

No. 3 of 2003

VIRGIN ISLANDS
DISASTER MANAGEMENT ACT, 2003
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SCHEDULE

No. 3 of 2003

Disaster Management Act, 2003

Virgin Islands

I Assent

THOMAS MACAN,
Governor
30th April, 2003

VIRGIN ISLANDS

No. 3 of 2003

An Act to provide for the more effective organization of the mitigation of, preparedness for, response to and recovery from, emergencies and disasters in the Virgin Islands and other matters connected therewith.

[Gazetted 8th May, 2003]

PART 1 PRELIMINARY

Short title
and
commencement

1. This Act may be cited as the Disaster Management Act, 2003 and shall come into force on such date as the Governor may, by Proclamation published in the *Gazette*, appoint.

Interpretation

2. In this Act, unless the context otherwise requires,

“**Act**” includes Regulations made under this Act;

“**Council**” means the National Disaster Management Council established under section 9(1)

“**Director**” means the Director of the Department of Disaster Management referred to in section 5;

“**disaster emergency**” means a state of emergency declared under section 2 of the Emergency Powers (Disasters) Ordinance or section 2 of the Virgin Islands (Emergency Powers) Order, 1967 on account of the occurrence of a disaster;

“**Emergency Operations Centre**” means an Emergency Operations Centre established under section 12;

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- “Fund”** means the Emergency Disaster Fund established under section 26(1);
- “hazard”** means a natural or man-made occurrence that poses a threat to people, property and the environment and is capable of causing a disaster and includes an earthquake, fire, flood, health hazard, meteorological hazard, landslide, slope failure, storm surge, technological hazard, tsunami, tidal wave or volcanic eruption;
- “hazard inspector”** means a hazard inspector referred to in section 5;
- “listed place”** means a place listed in the marine shelters list;
- “listed premises”** means the premises that are listed in the shelters list;
- “marine shelter master”** means a marine shelter master referred to in section 5;
- “marine shelter officer”** means a marine shelter officer referred to in section 5;
- “marine shelters list”** means the list of places established and maintained under section 13(1)(b);
- “National Alert System”** means the National Alert System referred to in section 21(1);
- “National Disaster Management Plan”** means the National Disaster Management Plan referred to in section 11;
- “National Emergency Broadcast System”** means the National Emergency Broadcast System referred to in section 21(2)(a);
- “National Emergency Operations Centre”** means the National Emergency Operations Centre referred to in section 12;
- “National Siren System”** means the National Siren System referred to in section 21(2)(b);
- “Policy Review”** means the Disaster Management Policy Review referred to in section 10(2)
- “shelter manager”** means a shelter manager referred to in section 5;
- “shelter officer”** means a shelter officer referred to in section 5;
- “shelter list”** means the list of premises established and maintained under section 13(1)(a);
- “statutory board”** means any board, authority, corporation, commission, committee, council, trust or other like body established by or under an enactment.

PART II
ROLE OF GOVERNOR

Declaration of
Disaster areas

3. Where a disaster emergency exists, the Governor may, by Proclamation and after consultation with the Chief Minister, declare either a specific area or the whole Territory a “Disaster Area”

Duties of
Governor

4. It shall be the duty of the Governor

- (a) to cause to be prepared a comprehensive plan and programme which shall be integrated into and coordinated with other plans and programmes of the Government and which shall include
 - (i) mitigation of injury and damage caused by hazards;
 - (ii) emergency relief;
 - (iii) identification of areas, people, building and infrastructure particularly vulnerable to hazards;
 - (iv) taking measures for building and other development standards, safety measures for securing permanent structures and other mitigation measures designed to eliminate or reduce disasters or the impacts of hazards;
 - (v) authorization of the erection or other construction of temporary works designed to mitigate danger, damage or loss from other hazards, and the procedures therefore;
 - (vi) organization of personnel and establishment of chains of command;
 - (vii) coordination of emergency management activities;
 - (viii) any other matter he thinks necessary or expedient;
- (b) in accordance with the plan and programme for emergency management of the Territory, and out of funds appropriated for these purposes, to procure and requisition supplies, medicines, materials and equipment, to institute training programmes and public information programmes;
- (c) to take all preparatory steps, including the partial or full mobilization of emergency services;
- (d) to ensure the furnishing of adequately trained and equipped forces for disaster response and recovery;

- (e) out of funds appropriated for that purpose, to carry out studies and surveys of industries, resources and facilities in the Territory as may be necessary to ascertain the capabilities of the Territory for emergency management phases of Mitigation, preparedness, response and recovery And to plan for the most efficient emergency use thereof.

**PART III
DIRECTOR OF DISASTER MANAGEMENT**

Department of
Disaster
Management
and appointment
of Director and
other officers.

5. (1) There shall be a Department of Disaster Management, which shall be headed by a Director appointed by the Governor.

(2) The Director shall be assisted by such number of other public officers or other persons as may be appointed or designated by the Governor for the purpose, including deputy or assistant directors or other public officers appointed or designated to discharge the functions of hazard inspectors, shelter managers, marine shelters masters, shelter officers or marine shelter officers under this Act.

(3) The Director, any deputy or assistant director, any member of the Police force and any person appointed or designated under subsection (2) shall have all the enforcement powers of a hazard inspector, shelter manager, marine shelter master, shelter officer or marine shelter officer under this Act.

Functions of the
Director

6. (1) The Director shall, subject to section 8, be responsible for assisting the Governor in coordinating the general policy of the Government relating to the mitigation of, preparedness for, response to and recovery from, emergencies and disasters in the Territory.

(2) The Director shall, for the purposes of subsection (1) and in addition to discharging other functions conferred on him by this Act or any other law,

- (a) review and appraise the programmes and activities of the Government in the light of the policy of this Act for the purpose of determining the extent to which such programmes and activities are contributing to the achievement of the policy, and to make recommendations to the Governor with respect thereto;
- (b) develop and recommend to the Governor national policies to foster and promote the mitigation of, preparedness for, response to and recovery from, emergencies and disasters in the Territory;

- (c) gather timely and authoritative information concerning the conditions and trends in the quality of the environment, both current and prospective, as these relate to the likelihood of disasters in the Territory;
- (d) analyze and interpret the information gathered under paragraph (c) for the purpose of determining whether the conditions and trends referred to in that paragraph are interfering, or are likely to interfere with the achievement of the policy of this Act;
- (e) prepare and review periodically disaster risk assessment maps of the Territory;
- (f) conduct programmes of public information and education on the mitigation of, preparedness for, response to and recovery from, emergencies and disasters;
- (g) liaise with persons and organizations within and without the Territory the purpose of exchanging information and facilitating the harmonization of the policies of such persons and organizations with those of the Government relating to the prevention And mitigation of, preparedness for, Response to and recovery from, Emergencies and disasters in the Territory; and
- (h) provide technical advice on draft regulations, whether under this Act or any other legislation, relating to the mitigation of, preparedness for, response to and recovery from, emergencies and disasters in the Territory.

(3) Where the Governor considers it expedient so to do, he may delegate the performance of any of the functions referred to in subsection (2) to any person he thinks fit.

Powers of
Director during
A disaster
emergency

7. Where a disaster emergency exists, the Director shall have power to

- (a) require public officers to respond and assist as directed;
- (b) requisition publicly owned vehicles, plant and equipment and determine their use and deployment; and
- (c) determine how publicly owned facilities shall be used,

and for the purpose of this section “publicly owned” means owned by the Government or a statutory board whose funds include monies

appropriated by the Legislative Council.

Director subject
To directions

8. The Director shall be subject to such directions of a special or general character in relation to the policy to be followed in the exercise of the powers conferred and the duties imposed on him by or under this Act as the Governor gives on any matter that affects the public interest, and the Director shall give effect to all such directions

**PART IV
NATIONAL DISASTER MANAGEMENT COUNCIL,
POLICY REVIEW AND NATIONAL DISASTER
MANAGEMENT PLAN**

Establishment
Of National
Disaster
Management
Council

9. (1) There is established a National Disaster Management Council.

(2) The provisions of the Schedule shall have effect as to the constitution, functions and procedures of the Council and the tenure of office of members of the Council.

(3) Subject to section 39(7), the Executive Council may, by Order published in the *Gazette*, amend the provisions of the Schedule.

Annual report
and Policy
Review

10. (1) Within three months after the end of every year, the Director shall prepare a report of the activities of his Department for the preceding year, and transmit the report to the Governor who shall present it to the Executive Council for approval and cause copies of the report to be laid before the Legislative Council.

(2) The report prepared under subsection (1) shall include a Disaster Management Policy Review relating to the mitigation of, preparedness for, response to and recovery from, emergencies and disasters in the Territory.

(3) When the Policy Review is approved, with or amendment, By the Executive Council, the Director shall, after the report referred to in subsection (1) has been laid before the Legislative Council, cause the Policy Review so approved to be published in the *Gazette* and a newspaper published and circulating in the Territory.

The National
Disaster
Management
Plan

11. (1) The Director shall prepare at regular intervals not exceeding five years, a National Disaster Management Plan, comprising the statement of the contingency arrangements under the coordination of the Director for responding to the threat or event and aftermath of a disaster in the Territory, whether or not the threat or disaster is such as to prompt the declaration of a disaster emergency.

(2) The National Disaster Management Plan shall include

- (a) procedures related to disaster preparedness and response of public officers, Ministries and Departments of Government, statutory boards and persons or organizations who volunteer or are required by law to perform functions related to the preparedness for and response to disasters in the Territory;
- (b) procedures for coordinating the National Disaster Management Plan and its

implementation with the preparation and implementation of disaster response plans by persons and bodies referred to in paragraph (a);

- (c) procedures for informing persons and bodies referred to in paragraph (a) and the public in the Territory and elsewhere of the existence of a threatened hazard alert under section 24 or the existence of a disaster emergency;
- (d) procedures for preparing and maintaining inventories of services, systems and supplies for the preparedness for and response to emergencies and disasters;
- (e) procedures for mobilizing services and systems for the preparedness for and response to emergencies and disasters during a threatened hazard alert under section 24 or the existence of a disaster emergency, including procedures for the manning of Emergency Operations centres and for the protection of the family and property of persons required for the purpose of manning such centres or required otherwise to perform other duties of protecting the public;
- (f) procedures for the protection and restoration of communications, both nationally and internationally, during a threatened hazard alert under section 24 or in the event or aftermath of a disaster emergency;
- (g) procedures for the release, distribution and replenishment of emergency stores of supplies of food, water, clothing and medical supplies during a threatened hazard alert under section 24 or in the event or aftermath of a disaster emergency;
- (h) procedures for safeguarding against fire, epidemics and pollution during a threatened hazard alert under section 24 or in the event or aftermath of a disaster emergency;
- (i) procedures for the provision of shelter for persons during a threatened hazard alert under section 24 or in the event or aftermath of a disaster emergency;
- (j) procedures for cooperation with international organizations and governments of other countries during a threatened hazard alert under section 24 or in the event or aftermath of a

disaster emergency;

- (k) procedures for accepting and facilitating the distribution of volunteer services and relief supplies during a threatened hazard alert under section 24 or in the event or aftermath of a disaster emergency;
- (l) procedures to apply in the event that the evacuation of the residents of any area is considered to be desirable in the event of a disaster emergency;
- (m) procedures to apply where the requisitioning of private property is considered to be desirable in the event of a disaster emergency, including procedures for assessing and paying compensation; and
- (n) procedures for protecting life and property from the dangers of looting and riotous behavior in the event or aftermath of a disaster emergency

(3) The Director shall submit the National Disaster Management Plan to the Governor who shall cause it to be reviewed by the Council and after such review, the Governor shall cause it and the recommendations of the Council to be submitted for the approval of the Executive Council.

(4) The Executive Council may,, subject to such amendments,, if any, as it thinks fit, approve the National Disaster Management Plan.

(5) The Executive Council shall cause the National Disaster Management Plan approve by it to be published in the Gazette and the National Disaster Management Plan so published shall form part of the Government's official policy on disaster management.

(6) For the avoidance of doubt, the provisions of this section apply to an amendment to the National Disaster Management Plan published under subsection (5) as they apply to the National Disaster Management Plan.

(7) The Director shall consult the Council in the preparation of a comprehensive disaster management strategy for the implementation of the National Disaster Management Plan.

PART V EMERGENCY OPEATIONS CENTRES AND SHELTERS

Emergency
Operations
Centres

12. The Director shall be responsible for the establishment and maintenance of a National Emergency Operations Centre to function as the headquarters of the activities undertaken in response to a disaster emergency or threatened hazard alert, and may establish and maintain supplementary Emergency Operations Centres or facilitate the establishment and maintenance of such supplementary Emergency Operations Centres, whether distributed according to geographical location or otherwise, by persons or bodies referred to in section 11 (2)(a).

Shelters

13. (1) The Director shall establish and maintain

- (a) a list of premises available for and suitable for use as emergency shelters; and
- (b) after consultation with the Director of Marine Services, a list of places available For and suitable for use as emergency Shelters for boats and other vessels,

during a threatened hazard alert under section 24 or in the event or aftermath of a disaster emergency.

(2) In the shelters list and, after consultation with the Director of Marine Services in the marine shelters list, the Director shall

- (a) distinguish between listed premises or listed places in Crown occupation and other premises or places, as the case may be;
- (b) list the facilities available at each listed premises or listed place, as the case may be;
- (c) indicate the suitability of each listed premises or listed place, as the case may be, for use during a threatened hazard alert under section 24 or in the event or aftermath of a disaster emergency;
- (d) indicate the periods for, and the conditions under which, the listed premises or listed place, as the case may be, would be suitable for use in the instances mentioned in paragraph (c); and
- (e) in the case of the marine shelters list, indicate
 - (i) the maximum draft and length of boats and other vessels allowed in the listed place;
 - (ii) the types of boats and other vessels that shall not be allowed in the listed place;
 - (iii) the mooring arrangement to be compiled with while the listed place is being used for the purposes of this Act;
 - (v) the maximum period that persons would be permitted to stay in listed place while the listed place is being used for the purpose of this Act;
 - (vi) the extent and boundaries of the

Listed place.

(3) Subject to subsection (4), the Director shall

- (a) assign to each listed premises, a shelter manager charged with the responsibility of managing the listed premises during any period where the listed premises are being used for the purposes of this Act, and may assign shelter officers to assist any shelter manager;
- (b) after consultation with the Director of Marine Services, assign to each listed place, a marine shelter master charged with the responsibility of managing the listed place during any period where the listed place is being used for the purposes of this Act, and may assign marine shelter officers to assist any marine shelter master.

(4) Where listed premises are a listed place are or is not in Crown occupation, the owner or occupier of the listed premises or listed place shall be notified in writing of the names of the shelter managers and shelter officers, or marine shelter masters and marine shelter officers, who are to be assigned to the listed premises or listed place, as the case may be.

(5) The owner or occupier of any listed premises or listed place shall not be liable to any person taking shelter in the listed premises or listed place for any injury to such person or damage to or loss of any person's property, which injury, damage or loss arises from the condition of the listed premises or listed place, where the use of the listed premises or listed place for shelter was within the limits of suitability indicated for the listed premises or listed place under subsection (2) (c) and (d).

(6) The provisions of subsection (5) are without prejudice to any other right or remedy which the person suffering injury, damage or loss may have

- (a) against a person other than the owner or occupier of the listed premises or listed place, as the case may be; or
- (b) against the owner or occupier of the listed premises or listed place for injury, damage or loss arising otherwise than from the condition of the listed premises or listed place, as the case may be.

PART VI OBLIGATIONS OF PUBLIC OFFICERS AND OTHER PERSONS

14. Every Permanent Secretary, Head of a Department of Government and statutory board shall

- (a) ensure that there is at all times an officer of his Ministry, Department of board,

Liaison
officers

designated as the liaison officer for Communication with the Director in relation to the procedures of the Ministry, Department or board under Section 11(2)(a) and disaster management matters generally;

- (b) supply to the Director annually or at any such time, in such form and by such date as may be required by the Governor such information as may be Requested by the Director for the Purposes of sections 6(2) and 11(2)
- (c) as required by the Governor, cause a disaster management plan for his Ministry, Department or board to be prepared or reviewed from time to time and then submitted to the Director.

Director to
Establish a
liaison with
the private
sector

15. (1) The Director shall establish a liaison with such organizations in the private sector as he thinks fit for the purposes of establishing communication links with them in relation to the procedures of those organizations under section 11(2)(a).

(2) For the purposes of subsection (1), the Director may enter into such arrangements as he considers necessary with any organization requiring the provision by that organization of any information as may be requested by the Director for the purposes of sections 6(2)(a) and 11(2).

16. (1) Before any person, other than the Attorney General, a judge or magistrate, the Commissioner of Police or the Chief Fire Officer, exercises any disaster preparedness and response related powers under this Act or any other enactment, that person shall, subject to subsections (2) to (4), consult the Director.

(2) The obligation to consult under subsection (1) shall not apply

- (a) during a disaster emergency, where the person exercising the powers referred to under subsection (1) considers that the urgency of the matter or difficulty of logistics makes such consultation impracticable; or
- (b) in respect of the exercise of any power in relation to which a waiver by the Director of his right to be consulted is in effect under subsection (3)

(3) The Director may, with the approval of the Governor, waive his right to be consulted by Notification published in the Gazette.

(4) A notification under subsection (3) may relate to the exercise of any power or category of powers or to be exercise of a power in a specific instance.

PART VII
SPECIALLY VALNERABLE AREAS

Delimitation
of specially
vulnerable
areas

17. (1) Subject to section 39(7), the Executive Council may, on the recommendation of the Council, designate, any area as an area that is specially vulnerable to a hazard (referred to in this Act as “a specially vulnerable area”) by Order published in the *Gazette*.

(2) Before making an Order under subsection (1), the Executive Council shall arrange for a draft Order prepared after consultation by the Director with the relevant Government institutions and other organizations in the private sector and delimiting any area that the Director recommends for designation as a specially vulnerable area, to be published in the *Gazette* and in at least one newspaper circulating in the Territory and presented by the Director for discussion and comment at a public consultation.

(3) The Director shall submit a report on the public consultation held under subsection (2) to the Governor, who shall cause the report and the draft Order to be reviewed by the Council, and the Council shall, upon completion of its review, make such recommendations to the Executive Council concerning the making of an Order under subsection (1) as the Council thinks fit.

(4) For the avoidance of doubt, the provisions of this section apply to the making of an amendment to an Order under subsection (1) as they apply to the making of such an Order.

Special area
precautionary
plans for
specially
vulnerable areas

18. (1) The Director may prepare for the approval of the Executive Council, a special area precautionary plan for the mitigation and prevention of disasters in a specially vulnerable area.

(2) A special area precautionary plan may include strategies, policies and standards for development and for maintenance of structures in the specially vulnerable area or any such proposed area.

(3) A special area precautionary plan may communicate strategies, policies, standards or designations by means of maps and diagrams.

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(4) A special area precautionary plan does not authorize any development that is not permitted under the Land Development (Control) Ordinance, the Buildings Ordinance or any other enactment.

Draft special
Area
precautionary
plan

19. (1) Before approving a special area precautionary plan, the Executive Council shall cause a draft special area precautionary plan prepared by the Director to be published in the *Gazette* and in at least one newspaper circulating in the territory, and invite the public to submit comments on the draft special area precautionary plan to the Director in writing.

(2) The Executive Council shall allow a period of not less than four weeks and not more than eight weeks for the receipt by the Director of comments under subsection (1).

(3) From the date of the invitation to the public under subsection (1), the Director shall, on written application by any person, permit access to any technical studies used in the preparation of the draft special area precautionary plan.

Approval of
Special area
precautionary
plan.

20. (1) After the expiration of the time allowed under section 19(2) for the submission of comments, the Director shall submit a report on the comments received to the Governor, who shall cause the report and the draft special area precautionary plan to be reviewed by the Council.

(2) The Director shall, on the recommendation of the Council, amend the draft special area precautionary plan before submitting it to the Executive Council for approval.

(3) The Executive Council may, subject to such amendments, if any, as it thinks fit, approve the special area precautionary plan submitted under subsection (2).

(4) The Executive Council shall cause the special area precautionary plan approved by it to be published in the Gazette and the special area precautionary plan so published shall form part of the Government's official policy on disaster management.

(5) For the avoidance of doubt, the provisions of this section and sections 18 and 19 apply to an amendment to a special area precautionary plan published under subsection (4) as they apply to a special area precautionary plan.

PART VIII
NATIONAL ALERT SYSTEM AND THREATENED HAZARD
ALERTS

National Alert
System

21. (1) There shall be a National Alert System for the Territory.

(2) The National Alert System shall be operated under the supervision of the Director and shall consist of

(a) A National Emergency Broadcast System; and

(b) A National Siren System.

National
Emergency
Broadcast System

22. (1) The National Emergency Broadcast System shall enable the Government to broadcast emergency announcements directly from the National Emergency Operations Centre to the public on such frequency or in such manner as is specified in a memorandum of understanding between the Government and a person who is licensed to operate a telecommunications station under the Telecommunications Act or any enactment amending or replacing that Act.

(2) No announcement shall be broadcasted on the National Emergency Broadcast System unless it is in writing and approved and signed by the Governor, acting after consultation with the Director.

(3) Subject to subsection (7), a person who contravenes subsection (2)

(a) Commits an offence and is liable, on summary conviction, to a fine not exceeding five thousand dollars; and

(b) is, without prejudice to the power of the court to make any other order or grant any other relief, liable in civil

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proceedings to pay damages to any person who suffers injury, loss or damage as a result of relying on the announcement.

(4) The Director shall keep an original signed copy of all announcements broadcasted on the National Emergency Broadcast System and shall, upon application in writing, provide any person with a certified copy of any such original signed copy.

(5) Judicial notice shall be taken of an original signed copy of certified copy referred to in subsection (4)

(6) All announcements broadcasted on the National Emergency Broadcast System shall be presumed to be broadcasted in accordance with subsection (2), unless notice to the contrary is subsequently given by an announcement broadcasted on the National Emergency Broadcast System or by an advertisement issued by the Director and published in the *Gazette* and once issue of a newspaper circulating in the Territory.

(7) A person with whom the Government has entered into a memorandum of understanding referred to in subsection (1)

- (a) is entitled to presume that all announcements being broadcasted on the National Emergency Broadcast System are being broadcasted in Accordance with subsection (2); or
- (b) shall not be liable under subsection (3),

unless he knew or had reason to believe that the announcement was not being broadcasted in accordance with subsection (2)

National Siren System

23. (1) The National Siren System shall consist of a siren which shall be activated not more than ten minutes before an announcement is broadcasted on the National Emergency Broadcast System so as to notify the public that the broadcasting of such an announcement is imminent.

(2) The National Siren System shall not be activated unless the Director does so himself or specifically authorizes an officer of the Department of Disaster Management, or such other person as he thinks fit, to do so.

(3) A person who willfully activates the National Siren System without the authorization of the Director commits an offence and is liable, on summary conviction, to a fine not exceeding five thousand dollars.

Threatened Hazard alerts

24. (1) For the purposes of this Act,

- (a) a threatened hazard alert exists when an announcement that there is a substantial prospect that a hazard will occur in the Territory is broadcasted on the National Emergency Broadcast System in Accordance with section 22(2); and
- (b) a threatened hazard alert ceases to exist when an announcement to that effect is

Broadcasted on the National Emergency Broadcast System in accordance with Section 22(2).

(2) The Director shall, immediately upon becoming aware of the fact, inform the Governor that there is a substantial prospect that a hazard will occur in the Territory.

(3) Where a threatened hazard alert exists and the Governor, after consultation with the Director, is satisfied that the lives of residents in any part of the Territory would be at risk when the hazard occurs, the Governor may cause an announcement advising those residents to evacuate that part of the Territory in the interest of their own personal safety.

- (a) to be broadcasted on the National Emergency Broadcast System in Accordance with section 22(2); or
- (b) to be made by loudspeaker in that part of the Territory by members of the Police Force.

PART IX INTERNATIONAL INSTRUMENTS AND MEMORANDA OF UNDERSTANDING

International Instruments and Memoranda of Understanding.

25. The Executive Council may, after consultation with the Council,

- (a) make, subject to section 39 (7), an Order applying to the Territory the provisions of any regional, sub-regional or international instrument relating to emergencies and disasters which applies to the Territory; or
- (b) enter, subject to section 19 of the Virgin Islands (Constitution) Order, 1976, into such arrangements or memoranda of understanding as it considers necessary with other States, territories or organizations to enhance the Territory's management plans and efforts as they relate to the mitigation of, preparedness for, response to and recovery from, emergencies and disasters.

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PART X EMERGENCY DISASTER FUND

Establishment of Emergency Disaster Fund

26. (1) there is established a fund to be known as the Emergency Disaster Fund which shall comprise

- (a) such monies as may be appropriate by the Legislative Council;
- (b) such donations and grants as may be made by persons and organizations approved by the Ministry of Finance;

- (c) such sums of money as may be raised by way of loan with the approval of the Legislative Council upon the Recommendation of the Minister Responsible for finance (in this Part Referred to as “the Minister”); and
- (d) such other monies as the Council may raise through activities organized by or on behalf of the Council.

(2) The Fund shall be administered by a Committee (hereinafter referred to as “the Fund Committee”) comprising the Financial Secretary, as *ex officio* Chairman, and not more than four other persons, appointed by instrument under the hand of the Governor after consultation with the Minister

(3) The Fund Committee appointed under subsection (2) may include members of the Council.

(4) The members of the Fund Committee, other than the Chairman, shall be appointed

- (a) for a period of two years; and
- (b) on such other terms and conditions as the Governor may determine.

(5) The Fund Committee shall

- (a) meet at such times and place as its Chairman may determine; and
- (b) regulate its procedure in such manner as it may determine.

Application of Fund

27. (1) The Fund shall be applied towards recovery efforts and the adoption and promotion of preventive measures before, during and after a disaster emergency.

(2) The Fund may, subject to the prior approval of the Executive Council, be applied towards assisting, by way of grants or loans, other countries or territories that have suffered disasters to which this Act would apply.

Obligations of the Fund Committee

28. In the administration of the Fund Committee shall, in consultation with the Council, be responsible for

- (a) determining the criteria to be applied in
 - (i) funding projects and programmes in relation to the mitigation of, preparedness for, response to and recovery from, emergencies and disasters;
 - (ii) providing financial assistance to persons for their relief and recovery from an emergency or disaster;
- (b) the keeping of proper books of accounts

and other records;

- (c) the preparation and submission of reports relating to the administration of the Fund to the Minister; and
- (d) making recommendations to the Council on activities geared towards raising funds as provided for in section 26 (1) (d).

Withdrawal
of money
from the Fund

29. (1) Subject to subsection (2), no money shall be withdrawn from the Fund except upon the authority of a warrant under the hand of the Minister who shall make such authorization after consultation with the Fund Committee.

(2) Where it is not reasonably practicable for the Minister to sign a warrant, the Financial Secretary may disburse the necessary funds subject to ratification by the Minister at the earliest opportunity.

Manner of
keeping Fund

30. (1) Any money credited to the Fund shall be kept in an account at such bank in the Territory as the Minister may approve.

(2) The Fund Committee may, with the approval of the Minister, invest monies credited to the Fund in such manner as it considers prudent and any interest or benefit received from such investment shall form part of the Fund.

Accounts
and audit

31. (1) The accounts of the Fund shall be audited and reported on annually by the Chief Auditor, and for that purpose the Chief Auditor or any person authorized by him in that behalf shall have access to all books, records, returns and other documents relating to such accounts.

(2) The Chief Auditor shall submit the report referred to in subsection (1) to the Minister who shall cause it, together with the report received by him under section 28(c), to be laid before the Legislative Council.

PART XI MISCELLANEOUS

Disaster
hazard
inspections

32. (1) Where a magistrate is satisfied, on evidence on oath by a hazard inspector, that the condition of any premises is reasonably suspected of posing a danger of serious injury to persons outside of the premises in the event of a disaster, the magistrate may issue or renew an order authorizing the hazard inspector to enter and inspect those premises.

(2) An order under this section shall expire at the end of thirty days after the date on which it is made, unless it is renewed before expiry for one or more periods, each of which shall not be more than thirty days.

(3) An order under this section shall be carried out during daylight hours unless the order authorizes otherwise.

(4) The Director shall provide himself, staff, volunteer organizations and each hazard inspector with a distinctive badge, tag or other identification device which may conveniently be carried by himself and each hazard inspector while engaged in the performance of their duties under this section or section 33.

(5) A hazard inspector who exercises a power under this section or section 33 shall identify himself as a hazard inspector to any person in control of the premises to be inspected at the time of the inspection, by the production of his hazard inspector's badge, tag or other identification device issued under subsection (4) and shall explain the purpose of the inspection.

(6) An order under this section may be issued or renewed on application notwithstanding that no notice of the application is given to any person who may be affected thereby.

(7) The hazard inspector shall prepare a report on the results of any inspection carried out under this section, a copy of which shall be provided to the occupier of the premises.

(8) Where the hazard inspector is of the opinion, after carrying out an inspection under this section or section 33, that the condition of any premises in the event of a disaster, and that the condition of the premises which gives rise to the danger constitutes a violation of any other law, he shall send a copy of the report to any Ministry, Department or other body responsible for the administration of that other law, and notify the occupier of the premises that the report has been supplied to the Ministry or Department in question.

(9) Notice of the availability of a report under subsection (7) or (8) may be given by advertisement in the Gazette and in at least one issue of a newspaper circulating in the Territory, where attempts to identify or find an occupier, for the purpose of providing him with a copy of the report under subsection (7) or notifying him of its delivery to a Ministry or Department under subsection (8), have not succeeded after one month.

(10) A report of a hazard inspector under this section shall be admissible in any legal proceedings as evidence of the truth of the report's finding of fact, whether or not the Crown is a party to such proceedings.

(11) This Act does not prejudice any right under any other law to take steps to ameliorate the condition of premises considered to pose danger under subsection (8).

Power of hazard inspector to enter premises and make orders during a threatened hazard alert

33. (1) Notwithstanding the provisions of section 32 and any other law to the contrary, a hazard inspector may, in the event of a threatened hazard alert under section 24,

- (a) enter any premises at any time to ensure that there are no objects in the premises left in such state as to be capable of causing people or property to be endangered if the hazard occurs;
- (b) order the proper securing or removal of objects found in premises entered into under paragraph (a) which, in the opinion of the hazard inspector, are capable of causing people or property to be endangered if the hazard occurs;
- (c) order the removal to a safe location of any vehicle, boat or other vessel, or machinery which, in the opinion of the hazard inspector is in a derelict state or is abandoned whether in premises or in a public place or road, and is capable of causing people or property to be

Endangered if the hazard occurs; and

- (d) order the cutting and trimming of trees and branches which, in the opinion of the hazard inspector, are capable of causing people or property to be endangered if the hazard occurs.

(2) Where a hazard inspector makes an order under

- (a) subsection (1)(b), the owner or occupier of the premises shall comply with the order; and
- (b) subsection (1)(c), the owner or person who has charged of the vehicle, boat or other vessel, or machinery shall comply with the order.

(3) Where, for the purposes of subsection (1)(d), a tree is in a place other than a public place, the hazard inspector shall first obtain the permission of the owner or occupier of the property on which the tree is located before making the order, except where the owner or occupier of the property cannot be found within a reasonable period of the threatened hazard alert under section 24.

(4) Where the owner or occupier refuses to grant a hazard inspector permission in accordance with subsection (3), the hazard inspector shall refer the matter to the Council which may issue such directive as it considers fit and its decision shall be final.

(5) Where an order under subsection (1)(d) or a directive under subsection (4) is made in relation to a tree located,

- (a) in a place other than a public place, the owner or occupier of the property shall comply with the order or directive;
- (b) in a public place, such person as the Director may designate for that purpose shall comply with the order.

(6) Where, for the purposes of subsections (1)(b) and (c) and (2), the owner or occupier of the property, or the owner or person who has charge of the vehicle, boat or other vessel, or machinery, as the case maybe, cannot be found, the hazard inspector may place a copy of the order in a conspicuous place on the property or the vehicle, boat or other vessel, or machinery, requiring compliance with the order within such period as the hazard inspector may specify in the order.

(7) Where a person fails to comply with an order under this section,

- (a) the hazard inspector may execute the order and costs thereof may be recovered from that person by civil action before a magistrate; and
- (b) that person commits an offence and is liable, on summary conviction, to a fine not exceeding five hundred dollars.

(8) For the purposes of subsection (1) (c), the question as to which place constitutes a safe location shall be determined by the hazard inspector.

Assaulting or obstructing the Director etc.

34. (1) A person commits an offence if he assaults or obstructs the Director, a hazard inspector, a shelter manager, a marine shelter master, a shelter officer, marine shelter officer or a member of the Police Force or any person appointed under section 5(2) in the execution of a duty in relation to

- (a) the functions of a shelter manager, a marine shelter master, a shelter officer or a marine shelter officer under section 13;
- (b) the functions of a hazard inspector under section 32; or
- (c) functions under any Regulations or By-Laws made under this Act.

(2) A person who commits an offence under subsection (1) is liable, on summary conviction, to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding two years, or both.

(3) A magistrate may suspend, for such period as he thinks fit, a boat master's licence issued in the Territory in the name of a person who assaults or obstructs a marine shelter master or marine shelter officer in the execution of his duty and who is found to have committed an offence under subsection (2) as a result thereof.

Offences and penalties under Regulations and By-Laws

35. (1) Any Regulations or By-Laws made under this Act may create offences and impose penalties of a fine not exceeding one thousand dollars or imprisonment not exceeding one year, or both.

(2) It shall be a defense to any charge of an offence under any Regulations or By-Laws which, at the time of the act charged as an offence, had been published only in the manner permitted by section 39(10), for the person charged to show that he did not see or hear an announcement or see a notice or learn from credible sources that the act charged constituted an offence.

Power to institute proceedings

36. (1) Where an offence is created by this Act, or Regulations or By-Laws made under this Act, an information against any person accused of committing that offence may be laid by the Director, a member of the Police Force or any other person authorized in writing by the Governor, after consultation with the Attorney General.

(2) Subject to subsection (1), an information may be laid by a shelter manager or marine shelter master against a person accused of committing an offence under any By-Law made under this Act.

Exemption from Civil liability

37. The Director, a hazard inspector, a shelter manager, a marine shelter master, a shelter officer, a marine shelter officer, a member of the Police Force or a person appointed or designated under section 5(2) shall not be liable for any act done by him in good faith in the execution of any duty or function under this Act.

Payment out of the Consolidated Fund

38. Any cost associated with the functions of the Council or with the implementation of the provisions of this Act shall be paid out of the Consolidated Fund after allocation in accordance with budgetary procedure.

Regulations
and By-laws

39. (1) The Governor may make Regulations generally for the purpose of implementing the provisions of this Act, and in particular, for prescribing rules of procedure for the Council.

(2) The Governor may make By-Laws regulating the use of listed premises or listed places during any period when they are being used as emergency shelters for the purpose of this Act.

(3) By-Laws made under subsection (2) for listed premises or listed places which are not in Crown occupation may be made on the recommendation of the occupiers of the premises.

(4) By-Laws made under subsection (2) may confer on shelter managers and shelter officers, or marine shelter masters and marine shelter officers, authority

- (a) to refuse admission of persons, or boats or other vessels, to any listed premises or listed place to prevent overcrowding;
- (b) to prohibit the bringing of pets or other animals into the listed premises or listed place;
- (c) to prohibit the bringing of weapons or hazardous materials into the listed premises or listed place;
- (d) to limit by weight or bulk the luggage or other property to be brought into the listed premises or listed place by persons taking shelter;
- (e) to disclaim, as a condition of permitting persons using the listed premises or listed place to bring luggage or other property into the listed premises or listed place, responsibility for the safety of such property, including responsibility for negligent damage to such property;
- (f) to refuse entry to the listed premises or listed place of any person reasonable suspected of having a prohibited item in his luggage, boat or other vessel, or other property to be brought into the listed premises or listed place, unless that person submits to a search of the luggage, boat or other vessel, or other property;
- (g) to allocate the use of the space and the facilities of the listed premises or listed place among different users thereof, and to impose reasonable charges to cover the cost of providing telephone and other services beyond the allocation of physical space;
- (h) to regulate the use of musical instruments and other equipment which may disturb other users of the listed premises or listed place;

- (i) to prohibit the consumption of alcoholic drinks and the use of tobacco and tobacco place;
- (j) to require persons to observe safeguards in the interests of the health of other persons;
- (k) to require persons using the listed premises or listed place to take precautions against the outbreak or spread of fire, including participating in fire drills requiring temporary evacuation and assembly;
- (l) to set minimum standards of conduct in listed premises or listed places in the interests of decency and public morality;
- (m) to set minimum standards of cleanliness and tidiness to be observed in emergency shelters;
- (n) to require persons taking shelter to clean areas within the listed premises or listed place which they occupy;
- (o) to prohibit the commission of breaches of the peace or sexual or other harassment in or near the listed premises or listed place;
- (p) to enforce the criminal law and the regulation and prohibition of the matters prescribed in paragraphs (1) to (o) by suspension or expulsion from the listed premises or listed place, and to use reasonable force for this purpose, independently of any proceedings in respect of an offence created by virtue of section 35(1).
- (q) to accommodate any person at any listed premises or listed place without the permission of the owner of the premises or place;
- (r) to prohibit any person from depositing anything on the compound of any listed premises or listed place without permission.

(5) Where the use of reasonable force is permitted under subsection (4)(p), the shelter manager, marine shelter master, shelter officer or marine shelter officer may request the assistance of any other person in the use of such reasonable force, and the shelter manager, marine shelter master, shelter officer, marine shelter officer or other person rendering assistance shall not be liable, whether civilly or criminally, for any tort or offence by virtue of using such reasonable force.

(6) Where for the purposes of subsection (4)(p), a person is detained, the detention may not be continued beyond the first reasonable opportunity to hand over custody of that person to a member of the Police Force.

(7) Any Regulations, By-Laws or Order made under this Act shall be subject to an affirmative resolution of the Legislative Council and shall be published in the *Gazette*.

(8) Without prejudice to subsection (7), during any threatened hazard alert or disaster emergency, Regulations and By-Laws made under this Act may be published either

- (a) by announcement broadcasted on the National Emergency Broadcast System in accordance With section 22(2); or
- (b) by notice affixed to the outside of every magistrate's court and every police station in the Territory.

(9) Publication under subsection (8) shall be deemed to be sufficient compliance, for the duration of any period of threatened hazard alert or disaster emergency, with any requirement of publication under this Act or any other enactment.

Act binds the
Crown

40. This Act binds the Crown.

SCHEDULE

(Selection 9(2))

**PROVISIONS HAVING EFFECT AS TO THE CONSTITUTION, FUNCTIONS,
PROCEDURE AND TENURE OF OFFICE OF MEMBERS, OF THE NATIONAL
DISASTER MANAGEMENT COUNCIL**

Constitution and
Functions of
Council

1. (1) Subject to subparagraph (2), the Council shall consist of
- (a) the Governor as *ex officio* Chairman;
 - (b) the Chief Minister, or a public officer nominated by him, as deputy Chairman;
 - (c) the Financial Secretary, *ex officio*;
 - (d) the Commissioner of Police, *ex officio*;
 - (e) the Chief Fire Officer, *ex officio*;
 - (f) the Director of Health Services, *ex officio*;
 - (g) the Director of Planning, *ex officio*;
 - (h) the Chief Environmental Health Officer, *ex officio*;
 - (i) the Director of Public Works Department, *ex officio*;
 - (j) the Director of Marine Services, *ex officio*;
 - (k) the representatives of such other Ministries, Departments of Government and statutory Bodies as the Governor thinks fit; and
 - (l) such other persons nominated by such organizations as the Governor thinks fit who volunteer or are required by law to perform functions related to the mitigation of, preparedness for, response to and recovery from, emergencies and disasters in the Territory.

(2) The powers set out in subparagraph (1)(k) and (l) shall be exercised in such a way as to ensure that the membership of the Council does not exceed thirty.

(3) The persons, other than the Minister, referred to in subparagraph (1)(b), (k) and (l) shall be appointed by instrument under the hand of the Governor.

(4) The Deputy Chairman shall serve as Chairman of the Council in the Governor's absence.

(5) The Chairman or Deputy Chairman and any seven other members of the Council shall constitute a quorum for meetings of the Council.

(6) The Director shall be the Secretary of the Council.

(7) The Council shall, after consultation with the Director,

- (a) establish other committees and sub-committees charged with particular responsibilities, whether defined by geographical area or otherwise, in relation to the mitigation of, preparedness for, response to and recovery from, emergencies and disasters in the Territory; and
- (b) determine the powers to be exercised by such committees and sub-committees and when they shall be convened to deal with a threatened hazard alert or an actual disaster.

(8) The members of the Council or nay committee or sub-committee established under subparagraph (7) may be paid such fees as the Executive Council may determine to defray any costs incurred by such members in performing their duties under this Act or under the direction of the Council.

(9) The Council and any committee or sub-committee established under subparagraph (6)(a) may, subject to regulations made under section 39(1), determine its own procedure.

(10) The Governor may invite to any meeting of the Council such other persons as he deems fit but such persons shall not be entitled to vote.

(11) The functions of the Council shall be to

- (a) review and advise on national strategy for disaster management;
- (b) review the state of disaster management in the Territory and report at least once annually, by June of each year, to the Executive Council its findings;
- (c) make recommendations to the Executive Council on needs for improving the Territory's Disaster management;
- (d) promote comprehensive disaster management in the Territory;
- (e) receive reports from and review the work of committees so established.

(12) The Council shall have power to do all such things as it considers necessary or expedient for the performance of the functions conferred upon it by or under this Act.

Tenure of office

2. (1) The members of the Council, other than ex officio members and the Deputy Chairman, shall hold office

- (a) for a period not exceeding two years but may be removed from office at any time by the Governor before expiry of their terms; and

- (b) on such other terms and conditions as the Governor may determine.

(2) A member of the Council, other than ex-officio member or the Deputy Chairman may at any time, by letter under this hand addressed to the Chairman of the Council, resign his office.

(3) Where a member of the Council resigns under subparagraph (2) or is for any reason within the terms and conditions of his appointment remove from office under subparagraph (1)(a), the Chairman of the Council may appoint such other person as he thinks fit to replace such member, in accordance with the relevant provision of paragraph 1(1) and paragraph 1(3).

(4) subparagraphs (1) to (3) apply to the members of a committee or sub-committee established under paragraph 1(7)(a) as if the reference

- (a) in paragraph (1) to “Council” and “Governor” were a reference to “committee or sub-committee” and “Council” respectively; and
- (b) in subparagraphs (2) and (3) to “Council” and “Chairman of the Council” were a reference to “committee or sub-committee” and “Council” respectively.

Passed by the Legislative Council this 17th day of April, 2003.

REUBEN VANTERPOOL,
Speaker.

OLEANVINE MAYNARD,
Ag. Clerk of the Legislative Council.

