



Local Government Association Tasmania

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Dear Mr Lea

Review of the Emergency Management Act 2006

Thank you for the opportunity to provide input into the review of the *Emergency Management Act 2006*. The Local Government Association of Tasmania (LGAT), as the organisation responsible for providing the link between State Government and Local Government, on matters of policy, finance, legislation/regulation and roles and functions, has developed a sectoral response to the review.

Input into the submission has been provided from Councils through two LGAT hosted workshops (one in the North and one in the South) and from individual council submissions.

It is understood that the review of the *Emergency Management Act 2006* is one component of a broader suite of work being undertaken to implement the 52 recommendations to come out of the Department of Justice Review into Tasmania's Emergency Management Arrangements.

It is pleasing to see that input from the 2012 Review into the *Emergency Management Act* is being considered as part of this review; however it is also essential that the review recognises a number of other changes that have occurred since the Justice Review was completed. In particular:

- The significant changes that have occurred in emergency management arrangements in Tasmania; for example the change to State Emergency Services (SES) reporting arrangements from Tasmania Policy to the State Fire Commission.
- The current project to review the funding model for SES in relation to the centralisation of SES volunteer Units.
- The need for a full and comprehensive review of the *Fire Service Act 1979*, given the change to reporting for the SES and the potential for overlap.

Specific comments from councils in relation to the proposed changes to the Act at the Municipal Level are provided in **Attachment One**.

I look forward to further consultation in relation to the drafting of the Bill as it is drafted.

If you have any further questions in relation to the submission please do not hesitate to contact Georgia Palmer, Senior Policy Officer at Georgia.palmer@lgat.tas.gov.au

Yours sincerely

A handwritten signature in black ink, appearing to read 'Katrena Stephenson'.

Katrena Stephenson
CHIEF EXECUTIVE OFFICER

ATTACHMENT ONE

| | <p>Recommendations arising from DoJ Review or 2012 Review of the <i>Emergency Management Act 2006</i></p> | <p>Proposed Amendments to the <i>Emergency Management Act 2006</i></p> | <p>Council comments</p> |
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| <p>Proposals directly affecting the Councils:</p> | | | |
| <p>1</p> | <p>DoJ Recommendation 26. <i>That, following consultation with local government, the description of municipal emergency management functions and responsibilities in the Act be amended to better reflect the reality of municipal roles and capabilities.</i></p> <p>This was recommended because the review revealed the potential for confusion over council responsibilities under the Act, which was thought to be created by the multi-layered and potentially overlapping statutory responsibilities between municipal and regional levels.</p> <p>Council capabilities and capacities to meet their requirements under the Act also varied markedly and, in particular, stakeholders felt that the Act didn't adequately reflect the "real" role of Councils.</p> <p>The following municipal-level functions either currently exist within the Act or have been recommended within the Hyde or DoJ reports to be included within the Act:</p> <p>Current Act:</p> <ul style="list-style-type: none"> • Establish and maintain a Municipal Emergency Management Committee • Prepare and maintain a Municipal Emergency Management Plan • Appointing and supporting a Municipal | <p>Amend sections 22 and 24 of the Act in relation to Municipal Emergency Management Committee and Municipal Emergency Management Coordinators to include more contemporary functions, such as the establishment of community refuges, evacuation centres, recovery centres; coordination of local recovery operations; support to emergency services and public engagement.</p> | <p>The recommended wording was generally supported with some council's concerned with the use of the word support.</p> <p>A number commented that councils role in response can sometimes be in a coordination capacity rather than support. For example the City of Launceston has a response role in floods with control over the levee systems, flood height prediction and traffic management planning in relation to the closure of the flood levee.</p> <p>Other more regional councils are sometimes required to play a more active role in response when they have become isolated during an event.</p> <p>It is essential that the final wording of the Act is flexible enough to allow recognition of councils more active role.</p> |

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| | <p>Emergency Management Coordinator</p> <ul style="list-style-type: none"> Using council resources to manage an emergency in accordance with the Municipal Emergency Management Plan Establish and maintain a municipal volunteer SES unit it considers necessary to operationalise the Municipal Emergency Management Plan <p>Hyde and DoJ Reports:</p> <ul style="list-style-type: none"> Coordinate and manage council resources to support emergency management operations Provide support to emergency services as requested Establish and operate local refuges/evacuation centres Coordinate and manage local recovery operations Establish and operate local recovery centres Provide information and communication to the media and local populations Maintain council business and services Be actively involved in localised hazard risk assessment to inform planning <p>The coordination and execution of these functions would logically rest with the council or established Municipal Emergency Management Committees and/or the Municipal Emergency Management Coordinators.</p> | | |
| 2 | <p>The above DoJ recommendation 26 also relates to the council's responsibility under s49 of the Act to establish and maintain municipal volunteer SES units. The DoJ report expressed support for SES instead of the councils to have the capacity and responsibility to centrally fund</p> | <p>Amend Division 5 and specifically section 49 to change the responsibility for establishing, maintaining and resourcing municipal volunteer SES units from the councils to the SES, but</p> | <p>There was general consensus that resourcing of SES volunteer units should be centralised and that the wording of the new Act should recognise that arrangement. It was suggested that the best way to fund centralisation may be through a levy, although it should be noted that historically there has not been wide spread support for Local</p> |

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| | <p>and manage these assets.</p> <p>The 2012 review of the Act resulted in similar levels of support from council officers for the centralisation of SES volunteer units.</p> <p>However, to fully support this change Councils would need to see a financial model which compares the current funding arrangements to a levy arrangement to ensure that the new model is not seen as an opportunity for the state to cost shift their current budget responsibilities.</p> <p>SES also supported a centralised funding model in order to simplify the management of SES facilities and assets, achieve greater consistency in standards across the State and to be better able to strategically manage its assets and associated revenue.</p> <p>During consultation, some stakeholders indicated that the Councils should still have a mechanism to maintain linkages with the SES volunteer Units.</p> <p>A separate, but related review of a sustainable and centralised funding model for SES and the State Fire Commission is currently underway within DPFEM. A working group has been established including TFS, DPFEM, SES and LGAT to oversee this project progress with the proposed amendment will not be possible until the results of this review are known.</p> | <p>retain the ability to establish partnerships between SES and the councils where necessary for the purpose of supporting SES units and their local capabilities (subject to the establishment of a sustainable funding model).</p> | <p>Government as a collection agent for State Government levies, so the introduction of such a levy would need to be accompanied by an appropriate educative campaign for the community. Should a levy be applied then funding for SES volunteer units from councils would be removed (cash and in kind)</p> <p>Some councils' were of the view that the conditions of transfer to a centralised model would need to be in place before it is enshrined in legislation.</p> <p>Other issues raised included:</p> <ul style="list-style-type: none"> • The need for a formal mechanism to ensure there is a continued link between the local SES unit and councils. • The need for cost neutrality on a state wide basis • The importance of transparency in how the levy is spent so as to ensure it doesn't become a mechanism for the State to fund the current SES management team. |
| 3 | <p>DoJ Recommendation 37. <i>The Act should specifically provide for the State Recovery Coordinator and committees such as the Bushfire Recovery Task Force, Affected Area Recovery Committees, etc, and what legislative authority (powers and function) should be vested in the adviser and those committees.</i></p> <p>Both the 2012 review and DoJ review found that the Act</p> | <p>Add a new Division to Part 2 – Administration – to make provision for a State Recovery Coordinator, applicable recovery committees and associated functions and powers</p> <p>Add a new Division to Part 3 – Emergency Management - to cover</p> | <p>Local Government has long advocated for recognition of recovery in the Act and the addition of provisions in the Act relating to recovery would further support the important role of recovery in emergency management and would provide protection for the work and decisions that recovery coordinators make.</p> <p>As such councils are supportive of the suggested</p> |

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| | <p>lacked provisions for disaster recovery, particularly for major disasters where various State-level relief, recovery and reconstruction arrangements were required.</p> <p>In line with current relief and recovery arrangements, the Premier should have the ability to declare a 'Recovery and Reconstruction Area' to trigger certain relief, recovery and reconstruction arrangements and powers.</p> <p>This was recommended in the DoJ report because the review agreed with the Hyde report that more clarity was required regarding disaster recovery arrangements, particularly for major disasters where the scope of the recovery effort is likely to extend well beyond the jurisdiction of the Regional Emergency Management Controller. New relief and recovery sections are required under Part 2 Division 1 of the Act that covers Administration at a State Level. Amendments will include the establishment of a State Recover Coordinator, applicable State-level committees and associated functions and powers. These are to reflect the provisions of the reviewed State Recovery Plan.</p> | <p>provisions and arrangements for disaster relief, recovery and reconstruction arrangements, including the ability for the Premier to declare a Recovery and Reconstruction Area to trigger certain relief, recovery and reconstruction arrangements and powers.</p> | <p>amendments.</p> <p>A number of councils identified the need for the wording to include all aspects of recovery not just social recovery (eg social/economic/environmental/infrastructure)</p> <p>A few councils also commented that the Act should recognise that councils play a lead role in recovery of their communities.</p> <p>Councils are supportive of the recognition of the recovery taskforce in the Act and a clear definition of their role and responsibilities.</p> |
| 4 | <p>The 2012 review recommended that Regional and Municipal Emergency Management Committees established under Part 2 of the Act should be given the power to establish sub-committees for the purpose of assisting them in the performance and exercise of their functions and powers.</p> <p>This was recommended because the power already exists at State-level and there are currently regional and some municipal recovery sub-committees that report to the Regional and Municipal Emergency Management Committees.</p> | <p>Amend sections 16 and 22 of the Act to allow Regional and Municipal Emergency Management Committees the power to establish sub-committees for the purpose of assisting them in the performance and exercise of their functions and powers.</p> | <p>There was general agreement that the Act should allow, but not mandate, for Municipal Emergency Management Committees (MEMCs) to form subcommittees. The majority of MEMCs already have subcommittees, such as recovery subcommittees. These committees should have the same protection for decision making as MEMCs.</p> |

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| 5 | <p>The 2012 review recommended that Municipal Emergency Management Committees established under Part 2, Division 3 of the Act should have the flexibility to appoint someone other than the Municipal Emergency Management Coordinator as their Executive Officer. This would particularly apply to combined areas (s19).</p> <p>This was recommended because it was acknowledged that the Executive Officer role can add significant administrative workload onto appointed Municipal Coordinators, who not only have their substantive work positions to support, but also their Municipal Coordinator functions during emergencies. This approach will provide greater flexibility, particularly for combined areas. In these cases the combined municipal authorities would have the flexibility to appoint a single suitable Executive Officer instead of selecting one of the Municipal Emergency Management Coordinators.</p> | <p>Amend section 21 to provide the Municipal Chairperson of a Municipal Emergency Management Committee the flexibility to appoint any suitable person as Executive Officer of the Municipal Emergency Management Committee, instead of defaulting only to their Municipal Emergency Management Coordinator. Such appointments need to be for set terms.</p> | <p>There were varying views on this amendment. Many councils did not see it as necessary as it had not been identified as an issue in the past. E.g. councils do not use their coordinator as the Executive Officer. However, other councils were supportive of it being enshrined in legislation; however a term of appointment was not supported.</p> |
| 6 | <p>The 2012 review recommended that the functions of Municipal Emergency Management Committees also include the requirement to report to the Regional Controller any municipal matters that relate to the '<u>powers</u>' of the Regional Emergency Management Committee or Controller (s22(1)(d)). The current section only requires them to report on matters that relate to regional '<u>functions</u>'.</p> <p>This was recommended to align with regional-State arrangements and to reinforce the requirement for engagement between the Municipal and Regional levels on powers as well as functions.</p> | <p>Amend section 22 sub-section (1) (d) to require Municipal Emergency Management Committees to also report to the Regional Emergency Management Controller/Committee on matters relating to applicable powers.</p> | <p>Councils were unsure of the true intent of this change and further clarification is required.</p> <p>Any change in this provision may have been superseded by the change in reporting requirement for the SES and should be considered in the broader context.</p> |
| 7 | <p>The 2012 review highlighted inconsistencies in who can delegate their functions and powers. Section 30 makes provision for the delegation of functions and powers, but does not include the ability for appointed Deputies to</p> | <p>Amend section 30 of the Act to include the ability for all appointed Deputies to delegate their functions and powers.</p> | <p>At the moment the Deputy Municipal Emergency Management Coordinator has no powers under the Act and only has formal powers and functions if the Municipal Coordinator is away or not available.</p> |

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| | <p>delegate as well. This also applies to Deputy Municipal Emergency Management Coordinators.</p> <p>Section 30 should be amended to allow all appointed Deputies to delegate their functions and powers.</p> <p>This was recommended to ensure there is always a Deputy State Controller, Regional Controller and Deputy Municipal Coordinator in case they need to step into an unexpectedly vacant State Controller, Regional Controller and Municipal Coordinator position.</p> | | <p>A clause should be added so that the Municipal Coordinator can delegate any powers or functions to the Deputy so that both the Deputy and Municipal Coordinator are protected under the Act and are able to respond to an emergency simultaneously.</p> |
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| | Other proposals: | Comment | |
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| 8 | <p>DoJ Recommendation 5. <i>That the Act be amended to provide for a Standing Committee for Emergency Management, chaired by the Premier. Alternatively, such a committee could be established under the existing provisions of s12 of the Act.</i></p> <p>This was recommended because most other jurisdictions had standing Ministerial-level committees and, according to the Hyde review into the 2013 Tasmanian Bushfires, such a committee would provide the necessary high-level leadership to reflect the priority and importance of emergency management prior to, during and following significant disasters. Section 12 of the Act already makes provision for a Ministerial Committee, but the proposed amendment will describe the committee as a <u>standing</u> committee and not a committee to be established by the Premier when considered necessary.</p> | <p>Amend section 12 of the Act to describe the Ministerial Committee as a <u>standing</u> committee and not a committee to be established by the Premier when considered necessary.</p> | <p>No issues were raised.</p> |
| 9 | <p>DoJ Recommendation 16. <i>That consideration be given to provide for a forward-looking capacity to authorise emergency powers under s40 in the event that an emergency “is likely” to occur and there are reasonable grounds for the exercise of those powers for the purposes outlined in the Act.</i></p> <p>This was recommended because the review found that consideration of ‘<i>emergency powers</i>’ was more reactive to disaster events or incidents, yet they could be beneficial during the lead up to a potential or ‘ascertainable’ emergency to make urgent preparations and to mitigate certain risks. As proposed, provisions will be made clear that the authorisation of emergency powers may also be made on occasions where an emergency <u>may</u> occur to assist authorities with preparations before any pending emergency.</p> | <p>Amend section 40 to make it clear that the authorisation of emergency powers may also be made on occasions where an emergency <u>may</u> occur to assist authorities with preparations before any pending emergency.</p> | <p>Qualified support was provided for this change on the basis that this change is promulgated widely for comment, before being included in legislation.</p> |
| 10 | <p>DoJ Recommendation 18. <i>That further consideration be given to the establishment of a forward-looking or pre-emptive declaration</i></p> | <p>Amend section 42 to make it clear that the declaration of a state of emergency may also be made on</p> | <p>Qualified support was provided for this change on the basis</p> |

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| | <p><i>of an emergency and/or a graduated scale of emergency once the findings of the National Review of Warnings and Information are better understood.</i></p> <p>This was recommended because the review found that consideration of a '<i>declaration of a state of emergency</i>' was more reactive to disaster events or incidents, yet the special emergency powers available during a declaration could be beneficial during the lead up to a potential disaster to make urgent preparations and to provide a strong public message that all is being done to deal with the emergency.</p> <p>As proposed, provisions will be made clear that the declaration of a state of emergency may also be made on occasions where an emergency <u>may</u> occur to assist authorities with preparations before any pending emergency. Provisions will also be made for an 'Emergency Alert declaration' by the State Emergency Management Controller as part of the graduated scale of emergency where emergency powers are authorised and key positions appointed to assist with preparations or pre-positioning for response and recovery.</p> | <p>occasions where an emergency <u>may</u> occur to assist authorities with preparations before any pending emergency.</p> <p>Add a new Division to make provision for an Emergency Alert Declaration to be authorised by the State Emergency Management Controller as part of the graduated scale of emergency where emergency powers are authorised and key positions appointed to assist with preparations or pre-positioning for response and recovery functions.</p> | <p>that this change is promulgated widely for comment, before being included in legislation.</p> |
| 11 | <p>DoJ Recommendation 40. <i>That the Tasmanian Emergency Management Plan be renamed the Tasmanian Emergency Management Arrangements (TEMA).</i></p> <p>This was recommended because the Tasmanian Emergency Management Plan was somewhat misleading given that it is not a plan of what to do in the event of an emergency. Instead, it laid down the State-level arrangements, frameworks and broad responsibilities. Plan nomenclature at section 32 and within the interpretations section will need to be amended to 'Tasmanian Emergency Management Arrangements'.</p> <p>The review proposed that Regional and Municipal Emergency Management Plans retain their titles.</p> | <p>Amend any reference to Tasmanian Emergency Management Plan to read 'Tasmanian Emergency Management Arrangements', particularly within section 32 of the Act and the interpretation section.</p> | <p>No issues raised</p> |

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| 12 | <p>DoJ Recommendation 15. <i>That s40 of the Act be amended to allow a simplified authorisation of all emergency powers.</i></p> <p>Both the 2012 review and DoJ review recommended more flexibility with the authorisation of emergency powers. Stakeholders felt the current arrangements attracted too much debate and hesitation over the appropriateness of certain prescribed powers, which causes delays.</p> <p>The DoJ review specifically concluded that emergency powers under the Act were not authorised during the 2013 bushfires due to debate about appropriate, specific powers and the complexities in deciding which are appropriate for the given circumstances.</p> <p>Rather than prescribing specific powers in any authorisation, both reviews propose that <u>all</u> emergency powers be available to appropriate authorised officers when any particular emergency powers under Schedule 1 of the Act may be needed.</p> | <p>Amend section 40 of the Act to make provision for <u>all</u> emergency powers (listed in Schedule 1 of the Act) to be available to an appropriate authorised officer upon authorisation unless otherwise stated.</p> | <p>The only issue raised in respect to this change was the need to keep Section 40(4) in addition to this change that being 'any authorisation may not be made so as to have an effect for a period exceeding 7 days'.</p> |
| 13 | <p>DoJ Recommendation 17. <i>That the Act be amended to remove s42(1)(b).</i></p> <p>Both the 2012 review and DoJ review found that the requirement for the Premier, when considering a declaration of a state of emergency, to be satisfied that the authorisation of emergency powers alone will be, or may be insufficient to manage the emergency was unnecessary, over prescriptive and confusing.</p> <p>The reviews concluded that many of these types of provisions needed to be simplified, otherwise there would be ongoing resistance in the use of these powers at time where they probably should be authorised.</p> | <p>Remove section 42 sub-section (1) (b), which is the requirement for the Premier, when considering a declaration of a state of emergency, to be satisfied that the authorisation of emergency powers alone will be, or may be insufficient to manage the emergency.</p> | <p>No issues raised</p> |
| 14 | <p>The 2012 review recommended that State and Regional Emergency Management Committee Executive Officers should be appointed for set terms by the State Emergency Management</p> | <p>Amend sections 8 and 15 to require State and Regional Emergency Management Committee Executive Officers to be appointed by the State</p> | <p>No issues raised</p> |

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| | <p>Controller. These appointments need not be from the State Emergency Service per the current default arrangements detailed in s8 and s15 of the Act.</p> <p>This was recommended because stakeholders felt it beneficial to have greater flexibility with these appointments. It was also noted that, with regard to default Executive Officer appointments to the SES Director and Regional Managers, the role adds significant work and responsibility to another full time substantive role. There may be occasions in the future where Executive Officer appointments be shared or allocated to different officials on a fixed term basis.</p> | <p>Emergency Management Controller for set terms.</p> <p>Remove sub-sections (5)(b) to section 8 and section 15, which removes the requirement for State Emergency Service positions to perform State and Regional Emergency Management Committee Executive Officer functions if no-one else is appointed.</p> | |
| 15 | <p>The 2012 review recommended that the State Emergency Management Controller should have the power to provide blanket approval for certain statutory services or authorised officers to authorise certain emergency powers in time of urgency during day-to-day emergencies.</p> <p>This was recommended because stakeholders felt that a number of pre-emptively approved emergency powers would be very helpful in critically urgent day-to-day emergency situations, rather than awaiting approval.</p> <p>The type of powers that would be considered for day-to-day emergencies under such a blanket authority would be to evacuate persons, animals and wildlife; turn off, block, take possession of or restore the supply of electricity, liquids, gas or any other substance. DoJ recommendations 15 and 16 relate to this recommendation.</p> | <p>Amend section 40 to provide the flexibility for the State Emergency Management Controller to provide blanket approval during specified periods for certain statutory services or authorised officers to authorise certain emergency powers in time of urgency, such as to evacuate persons, animals and wildlife; turn off, block, take possession of or restore the supply of electricity, liquids, gas or any other substance; etc.</p> | No issues raised |
| 16 | <p>In line with the above proposal #6, the 2012 recommended reporting between Regional and State Controllers on matters affecting powers. The functions of Regional Emergency Management Committees include the requirement to report to the State Controller any regional matters that relate to the <u>functions</u> (only) of the State Emergency Management Committee or</p> | <p>Amend section 16 sub-section (1)(d) to require Regional Emergency Management Committees to also report to the State Emergency Management Controller/Committee on matters relating to applicable powers.</p> | No issues raised |

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| | <p>Controller (s16(1)(d)).</p> <p>This section should be amended to also report on matters relating to applicable <u>'powers'</u>.</p> <p>This was recommended because there have been instances since 2006 where engagement on powers, such as the imposition of additional functions on a Regional Emergency Management Committee, would have been appropriate. The amendment will reinforce this requirement.</p> | | |
| 17 | <p>The 2012 review found that section 17 sub-paragraph (4) erroneously indicates that Regional Controller and deputy appointments are made by the State Controller, yet sub-paragraphs (1) and (2) of the same section requires the Minister or the Commissioner of Police to determine these appointments (depending on the prescribed circumstances). Sub-paragraph (4) needs to be corrected to reflect the provisions of sub-paragraphs (1) and (2).</p> <p>This was recommended to resolve confusion over who is responsible for making appointments of Regional Controllers and their deputies.</p> | <p>Amend section 17 sub-section (4) to remove any ambiguity about responsibilities for Regional Controller and Deputy Regional Controller appointments, which should rest with the Minister subject to advice from the Commissioner of Police.</p> | No issues raised |
| 18 | <p>The 2012 review found an error in section 42(3) of the Act. This section covers the time limitations for a declaration of a state of emergency and the wording suggests that declarations <u>may not</u> be made for a period <u>not</u> exceeding 12 weeks, etc. This is erroneous and the latter "not" needs to be deleted.</p> <p>This was recommended to correct a typographic error.</p> | <p>Amend section 42 sub-section (3) to correct a typographic error by deleting the word "<u>not</u>" from the phrase "<i>declarations may not be made for a period <u>not</u> exceeding 12 weeks</i>"</p> | No issues raised |
| 19 | <p>The 2012 review advised that the definition of 'emergency management' should include activities that provide community 'resilience' against emergencies and disasters. The definition should also include interstate, national or international activities for</p> | <p>Amend section 3 interpretation as required by the above amendments. In particular:</p> <p>The definition of '<i>emergency management</i>' should</p> | No issues raised |

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| | <p>the purpose of ensuring appropriate protections to deployed emergency management workers.</p> <p>This was recommended because of Tasmania’s commitment towards the National Strategy for Disaster Resilience and its involvement in a number of resilience-building initiatives within Tasmania’s emergency management sector.</p> <p>The inclusion of interstate, national or overseas emergency management activities within the definition reflects the greater number of deployments out of the State in recent years and will ensure the same protections, such as workers compensation, apply to Tasmanian emergency management workers who temporarily deploy out of Tasmania to perform emergency management functions. While legal advice suggests that the same protections should apply, it adds that the protections would need to be considered on a case-by-case basis. Amending the definition along these lines should help to strengthen any such case.</p> | <p>include activities that provide community resilience against emergencies and disasters and include interstate, national or international activities for the purpose of ensuring appropriate protections to deployed emergency management workers.</p> | |
| 20 | <p>There are a number of consequential amendments within the Act that will be required to reflect the above changes. Specifically, and subject to further consultation, there will be consequential amendments to the functions and powers of State and Regional Emergency Management Committees and Controllers due to the revised definition of ‘emergency management’ and the revised relationships with:</p> <ul style="list-style-type: none"> • The Ministerial Committee; • Amended Municipal Emergency Management Committee functions; and • New recovery provisions | <p>Make consequential amendments to sections 9, 11, 16 and 18 regarding the functions and powers of State and Regional Emergency Management Committees and Controllers as a result of the above amendments.</p> | |