



Mines Safety Bulletin No. 82

Date: 14 January 2008

Subject: Emergency Management Act 2005

Purpose

This safety bulletin is issued to provide general advice regarding the *Emergency Management Act 2005* (the EM Act).

The key objectives of the EM Act are to:

- establish overarching emergency management arrangements for Western Australia's emergency services, including local governments and support organisations — this will establish a framework for managing emergencies of a large scale or catastrophic nature requiring a significant and coordinated response;
- provide necessary legislative powers and protection; and
- improve protection for volunteers.

Overview of the EM Act

The EM Act establishes a *planning* infrastructure based upon previously existing arrangements, including:

- The State Emergency Management Committee (SEMC) — responsible for planning and preparing for an efficient emergency management capability for the State. The EM Act requires SEMC to establish policies and plans.
- District Emergency Management Committees — established for each emergency management district to assist in the establishment and maintenance of effective emergency management arrangements for its district.
- Local Emergency Management Committees — established by the respective local government to advise and assist the local government in ensuring that local emergency management arrangements are established for its district.
- Hazard management agencies — responsible for developing and maintaining State emergency management plans for designated hazards.
- Combat agencies and support organisations, and the activity or function for which they are responsible.
- Local governments' responsibilities in relation to local, community-centred emergency management.

The EM Act also establishes an *operations* infrastructure, including:

- The State Emergency Coordinator (the Commissioner of Police) — responsible for coordinating the response to an emergency during a declared ‘state of emergency’, for chairing the State Emergency Coordination Group, and for providing advice to the Minister and the State Disaster Council.
- The State Emergency Coordination Group (SECG) — this is automatically established if a ‘state of emergency’ is declared, or may be formed at other times at the request of a Hazard Management Agency. The SECG is responsible for ensuring the provision of a coordinated emergency management response across whole of government.
- The State Disaster Council (SDC) — this is automatically formed if a ‘state of emergency’ is declared. The SDC is chaired by the Premier, and includes relevant Ministers and the State Emergency Coordinator. Establishment of the SDC ensures that Government is involved in the management of a declared ‘state of emergency’, and has the opportunity (via the State Emergency Coordinator) to provide the Government’s input to the State Emergency Coordination Group.

Overview of key powers available

The EM Act provides for a graduated scale of emergencies, via the declaration of an ‘emergency situation’ (by the respective hazard management agency) or a ‘state of emergency’ (by the Minister). Different levels of powers are available during an ‘emergency situation’ or ‘state of emergency’. Common to each are the powers to:

- evacuate persons;
- control or use property (e.g. as an evacuation centre);
- detain and decontaminate persons exposed to hazardous substances; and
- obtain and exchange information (e.g. to provide welfare services).

Local governments have additional powers in designated ‘cyclone areas’.

Directions may be given to ‘public authorities’ in relation to the preparation, review or testing of State emergency management plans, and during a declared ‘state of emergency’.

State Emergency Management Committee policies must be complied with.

Regulations under the EM Act

- Prescribe hazard management agencies for hazards, plus combat agencies and support organisations.
- Limit the circumstances, and regulate the manner, in which the powers under the EM Act may be exercised.
- Require emergency management agencies to provide insurance cover for volunteers for compensation for injury caused.

General information about the EM Act

The EM Act came into operation on 24 December 2005. Since then, Western Australia’s emergency management arrangements have been reviewed and there is now a wide selection of sources of information regarding the EM Act and emergency management in the State.

The *Emergency Management Act 2005* can be obtained from the State Law Publisher web site at:

www.slp.wa.gov.au/statutes/swans.nsf/PDF?openPage&Count=600&RestrictToCategory=E

and the Emergency Management Regulations 2006 at:

www.slp.wa.gov.au/statutes/regs.nsf/PDF?openPage&Count=600&RestrictToCategory=E

State emergency management arrangements

Western Australia's emergency management arrangements are based on the provisions of the EM Act and are extended through a number of other documents. Documents forming the State's emergency management arrangements can be found on the Fire and Emergency Services Authority (FESA) website at www.fesa.wa.gov.au/internet and following the menu items through 'State emergency management'.

Alternatively, links to the specific pages are listed below.

- State Emergency Management Policies
www.fesa.wa.gov.au/internet/default.aspx?MenuID=296
- State Emergency Management Plans (WESTPLAN)
www.fesa.wa.gov.au/internet/default.aspx?MenuID=297
- Emergency Management Act tips
www.fesa.wa.gov.au/internet/default.aspx?MenuID=362
- State Emergency Management Committee (SEMC), including minutes of meetings, annual report, strategic and annual business plans, and subcommittees
www.fesa.wa.gov.au/internet/default.aspx?MenuID=284
- Training and development opportunities and information
www.fesa.wa.gov.au/internet/default.aspx?MenuID=285
- Emergency risk mitigation information
www.fesa.wa.gov.au/internet/default.aspx?MenuID=288

Hazard management agencies

Section 4 of the EM Act provides for hazard management agencies (HMAs) to be prescribed by the regulations for emergency management, or an emergency management aspect (prevention, preparedness, response or recovery), of a hazard. The prescription as a HMA may be for the whole of the State, or an area of the State. Two of the most important HMAs are already established by regulations.

Hazard management agency – Commissioner of Police

Regulation 16 of the *Emergency Management Regulations 2006* prescribes the Commissioner of Police as the HMA for the emergency management aspects of preparedness and response, for the whole of the State, for the hazards:

- air crash;
- road crash;
- persons lost or in distress on land, requiring significant coordination of search operations;
- persons lost or in distress on inland waterways within the limits of a port or in a fishing vessel or pleasure craft within the limits of a port or at sea;
- radiation escape from nuclear powered warship;
- space re-entry debris; and
- a terrorist act as defined in *The Criminal Code* section 100.1 set out in the Schedule to the *Criminal Code Act 1995* of the Commonwealth.

Hazard management agency – FESA

Regulation 17 of the Emergency Management Regulations 2006 prescribes FESA as the HMA for the emergency management aspects of preparedness and response, for the whole of the State, for the hazards:

- injury or threat to life of a person trapped by the collapse of a structure or landform;
- cyclone;
- earthquake;
- flood;
- storm;
- tsunami; and
- actual or impending spillage, release or escape of a chemical, radiological or other substance that is capable of causing loss of life, injury to a person or damage to health of a person, property or the environment.

Volunteer employment protection

The EM Act provides for the protection of the employment rights of volunteers when carrying out an emergency management response. Basically, this means that a volunteer who is legitimately absent from work carrying out an emergency management response is entitled to their normal pay and entitlements (long service, sick or recreational leave entitlements or other benefits).

Also, the EM Act provides that an employer must not victimise an employee for the reason that the employee was absent carrying out an emergency management response. An employer victimises an employee if the employer:

- dismisses the employee;
- alters the employee's position to the employee's disadvantage;
- refuses to promote or transfer the employee under competitive and/or reasonable circumstances; or
- does not provide entitlements that the employee is otherwise entitled to.

If an employer does contravene the EM Act, the employee or their representative organisation or association can apply to the Magistrates Court for an order against the employer to correct the contravention.

The EM Act *does not*, however, provide for employers to be required to release employees to attend emergencies. Therefore it is essential that:

- volunteers ensure that their employer is aware that they are a volunteer and therefore may be called upon in an emergency;
- volunteers recognise that their employer has engaged them to do a job and may not always be able to release them to attend an emergency because of the operational requirements of the company;
- volunteers and volunteer agencies acknowledge and thank employers for the support they provide particularly by releasing their employees in an emergency;
- volunteer agencies acknowledge and respect that volunteers have work commitments and try to work around them — in particular, try to spread call-outs equally among members so as to minimise, where possible, the imposition on employers;

- employers, whenever practicable, release employees when they are called up for an emergency, recognising that a volunteer will be contributing to a safer community, which may indirectly benefit the employer; and
- employers are made aware of the volunteer employment protection provisions of the EM Act.

Practical application to the mining industry

The mining industry has the reputation in remote areas of being willing to provide assistance in an emergency. Commonly, mining enterprises have facilities, trained personnel and equipment that may be of immense value to emergency management authorities, such as accommodation, landing strips and other infrastructure, medical or first aid personnel and equipment, mine rescue and fire-fighting personnel and equipment etc.

However, it is now important to realise that such facilities equipment and people may now be requisitioned by emergency management authorities under a penalty prescribed in the law of the State and that it is an offence not to comply. This does not, of course, mean that any such requisition would be made lightly or without consideration for the needs of the provider, but the decision lies with the relevant emergency management authority and not with the provider.

What are the penalties for not complying with a legal direction given by an Authorised Officer (during a state of emergency) or a Hazard Management Officer (during an emergency situation)?

- If a person refuses to comply of their own accord, they are committing an offence under the EM Act and may be subject to a \$50,000 fine.
- If a person is instructed by their employer not to comply, then the employer may be subject to a \$500,000 fine and the person may be subject to a \$50,000 fine.
- It may be a defence for a person instructed by an employer not to comply if that instruction alters the 'state of mind' of that person.

Ensuring the best outcome

Mining companies (and others) should be aware of their new responsibilities under the emergency management legislation. A proactive approach will ensure the best possible outcome in any given emergency situation.

Mining companies operating in the remote areas of the State are strongly enjoined to become familiar with the requirements under the EM Act and to co-operate by ensuring that the relevant State, regional and local emergency management authorities (usually the most senior police officer in the area) are made aware of the type and extent of assistance that they may be able to call upon in any given type of emergency situation. This will enhance the industry's reputation as a 'good neighbour' and may help to save lives in the event of the kind of emergency contemplated by the EM Act.



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