



LEGISLATIVE ASSEMBLY FOR
THE AUSTRALIAN CAPITAL TERRITORY

The Emergency Management Bill 1998

**Report No.5 of the
Standing Committee on Justice and Community Safety**

November 1999

Resolution of Appointment

That—

The following general purpose standing committees be established to inquire into and report on matters referred by the Assembly or, matters that are considered by the committee to be of concern to the community...

...a Standing Committee on Justice and Community Safety to examine matters related to administration of justice, legal policy and services, registrar and regulatory services, electoral services, consumer affairs, corrective, emergency and police services and fair trading and any other matter under the responsibility of the portfolio minister.

Legislative Assembly for the ACT, *Minutes of Proceedings*, No.2, 28 April 1998, p 15.

Terms of Reference

Inquire into and report on the Emergency Management Bill 1998 by the first sitting day of November 1999.

Legislative Assembly for the ACT, *Minutes of Proceedings*, No.48, 4 May 1999, p 398.

Committee Membership

Paul Osborne MLA (Chair)

John Hargreaves MLA (Deputy Chair)

Harold Hird MLA

Trevor Kaine MLA

Secretary: Fiona Clapin

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RECOMMENDATIONS

The following summary of recommendations is drawn from the text of this report. References relate to the paragraph numbers of the recommendations in the body of the report.

Recommendation 1

33. The committee recommends that the Bill be amended to:

- (i) provide for the Chief Police Officer to be designated as the permanent Territory Controller; and**
- (ii) provide the Territory Controller (Chief Police Officer) with powers to delegate authority to another person such as the Chief Health Officer as Territory Controller if he/she believes this is appropriate; and**
- (iii) delete any reference to a Dormant Controller.**

Recommendation 2

41. The committee recommends that the Clauses 4-6 on the Executive Director remain as set out in the current Bill.

Recommendation 3

53. The committee recommends that the Bill be amended to provide for:

- (i) the functions of the Emergency Management Committee and the Management Executive be combined into one committee only, to be known as the Emergency Management Committee;**
- (ii) the Chairperson of the Emergency Management Committee to be the Territory Controller;**
- (iii) the Chief Health Officer be included in all functions of the Emergency Management Committee, including the functions associated with 'Managing Emergencies' (in the current Bill associated with the Management Executive); and**
- (iv) in the event of a declared emergency, the Chairperson of the Emergency Management Committee have the power to appoint additional members to the committee, as deemed necessary under the circumstances.**

Recommendation 4

60. The committee recommends that Division 4 of Part 11 of the Bill relating to Commonwealth and interstate co-operation be retained as set out in the Bill.

Recommendation 5

69. The committee recommends that the Government introduce separate ambulance service legislation.

Recommendation 6

70. The committee recommends that provision for a levy (currently included in Division 3 of Part VI of the Emergency Management Bill) be included in separate ambulance legislation or in other more appropriate legislation.

INTRODUCTION

Background to the legislation

1.The ACT currently has no emergency management legislation.¹ All other States and Territories have legislation in some form, with the exception of Western Australia which is currently preparing a Bill.

2.The Government introduced the Bill with the objective of making provision for the organisation, coordinated management and planning for emergencies. It is designed to ensure a comprehensive approach to prevention, preparedness, flexible response and efficient recovery from emergencies.

3.The types of emergencies that have the potential to occur in the ACT are very diverse. They could include sudden impact emergencies such as earthquake, bushfire, severe storm, flash flooding, major technology failure as well as slow impact emergencies such as exotic animal disease, health epidemics or water contamination.²

4.The basic principal underlying this type of legislation is to ensure a lawful basis for extraordinary measures which may be required during a major emergency to save life and minimise damage to property. The Emergency Management Committee³ has indicated that such legislation is required to provide:

- a formal basis for emergency/counter disaster legislation it will provide for support plans, inter-service and multi-service organisational arrangements, preparedness measures, response action and recovery arrangements;
- allocation of responsibilities in a statutory and accountable form and provide a precedence of action where in crisis circumstances there may be doubt as to the supremacy of responsibilities of other laws;
- a basis for ensuring cross border arrangements in times of crisis are in accordance with national coordination process;
- clarity in implementing the ACT Government's responsibilities in minimising the effects of disasters;

¹ Emergency management matters are currently co-ordinated by the ACT Emergency Management Committee, chaired by the Executive Director, ACT Emergency Services.

² ACT Government, *Submission*, p5

³ This consists of the operational agencies of the Emergency Services Bureau and the Australian Federal Police (ACT Region)

- statutory indemnity for organisations and individuals who are required to carry out the emergency/counter disaster activities; and
- the exercising of emergency powers.⁴

Conduct of the Inquiry

5.The Emergency Management Bill 1998 was referred to the Standing Committee on Justice and Community Safety on 4 May 1999 for inquiry and report to the ACT Legislative Assembly by the first sitting day in November 1999.

6.The Government urged the committee to consider the legislation quickly as it needed to be in place to respond to potential Y2K situations.

7.The inquiry was advertised in local newspapers and the committee wrote to relevant individuals and organisations inviting submissions. Ten submissions were received and a public hearing was held where ten witnesses gave evidence. (see Appendix A for details) The committee also received a confidential Government briefing on the ACT's preparedness for Y2K.

Key elements of the Bill

8.The Bill:

- establishes the ACT Emergency Service to provide assistance and support to agencies and organisations in emergencies and in other situations of need by formally prescribing the Service's role, operational responsibility and structure including the responsibilities of the Executive Director;
- establishes the ACT Ambulance Service and specifies its function; and
- formalises Commonwealth, interstate and regional cooperation and arrangements in relation to emergencies;

9.The Minister for Justice and Community Safety stated the Bill clearly distinguishes between the broader 'emergency management' functions requiring co-ordination across government and non-government organisations and the function of 'managing emergencies'. He suggested the proposed scheme improves on similar legislation elsewhere by:

⁴ ACT Government, *Submission*, pp1-2.

- covering both natural and man-made emergencies, including widespread technology failure;
- allowing for the efficient transition to a declared emergency by providing for a 'continuum of emergency response';
- empowering the responsible Minister to appoint the most appropriate individual with relevant expertise to the position of Territory Controller; and
- catering for the commencement and sustained Recovery function as part of the coordinated response to an emergency.

10. The Minister for Justice and Community Safety noted that this approach to assignment of broad responsibilities has already achieved significant improvements in planning and preparedness through such processes as a storm event workshop, the earthquake microzonation project, updating the hazardous materials sub-plan, Y2K planning, and conducting an infrastructure workshop.⁵

11. According to the Government, the Bill is very modern compared to legislation in other jurisdictions in that it covers 'emergency risks' and not just the traditional historical focus on natural disasters. Emergencies arising from civil defence requirements, mass gatherings of people at events, disruption of essential services, and technological problems including widespread simultaneous failure of computers are covered by the Bill.

Scope of inquiry

12. This report identifies the key issues raised in submissions and provides analysis and recommendations on these issues. The Government provided a comprehensive supplementary submission which included detailed responses to key issues raised in written submissions. This was very useful for the committee.

13. A number of submissions presented arguments against elements of the Bill which are not covered in this report. While the committee considered all issues raised in submissions, it does not report on issues which it believes the Government has provided an adequate response.

⁵ ACT Government, *Supplementary Submission*, cover page

KEY ISSUES

14. The key issues raised in submissions include:

- who should be the Territory Controller;
- the role and powers of the Executive Director;
- membership and functions of the Emergency Management Committee and the Management Executive;
- Commonwealth and interstate cooperation; and
- the regulation and contestability of ambulance services.

Who should be the Territory Controller?

15. The Bill authorises the Chief Minister to declare a state of emergency where an event requires a significant and coordinated response by agencies and organisations. As part of this declaration, the Bill proposes the appointment of a Territory Controller.

16. Clause 22 provides for the appointment of a Territory Controller **during** a period of emergency. The Controller is charged with the responsibility for managing the emergency in accordance with the Territory's Emergency Plan. The Controller is able to use extraordinary powers to reduce risk to life and property and to co-ordinate the immediate recovery operations to restore the Territory to its pre-emergency situation as soon as possible.

17. Clause 23 authorises the Minister to appoint a Dormant Controller **before** the declaration of a state of emergency. The Dormant Controller would be the Controller during 'peacetime', or at all times when no state of emergency has been declared. According to the Government, the Bill caters for the sudden impact emergency and avoids potential for delay by providing for the Minister to appoint a Dormant Controller. Unless the Minister specifically appoints a Territory Controller then the Dormant Controller will become the Territory Controller on declaration of a state of emergency.

18. The Minister for Justice and Community Safety advised it is the Government's intention to appoint the Chief Police Officer as the Dormant Controller.⁶ The Government submission stated it is highly likely that the Chief Police Officer would be the most appropriate Territory Controller in most emergencies.

⁶ ACT Government, *Submission*, p6

19. The provision of a Dormant Controller and provision for Minister to appoint a Territory Controller marks a different approach to current arrangements in the ACT and in other jurisdictions. The Government argued that the ACT needs different arrangements to other jurisdictions because: the diversity of likely emergencies; the relatively small geographic size; and the existence of a consolidated emergency services organisation with direct accountability to the ACT Government; and the fact of a singular State/local government tier.⁷

20. A number of submissions to the inquiry rejected the need for a Dormant Controller and argued for the appointment of a permanent Territory Controller. For example, the **Australian Federal Police Association** proposed that the position of Territory Controller be permanently filled because: of the inherent responsibilities of the position; the time of a disaster is not the time to be quibbling over who should be in charge; delays in the appointment of a Controller could compromise the ability of the Territory to recover from the effects of the emergency/disaster; the incumbent could consolidate relationships and networks *before* an emergency/disaster occurs and it would enable consistency in leadership and guidance in the critical preparation and planning phases; and it would enable the Controller to be the permanent chair of the Emergency Management Executive.⁸

21. **The Government** defended its provision of a Dormant Controller and the provision for the Minister to appoint different people as Territory Controllers according to the nature of the emergency mainly on grounds of flexibility. The Government responded to arguments against its proposals for the Territory Controller with the following:

- there will be no confusion at the time of a disaster- the Dormant Controller becomes the Territory Controller unless the Minister appoints another person;
- it is appropriate for the Minister to determine who is best equipped to be the Controller given the obligation of the Minister and Government to account for their management of any particular emergency;
- flexibility in the appointment of a Territory Controller also ensures the Territory has the capacity to manage protracted recovery operations using some of the Territory Controller's powers to co-ordinate the large-scale effort by non-traditional response agencies, such as Health or ACTEW;
- there have been emergencies interstate for which a 'state of emergency' was not declared because of some broader co-ordination deficiencies in their emergency legislation (eg the Cryptosperidium crisis in Sydney Water and the Victorian gas crisis); and

⁷ ACT Government, *Submission*, p5.

⁸ AFPA, *Submission*, pp3-4.

- the types of emergencies which could occur in the ACT are very diverse⁹

22. The committee found the arguments put forward in favour of a permanent Territory Controller more compelling than the Government's arguments for a flexible arrangement. The committee rejected the concept of a Dormant Controller.

23. There was strong support in submissions for the appointment of the Chief Police Officer as the permanent Territory Controller.¹⁰ For example, **the Australian Federal Police Association** argued:

- the AFP is the only organisation in the ACT with the legislated role to protect life and property in all circumstances (through the auspices of section 8 of the AFP Act 1979);
- under the ACT *Coroners Act 1997* police are agents of the coroner and it is rare that a disaster/emergency occurs where there is no loss of life, thus the coroner invariably becomes involved in the investigation of the event;
- there is the possibility of criminal activity causing some disasters, thus police invariably are involved at some stage to investigate for the courts;
- police hold powers under various legislation that exceed those held by other agencies in most circumstances;
- police are recognised as having command and control of all emergency and rescue incidents, except during and immediately after a fire-appointing the Chief Police Officer as Territory Controller will therefore simplify the chain of command;
- police hold a unique position in society, a position of trust and responsibility not held by other services-the community expects police to be in charge of such events;
- sections of the Bill, such as section 27, 28, 29, 30, give a defacto power to arrest and/or to enter premises-these roles are most appropriately conducted by police;
- such an appointment is consistent with other Australian states and overseas jurisdictions;
- the current Territory Controller is the AFP Assistant Commissioner, ACT Region; and
- it is extremely difficult to imagine a major emergency/disaster scenario in which police would not play an important role.¹¹

⁹ ACT Government, *Supplementary Submission*

¹⁰ eg United Firefighters Union, Australian Federal Police Association, Mr Jones

¹¹ AFPA, *Submission*

24. **The Government** responded to the Australian Federal Police Association's claim that the Territory Controller must be the ACT Chief Police Officer with the following arguments:

- the AFP is not the only organisation in the ACT with a statutory responsibility to protect life and property-other emergency services agencies also possess command and control expertise of a high order related to their particular responsibilities;
- other agencies have statutory responsibilities and expertise in dealing with unusual and unique events likely to impact adversely on the community;
- the Bill separates the broader functions and responsibilities of emergency management from the responsibilities of 'managing emergencies'-links between these functions are provided for through membership of committees and assignment of specific responsibilities;
- the Coroners Act is of little relevance to the assignment of responsibility for emergency management within the ACT; and
- whether the Commonwealth is prepared to pass Regulations to allow for accountability to the ACT Government for the purposes of specific functions is not the issue because the potential for conflict between the two jurisdictions will remain. The scheme of the Bill makes it unambiguously clear that the appointment of a Controller stems from and is responsible to the Minister who is accountable to the Legislative Assembly.¹²

25. The Government stated that while police have expertise in command and control of law enforcement situations, there are other emergency services organisations which have complimentary command and control expertise. The Government argued that no single organisation has sole responsibility for protection of life, property and the environment as that responsibility rests with Government as a whole.¹³

26. The Government highlighted the need to ensure sovereignty to the ACT of the position of Territory Controller. According to the Government, a statutory appointment of the Chief Police Officer of the ACT would not give the Territory the ability to change the appointment of Controller if the Chief Police Officer suddenly found himself or herself the subject of directions from his or her Commonwealth Minister. In their view, until the Chief Police Officer is directly appointed by, and solely accountable to, the ACT Government, any permanent appointment to the position of Territory Controller removes the ability of the Territory to replace the Territory Controller.

¹² ACT Government, *Supplementary Submission*

¹³ *ibid*, p5.

27. The **Australian Federal Police Association** challenged the Government's concerns that Federal Police officers are not truly accountable to the ACT with the following persuasive arguments:

It is very difficult to reconcile this apparent concern of government against its stated plan (in the Minister's presentation speech, page 7) that the senior police officer is expected to be the Territory Controller in most emergencies. The argument is also difficult to reconcile against the fact that the current Territory Controller is the Chief Police Officer. The Association understands that the Commonwealth can pass enabling regulations to allow the Chief Police Officer to be directly accountable to the ACT for the purposes of specific legislation. Therefore, we see no legal or accountability impediment to such a permanent appointment.¹⁴

28. The **United Firefighters Union** argued that the Territory Controller should be experienced in operational command. They did not agree with the Bill leaving open the possibility of making the Executive Director of the Emergency Services Bureau the Territory Controller.¹⁵

29. The committee carefully weighed up the benefits of flexibility and Ministerial discretion against the benefits of certainty and clarity of responsibilities. After giving the matter detailed consideration, the committee concluded the Chief Police Officer should be appointed as the Territory Controller. Such an arrangement will streamline emergency management arrangements and leave no room for doubt about who is in charge when there is a declared emergency.

30. The problem of accountability is ongoing while the ACT does not have its own police force. This problem would still have existed under the Government's proposal to appoint the Chief Police Officer as the Controller for most emergencies. To alleviate this problem, the Government should ask the Commonwealth Government to implement the Australian Federal Police Association's proposal to introduce regulations which would enable the ACT Chief Police Officer to be directly accountable to the ACT for the purposes of specific legislation. To address the Government's concerns about emergencies which are not police-related such as health emergencies or gas emergencies, the committee suggests the Territory Controller be given the power to delegate his/her powers as Controller to an appropriate person, for example, the Chief Health Officer, in such events. The committee agrees with the Australian Federal Police Association that there is no need for the Controller to work full-time in the role, as the routine support and administrative duties can be undertaken by the Executive Director.

31. However, one member of the committee did not agree with the majority committee view that the Bill should designate the Chief Police Officer as Territory Controller. He argued that while he supports the Government's proposal that the Chief Police Officer would be the Controller on most occasions, the majority committee's recommendation provides the Minister with no flexibility to appoint another person as Territory Controller. He found the

¹⁴ AFPA, *Submission*, p5.

¹⁵ United Firefighters Union, *Submission*

Government's arguments against the appointment of the Chief Police Officer as a permanent Controller convincing. He believed such an appointment was inadvisable on grounds of accountability. With the Chief Police Officer only being nominally accountable to the ACT Government, this could be a problem on occasions where the Commonwealth has different priorities to the ACT. He considered there may be emergencies where there is no useful purpose in the Chief Police Officer being the Territory Controller, such as the contamination at Belconnen Tip. He also put the view that the ACT Government would not have the power to terminate the appointment if the Minister lacked confidence in the Chief Police Officer's ability to manage an emergency. He was of the belief that police have little involvement in recovery operations. He was concerned that the Recommendation below provides for a public servant to delegate powers and therefore provides an unchecked delegation authority of these extreme powers without authority of a Minister who would be accountable to parliament for his or her actions.

32.The committee notes, however, that its proposed arrangements only come into play in the event of a 'declared' emergency.

Recommendation 1

33.The committee recommends that the Bill be amended to:

- (i) provide for the Chief Police Officer to be designated as the permanent Territory Controller; and**
- (ii) provide the Territory Controller (Chief Police Officer) with powers to delegate authority to another person such as the Chief Health Officer as Territory Controller if he/she believes this is appropriate; and**
- (iii) delete any reference to a Dormant Controller.**

The Executive Director

34.Another controversial element of the Bill relates to the inclusion of functions and powers of the Executive Director.(Clauses 4-6 in Part 11) The functions for this position are listed as establishing and monitoring protocols and communication networks, maintaining formal records of emergency management arrangements with other jurisdictions, assisting the development of preparedness plans and coordinating public information.

35.Some submissions questioned the need for this position to be included in legislation and raised problems with the functions and powers outlined in the Bill.

36. The **Australian Federal Police Association** argued the Executive Director's position is a structural impediment to the Territory Controller's (and even the Emergency Management Committee's) authority.¹⁶

37. The **United Firefighters Union** presented the view that the creation by legislation of such a position is unprecedented in any other state or territory emergency management legislation and would seem completely unnecessary in the ACT. The union has concerns about the Executive Director being able to interfere with existing and new arrangements between agencies, especially as there is no requirement for the Executive Director to have operational knowledge or experience.¹⁷

38. The **ACT Government** responded that:

- the ACT long ago committed itself to the establishment and maintenance of an integrated emergency response structure when the Emergency Services Bureau (ESB) was established—this structure is often used as a model elsewhere, and has been a significant achievement for the ACT;
- the Bill codifies the existing arrangements that have achieved improvements in preparedness measures and prevention activities which are as important, if not as visible, as response services.¹⁸
- the allocation of responsibilities for managing emergencies, are vested in the relevant heads of emergency service organisations and the police;¹⁹
- the United Firefighters Union's comment that the Executive Director position is without precedent and superfluous within the ACT reflects attitudes related to current industrial tensions as well as an unwillingness to accept the existence of the ESB—it is unhelpful in the context of the design of a statutory scheme which is intended to anticipate and protect the interests of the ACT community in time of emergency.
- emergency response agencies are expensive community resources managed within an effective co-ordinating structure and the Executive Director has always had and should continue to have significant responsibilities of the kind spelt out in Clause 5a contrary approach based on assertion of agency 'rights' and which implicitly treats the existence of the ESB as illegitimate, misses the point and promotes sectional rather than the public interest.²⁰

39. The **Australian Federal Police Association** argued that the Executive Director should not have voting rights on the committee. In their view, the Executive Director should be the key support officer, a 'gopher' who provides support to the Committee in its

¹⁶ AFPA, *Submission*.

¹⁷ United Firefighters Union, *Submission*, p2.

¹⁸ ACT Government, *Supplementary Submission*, Appendix B

¹⁹ ACT Government, *Submission*, pp4-5.

²⁰ ACT Government, *Supplementary Submission*, Appendix B

operations. The main responsibilities of the position are ensuring that Committee decisions are implemented and supported, and in effect would mean that he/she would have tactical control over emergency management planning at a day-to-day level.²¹

40. The committee believes the Government is correct to formalise the role of the Executive Director and does not believe the arguments put forward against this position justify not including this provision in the Bill. The Government is attempting to formalise the planning of emergency services and it is appropriate that the position and functions of the Executive Director be set out in legislation.

Recommendation 2

41. The committee recommends that Clauses 4-6 on the Executive Director remain as set out in the current Bill.

Emergency Management Committee and Management Executive

42. The Bill provides for an Emergency Management Committee, with the primary function of providing for liaison between relevant agencies, organisations and other persons in relation to emergency management. The Bill provides that the Chair of this committee will be the Executive Director. The Bill also provides for a Management Executive, with similar membership to the Emergency Management Committee. The purpose of the Management Executive committee is to provide advice to the Controller in the management of emergencies.

One committee or two?

43. A number of submissions argued that the Emergency Management Committee and the Management Executive should be consolidated into one committee. For example, the **Australian Federal Police Association** commented that the Management Executive appears to be illogical and a duplication of the Emergency Management Committee. The **Government** responded to this claim with the following arguments:

- the Emergency Management Committee and the Management Executive have different functions and are not duplicates of each other;
- Clause 25, along with Clause 7 (the EMC), provide the necessary links between the broad 'Emergency Management' provisions and the 'Management of Emergencies' provisions; and

²¹ AFPA, *Submission*, pp5-6.

- the Exposure Draft 1997 attempted to manage the separate functions (Emergency Management and Managing Emergencies) through one committee structure, but many comments indicated this was confusing and did not sufficiently separate the functions- Clause 25 now separates the response/recovery operations in Managing Emergencies and gives the Controller flexibility to determine the necessary expertise required for managing a particular emergency.²²

44. The committee does not accept the Government's rationale for establishing separate committees. The provision of separate committees appears to be an unnecessary duplication. The membership of the committees is the same with the exception of the Chief Health Officer, who is not represented on the Emergency Executive. The argument that the two committees serve different functions is not sufficiently strong to justify having separate committees. The Standing Committee on Justice and Community Safety is an example of a committee which is able to accommodate two different functions (scrutiny of bills and general policy). The committee is of the view that the Emergency Management Committee and the Management Executive would also be able to accommodate two different functions, particularly if the membership and chair are the same for each committee. Such a consolidation would have the benefit of providing continuity in emergency management. The committee responsible for establishing general protocols for emergencies in 'peacetime' would also be responsible for providing advice on the management of declared emergencies.

45. The committee proposes that the Bill be amended to give the Emergency Management Committee the capacity to carry out the functions of the Management Executive for periods when a state of emergency has been declared. The Bill should also be amended to provide the chairperson of the Emergency Management Committee with powers to appoint additional members to the committee in the event of a declared emergency as he/she deems necessary under the circumstances.

Chairperson

46. The **United Firefighters Union** submitted that the Executive Director should not be the chairperson of the Emergency Management Committee. In their view the position is unnecessary and the creation of a permanent chair can be counter-productive to the effective functioning of the committee and stifle divergent opinion and debate. The union suggested the election of a chairperson by the members of the committee would be far more appropriate. The committee did not agree it was appropriate to leave the appointment of chairperson of this committee to an election and considers it appropriate that the identity of the chairperson be explicitly stated in the Bill.

47. Some submissions called for the appointment of the Territory Controller as the Chair of the Emergency Management Committee. For example, the **Australian Federal Police Association** argued:

²² ACT Government, *Supplementary Submission*

The Emergency Management Committee is the 'engine room' of the system, where the various services resolve outstanding issues and recommend the implementation of the best systems. To assist this process, there needs to be stability and clear direction. Permanently appointing the Territory Controller as the chair of the Committee is one necessary and logical step, in keeping with his/her status.

48. The **ACT Government** responded that in NSW the State Controller is not necessarily the Chair of the State Emergency Management Committee and the chair, in the majority of States and Territories, is not the Chief Police Officer. The Government argued that their proposal follows the concept of clearly distinguishing 'Emergency Management' functions from those of 'Managing Emergencies'. The Government further claimed it ensures that emergency planning responsibility is placed in the hands of a senior expert who may be better qualified for the task than a senior police officer would be and that the Bill codifies existing administrative arrangements.

49. The committee did not agree with the Government view that the Executive Director should be the Chairperson of the Emergency Management Committee. While the committee understands the distinction between the roles of 'Emergency Management' and 'Managing Emergencies' it does not accept that these functions need to be controlled by different individuals through different committees. It is appropriate that the Bill designate the Territory Controller as Chairperson of the Emergency Management Committee and that this committee serve the dual functions of 'Emergency Management' and 'Managing Emergencies'. The Executive Director would still be able to contribute significantly to the planning and co-ordination of emergency management while functioning as a committee secretary.

Membership

50. On the matter of membership of the Emergency Management Committee, the **United Firefighters Union** questioned if the Bill seeks to create an additional funded position for the Director ACTES. The **ACT Government** responded that currently the Chief Fire Control Officer and Director of the ACT Emergency Service is a public servant who attends meetings of the Emergency Management Committee as a representative of both agencies and it is unnecessary for another representative to attend meetings. The Government claimed the prerogative should rest with Government to make changes in the future.²³ The committee was satisfied with this response.

51. The committee did consider it appropriate that the Chief Health Officer be added to the list of members of the Management Executive. The Chief Health Officer is listed in Clause 7 as a member of the Emergency Management Committee and it is reasonable that this officer should also have a permanent position on the committee when it is acting in its Management Executive role.

²³ ACT Government, *Supplementary Submission*, Appendix B

52.The arrangements for functions, membership and chairing recommended in this section will result in a more streamlined system. This is illustrated in the pictorial representation provided by the AFPA which is included in Appendix B.

Recommendation 3

53.The committee recommends that the Bill be amended to provide for:

- (i) the functions of the Emergency Management Committee and the Management Executive be combined into one committee only, to be known as the Emergency Management Committee;**
- (ii) the Chairperson of the Emergency Management Committee to be the Territory Controller;**
- (iii) the Chief Health Officer be included in all functions of the Emergency Management Committee, including the functions associated with ‘Managing Emergencies’ (in the current Bill associated with the Management Executive); and**
- (iv) in the event of a declared emergency, the Chairperson of the Emergency Management Committee have the power to appoint additional members to the committee, as deemed necessary under the circumstances.**

Commonwealth and Interstate Co-operation

54.A number of submissions raised concerns about Division 4 of Part 11 of the Bill, dealing with Commonwealth and Interstate Co-operation. This part of the Bill gives the Chief Executive powers to make arrangements for Commonwealth and interstate co-operation.

55.The **United Firefighters Union** were concerned that this Division usurps the responsibilities of statutory office holders such as the Fire Commissioner and the Chief Fire Control Officer. The union noted that these powers do not apply to police functions²⁴

56.In response to the United Firefighters Union, the **ACT Government** stated:

- Clause 13 does not usurp the powers of the Fire Commissioner or the Chief Fire Control Officer as these officers do not currently have authority to enter into such arrangements;
- in view of the potential significance of such inter-governmental agreements (resource/cost implications, political considerations, relationships between governments, etc) it is entirely appropriate that the ability to enter into such arrangements be vested in the Chief Executive.

²⁴ United Firefighters Union, *Submission*, p4

- police powers are contained in the AFP Act (1979) which is a Federal Act and therefore the AFP has the power nationally to enter into arrangements for the use of AFP resources.²⁵
- this provision relates to arrangements to deploy the ACT's resources outside the Territory in aid of other jurisdictions-deployment of resources outside the Territory carries a range of implications (including cost recovery, contingency planning and staff welfare) which are appropriately dealt with at the most senior level within the Department.²⁶

57.The **ACT Fire Brigade** pointed out Section 15 (2) removes the right of the agency head to manage his or her organisation by removing the right of the agency head to determine what resources are appropriate and can safely be made available for an interstate operation. They argued the responsibility of the agency head under the purchase agreement is brought into question and usurped by a public employee.

57.The **Australian Federal Police Association** argued:

The Division enables a Chief Executive of the Attorney Generals Department to enter into arrangements on behalf of ACT agencies. The (AFP) Association believes that in general, it is inappropriate to involve the Chief Executive in these aspects of emergency management, and in particular, if anyone other than the individual combat agencies should have the power to enter into arrangements with the Commonwealth and interstate agencies, then it should only be the Territory Controller (in consultation and agreement with the Emergency Management Committee and the respective agency head).²⁷

58.In response, the **Government** provided the following arguments:

The Chief Executive is defined in Section 14 of the Interpretations Act 1967 to mean the Chief Executive to which the administration of the Bill is allocated by the ACT Government. This is the Chief Executive Department of Justice & Community Safety. The Australian Federal Police Association submission does not appear to understand the role of Government or the significance to enter arrangements which are inter-Governmental in nature.²⁸

59. The committee concluded that it is appropriate for the Chief Executive Officer to have the powers to enter into co-operative arrangements with Commonwealth and interstate governments.

Recommendation 4

60.The committee recommends that Division 4 of Part 11 of the Bill relating to Commonwealth and interstate co-operation be retained as set out in the Bill.

²⁵ ACT Government, *Supplementary Submission*, Appendix B

²⁶ *ibid*

²⁷ AFPA, *Submission*, p6

²⁸ ACT Government, *Supplementary Submission*

Inclusion of ambulance regulation

61. A key concern raised in submissions and in the public hearing was the inclusion of ambulance service regulation within this Bill.

62. Although submitters supported the concept of ambulance service legislation but there was a strong view that this legislation should be separate from general emergency management legislation.²⁹ In the words of the **Australian Federal Police Association**:

The current Bill not only establishes an emergency management system, but regulates both the ACT Emergency Services and the ACT Ambulance Service. It is our understanding that eventually the Government wishes to incorporate the ACT Fire Brigades into the legislation, and presumably an ACT Police Force if such an organisation is eventually established. Legislation establishing and regulating individual services should be separate to legislation which co-ordinates how the agencies operate with each other in times of disaster.

The Association obviously does not oppose the establishment of legislation which regulates the operations of such organisations, and gives protection to their employees acting in good faith. What the Association does oppose is to incorporate such legislation into emergency management legislation. We submit that the committee recommends that the currently proposed sections relating to the ACT Emergency Service and ACT Ambulance Service be separated and put forward as separate pieces of legislation.³⁰

63. First Aid Australia Pty Ltd, a professional paramedic and pre hospital care service provider, suggested it may be more appropriate to provide a specific legislative framework for the control and operation of ambulances through separate legislation.³¹ In their view, this case is supported by the fact that there is separate legislation covering the operations of the Fire Brigade.³²

64. The ACT Government justified the inclusion of ambulance legislation on the grounds that:

- in keeping with the Government Policy of integrating similar functions into one piece of legislation (eg Environment Act 1997) the inclusion facilitates the continuum of emergency response and an effective co-ordinated approach -it provides an opportunity for the Territory to consolidate all its emergency management/agency provisions in a single statute, a logical and convenient approach which will benefit the community by making the law in this area easier to find and understand- it also reduces the risk of piecemeal amendments to separate statutes which can cause confusion through duplication and, for example, the adoption of different terminology for similar concepts;

²⁹ Eg United Firefighters Union *Submission*

³⁰ AFPA, *Submission*, pp6-7.

³¹ First Aid Australia, Pty Ltd, *Submission*, p1

³² *ibid*

- it is not at all clear why objection should be taken to a consolidated statute unless it is based on a simple desire to retain 'ownership' for parochial reasons of service specific legislation;³³
- the Bill also includes the necessary legislative basis for the medical treatment and protocols undertaken by ambulance officers in providing the high level of patient care which they deliver on a daily basis and while the Chief Officer is subject to the directions of the Chief Executive, those directions cannot relate to the matters the Chief Officer exercises in regard to the provision of medical treatment;³⁴ and
- a comprehensive statute projects a clear message that our emergency services have an integrated, co-operative approach to community safety-the desire for service specific legislation with the inevitable duplication of provisions and cross-referencing is based on an emotive argument which lacks substance or public benefit.³⁵

65. Another important issue raised during the inquiry was the extent to which ambulance regulation should provide for contestability. In line with National Competition Policy, the ACT Government has certain obligations to provide a regulatory framework which promotes competitive neutrality. First Aid Australia Pty Ltd highlighted this issue in its representations to the committee.³⁶ The committee did not receive a detailed response to these issues from the Government. The Government, did, however, advise that the details of the contestability arrangements would be included in regulations to be developed at a later stage.³⁷ The committee found that this proposal was not satisfactory. It does not allow the committee to scrutinise this aspect of the legislation before it is presented in the Legislative Assembly.

66. In summary, the committee concluded that the arguments put forward by the Government in favour of incorporating ambulance service legislation into general emergency services legislation were not compelling enough to justify this move. It may have been acceptable if the Government had achieved support for this approach from key stakeholders, such as the unions, but while there is such strong opposition, it is not an approach which the committee can support. In addition, the committee was of the view

³³ ACT Government, *Supplementary Submission*

³⁴ ACT Government, *Submission*, p7.

³⁵ ACT Government, *Supplementary Submission*, cover page

³⁶ First Aid Australia Pty Ltd pointed out that the title of Part IV- 'The ACT Ambulance Service' only refers to the government ambulance service. They also noted that the duties of the Chief Officer of the ACT Ambulance Service includes providing advice to government in relation to the provision of ambulance services, which by definition excludes anyone providing services defined under ambulance services. In their view having the CEO of one competitor dictating the terms of operation and participation for all participants makes a mockery of competitive neutrality and the concept of a level playing field. First Aid Australia Pty Ltd further argued that in line with the principle of competitive neutrality their organisation should be given approval in the same way the ACT Ambulance Service is in 7(1). First Aid Australia Pty Ltd also questioned the provision in 71(3) which requires the payment of an application fee to be prescribed later. They were uncertain whether they will need further licenses and approvals to fulfil their duty of care of if the Ministerial approval will suffice. (*Submission*)

³⁷ Transcript, pp31-33.

that there is no logic in including information about the ambulance levy (Clauses 60-66) in general emergency services legislation. The concerns raised about the lack of detail of regulatory arrangements covering the contestability of ambulance services provide further justification for not including ambulance services regulation in the Emergency Management Bill 1998. The committee therefore proposes that the Government introduce separate legislation to govern the provision of ambulance services and that the Emergency Management Bill 1998 be confined to matters related to the management of declared emergencies.

67. One member of the committee disagrees with the majority committee view. He considers that ambulance services should come under the control of the Minister for Emergency Services and therefore should still remain as part of the Emergency Management Bill 1998.

68. The committee does not disagree that the Minister for Emergency Services could administer ambulance services, but does not agree that the provision of ambulance services should be governed by the Emergency Management Bill 1998.

Recommendation 5

69. The committee recommends that the Government introduce separate ambulance service legislation.

Recommendation 6

70. The committee recommends that provision for a levy (currently included in Division 3 of Part VI of the Emergency Management Bill) be included in separate ambulance service legislation or in other more appropriate legislation.

Paul Osborne MLA

Chair

11 November 1999

Appendix A: Submissions and Witnesses

Submissions

First Aid Australia Pty Ltd

NSW State Emergency Management Committee

ACT Government (two submissions)

United Firefighters Union of Australia, ACT Branch

ACT Fire Brigade

Australian Federal Police Association

Mr Pat Jones

St John Ambulance Australia (two submissions)

Witnesses at public hearing held on 27 September 1999

Mr Michael Rigo (First Aid Australia)

Mr Russell Shepherd and Mr Conrad Barr (United Firefighters Association)

Mr Jason Byrnes and Mr Scott Rowell (Australian Federal Police Association)

Mr Pat Jones

Mr Gary Humphries MLA (Minister for Justice and Community Safety)

Mr Tim Keady (CEO, Department of Justice and Community Safety)

Mr Mike Castle (Emergency Services Bureau)

Commander Denis McDermott (Australian Federal Police)

Appendix B: Comparison of Different Models³⁸

³⁸ Source: AFPA Submission

AFPA's Proposed Emergency Management Structure