



DISASTER AND EMERGENCY MANAGEMENT ACT 2001

DISAASTA EN 'IMERJENSI MAENIJMENT AEKT 2001

[Consolidated as at 29 December 2012
on the authority of the Administrator
and in accordance with
the *Enactments Reprinting Act 1980*]

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Disaster and Emergency Management Act 2001

Disaasta en 'Imerjensi Maenijment Aekt 2001

An Act to make provision for the protection of life and property in the event of a disaster or emergency, for recovery following such event, to provide for the management of disaster and emergency situations, and for related purposes.

BE IT ENACTED by the Legislative Assembly of Norfolk Island as follows:

PART 1 — PRELIMINARY

Short title

1. This Act may be cited as the *Disaster and Emergency Management Act 2001*.

Commencement

2. This Act shall commence on the day on which notification of assent to this Act is published in the Gazette.

Interpretation

3. In this Act, unless the contrary intention appears –
- “appointed officer” means a person appointed under paragraph 8(2)(c) who does not have the powers under section 10 of this Act;
 - “authorised officer” means a person appointed under paragraph 8(2)(d) of this Act;
 - “Chief Fire Control Officer” means the person appointed as the Chief Fire Control Officer under the *Fire Control Act 2000*;
 - “Disaster” means any occurrence (including flood, fire, storm, tempest, earthquake, eruption, epidemic of human, animal, or plant disease, hostilities directed by an enemy against Australia, and accident) that —
 - (a) causes, or threatens to cause, loss of life or injury to persons or animals or damage to property; and
 - (b) is of such a nature or magnitude that extraordinary measures are required in order to protect human or animal life or property;
 - “disaster or emergency area” means that area or part of the Territory of Norfolk Island in respect of which a state of disaster or emergency has been declared pursuant to section 9 of this Act;

“emergency” means any occurrence (including fire, flood, storm, tempest, earthquake, eruption, epidemic of human, animal or plant disease, hostilities directed by an enemy against Australia, and accident) –

- (a) that causes, or threatens to cause, loss of life or injury to persons or animals, or damage to property; and
- (b) whilst not constituting a disaster should, in the opinion of the Minister be dealt with under this Act because of the diverse resources required in response to the emergency, the likelihood of the emergency escalating into a disaster, or for any other reason;

“Minister” means the Minister of the Norfolk Island Government responsible for Disaster or Emergency Services, and in relation to a declaration of a state of disaster or emergency under this Act, may be that Minister, or in the event of his or her unavailability for whatever reason, any Minister of the Norfolk Island Government;

“Officer in Charge of the Norfolk Island Police” means the officer in charge of the Norfolk Island Police from time to time;

“plan” means the plan, of whatever name, prepared under section 8 of this Act;

“recovery” means recovery of the normal pattern of life of individuals, families, and communities affected by a disaster or emergency and includes –

- (a) the restoration of essential facilities and services;
- (b) the restoration of other facilities and services necessary for the normal functioning of a community;
- (c) the provision of material and personal needs;
- (d) the provision of means of emotional support;

“response” means any measure or measures taken in pursuance of this Act during the continuance of a declared state of disaster or emergency to protect life or property, but does not include a recovery operation;

“revenue fund” has the same meaning as that defined under the *Public Moneys Act 1979*;

“Territory of Norfolk Island” means that area defined as Norfolk Island in the *Norfolk Island Act 1979* of the Commonwealth of Australia, and includes any area of land, sea, or air defined by boundary, box, radius, or other means over which or within which the Government of Norfolk Island has any control, duty, responsibility, or stewardship, pursuant to any Act, intergovernmental or international agreement, understanding, treaty, or accord;

“vehicle” means any car, bus, boat, vessel, aircraft, cart, bicycle, motorcycle, whatsoever and of any description, whether self propelled or otherwise and includes any vehicle described as such in the *Traffic Act 2010*;

“volunteer” means a person who is requested, or directed by, or under the control of a member of the committee or an authorised officer, or member of the police force to do any act or thing in pursuance of this Act to assist during a state of disaster or emergency or during a recovery operation, whether or not that person has officially or formally volunteered to assist.

Act to bind the Crown

4. (1) This Act shall bind the Crown.
- (2) Nothing in this Act renders the Crown liable to be prosecuted for an offence.

Application of Act

5. (1) Where the provisions of this Act are inconsistent with any other Act or law, the provisions of this Act prevail.
- (2) The powers conferred on any person by, or pursuant to, this Act are in addition to, and do not derogate from, any powers the person may possess under any other Act or law.
- (3) This Act does not authorise the taking of measures to bring an industrial dispute to an end or to control civil disorders not being civil disorders resulting from, and occurring during the continuance of, a declared State of Disaster or Emergency.

PART 2 — DISASTER AND EMERGENCY COMMITTEE

Establishment of Committee

6. (1) The Emergency Management of Norfolk Island Committee is established.
- (2) The Committee shall consist of the following members:
 - (a) the Controller;
 - (b) the Deputy Controller;
 - (c) the Officer in Charge of the Norfolk Island Police;
 - (d) the Chief Fire Control Officer; and
 - (e) one other person.
- (3) The Controller, the Deputy Controller, and the other person mentioned in subsection 6(2) shall be appointed by the Minister who shall publish those appointments in the Gazette.
- (4) The Minister may not be a member of the Committee.
- (5) The members of the Committee shall be appointed for such term not exceeding three years and on such conditions as the Minister may determine and may be re-appointed.
- (6) The Minister, on the recommendation of the committee, may appoint one member to be the presiding member of the committee and another to be the deputy presiding member of the committee.

(7) The Minister, on the recommendation of the committee, may appoint a suitable person to be a deputy of a member of the committee, other than the Controller, and that person may act as a member of the committee in the absence of the member of whom he or she is deputy.

(8) The Minister, on the recommendation of the committee, shall authorise the provision or recruitment of such reasonable secretarial or administrative support as is requested by the Controller for the proper and effective functioning of the committee.

Proceedings of Committee

7. (1) Three members constitute a quorum for a meeting of the committee.

(2) A decision cast by a majority of the votes cast by the members present at a meeting is a decision of the committee.

(3) In the event of an equality of votes, the presiding member shall have the casting vote.

(4) A committee member may attend a meeting of the committee by telephone link in the event that it is not practicable for that member to attend personally, in which case the presiding member shall arrange for a suitable telephone device to be available at the meeting for that purpose.

(5) Subject to this Act, the committee may determine its own procedures.

Functions of Committee

8. (1) The committee must —

- (a) prepare a Disaster and Emergency Plan for the Territory of Norfolk Island with provision for response to and recovery from disasters and major emergencies;
- (b) advise the Minister on matters affecting the Plan and on methods of combating disasters and major emergencies, and of recovery following disasters and major emergencies;
- (c) advise the Minister on the making of any declaration of disaster or emergency;
- (d) keep the Disaster and Emergency Plan under review and make such amendments to it as from time to time appear necessary or expedient;
- (e) maintain contact with organisations, groups, or persons, that might usefully participate in response or recovery operations and keep them informed of what would be expected of them in the event of a disaster or major emergency;
- (f) monitor the standard operating procedures of any body or organisation that performs any function under the Disaster and Emergency Plan or might participate in response or recovery operations;
- (g) monitor and evaluate the implementation of the Disaster and Emergency Plan and the response and recovery operations taken during or following any declared state of disaster or emergency.

(2) The committee may, for the purposes of its functions —

- (a) consult, liaise with, and make reciprocal arrangements with, other bodies or organisations involved in or concerned with the provision of response or recovery operations, or emergency services;
- (b) create such offices as it thinks fit and appoint persons to those offices;
- (c) assign such functions, duties, and responsibilities to the members of the committee or any person appointed to any office created by the committee as are considered necessary or expedient;
- (d) appoint a person or class of persons to be authorised officers for the purpose of the Disaster and Emergency Management Plan and to fulfill such functions or powers, subject to this Act, as are nominated or described under the Plan.

(3) The committee shall ensure that its members, any persons appointed to an office under this section, or any authorised officer, other than police officers, are provided with suitable photographic identification for the purpose of the exercise of any powers under this Act or, subject to this Act, the Plan.

(4) A member of the committee, appointed officer, or authorised officer, other than a police officer, must at the request of any person in respect of whom he or she intends to exercise any powers under this Act or the Plan shall produce his or her identification provided in accordance with subsection 8(3).

(5) A member of the committee, appointed officer, or authorised officer, on ceasing to hold that position or office for any reason, must forthwith surrender his or her identification provided under subsection 8(3) to the Controller, or in the event that it is the Controller who is ceasing to hold office, to the Minister.

(6) The Controller and any member of the committee shall be deemed to be authorised officers for the purposes of this Act.

(7) The Plan referred to in subsection 8(1) shall be deemed to be a disallowable instrument in accordance with section 41A of the *Interpretation Act 1979*.

Penalty in respect of failure to comply with subsection (5): 5 Penalty units.

PART 3 — STATE OF DISASTER OR EMERGENCY

Declaration of Disaster or Emergency by Minister

9. (1) If it appears to the Minister, on the advice of the Controller or, in the absence of the Controller another member of the committee, that a disaster or emergency has occurred, is occurring, or is about to occur, he or she may declare that a state of disaster or emergency exists in respect of so much of the Territory of Norfolk Island as is, in his or her opinion, affected or likely to be affected by the disaster or emergency.

(2) A declaration under subsection 9(1) must be made in writing in a manner and form determined by the Minister and must be published or announced in accordance with the Plan.

(3) A declaration under subsection 9(1) remains in force for 72 hours and may not be extended or renewed without a resolution of the Legislative Assembly.

- (4) (a) The Minister may call and convene an emergency meeting of the Legislative Assembly with such notice as he or she considers appropriate, upon making a declaration of disaster or emergency for the purpose of extending or renewing the state of disaster or emergency for such time as the Legislative Assembly may determine.
- (b) A declaration of disaster or emergency may be extended for the purpose of response operations under this Act and the Plan, and on the advice of the Controller for recovery operations under this Act and the Plan.

(5) The Minister may at any time, after taking the advice of the Controller, or in the absence of the Controller another member of the committee, revoke a declaration under this section.

Powers of Minister on Declaration

10. On a declaration of disaster or emergency, the Minister may also authorise, without further appropriation, the expenditure of such sum or sums as are approved by resolution of the Legislative Assembly from the Revenue Fund to relieve distress and assist in response and recovery operations in accordance with the Plan.

Powers of committee, and authorised officers during State of Disaster or Emergency

11. (1) On the declaration of a state of disaster or emergency and while that declaration remains in force the Controller must take any necessary action to carry the Plan into effect and cause such response and recovery operations to be carried out as he or she thinks appropriate.

(2) Without limiting the generality of subsection 11(1), but subject to any regulations which may be prescribed (if any), the Controller, a member of the committee, or an authorised officer may, if of the opinion that it is necessary to do so, do or cause to be done all or any of the following things for the purposes of responding to or, subject to subsection 13(3), recovering from a disaster or emergency –

- (a) by notice in writing in a form approved by the Controller, require the owner, or a person for the time being in charge, of any real or personal property in a disaster or emergency area to place it under the control or at the disposition of a person nominated by the Controller, or the committee member, appointed officer, or authorised officer;
- (b) direct and cause the evacuation and removal of persons or animals from a disaster or emergency area, or part of a disaster or emergency area, or from any area within the Territory of Norfolk Island which is affected by the disaster or emergency or required for the response to a disaster or emergency, and remove to such place as he or she thinks fit any person or animal found within such an area;
- (c) enter and, if necessary, break into any land, building, structure or vehicle within the disaster or emergency area;
- (d) take possession of any land, body of water, building, structure, vehicle or other thing within the disaster or emergency area or outside the area if reasonably required in response to the disaster or emergency;

- (e) remove, demolish or destroy any building, structure, vehicle, animal or vegetation within the disaster or emergency area;
- (f) shut off, or cut off, any supply of fuel, gas, electricity or water, or any drainage facility, within the disaster or emergency area or in any other area which affects such supply to the disaster or emergency area;
- (g) direct or prohibit the movement of persons, animals or vehicles into or within the disaster or emergency area;
- (h) remove to such place as he or she thinks proper any person who obstructs or threatens to obstruct response or recovery operations;
- (i) give directions to any person whose responsibilities require him or her to engage in response or recovery operations, or who is so engaged;
- (j) ration and distribute food, water, fuel, gas, or electricity or any other thing reasonably required to be rationed and distributed.

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

Compensation

12. (1) A person is entitled to be compensated for any injury, loss or damage suffered by the person —

- (a) that arises in consequence of the exercise of powers under section 11 (apart from paragraph 11(2)(h)); and
- (b) that would not have arisen in any event in consequence of the disaster or major emergency.

(2) In assessing compensation under subsection 12(1) a court must take into account —

- (a) any amount recovered or recoverable by the person suffering the injury, loss or damage under a policy of insurance; and
- (b) the extent (if at all) to which the conduct of the person suffering the injury, loss or damage contributed to that injury, loss or damage.

(3) A claim under subsection 12(1) shall not exceed the sum of \$10,000.00.

Recovery operations

13. (1) While a declaration of a state of disaster or emergency is in force and effect, or has been extended for recovery operations the Controller may —

- (a) determine that response operations should cease and that recovery operations should commence
- (b) direct authorised officers to take any specified action for the purposes of carrying out recovery operations in accordance with the Disaster and Emergency Plan.

(2) An authorised officer may be assisted by volunteers in carrying out recovery operations under this section and may give such directions to a volunteer as the officer thinks necessary for that purpose.

(3) A recovery operation under this section cannot be carried out on private land without the consent of the owner of that land, provided that the owner of

private land may not refuse access to the Controller or a person authorised under this Act for the purpose of traversing the land to access an area adjacent to such land for recovery operations.

(4) Subject to subsection 13(3) an authorised officer has the same powers during a recovery operation as those outlined in section 10.

Offences

14. (1) A person must not without lawful excuse refuse or fail to comply with any lawful direction of the Controller or of an authorised officer, given during the continuance of a declared State of Disaster or Emergency.

(2) A person must not obstruct or interfere with any response or recovery operations carried out in pursuance of this Act.

(3) A person must not falsely represent that he or she is an authorised officer, or member of the committee.

(4) A person must not, without lawful authority —

- (a) wear any insignia or special apparel, or possess identification issued to a committee member or authorised officer for the purposes of this Act; or
- (b) use any special equipment issued to an authorised officer for the purposes of this Act, in circumstances where to do so would lead to a reasonable belief that he or she was a committee member or authorised officer.

Penalty for an offence mentioned in this section: 10 penalty units

PART 4 — MISCELLANEOUS

Immunity from liability

15. (1) A person does not incur any civil liability for an honest act or omission in the exercise or discharge of powers or functions under this Act.

(2) A liability that would, but for subsection 15(1), lie against a person, lies instead against the Crown in the right of Norfolk Island limited in any case to that sum mentioned in subsection 12(3) of this Act.

(3) This section applies to a member of the committee, an appointed officer, an authorised officer, a volunteer, or any person who is acting under the instructions of, or at the direction of a committee member, appointed officer or authorised officer.

Protection of employment

16. (1) A person who is absent from employment on official duties in connection with functions, duties, or responsibilities under this Act is not liable to be dismissed or prejudiced in employment by reason of that absence, and the person's actual and accruing rights in respect of employment (other than payment for time absent from employment) must be determined as if the person had not been so absent.

(2) The Minister may approve an ex-gratia payment under the provisions of the *Public Monies Act 1979* from the Revenue Fund to reimburse persons who have lost income by virtue of official duties during a State of Disaster or Emergency.

Disaster and Emergency Relief Fund

17. (1) The Disaster and Emergency Relief Fund is established.
- (2) Any money received by the Minister, the committee, or any other person or body for the relief of persons who suffer injury, loss or damage as a result of a disaster or major emergency in respect of which a declaration under this Act, or for the purposes of responding to and recovering from a disaster or major emergency must be paid into the fund.
- (3) The fund shall be administered in accordance with the plan by the Disaster Relief Fund Committee appointed and constituted in accordance with the Plan.
- (4) Subject to this section, no money received by the fund in respect of a particular disaster or major emergency may be disbursed otherwise than to, or for the purpose of the relief of, persons who suffered injury, loss or damage as a result of that disaster or major emergency, or for the purposes of any action required under the Plan.
- (5) No money in the fund may be used to defray the costs of administering the fund.
- (6) The monies in the fund shall be held in a separate bank account opened and maintained by the committee for that purpose and shall not be held by the Administration.
- (7) The *Financial Institutions Levy Act 1985* shall not apply to monies held in or deposited to the fund.
- (8) The Disaster Relief Fund Committee (in this section called the “committee”) shall cause to be kept, in accordance with commercial accounting principles, proper accounts and records of the transactions and affairs of the Disaster and Emergency Relief Fund and for the purposes of this section the term “commercial accounting principles” has the same meaning as that contained in section 36(C) of the *Public Moneys Act 1979*.
- (9) (a) As soon as practicable after the end of each financial year, or at any other time requested by the Minister, the committee shall cause to be prepared in accordance with commercial accounting principles, a balance sheet and a statement of income and expenditure with respect to the Disaster and Emergency Relief Fund provided that this subsection shall only apply if there were any monies whatsoever held in the said fund at any time during the financial year.
- (b) The committee shall provide a copy of the balance sheet and statement of income expenditure to the Minister who shall table such documents before the Legislative Assembly at the first sitting after his receipt of same.
- (c) Provided that any monies whatsoever were held in the Disaster and Emergency Relief Fund in any financial year, such fund shall be audited as if it were a fund to which section 37 of the *Public Moneys Act 1979* applied.

(10) Sections 33 and 34 of the *Public Moneys Act 1979* shall apply to the misappropriation of monies of the fund, and forging or uttering a document with intent to obtain monies fraudulently from the fund, as if those sections were contained within this Act and the monies contained within the fund were public moneys.

(11) The bank account opened for the purposes of subsection (6) may not be overdrawn.

(12) The Committee may invest the monies of the Disaster and Emergency Relief Fund, provided that such investments are made in accordance with the provisions of section 10 of the *Public Moneys Act 1979*.

Appropriation of monies

18. Monies for the purposes of the fund may be provided by the Legislative Assembly under the provisions of the *Public Moneys Act 1979*.

Transitional and savings

19. (1) Those persons who hold the position of Controller, Deputy Controller, and the Chairperson of the committee known as the Emergency Management Norfolk Island Committee (EMNIC), at the date of commencement of this Act, shall be deemed to have been appointed to the positions of Controller, Deputy Controller and the other person mentioned in subsection 6(2) of this Act, and in the case of the “other person”, that person shall be deemed to be the presiding member of the committee.

(2) The deemed appointments under subsection 19(1) shall be for a period of three months, or such longer period not exceeding 12 months as the Minister determines, and the said persons mentioned in subsection 19(1) are eligible for appointment or re-appointment to the committee.

Workers compensation payable in respect of certain persons

20. (1) For the purposes of the *Employment Act 1988*, or any other Act substituted or commenced to provide compensation to workers injured or killed whilst in employment, a person who, otherwise than under a contract of employment with the committee or the Controller, engages in response or recovery operations under this Act whether as a volunteer or otherwise, or training for such operations with the consent of the Controller, shall be deemed to be a worker employed by the Administration.

(2) The method of assessing compensation payable to a person mentioned in subsection 20(1) shall be prescribed by regulation.

Regulations

21. The Administrator may make such regulations as are contemplated by this Act, or as are necessary, convenient, or expedient for the purposes of this Act, or as are necessary in consequence of conditions directly or indirectly caused by a disaster or major emergency.

NOTES

The *Disaster and Emergency Management Act 2001* as shown in this consolidation comprises Act No. 5 of 2001 and amendments as indicated in the Tables below.

Enactment	Number and year	Date of commencement	Application saving or transitional provision
<i>Disaster and Emergency Management Act 2001</i>	5, 2001	9.3.01	
<i>Interpretation (Amendment) Act 2012</i> [to substitute throughout — Commonwealth Minister for Minister; and to substitute Minister for executive member]	14, 2012	28.12.12	

Table of Amendments

ad = added or am = amended rep = repealed rs = repealed and
inserted substituted

Provisions affected	How affected
3	am 14, 2012

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