient emergency management system that minimises the likelihood, effect and consequences of emergencies;”

The objects of the ACT's legislation are:

- (a) to protect and preserve life, property and the environment; and
- (b) to provide for effective emergency management that—
 - (i) has regard to the need to prepare for, prevent, respond to and recover from emergencies; and
 - (ii) takes an all-hazards approach to emergency management; and
 - (iii) develops community resilience to emergencies; and
- (d) to provide for the effective and cohesive management by the commissioner of the state emergency service, the ambulance service, the fire and rescue service and the rural fire service; and
- (e) to recognise the value to the community of all emergency service members, including volunteer members, and providers of operational and administrative support to the commissioner and the services.

Question 1: Does the EM Act contain the right objects and guiding principles?

Interpretation (Definitions and Terminology)

Hazards

The guiding principles in section 2 (3) (a) of the EM Act require emergency management arrangements to be based on an all-hazards approach in addressing emergency prevention, preparedness, response and recovery. Hazards are not defined in the EM Act, but are defined in the SEMP as:

A hazard is 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. Hazard includes 'disaster risk'.

The Australian Government Crisis Management Framework (AGCMF)³ provides a more descriptive definition:

- **natural events** – including but not limited to bushfires, cyclonic or severe storms, floods, earthquakes, space weather, asteroid or extra-terrestrial body impacting on the earth, pandemics and other biosecurity incidents, tsunamis and globally and regionally significant volcanic eruptions.
- **human-induced events** – including but not limited to cyberattacks, space junk, malicious critical infrastructure sabotage or kinetic terrorism or bioterrorism, and non-naturally occurring radiological or other wide area environment contamination events. This does not include events such as human protests or industrial workforce activities.

³ Department of the Prime Minister and Cabinet (Cth): Australian Government Crisis Management Framework - www.pmc.gov.au/sites/default/files/resource/download/australian-government-crisis-management-framework.pdf

Identified hazards are assigned by SEMC to Hazard Risk Reduction Leaders (agencies) to manage risks associated with those identified hazards.

Question 2: Should a definition of hazard be included in the EM Act, and if so, how general or prescriptive should it be and why?

Scene

Whilst the EM Act does not define “scene”, there are references in the 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.

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.

Question 3: Should the references to the “scene” of an emergency be amended to take account of broader emergency contexts?

Part 1A — State Emergency Management Plan (SEMP)

Part 1A of the EM Act provides for the SEMP to detail strategies for dealing with emergencies. SEMC is responsible for preparing and keeping the SEMP under review. The SEMP can be found at: www.dpc.sa.gov.au/responsibilities/security-emergency-and-recovery-management/state-emergency-management-plan.

The SEMP may provide that an agency other than SA Police can be the co-ordinating agency for an emergency, with the default position otherwise being that SA Police is the co-ordinating agency, and the SEMP can specify who is the control agency.

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.⁴ These provisions were included in 2016, when the second reading speech for the amending Bill explained:

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.⁵ Legal opinion obtained during the Review confirmed that the current role, function and authority of the SEMP is consistent with the Act and that its application to all sectors of the community is consistent with the intention of Parliament when the 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.⁶

Part 1 of the SEMP attempts to describe a clear set of principles defining the responsibilities of government agencies and participating organisations in emergency management activities. The intention is that the governance arrangements described in Part 1 assign the roles and responsibilities for planning and preparing for, responding to and recovering from emergencies.

Parts 2 and 3 provide supplementary material such as strategies, guidelines, frameworks and supporting plans.

It is important that the SEMP is an accessible, practical and clear document as it sets out the roles, responsibilities and activities of agencies in relation to emergencies, irrespective of whether an emergency is declared. It is important that the SEMP can be updated as SEMC sees fit.

The EM Act does not require the SEMP to be limited to declared emergencies and there are a number of references in the SEMP to “emergency”. Emergency Services agencies have indicated that they rely on the SEMP to organise their interactions on a day-to-day basis, not just during declared emergencies. For example, the SEMP determines who is the co-ordinating agency or who takes control at any emergency event.

4 The EM Act originally provided in s 3 that the SEMP means a plan (or a series of plans) prepared by SEMC in accordance with s 9 and comprising strategies for the prevention of emergencies in the State and for ensuring that the State is adequately prepared for emergencies, including strategies for the containment of emergencies, the co-ordination of response and recovery operations and the orderly and efficient deployment of resources and services in connection with response and recovery operations

5 2016 Review of the EM Act undertaken by SA Police

6 South Australia. *Parliamentary Debates*. House of Assembly. 11 February 2016. Emergency Management (Miscellaneous) Amendment Bill - <https://hansardsearch.parliament.sa.gov.au/daily/lh/2016-02-11/57?sid=ad546851c9be4e1daf>

The EM Act provides authority to the SEMP, but its status is not entirely clear. It is not clear to the Review whether actions taken in accordance with the SEMP enliven the responsibilities and protections of the EM Act, such as those in section 29, 32 or 36 of the EM Act.

Question 4: Is there a need for any parts of the SEMP to be given legislative force and protection? If so what elements and what form should this take?

Mitigation

Section 5A of the EM Act requires SEMC to prepare, keep under review and maintain the SEMP. The EM Act also lists a range of responsibilities for which there must be strategies. This includes preparedness and prevention, containment, co-ordination and recovery. It does not include mitigation and responsibilities for reducing the impact of events.

The Royal Commission into National Natural Disaster Arrangements (the Royal Commission) received a range of submissions - from insurance bodies to local councils, to interested individuals – that highlighted the increased importance of mitigation in the context of increasing climate change events.

The difference between prevention and mitigation is that prevention activities support measures that seek to eliminate the impact or reduce susceptibility of hazards, while mitigation measures accept that the event will occur and seek to reduce the inevitable impact. Of course, as with other matters addressed by the EM Act, mitigation is not the sole responsibility of government.

The Review is interested in understanding views on whether the absence of reference to mitigation measures in the EM Act is an omission that should be addressed; or alternatively if there is the view that mitigation should be business as usual for and dealt with in individual legislation that deals specifically with the issue that a hazard is connected to (such as climate, biosecurity, cyber threats).

Question 5: Should the EM Act include a reference to mitigation? If so, what form should this take?

Local Government

There are few explicit references to local government in the EM Act, and those which do exist tend to sit alongside other stakeholders. For example, local government is referenced in the guidelines, and in discussions on the SEMP, such as 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 the statement 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)).*

Question 6: Should there be greater reference to local government in the EM Act? If so, what form should this take?

Part 2—State Emergency Management Committee (SEMC)

The EM Act establishes SEMC as the governance body overseeing emergency management planning and the State Co-ordinator with the function of managing and co-ordinating response and recovery operations.

SEMC is a large Committee with 16 members and five additional approved observers, who may attend meetings of relevance to their organisation.

The EM Act provides a high level of detail for a committee comprised of statutory office holders and public servants. Section 6 (4) (b) is restrictive, and this level of detail may be better dealt with in the Minister's guidelines.

Section 10 provides a level of detail about procedure that is unusual for government committees. Membership could instead be left to the Ministerial guidelines and the Presiding Chair to determine.

Question 7: Does the EM Act provide too much prescription in relation to the composition and procedures of SEMC?

Question 8: Does SEMC have the appropriate functions and powers?

Assurance

In 2016, the EM Act was amended to account for preparedness and prevention activities within emergency management. The objects include *“establishing structures for risk prevention and preparedness”* and the guiding principles under the EM Act include that emergency management arrangements must *“be based on an all hazards approach in addressing emergency prevention, preparedness, response and recovery”*.

Responsibility for these activities is assigned via the SEMP.

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”.⁷

In Victoria, the State Crisis and Resilience Council must both monitor **and report** to the Minister at regular intervals on the progress of implementation of the Strategic Action Plan and work programs (section 13 (4) (b)). In addition, the functions of the Inspector-General for Emergency Management include (but are not limited to):

- develop and maintain an assurance framework for emergency management, including outcome measures, against which the capacity, capability and performance of the emergency management sector is to be monitored and assessed; and
- undertake system-wide reviews, including reviewing the emergency management functions of responder agencies and Departments in relation to the assurance framework; and

⁷ SEMP Part 1, paragraph 6.2

- evaluate state-wide training and exercising arrangements to maintain and strengthen emergency management capability; and
- monitor and report to the Minister on the implementation of the Strategic Action Plan

The Burns Review 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.

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.

The government's response to this recommendation was to establish an emergency management assurance framework that features an independently chaired advisory group.⁸ This advisory group is now known as the Emergency Management Assurance Subcommittee of SEMC.

When considering the establishment of an Inspector General Emergency Management, the government determined that the significant upfront cost associated with securing a budget, passing enabling legislation and establishing an office would not be an appropriate first response to addressing assurance governance in South Australia when a more cost-effective option had not yet been trialled.

Question 9: Should the EM Act provide that SEMC (or some other body/position) has an assurance function, or are the current arrangements appropriate?

⁸ 2017 Review of Emergency Management Arrangements undertaken by SEMC

Part 3—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 of the duties of the Police Commissioner under any Act.⁹

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.

In some situations, for example a longer-term emergency situation, it might be appropriate that there is a Police Commissioner and a State Co-ordinator, and these roles are held by separate people. This was managed during the COVID-19 emergency declaration period by the Deputy Commissioner undertaking more of the Police Commissioner's police role and on occasion, if the Commissioner took leave, the Deputy Commissioner assumed the State Co-ordinator function.

The benefit of the State Co-ordinator always being the Police Commissioner is that it avoids a scenario where the State Co-ordinator may issue a direction to the Police Commissioner. To address issues such as long-term events and fatigue or extended recovery operations, alternate models are discussed below, including a new declaration category of State of Alert and a legislated role and powers for a State Recovery Co-ordinator.

Question 10: Should the position of Commissioner of Police (or person acting as Commissioner) be the only person who can hold the role of State Co-ordinator?

⁹ 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).

Part 4: Division 3—Declaration of emergencies

The EM Act applies to all emergencies, irrespective of whether a declaration is made. The EM Act provides a framework for response agencies during any emergency situation and the SEMP facilitates the operational hierarchy for the response to incidents - even in the absence of a declaration. Other legislation, such as the FES Act and the SAPH Act, also form part of this framework.

Making of a declaration

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 to the powers that are enlivened by the form of declaration. The differences relate to the duration of the declaration and its form. In the case of a disaster and extensions, who makes the declaration differs.

Electricity supply emergencies are also provided for in the EM Act. This type of declaration differs 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

South Australia is somewhat unique in that it vests the role of making of a declaration in the State Co-ordinator, or for a disaster, the Governor.¹⁰ In most other jurisdictions there is a role for the Premier or Minister in the making of a declaration. This means that South Australia's model is the most de-politicised but also the most removed from executive government. A comparative table of jurisdictional approaches is below.

¹⁰ Obviously with the exception of an electricity supply emergency from page 36 onwards.

Table 3: Jurisdictional comparison on responsibility to make an emergency declaration

State/ Territory	Responsibility
ACT	The Chief Minister may declare a state of emergency if satisfied that an emergency has happened, is happening or is likely to happen; and the nature of the emergency calls for an urgent, significant and co-ordinated response to minimise or manage a substantial risk The Minister may make a state of alert declaration if satisfied that an emergency is likely to occur in all or part of their state or territory.
NSW	The Premier is able to declare a state of emergency or disaster if they are satisfied that an event constitutes a significant danger to life or property in NSW.
NT	The Minister can declare the existence of an 'emergency situation' or 'state of emergency'. The Administrator (or two Ministers acting together) may declare a 'state of disaster'.
QLD	The Minister for Fire and Emergency Services and the Premier, or a District Disaster Co-ordinator (with Ministerial approval), may declare a disaster situation exists
SA	The State Controller may declare an 'identified major incident' or a 'major emergency' and the Governor may declare a 'disaster'.
TAS	The Premier may declare a state of emergency if he or she is satisfied, on reasonable grounds that an emergency, or a significant threat of an emergency, is occurring or has occurred in Tasmania; or that the existing circumstances require, or may require, the exercise of special emergency powers. The State Controller may make a state of alert declaration if satisfied that an emergency is likely to occur in all or part of their state or territory.
VIC	The Premier is able to declare a state of emergency or disaster if they are satisfied that an event constitutes a significant danger to life or property in Victoria.
WA	The Minister may declare a state of emergency exists. The State Emergency Co-ordinator or the relevant hazard management agency (which includes, for example, the Police Commissioner and the FES Commissioner) is able to declare that an emergency situation exists.

Question 11: Should there be a change to who has the power to declare an identified major incident, major emergency or state disaster?

Length of declaration

An Identified Major Incident Declaration can remain in force for a maximum of 12 hours.

A Major Emergency declaration may remain in force for up to 14 days, and extensions for further periods (which may be of any length) may be approved by the Governor. The process for the Governor to approve an extension follows the consideration and recommendation of an extension by Executive Council, which is comprised of Cabinet members of the government of the day.

A Disaster declaration may remain in force for a period that must not exceed 30 days with extended periods (which may be of any length) subject to approval by resolution of both Houses of Parliament. This is the only role that Parliament is explicitly afforded under the EM Act.

The EM Act does not specify a limit for the number of extensions that can be made or impose a maximum period for which the state may operate under a Major Emergency or Disaster declaration.¹¹

Table 4: Jurisdictional comparison on the maximum duration of an emergency declaration and process that must be followed¹²

State/ Territory	Duration
ACT	There is no specified limit for the number of extensions/ maximum duration of time that the state can operate under a declaration.
NSW	A declaration is unable to be extended, but there is nothing to prevent another declaration being issued.
NT	There is no specified limit for the number of extensions/ maximum duration of time that the state can operate under a declaration.
QLD	There is no specified limit for the number of extensions/ maximum duration of time that the state can operate under a declaration.
SA	There is no specified limit for the number of extensions/maximum duration of time that the state can operate under a declaration.
TAS	The Premier may extend a declaration of a state of emergency for one or more further periods, each of which does not exceed the relevant period specified in section 42 (3), if satisfied that there are reasonable grounds to do so.
VIC	A declaration remains in force for not more than one month, but another declaration may be made before, at or after the end of that period. If a state of disaster has been declared, the Premier must report on the state of disaster and the powers exercised this section to both Houses of Parliament as soon as practicable after the declaration if Parliament is then sitting and if Parliament is not then sitting as soon as practicable after the next meeting of Parliament.
WA	There is no specified limit for the number of extensions/ maximum duration of time that the state can operate under a declaration.

During the COVID-19 pandemic, South Australia operated under a Major Emergency declaration for a total period of 793 days. 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 Government determined that this was an appropriate way to manage the pandemic. Parliament supported this by passing additional legislation to manage particular issues, including temporary amendments to the EM Act.

¹¹ However, the length of time that the state can be under an Electricity Supply Emergency declared by the Minister is 14 days, with one extension for a maximum period of 14 days (which the Governor must approve before the extension) pursuant to s 27B (2) of the EM Act.

¹² Division 7.3.1B of the *Emergencies Act 2004 (ACT)*
 Part 2 Division 4 of the *State Emergency and Rescue Management Act 1989 (NSW)*
 Part 3 Divisions 2 & 3 of the *Emergency Management Act 2013 (NT)*
 Part 4 Division 1 the *Disaster Management Act 2003 (QLD)*
 Part 4 Division 3 of the *Emergency Management Act 2004 (SA)*
 Part 3 Division 4 the *Emergency Management Act 2006 (TAS)*
 Part 5 of the *Emergency Management Act 1986 (VIC)*
 Part 3 Division 1 of the *Emergency Management Act 2005 (WA)*

The length of the major emergency declaration during COVID 19 was in part a consequence of SAPH Act not conferring the power to impose restriction of movement upon a class of people without enlivening a right of court review. In addition, the SAPH Act requires a range of principles to be taken into account when action is being taken under that Act. There are principles which apply to specific Parts of that Act and eight general principles.¹³ These principles, combined with the right of review, make the Act more difficult to use in a pandemic situation.

It is worth reflecting that partly due to the current SAPH Act framework, the pandemic was managed under the EM Act framework for an extended period, which does not explicitly require any of these matters to be taken into account. Changes made to the SAPH Act framework to deal with the period of transition out of the COVID-19 pandemic have largely expired. This means that the SAPH Act framework has not been substantively amended to make it more amenable to dealing with a pandemic. Section 90 of the SAPH Act provides that when a public health incident or public health emergency is declared under that Act, certain provision of the EM Act can apply to the emergency as if those provisions formed part of the SAPH Act. For the purposes of this Review, the EM Act should therefore be assessed with a pandemic scenario in mind, along with the many other hazards which the EM Act needs to be fit to manage.

Question 12: Should there be any changes to the permitted duration of declarations, the extension arrangements or processes relating to this? Why or why not?

A new type of declaration

For some of the emergency declaration period for COVID-19, South Australians were subject to relatively few restrictions even though living in a declared “state of emergency”. For example, a general election was able to be held, sporting matches were held with crowds, and hospitality businesses were able to operate.

Part of the impact of an emergency declaration is the message it sends to communities about the seriousness of an emergency.¹⁴ Implicit in this philosophy of “sending a message” to the community is that there is a high threshold for a declaration of an emergency.¹⁵

The COVID-19 pandemic experience showed that the level of threat and risk is not necessarily a peak followed by trough scenario but may be more nuanced over an extended period of time. The EM Act is not tailored for this. The instrument available to the State Co-ordinator is blunt and binary - the state is either in a declaration of emergency period or it is not.¹⁶ There is no step-down available under the EM Act which preserves the use of the powers that may be needed and nuances the message to the community.¹⁷

If it had been available, it appears that there may have been a time (or times) where another type of declaration may have been appropriate. This might enable, for example, containment strategies such as restriction of movement to remain in place, but recognise that in that phase, the management of the emergency followed a particular rhythm.

13 See Part 2 of the SAPH Act. Principles include precautionary; proportionate regulation; sustainability; participation; partnership; equity etc.

14 2009 Victorian Bushfires Royal Commission: Final Report - http://royalcommission.vic.gov.au/finaldocuments/summary/PF/VBRC_Summary_PF.pdf. See also Beccari, B: Evidence of policy learning in emergency declarations as communication tools in Australia - <https://onlinelibrary.wiley.com/doi/pdf/10.1111/disa.12594>

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

16 An identified major incident declaration remains in force for a period not exceeding 12 hours pursuant to s 22

17 This is also relevant in relation to recovery, from page 32 onwards

Transition Period Option

New Zealand's legislation has a category that provides for emergency powers called a "transition period". The *Civil Defence Emergency Management Act 2002* provides:

94A Minister may give notice of national transition period

After a state of emergency has been declared for any area, or after an emergency arises for which a state of emergency has not been declared, the Minister may give notice of a national transition period over the whole of New Zealand or any areas or districts if it appears to the Minister that a national transition period is required. A local transition period notice can be given by authorised officers. A national or local transition period is included in the legislation to enable a seamless transition from the emergency response phase to the recovery stage. It relies on the use of some powers available under an emergency to be available to support the early stages of the recovery, such as clearing roads and disposing of dangerous materials.

The national transition period also enables remedial works to be carried out, for example to restore access to cut-off properties or make temporary infrastructure repairs or require the provision of information. The transition period is for 90 days unless terminated earlier or extended. An example of the powers available during a transition period includes:

94N- Power to give directions

A Recovery Manager or a constable may—

(a) direct any person to stop any activity that—

- (i) may cause, or substantially contribute to the consequences of, an emergency; or
- (ii) may prevent or substantially hinder recovery from an emergency;

(b) request any person, either verbally or in writing, to take any action to prevent or limit or reduce the consequences of the emergency.

A Recovery Manager or a constable may direct—

(c) the owner of a structure (or the owner's agent) to obtain an assessment of the effect of the emergency (and any related subsequent events) on the structure:

(d) the owners of structures of a particular type (or the owners' agents) to obtain assessments of the effect of the emergency (and any related subsequent events) on the structures of that type that they own.

A person may not give a direction under subsection (2) unless the person has had regard to whether the structure or type of structure may, in the circumstances, pose a risk of injury or a risk to the safety of life or the safety of other property.

While the transition period may support a stepping down to recovery phase, it is unclear if such an option would support the challenges of longer-term events which potentially require a more nuanced threat and management response.

State of Alert Option

A State of Alert is a declaration type available in Tasmania and the ACT. Traditionally this is used as a pre-emergency declaration phase and the powers available under the equivalent emergency Act can be deployed for example to a specific region for response to a specific emergency threat. While the equivalent of the State Co-ordinator retains their responsibilities under the Act, this type of declaration may activate the delegation by the State Co-ordinator equivalent of only the powers required for the specific event / in the specific region.

In the ACT the Minister may declare a state of alert if they are: “satisfied that an event that has happened or is happening, or a circumstance that exists, gives rise to the likelihood of an emergency.” The declaration is made by the Minister and a State Controller is appointed for all or part of the region. The State Controller has special powers to co-ordinate necessary resources; as well as, for example, powers to direct people, prohibit people from entering an area, take possession of any premises near the emergency area and control and co-ordinate the distribution of water, power, food, healthcare etc.

In Tasmania the State Controller may declare a state of alert if they are “satisfied on reasonable grounds that there is a significant threat of an emergency occurring in Tasmania; or is satisfied on credible information that an emergency that may impact on Tasmania is occurring, or may occur, outside Tasmania.” In Tasmania when the State Controller declares a state of alert this activates emergency management powers for the purposes of preparing for or mitigating the risks of an emergency. Generally, if a region is affected by the declaration, the Regional Controller for the region is to take action, including to use, direct and co-ordinate all available resources so as to counter the likely effects of the relevant emergency.

It appears that the ACT and Tasmania State of Alert powers have traditionally been used to “flex up” to take action to mitigate or counter the likely effects of a pending emergency. This category of declaration may have been useful for South Australia in the 2022-23 River Murray flood, for which there was a long lead time for the preparation of the flood, and a Major Emergency Declaration was in place for 80 days.

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 a future threat remains a live risk that requires management - such as a pandemic where new or emerging variants remain a credible threat.

The step-up and step-down approach may allow for greater nuance in the messaging of the threat of the emergency to the public.¹⁸ For example, there were periods during COVID-19 where general community activities and movement did not necessarily reflect the traditional major emergency state. A State of Alert may have allowed for the powers required to manage the pandemic to be in place, while community messaging around the threat could be more proportionate.

A State of Alert declaration may also support advanced preparation and recovery planning. For example, in cases where an emergency meets the State of Alert threshold, such as for the floods, agencies may feel they have an earlier authorising environment to exercise emergency related procurement practices or recruitment practices.

Question 13: Would it be desirable for there to be a new class of declaration that supports the scaling up and down of emergency messaging? If so, should it be based on a State of Alert model, or another alternative?

¹⁸ A State of Alert is able to be declared under Division 3A of the *Emergency Management Act 2006 (TAS)* and s 151 of the *Emergencies Act 2004 (ACT)*

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

The *COVID-19 Emergency Response Act 2020*

While the Second Reading Speech for the EM Act envisaged it would be used for pandemics, the nature, duration and impact of COVID-19 was unprecedented. As a result, the *COVID-19 Emergency Response Act 2020* (the COVID-19 Response Act) was put in place to make various temporary modifications to the law of the State in response to the COVID-19 pandemic and for other purposes. Part 1 of the COVID-19 Response Act included temporary modifications of the EM Act in Schedule 2.

A number of these modifications were expressed to clarify the powers of the State Co-ordinator. Temporary amendments were made to section 25 of the EM Act by the COVID-19 Response Act. These amendments have since lapsed. 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 discharge of a power or to ensure compliance with it.

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, in particular given the framework of the SAPH Act has effectively not changed (as discussed above).

Question 14: Should the temporary (section 25) powers from the *COVID-19 Emergency Response Act 2020* be reinstated to the EM Act?

Section 25 (3)

In 2009, amendments were made to the EM Act and the SAPH Act to better prepare the state to handle a pandemic.¹⁹ 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.

¹⁹ via the *Statutes Amendment (Public Health Incidents and Emergencies) Act 2009*

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, namely if “the scope of an emergency is of such magnitude that demand for medical goods or services cannot be met without contravening the laws of the State”. 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 perhaps 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.

If the temporary powers from the COVID-19 Response Act are included in the EM Act, the need for an additional section that authorises contravention of laws may not be needed, unless the requirement to take advice on medical services should remain. If the section remains, the reference to considering advice could potentially be removed, or refer to the Chief Executive of the Department for Health and Wellbeing, given the role of the Chief Public Health Officer does not encompass the assessment of demand for medical goods or services.²⁰

Question 15: Should the EM Act make it clear that the State Co-ordinator is able to take advice from any source the State Co-ordinator considers appropriate?

Question 16: Should section 25 (3) of the EM Act be amended to remove the need to consider advice, if this is implicit in the role and function of the State Co-ordinator? Or should the reference to the Chief Public Health Officer be amended to the Chief Executive of the Department (for Health and Wellbeing)?

Information sharing and gathering prior to a declaration

Section 26B states that if the State Co-ordinator requires the disclosure of information by a direction or requirement under section 25, then that person is under no obligation to maintain secrecy or other restriction on the disclosure of the information, except an obligation or restriction designed to keep the identity of an informant secret. This power only applies during 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 a disaster. This may be because the types of events that the EM Act traditionally responds to are those that do not require this function- such as fire, earthquakes, storms, or are otherwise covered under alternative legislation such as the *Terrorism (Police Powers) Act 2005*. However, such powers could be deemed 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.

²⁰ This reference was originally to the Chief Medical Officer and later amended (as all Chief Medical Officer references were), to the Chief Public Health Officer when the SAPH Act was introduced.

CASE STUDY: Automated Wildfire Protection Systems: University of Southern California²¹

2021 saw 58,985 wildfires burn more than 7.1 million acres of land in the USA. The growing threat of climate change makes combating these disasters — and working to mitigate their impact before they occur — critical.

Several technologies are being employed to address wildfires. Potential solutions include using artificial intelligence to analyse weather satellite imagery to detect a fire's origin before it becomes difficult to control. Other systems use predictive analytics to determine where an ignited fire may spread, allowing firefighters to contain it more efficiently. Drones can be flown into hazardous areas to gather fire data without putting humans at risk. Drones can also be used to launch "prescribed burns": small fires deliberately placed in the path of an encroaching fire in order to slow its progress.

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.

In recent years, South Australia has been increasingly subject to new and protracted events of varying nature, including the COVID-19 pandemic and the River Murray Flooding Event. Emerging threats such as climate change and cyber security will present new challenges. These threats can impact supply chains, often 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 a declaration is required.

Question 17: In recognition of emerging threats, should the State Co-ordinator or another authorised person have available to them information gathering powers to determine whether there is (or is likely to be) an emergency that warrants a declaration being made?

Record Keeping and briefing Parliament

The EM Act does not currently provide specific requirements about written directions.

When the COVID-19 Response Act was introduced, in relation to the use of section 25 powers and directions, the Act required:

- (3) If a direction is issued under section 25 that affects any person's ability to enter South Australia from another State or Territory of Australia, applications for exemptions from that direction, or for any approval required before the person is permitted to travel into the State while the direction is in force, must be dealt with expeditiously and the Minister for Health must ensure that sufficient resources are available for that purpose such that most applications are able to be dealt with within 21 days after they have been received.

²¹ University of Southern California: Innovative Emergency Management and Response, March 21, 2023 - <https://mphdegree.usc.edu/blog/innovative-emergency-management-and-response>

The Minister must ensure that Members of Parliament are briefed on the effect of any directions or requirements of a kind referred to in section 25(3) within 7 days.

In relation to the considerations of the Transition Committee established by the government, section 25A (5) also required:

The committee referred to in subsection (1) must ensure that minutes of any meeting of the committee are provided to the COVID-19 Response Committee of the Legislative Council within 10 days after the meeting.

These temporary provisions have since expired.

Question 18: Should there be any specific requirements attached to written directions, such as the requirement to brief Members of Parliament or to publish information or advice in connection with a written direction?

Part 4: Division 5—Recovery operations

Recovery functions and responsibilities

Support to individuals in the early relief stage includes material aid to address basic needs, such as water, food and clothing, emergency and temporary accommodation and shelter. Once the immediate crisis passes, recovery support generally facilitated by government includes financial assistance and specialised services, such as legal assistance, insurance, financial counselling, building advice and primary industry or business assistance. Recovery can include a range of programs and initiatives aimed at addressing impacts across the built, social, economic and natural domains.²²

*Recovery, without doubt, is a complex and difficult aspect of any emergency management operation and can last months and years, is costly and requires significant state and local government and volunteer resources.*²³

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.

However, if a declaration is made the State Co-ordinator must, as soon as practicable, appoint an Assistant State Co-ordinator to exercise powers and functions in relation to recovery operations, and this role may have powers and functions delegated to it.

SEMC has created the role of the State Recovery Co-ordinator within the SEMP. The State Recovery Co-ordinator is responsible for, amongst other tasks, leading state-co-ordinated recovery planning and recovery operations and managing the normal recovery operations of government and non-government recovery organisations when it is determined a 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.

Other than the recovery responsibilities sitting with the State Co-ordinator, there is no role within the EM Act that describes a State Recovery Co-ordinator comparable to the role created in the SEMP.

The Burns Review commented:

*It would seem that recovery operations in South Australia are somewhat ad-hoc and inconsistent in the manner in which they are identified and carried out...The Review proposes an alternative model for emergency relief and recovery to make these aspects of emergency management more effective and efficient*²⁴

The Burns Review recommended that a permanent State Recovery Co-ordinator be appointed and take on the operational aspect during emergencies (currently completed by the Assistant State Co-ordinator Recovery - declared emergencies) and outside of emergencies this role be responsible for strategic management and co-ordination of state recovery activities (currently undertaken by the SEMP's State Recovery Co-ordinator). This proposal would consolidate the role, expertise and resources of recovery planning and operations into one role.

²² Royal Commission into National Natural Disaster Arrangements, Chapter 22

²³ Burns Review

²⁴ Burns Review

If such a role were to be created the EM Act would need to clarify:

- Command hierarchy between the State Co-ordinator and State Recovery Co-ordinator, both during and outside of a declaration
- If the State Recovery Co-ordinator status would always be an authorised officer for the purpose of the Act
- Any specific powers under the EM Act (discussed in next section).

Question 19: Should the EM Act provide for a separate role of State Recovery Co-ordinator, and if so what role, functions and reporting arrangements should it have?

Recovery Powers

Recovery efforts have become an increasingly important element of emergency management. governments, corporations, non-government organisations, communities and individuals all contribute significantly to recovery efforts.

The EM Act states that the objects of the Act 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. It has also been suggested that the structures in place do not provide for a seamless transition.

If a State Recovery Co-ordinator role was established under the EM Act, there is question as to what powers it should have, if any. Even if a designated role was not specified in the EM Act, there may still be an argument for strengthening the recovery powers currently described in section 27.

The powers exercisable in relation to recovery activities under section 27 are different to those available under section 25 for response. Section 25 (1) provides both broad and specific powers to the State Co-ordinator and an authorised officer if an emergency is declared. These powers are exercisable whilst a declaration remains in force but not after a declaration period.

The scope of recovery powers under section 27 is untested but it notably vests power primarily in the State Co-ordinator, who may direct authorised officers to take **specified action** for the purposes of carrying out recovery operations in accordance with the SEMP **at any time** after a declaration.

Recovery operations are defined in 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 is inclusive, but it is notable that there is no reference to remediation of measures taken as part of the response phase (for example, construction of temporary structures).

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

CASE STUDY 2022/23 River Murray Flooding Event

During the 2022-2023 River Murray Flood, the Department of Infrastructure and Transport (DIT) was required to gain access to private property for the purpose of building a levee to protect electricity network infrastructure. In another scenario, road access to a river community required the construction of a road through private property.

These activities are necessary to assist response efforts and are supported by the EM Act when an emergency declaration is in effect. Once a declaration ends and longer-term recovery activities start, some temporary structures should be removed to ensure public safety. However, as the declaration has ended, DIT no longer have authorisation under the EM Act to access private land and must rely on the good faith of landowners to allow DIT onto their land to remove the temporary structures or remediate works previously undertaken but no longer required. This can be time consuming for DIT to pursue and presents a risk to the community, who may attempt to continue navigating structures that are unfit for ongoing use.

The Royal Commission also explored a number of issues relating to recovery. One such issue related to the benefit of having powers which could facilitate information sharing that is currently not provided by the EM Act. Section 26B of the EM Act was added following COVID-19²⁵ but this is tied to a section 25 declaration period and may not be available to facilitate recovery operations.

Feasibly section 10 of the *Public Sector Act 2009* (the Public Sector Act) or the *Public Sector (Data Sharing) Act 2016* 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 in a recovery scenario may be limited, and not facilitate the sharing of information with non-government organisations, such as insurance companies or community organisations.

The Commonwealth and Northern Territory both have legislation that facilitates information sharing for emergency recovery purposes. In the case of the Commonwealth, the government has the ability to make an emergency privacy declaration which allows Australian Government 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.

The Royal Commission specifically noted the benefits of such recovery powers:

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...

²⁵ Added to the EM Act by the *Statutes Amendment (COVID-19 Permanent Measures) Act 2021*

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).

Another example raised during the Royal Commission was 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 argued:

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.

Question 20: Are recovery powers sufficient, and if not, what powers should be included?

Question 21: Should recovery powers be time limited or subject to some other form of oversight (like existing powers under section 25 are)?

Part 4: Division 6 — Electricity Supply Emergencies

Declaring an Electricity Supply Emergency

27B – Minister may declare 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.

Period of Emergency

For an electricity supply emergency, section 27B allows the Minister, on reasonable grounds, to declare an electricity supply emergency for a period that cannot exceed 14 days. Prior to the expiration of the declaration, with the approval of the Governor an extension can be granted which must not exceed 14 days. However, this extension can only occur *once*, and there may be no multiple extensions.

Conversely, in the case of a major emergency as defined in the EM Act, 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 declaration period in South Australia is quite restricted. In New South Wales and Queensland for example, the declaration period is not limited by legislation.

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 may increase the flexibility available to the Minister and align an electricity supply emergency extension arrangement to be on par with the major emergency arrangements.

Question 22: Should there be any change to the electricity supply emergency declaration period or its extension arrangements?

Scope of Minister's powers

27C – Minister's power to give directions

Section 27C of the EM Act provides the Minister with powers to give directions to designated persons when the Minister believes it reasonably necessary to respond to a declared electricity supply emergency. Specifically, section 27C (1) states that:

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 practicable 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 more efficiently coordinate the response (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 in 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 are broadly similar to that of other jurisdictions, the explicit inclusion of power in the EM Act for the Minister to direct toward an outcome and direct others best place to act, is unique.

In New South Wales, the legislation explicitly includes a cyber security incident targeted at a person that supplies a form of energy to the State that could disrupt to a significant degree or is at risk of disrupting to a significant degree energy supply to the State. The EM Act applies an all hazards approach and therefore does not currently explicitly describe cyber security incidents as a threat to electricity supply.

Question 23: Are the powers of direction appropriate to manage an electricity supply emergency?

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

In addition to the power to give directions, under section 27D of the EM Act the Minister has the power to require designated persons to provide information or documents. The Minister does not have to declare an

electricity supply emergency to exercise this power, meaning that the Minister can also require a designated person to provide the Minister with information or documents when the Minister considers it likely there will be an electricity supply emergency.

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.

Question 24: Are the powers to require documents or information fit for purpose?

Scope of designated persons the Minister can direct

Scope of designated persons (Section 27A – Interpretation)

The scope of who could be directed as a designated person was expanded in 2021 from AEMO, generators and retailers, to include electricity users, transmission or distribution network businesses, metering coordinators and third party electricity service providers.

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 and can usually control the devices in a timely manner.

Following the 2021 amendments, the EM Act's definition of designated persons now includes:

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;
- (d) a third party energy service provider;
- (e) a metering coordinator;
- (f) an end user;

The list of designated persons in the EM Act is more detailed than that of other jurisdictions, where it is stated that a *person* or *body* can be directed. The approach in the EM Act provides clarity on 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.

Question 25: Is the coverage of designated persons appropriate and does the scope adequately future proof the EM Act?

Part 5—Offences

The EM Act creates numerous offences.

The *Statutes Amendment (COVID 19 Permanent Measures) Act 2021* amendments made the offence of failing to comply with a requirement or direction of the State Co-ordinator or of an authorised officer during a declaration an expiable offence within the Act itself.

Other offences are not expiable – for example, obstructing or hindering operations carried out in accordance with the EM Act.

Expiation fees are different for a failure to comply with a direction under the EM Act (\$1,000 / \$5,000) than they are for similar provisions about complying with directions under the SAPH Act (\$750).²⁶

Question 26: Are any changes needed to the offence provisions in the EM Act?

²⁶ s 66 of the SAPH Act

Part 6 — Miscellaneous

Liability and Insurance

Section 32 of the EM Act addresses protection from liability and provides that if a person is exercising or discharging a power or function under this Act or carrying out a direction or requirement imposed under the Act, any liability will attach to the Crown rather than to that person. This section protects not only public sector employees but also private citizens or companies who are directed under section 25 to take some action that could cause loss, harm or damage to another person.

The EM Act further protects the Crown from liability in relation to omissions or actions taken in good faith associated with electricity emergencies and COVID-19 via section 32 (3) and 32A. The public policy reasons for this are likely that the financial position of the State could be seriously jeopardised if the State was liable, given the potentially wide scope of this liability.

Interestingly, section 36 provides that policies of insurance may instead step in:

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.

It is not clear to this Review whether any party has sought to rely on section 36.

Question 27: Are any changes needed to liability and insurance protections detailed in the EM Act?

Employment Protection for Volunteers

The EM Act provides employment protections for volunteers in section 33:

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 protection provided under the FES Act and does not have any remedy attached to it.

In some other jurisdictions more extensive protections appear to be offered. For example, in Western Australia, Part 9 of the *Emergency Management Act 2005 (WA)* provides:

93. Victimisation because of emergency management response

(1a) 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 —

- (c) dismisses the employee from employment with the employer; or

- (d) alters the employee's position in his or her employment with the employer, to the employee's disadvantage; or
- (e) refuses to promote or transfer the employee; or
- (f) does not provide the entitlements referred to in section 92; or
- (g) otherwise injures the employee in his or her employment with the employer.

94. Civil penalty for breach of section 93

(1a) In this section —

association has the meaning given to that term in the *Industrial Relations Act 1979*;

court means the Magistrates Court;

organisation has the meaning given to that term in the *Industrial Relations Act 1979*.

The following persons may apply to the court for an order under this section in respect of a contravention of section 93(1) —

- (a) the person directly affected by the contravention;
- (b) an organisation or an association of which that person is a member.

If the court is satisfied that the employer has contravened section 93(1), the court may order the employer —

- (c) to reinstate the person if he or she was dismissed from employment; or
- (d) subject to subsection (6), to pay to the person compensation for any loss or injury suffered as a result of the contravention; or
- (e) to pay to the Treasurer an amount not exceeding \$50 000, or do any one or more of those things.

The standard of proof to be applied in determining whether there has been a contravention of section 93(1) is the standard observed in civil proceedings.

A person is not entitled to compensation both under this section and otherwise for the same dismissal, loss or injury.

The court does not have jurisdiction under subsection (3)(b) to order that there be paid —

- (a) to an employee who has been dismissed, any amount exceeding 6 months' remuneration of the employee; and
- (b) in any other case, any amount exceeding \$5 000 or such other amount as is prescribed by the regulations.

For the purposes of subsection (6)(a) the court may calculate the amount on the basis of an average rate of remuneration received during any relevant period of employment.

A person must comply with an order made against him or her under this section.

Penalty:

- (a) a fine of \$50 000;
- (b) for each separate and further offence committed by the person under the *Interpretation Act 1984* section 71, a fine of \$5 000.

Question 28: Do the employment protections for volunteers need to be strengthened? Should there be a remedy attached to these provisions?

State Emergency Relief Fund

The EM Act provides for the establishment and governance of the State Emergency Relief Fund (SERF). Section 37 (2) states:

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.

The EM Act then details the governance arrangements, including the role of a committee, in the administration of the SERF. In 2006, this part of the EM Act was amended to change the threshold of emergency to a declared emergency or proclaimed situation. However, the section was not amended when the electricity supply emergency provisions were included and so it may not be clear if that type of emergency falls within the scope of this section (although an electricity supply emergency could be a proclaimed situation).

Question 29: Are any changes to section 37 relating to the State Emergency Relief Fund required?

Regulations

The matters dealt with in the Regulations appear to now all be included in the EM Act.

Question 30: Can the Regulations be repealed? Is there a need for the Regulations to deal with any other matters?

Other Matters

Public Sector Mobilisation

The EM Act does not deal with the issue of mobilisation of the public sector to apply effort to a declared emergency. Similar to other jurisdictions, this is dealt with as part of the 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 is an annex of the SEMP.

The Public Sector Mobilisation Policy can be activated by the Premier 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. The policy enables the South Australian Government to temporarily deploy significant numbers of SA public sector employees for

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

On 26 March 2020, the Premier issued a direction that gave effect to the Public Sector Mobilisation Policy.²⁷ The Commissioner for Public Sector Employment was appointed as Mobilisation Co-ordinator by the Chief Executive of the Department of Premier and Cabinet, consistent with the Policy.

The Review is not aware of any assessment of the impact of this policy, but 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.*²⁸

Question 31: Should the EM Act provide an explicit mechanism to facilitate the mobilisation of the public sector workforce when additional support is required to assist in responding to and recovering from emergencies?

Interface with other Acts

Legislation that can contribute to the effective management of events that give rise to an emergency is not the exclusive domain of the EM Act. Those assigned roles, functions and powers under the EM Act often rely on other legislation to manage these matters in order to prevent, prepare and respond to emergencies – particularly those that are not the subject of a declaration under the EM Act. A list of this legislation is available on the Review webpage, but notably this includes the FES Act, the *Livestock Act 1997* (SA), the *Essential Services Act 1981* (SA) and the SAPH Act. Issues relating to recovery are raised elsewhere in this paper.

Like the SAPH Act, many hazards are addressed by other legislation which enable prevention, preparedness, response and recovery actions to be undertaken. However, some do not. The most obvious of these relates to cyber emergencies in the State context, noting also that there is a role for Australian Government authorities and SA Police in these matters.

²⁷ Direction of the Premier under s 10 of the Public Sector Act, 26 March 2020 - www.publicsector.sa.gov.au/_data/assets/pdf_file/0007/213847/Direction-Public-Sector-Mobilisation-for-a-Major-Emergency.pdf

²⁸ OCPSE Annual Report 2021-22 - www.publicsector.sa.gov.au/about/Resources-and-Publications/annual-reports/ocpse-annual-report-2021-22.html

The Review notes the benefit of portfolio-based legislation being updated and in place to be fit for purpose for future emergency management scenarios which may not meet the threshold of a declaration under the EM Act; or indeed provide the legislative infrastructure for a smoother step down from a declaration. Consideration of this matter at an individual portfolio level is not within the scope of this review.

It is also unlikely that the State can comprehensively foresee all hazards or future emergency risks that may require a declaration, and therefore not all hazards will have their own accompanying legislation. Space junk is one example of this. This underscores the importance of the EM Act being of general application and able to be applied expeditiously without excessive prescription or process.

Question 32: What future threats may not be able to be adequately managed by the EM Act and what changes would be needed to address this?

Question 33: Are there areas where other legislation interacts with the EM Act which results in gaps or problems in the management of emergency events?

Interface with the Commonwealth Government agencies

The *Security of Critical Infrastructure Act 2018* (SOCI Act) aims to strengthen the security and resilience of critical infrastructure through capturing a range of assets relevant to the following critical infrastructure sectors:

- communications
- data storage or processing
- defence industry
- energy
- financial services and markets
- food and grocery
- health care and medical
- higher education and research
- space technology
- transport
- water and sewage.

The SOCI Act also provides key obligations for the owners and operators of certain critical infrastructure assets. These include:

- the requirement to report information to the Register of Critical Infrastructure Assets
- mandatory cyber incident reporting requirements
- the requirement to produce and comply with a Critical Infrastructure Risk Management Program.

Whilst the SOCI Act provides an ability for the Commonwealth to provide information received under that Act to a State Minister or agency, this appears to not be a systematic arrangement. The information provided to the Commonwealth that relates to infrastructure within South Australia would provide a useful understanding to the State of the degree of preparedness and risks to the State in managing a hazard or an emergency event. However, if for example the EM Act made provision for this information to also be made available to the State (e.g., the Chief Executive of DPC as the Chair of SEMC), this would potentially impose an additional compliance burden on asset owners if the information was not presented in a way that was specific to South Australia in a report to the Commonwealth agency. In addition, if the State seeks the information, then this should be for a purpose – forming part of an assurance process. As discussed above, assurance is generally the responsibility of individual organisations and not subject to a global assessment, except at the highest of levels.

There is also a *National Emergency Declaration Act 2020 (Cth)* in place, providing a framework for the Commonwealth Government to declare a matter to be a national emergency. The interface with this Act and state arrangements remains untested, but in its present form may not have a material impact on the EM Act.

Question 34: Are any changes to the EM Act framework needed as a result of Commonwealth legislation?

Further Issues

This paper does not explore all sections of the EM Act. However, submissions are welcome on any issue that is relevant to the Terms of Reference.

Question 35: Please provide any other comments about the EM Act.



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