

Authorised Version

Emergency Management Amendment (Critical Infrastructure Resilience) Act 2014

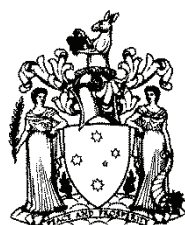
No. 76 of 2014

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Authorised Version



Victoria

**Emergency Management Amendment
(Critical Infrastructure Resilience) Act
2014[†]**

No. 76 of 2014

[Assented to 21 October 2014]

The Parliament of Victoria enacts:

1 Purpose

The purpose of this Act is to—

- (a) amend the **Emergency Management Act 2013** to provide for emergency risk management arrangements for critical infrastructure resilience; and

(b) consequentially amend the **Freedom of Information Act 1982** and the **Terrorism (Community Protection) Act 2003**.

2 Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day to be proclaimed.
- (2) If this Act does not come into operation before 1 July 2015, it comes into operation on that day.

3 New Part 7A inserted

After Part 7 of the **Emergency Management Act 2013** insert—

"PART 7A—CRITICAL INFRASTRUCTURE RESILIENCE

Division 1—Preliminary

74A Object of this Part

The object of this Part is to provide for emergency risk management arrangements for critical infrastructure resilience.

74B Definitions

In this Part—

critical infrastructure means any infrastructure which is—

- (a) assessed by the relevant Minister to be significant critical infrastructure or major critical infrastructure; or
- (b) designated by the Governor in Council to be vital critical infrastructure;

See:
Act No.
73/2013
and
amending
Act Nos
37/2014 and
41/2014.
LawToday:
www.
legislation.
vic.gov.au

criticality assessment methodology means the methodology prescribed in any regulations or specified in any guidelines;

essential service has the meaning given by section 74C;

exercise means an exercise required by section 74Q;

guidelines means guidelines issued under section 74W;

Industry Accountable Officer means a person nominated under section 74I;

infrastructure means—

- (a) any premises, asset, good or system used for the purpose of the generation, production, extraction, storage, transmission, distribution or operation of an essential service; and
- (b) any communication system used for the delivery of an essential service, including any system used to generate, send, receive, store or otherwise process any electronic communication for the purpose of an essential service;

major critical infrastructure means any infrastructure assessed by the relevant Minister to be infrastructure the disruption of which could adversely impact—

- (a) the continuity of the supply of an essential service to more than one region of Victoria; or

- (b) the economic or social well-being of more than one region of Victoria;

Order means an Order of the Governor in Council;

premises includes—

- (a) land; and
- (b) a building or vehicle; and
- (c) a part of a building or vehicle; and
- (d) any place, whether built on or not;

region means an area of Victoria specified in the guidelines;

relevant Department means the Department responsible for providing support to the relevant Minister in respect of the relevant infrastructure;

relevant Minister means the Minister designated as the relevant Minister under section 74F;

resilience improvement cycle means the period of 12 months commencing when a statement of assurance is submitted to the relevant Minister;

responsible entity means the person designated as the responsible entity under section 74H;

significant critical infrastructure means any infrastructure assessed by the relevant Minister to be infrastructure the disruption of which could adversely impact—

-
- (a) the continuity of the supply of an essential service to one region of Victoria; or
 - (b) the economic or social well-being of one region of Victoria;

statement of assurance means a statement submitted under section 74N;

Victorian Critical Infrastructure Register means the register established and maintained under section 74J;

vital critical infrastructure means any infrastructure—

- (a) assessed by the relevant Minister to be infrastructure the disruption of which could adversely impact—
 - (i) the continuity of the supply of an essential service to Victoria; or
 - (ii) the economic or social well-being of Victoria; and
- (b) designated as vital critical infrastructure under section 74E.

74C What is an essential service?

For the purposes of this Part, ***essential service*** means any of the following services—

- (a) transport;
- (b) fuel (including gas);
- (c) light;
- (d) power;
- (e) water;

- (f) sewerage;
- (g) a service specified to be an essential service by the Governor in Council for the purposes of paragraph (g) of the definition of *essential service* within the meaning of section 3 of the **Essential Services Act 1958**.

Division 2—Assessment of infrastructure

74D Assessment of infrastructure

- (1) The relevant Minister must—
 - (a) assess or reassess, having regard to the criticality assessment methodology, whether any infrastructure is or has ceased to be—
 - (i) major critical infrastructure or significant critical infrastructure;
 - or
 - (ii) vital critical infrastructure; and
 - (b) advise the Minister as to the outcome of the assessment or reassessment.
- (2) The Minister may request the relevant Minister to assess or reassess any infrastructure under this section.

74E Designation of vital critical infrastructure

- (1) Subject to this section, the Governor in Council on the recommendation of the relevant Minister may by Order—
 - (a) designate infrastructure specified in the Order to be vital critical infrastructure;
 - or
 - (b) revoke the designation of infrastructure specified in the Order to be vital critical infrastructure.

-
- (2) The relevant Minister may make a recommendation under subsection (1) based on the assessment or reassessment, having regard to the criticality assessment methodology, by the relevant Department of any infrastructure as vital critical infrastructure.
 - (3) The relevant Minister must provide a copy of an Order made under subsection (1) to the following—
 - (a) the responsible entity of the relevant vital critical infrastructure;
 - (b) Emergency Management Victoria;
 - (c) the Chief Commissioner of Police;
 - (d) the Chief Executive Officer of any municipal council in the municipal district of which the relevant vital critical infrastructure is wholly or partly located.
 - (4) A failure to comply with subsection (3) in relation to an Order does not affect the validity, operation or effect of the Order.
 - (5) Despite subsection (4), the responsible entity of the relevant vital critical infrastructure is not required to comply with this Part until it receives a copy of the Order under subsection (3).

Division 3—Responsibilities in relation to critical infrastructure

74F Who is the relevant Minister?

For the purposes of this Part, *relevant Minister* means the Minister designated by the Governor in Council by Order as the relevant Minister in respect of—

- (a) infrastructure; or
- (b) a class or type of infrastructure—
as specified in the Order.

74G Delegation by relevant Minister

- (1) A relevant Minister, by instrument, may delegate to a public sector employee within the meaning of section 4(1) of the **Public Administration Act 2004** any function or power of the relevant Minister under this Part other than—
 - (a) this power of delegation; or
 - (b) a function or power conferred on the relevant Minister under section 74E or 74O(2).
- (2) A relevant Minister must provide a copy of any instrument making or revoking a delegation under subsection (1) to the Minister.
- (3) Emergency Management Victoria must maintain a record of delegations in force under this section.

74H Who is the responsible entity?

- (1) For the purposes of this Part, *responsible entity* means the person designated by the Governor in Council by Order as the responsible entity in respect of vital critical infrastructure specified in the Order.
- (2) A responsible entity may apply to the relevant Minister to have the designation revoked on the grounds specified in the application.

-
- (3) After considering an application under subsection (2), the relevant Minister may recommend to the Governor in Council that the Order designating the responsible entity be revoked or amended.

74I Nomination of Industry Accountable Officer

- (1) A responsible entity must provide to the relevant Minister the nomination of a natural person as the Industry Accountable Officer in respect of vital critical infrastructure of the responsible entity.
- (2) A natural person nominated under subsection (1) must be—
- (a) an officer within the meaning of section 9 of the Corporations Act; or
 - (b) any other employee of the responsible entity approved by the relevant Minister.
- (3) The relevant Minister must notify the Minister as to the nomination of an Industry Accountable Officer under subsection (1).

Division 4—Victorian Critical Infrastructure Register

74J Victorian Critical Infrastructure Register

- (1) Emergency Management Victoria must establish and maintain a register called the Victorian Critical Infrastructure Register.
- (2) The Victorian Critical Infrastructure Register must contain—
- (a) all infrastructure—
 - (i) assessed to be major critical infrastructure;

-
- (ii) assessed to be significant critical infrastructure;
 - (iii) designated to be vital critical infrastructure;
 - (b) in respect of each critical infrastructure—
 - (i) the name and location;
 - (ii) the relevant Department;
 - (iii) the relevant Minister;
 - (c) in respect of each vital critical infrastructure—
 - (i) the date of the declaration as vital critical infrastructure;
 - (ii) the relevant responsible entity;
 - (iii) the relevant Industry Accountable Officer.
 - (3) The relevant Minister must provide the information required to be contained in the Victorian Critical Infrastructure Register under subsection (2) to the Minister.
 - (4) Emergency Management Victoria must remove an entry on the Victorian Critical Infrastructure Register relating to—
 - (a) major critical infrastructure or significant critical infrastructure, if the relevant Minister advises the Minister that the relevant Minister considers that the infrastructure is no longer major critical infrastructure or significant critical infrastructure;
 - (b) vital critical infrastructure, if the relevant Minister provides the Minister with a copy of the Order revoking the

designation of the infrastructure as vital
critical infrastructure.

**74K Access to the Victorian Critical
Infrastructure Register**

- (1) Emergency Management Victoria must ensure that information on the Victorian Critical Infrastructure Register is only accessed by—
 - (a) a person specified in subsection (2); or
 - (b) any other person that Emergency Management Victoria considers requires access in the performance of their functions or exercise of their powers in respect of critical infrastructure, counterterrorism or emergency management.
- (2) If subsection (3) applies, the following may access the Victorian Critical Infrastructure Register after requesting Emergency Management Victoria for access—
 - (a) the Minister;
 - (b) a relevant Minister;
 - (c) the Inspector-General for Emergency Management;
 - (d) any person who is a delegate of the relevant Minister under section 74G;
 - (e) Victoria Police.
- (3) A person or body referred to in subsection (2) can only make a request under subsection (2) if access is required in the performance of their functions or exercise of their powers in respect of critical infrastructure, counterterrorism or emergency management.

74L Review of Victorian Critical Infrastructure Register

- (1) Emergency Management Victoria must conduct a review of the accuracy and currency of the Victorian Critical Infrastructure Register—
 - (a) at least once every 3 years; and
 - (b) on the request of the Minister.
- (2) Emergency Management Victoria must report to the Minister after conducting a review.
- (3) The Minister may after considering a report under subsection (2) make a request to a relevant Minister under section 74D(2).

Division 5—Resilience improvement cycle

74M Resilience improvement cycle

A responsible entity must before the end of each resilience improvement cycle complete the following in respect of each relevant vital critical infrastructure—

- (a) a statement of assurance;
- (b) emergency risk management planning and documentation;
- (c) unless otherwise agreed by the relevant Minister, an exercise;
- (d) an audit.

74N Statement of assurance

- (1) A responsible entity must submit a statement of assurance to the relevant Minister—
 - (a) within the period of 6 months after receiving a copy of an Order under section 74E; and

-
- (b) at the end of each subsequent period of 12 months.
- (2) A statement of assurance must—
- (a) be prepared in accordance with the regulations and the guidelines; and
 - (b) in accordance with the regulations and the guidelines, identify the emergency risks to relevant vital critical infrastructure; and
 - (c) in accordance with the regulations and the guidelines, specify the emergency risk management actions or activities that the responsible entity proposes to take to address the identified emergency risks; and
 - (d) contain an attestation signed by the Industry Accountable Officer in accordance with subsection (3).
- (3) An attestation must state—
- (a) that the responsible entity has complied with this Part; and
 - (b) that the responsible entity will undertake the emergency risk management actions and activities proposed in the statement of assurance in the next resilience improvement cycle; and
 - (c) any other requirement contained in the regulations or guidelines.
- (4) A statement of assurance required under subsection (1)(b) must also state in the attestation—

-
- (a) whether or not the emergency risk management actions and activities proposed in the previous statement of assurance have been undertaken; and
 - (b) if any of the emergency risk management actions and activities proposed in the previous statement of assurance have not been undertaken, the reason why each of the emergency risk management actions and activities proposed in the previous statement of assurance have not been undertaken; and
 - (c) how any findings under section 74T will be dealt with.

74O Powers of relevant Minister

- (1) A relevant Minister may request a responsible entity to revise a statement of assurance submitted to the relevant Minister by the responsible entity if the relevant Minister is of the opinion that the statement of assurance is not adequate having regard to the requirements under section 74N.
- (2) If a revised statement of assurance submitted to the relevant Minister by the responsible entity is in the opinion of the relevant Minister not adequate having regard to the requirements under section 74N, the relevant Minister may direct the responsible entity to submit a further statement of assurance amended in accordance with the direction of the relevant Minister within a time as specified by the relevant Minister.

-
- (3) The relevant Minister may request a responsible entity to provide to the relevant Minister any information specified by the Minister in the request which the relevant Minister considers is necessary to establish the accuracy of the statements made in the statement of assurance.
 - (4) A responsible entity must comply with a request under subsection (3) within the time specified by the relevant Minister in the request.

74P Emergency risk management plan and documentation

- (1) A responsible entity must prepare an emergency risk management plan for vital critical infrastructure to prepare for an emergency.
- (2) An emergency risk management plan must be prepared in accordance with the regulations and the guidelines.
- (3) An emergency risk management plan prepared by the responsible entity for vital critical infrastructure may, with the agreement of the relevant Minister, form part of any other risk management plan or activity for the vital critical infrastructure undertaken to comply with requirements imposed under any other Act or regulations.
- (4) The relevant Minister may request a responsible entity to provide to the relevant Minister—
 - (a) a copy of an emergency risk management plan or any other documents relating to emergency risk management as specified in the request; or

- (b) any details relating to an emergency risk management plan or any other documents relating to emergency risk management as specified in the request.
- (5) A responsible entity must comply with a request under subsection (4) within the time specified by the relevant Minister in the request.

74Q Exercise by responsible entity

- (1) A responsible entity must develop, conduct and evaluate an exercise to test their planning, preparedness, prevention, response or recovery capability in respect of an emergency.
- (2) An exercise must be developed in consultation with—
 - (a) the relevant Minister; or
 - (b) all the relevant Ministers, in the case of an exercise which is a joint exercise.
- (3) Without limiting the generality of subsection (2), consultation must include the details of the proposed exercise including the nature of the simulated emergency event and its timing and location.
- (4) An exercise must be developed, conducted and evaluated in accordance with the regulations and the guidelines.
- (5) An exercise must be conducted under the observation of the relevant Minister or relevant Ministers.
- (6) Unless subsection (7) applies, an exercise must be conducted and evaluated in each resilience improvement cycle.

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- (7) The relevant Minister may agree in writing with the responsible entity that an exercise is to be conducted at a frequency other than in each resilience improvement cycle.
- (8) The relevant Minister may agree in writing with the responsible entity that the responsible entity is not required to complete an exercise in the current resilience improvement cycle, if the relevant Minister is satisfied that—
- (a) the occurrence of an event, including an exercise in compliance with any other requirement, tested the responsible entity's planning, preparedness, prevention, response or recovery capability in respect of an emergency; and
 - (b) the occurrence of the event demonstrated substantial compliance with the requirements under this Part.

74R Relevant Minister to review exercise

The relevant Minister or relevant Ministers who observed an exercise—

- (a) must review the conduct of the exercise in accordance with the regulations and guidelines; and
- (b) must provide comments in writing to the responsible entity on the outcomes of the exercise; and
- (c) may, if the relevant Minister considers, or the relevant Ministers consider, that there are significant issues with the exercise conduct or outcome, request in writing either or both of the following—

-
- (i) that specified improvement actions be completed by the responsible entity within the time specified in the request;
 - (ii) that a second exercise be conducted, including in the request the nature of the exercise and any specific capability to be tested.

74S Responsible entity to conduct audit

- (1) A responsible entity must conduct an audit of their emergency risk management processes after the completion of the exercise in accordance with any requirements prescribed by the regulations or the guidelines.
- (2) The purpose of the audit is to evaluate the efficiency, effectiveness and appropriateness of the management by the responsible authority of risks to its capability in relation to planning, preparedness, prevention, response and recovery.
- (3) An audit must be undertaken by—
 - (a) unless paragraph (b) applies, a person who was not involved in the emergency risk management planning process or the development and conduct of the exercise; or
 - (b) if the relevant Minister requires that the audit be undertaken by an independent auditor, an independent auditor.

74T Audit certificate and findings

After a responsible entity completes an audit, the relevant Industry Accountable Officer on behalf of the responsible entity must submit to the relevant Minister—

-
- (a) an audit certificate confirming that the audit has been completed; and
 - (b) the audit findings, including the following—
 - (i) the outcome of the audit;
 - (ii) whether any required actions have been identified.

74U Relevant Minister may request second audit

- (1) If the relevant Minister is not satisfied as to the conduct of an audit, the relevant Minister may request that a responsible entity conduct a second audit in accordance with the request within the time specified in the request.
- (2) The relevant Minister may specify in the request that the second audit be conducted by an independent auditor.

Division 6—General

74V Offences

A responsible entity must not—

- (a) fail, without reasonable excuse, to provide a statement of assurance to the relevant Minister in accordance with section 74N; or
- (b) provide a false or misleading statement of assurance to the relevant Minister in accordance with section 74N; or
- (c) fail, without reasonable excuse, to revise a statement of assurance when requested to do so by the relevant Minister in accordance with section 74O(1); or

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- (d) fail, without reasonable excuse, to submit a further statement of assurance within the specified time when directed to do so by the relevant Minister in accordance with section 74O(2); or
 - (e) fail, without reasonable excuse, to provide further information within the specified time when requested to do so by the relevant Minister in accordance with section 74O(3); or
 - (f) fail, without reasonable excuse, to provide details of an emergency risk management plan within the specified time when requested to do so by the relevant Minister in accordance with section 74P; or
 - (g) fail, without reasonable excuse, to conduct an exercise in accordance with section 74Q; or
 - (h) fail, without reasonable excuse, to undertake specified improvement actions within the specified time when required to do so by the relevant Minister in accordance with section 74R; or
 - (i) fail, without reasonable excuse, to conduct an audit with an independent auditor when requested to do so by the relevant Minister in accordance with section 74S(3); or
 - (j) fail, without reasonable excuse, to submit an audit certificate to the relevant Minister in accordance with section 74T; or

- (k) submit a false or misleading audit certificate to the relevant Minister in accordance with section 74T.

Penalty: In the case of a natural person,
600 penalty units;

In the case of a body corporate,
3000 penalty units.

74W Guidelines

- (1) The Minister may issue guidelines for the purposes of this Part.
- (2) Without limiting the generality of subsection (1), guidelines may be made for or with respect to the following—
 - (a) criticality assessment methodology;
 - (b) emergency risk management planning processes;
 - (c) the conduct of exercises;
 - (d) audit processes.
- (3) Guidelines issued under this section must not be inconsistent with any regulations made under this Act.

74X Savings and transitional

Despite the repeal of Part 6 of the **Terrorism (Community Protection) Act 2003**, a risk management plan prepared by a declared essential service under that Act continues in force until the declared essential service is designated to be a responsible entity under this Part and the relevant Industry Accountable Officer has attested the first statement of assurance.

_____".

**4 Amendment of section 64—Functions of the
Inspector-General for Emergency Management**

After section 64(1)(g) of the **Emergency
Management Act 2013** insert—

"(ga) monitor, review and assess critical
infrastructure resilience at a system level;
and".

5 Amendment of section 76—Regulations

At the end of section 76 of the **Emergency
Management Act 2013** insert—

"(2) Without limiting the generality of subsection
(1), for the purposes of Part 7A, regulations
may make provision for or with respect to
the following—

- (a) criticality assessment methodology;
- (b) the contents of a statement of
assurance;
- (c) requirements and standards for the
conduct and evaluation of exercises;
- (d) standards to be met in emergency risk
management planning, exercises and
audits."

6 Amendment of section 29A of the Freedom of Information Act 1982

For section 29A(1A) and (1B) of the **Freedom of Information Act 1982** substitute—

- "(1A) Without limiting subsection (1), a document is an exempt document if it is a document held or created by Victoria Police for the purpose of—
- (a) counterterrorism or a purpose relating to counterterrorism; or
 - (b) the protection of critical infrastructure within the meaning of section 74B of the **Emergency Management Act 2013** on—
 - (i) the Victorian Critical Infrastructure Register under section 74J of the **Emergency Management Act 2013**; or
 - (ii) any corresponding register kept by an agency of the Commonwealth.
- (1B) Without limiting subsection (1), a document is an exempt document if it is a document—
- (a) created for or with respect to emergency risk management arrangements for critical infrastructure resilience under Part 7A of the **Emergency Management Act 2013** for the purposes of administering, complying with, or enforcing that Part; or
 - (b) which contains information about, or which could lead to the identification of, a document to which paragraph (a) applies.

See:
Act No.
9859.
Reprint No. 8
as at
1 December
2012
and
amending
Act Nos
82/2012,
70/2013,
1/2014,
17/2014 and
37/2014.
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(1C) Without limiting subsection (1), a document is an exempt document if subsection (1B) as in force before the commencement of section 6 of the **Emergency Management Amendment (Critical Infrastructure Resilience) Act 2014** would apply to or in respect of the document had section 6 of the **Emergency Management Amendment (Critical Infrastructure Resilience) Act 2014** not come into operation."

7 Amendment of section 31(3) of the Freedom of Information Act 1982

In section 31(3) of the **Freedom of Information Act 1982**, for "Intelligence and Covert Support Department" **substitute** "Intelligence and Covert Support Command".

8 Consequential amendments to the Terrorism (Community Protection) Act 2003

See:
Act No.
7/2003.
Reprint No. 3
as at
1 March 2013
and
amending
Act Nos
68/2013,
73/2013,
17/2014 and
37/2014.
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(1) Section 1(d) and Part 6 of the **Terrorism (Community Protection) Act 2003** are **repealed**.

(2) In section 3 of the **Terrorism (Community Protection) Act 2003**—

(a) the definitions of *declared essential service* and *operator* are **repealed**;

(b) for the definition of *essential service* **substitute**—

"essential service has the same meaning as it has in section 74B of the **Emergency Management Act 2013**;"

(3) For section 21F(2)(a) of the **Terrorism (Community Protection) Act 2003** **substitute**—

"(a) a part of the essential service is located in a particular area; and"

9 Repeal of amending Act

This Act is **repealed** on 1 July 2016.

Note

The repeal of this Act does not affect the continuing operation of the amendments made by this Act (see section 15(1) of the **Interpretation of Legislation Act 1984**).

Emergency Management Amendment (Critical Infrastructure Resilience) Act
2014
No. 76 of 2014

Endnotes

ENDNOTES

† *Minister's second reading speech—*

Legislative Assembly: 6 August 2014

Legislative Council: 18 September 2014

The long title for the Bill for this Act was "A Bill for an Act to amend the **Emergency Management Act 2013** to provide for emergency risk management arrangements for critical infrastructure resilience and to consequentially amend the **Freedom of Information Act 1982** and the **Terrorism (Community Protection) Act 2003** and for other purposes."