

**SENATE LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION
COMMITTEE**

**REVIEW OF THE OPERATION OF THE *NATIONAL EMERGENCY
DECLARATION ACT 2020***

SUBMISSION OF THE STATE OF QUEENSLAND

Queensland's Disaster Management Framework

Queensland's long-standing disaster management arrangements are locally-led, regionally-coordinated, state-facilitated and supported by the Commonwealth Government. The arrangements enable a progressive escalation of support and assistance through local, district and State levels.

The *Disaster Management Act 2003* (Qld) (DM Act) establishes the Queensland Disaster Management Committee (QDMC),¹ which is chaired by the Premier and includes relevant Ministers.² The QDMC prepares a State Disaster Management Plan (SDMP) which provides for QDMC's strategic policy framework for disaster management of the State; the roles and responsibilities of entities involved in disaster operations and management; and the coordination of disaster operations and activities relating to the identified entities.³

The chairperson of the QDMC appoints a State Disaster Coordinator⁴ who, with support from the State Disaster Coordination Group, coordinates disaster operations for the QDMC and ensures that the strategic decisions of the QDMC about disaster response operations are implemented.⁵

Queensland's framework for disaster management also includes 23 Disaster Districts and District Disaster Management Groups (DDMG), and 77 local governments and Local Disaster Management Groups. DDMGs and local governments must prepare district and local disaster management plans respectively.⁶ Each plan incorporates elements of the SDMP to provide the basis for the coordination of disaster operations and response with various partner agencies and organisations in its area.

The guiding principles of the DM Act are that disaster management is to be planned across the phases of preventative and preparatory measures, and response and recovery actions and that all events are to be managed in accordance with the QDMC strategic policy framework, the SDMP and any disaster management guidelines.⁷ Local governments have primary responsibility for disaster management in their areas, with resources and support to be provided by the district, State and Commonwealth levels as required.⁸

¹ *Disaster Management Act 2003* (Qld) s 17.

² *Disaster Management Regulation 2014* (Qld) s 2.

³ *Disaster Management Act 2003* (Qld) s 49.

⁴ *Disaster Management Act 2003* (Qld) s 21B.

⁵ *Disaster Management Act 2003* (Qld) s 21C.

⁶ *Disaster Management Act 2003* (Qld) s 53 and s 57.

⁷ *Disaster Management Act 2003* (Qld) s 4A.

⁸ *Disaster Management Act 2003* (Qld) s 4A.

This allows for the provision of specific place-based emergency responses, including for remote and discrete Aboriginal and Torres Strait Islander communities which may be different to responses that are effective in other areas of Australia. Locally-led responses are also able to be tailored for people with disability and seniors who may need additional supports during times of emergency.

The DM Act provides for the declaration of a disaster situation by a district disaster coordinator for a district or part of the district⁹ or by the Minister and Premier for the State or a part of the State.¹⁰ The declaration authorises particular persons to exercise declared disaster powers to ensure public safety, prevent or minimise loss of human life, or illness or injury to humans or animals; to prevent or minimise property loss or damage or damage to the environment and to otherwise prepare for, respond to, or recover from the disaster situation.¹¹

Queensland provides for a range of other emergency declarations to be made in response to specific events or situations, for example:

- a public health emergency may be declared under the *Public Health Act 2005* (Qld) if the Minister is satisfied there is a public health emergency and that the exercise of emergency powers is necessary to prevent or minimise serious adverse effects on human health;¹²
- an emergency situation may be declared under the *Public Safety Preservation Act 1986* (Qld) by a senior police officer in response to a situation such as an explosion or fire; oil or chemical spill; the escape of gas, radioactive material or flammable or combustible liquids; or an incident involving a bomb or weapon that causes or may cause a danger of death, injury or distress to a person, loss of or damage to property or pollution of the environment;¹³
- a biosecurity emergency order may be made under the *Biosecurity Act 2014* (Qld) to respond to a biosecurity event to take emergency action to isolate the biosecurity emergency area, to stop the spread of any biosecurity matter associated with the biosecurity event and, if practicable, to eradicate the biosecurity matter;¹⁴
- a clean-up notice may be issued under the *Environmental Protection Act 1994* (Qld) for a contamination incident that has caused or is likely to cause serious or material environmental harm or contaminate other land, to require a person to prevent or minimise the contamination including by containing, removing, dispersing or destroying the contaminants, and to rehabilitate or restore the environment because of the incident;¹⁵
- an authorised officer under the *Environmental Protection Act 1994* (Qld) may give an emergency direction to a person to take reasonable action which is necessary to protect the health and safety of a person, prevent or minimise environmental harm, or rehabilitate or restore the environment because of harm.¹⁶

⁹ *Disaster Management Act 2003* (Qld) s 64.

¹⁰ *Disaster Management Act 2003* (Qld) s 69.

¹¹ *Disaster Management Act 2003* (Qld) s 76.

¹² *Public Health Act 2005* (Qld) s 319.

¹³ *Public Safety Preservation Act 1986* (Qld) s 5.

¹⁴ *Biosecurity Act 2014* (Qld) s 113.

¹⁵ *Environmental Protection Act 1994* (Qld) s 363H.

¹⁶ *Environmental Protection Act 1994* (Qld) s 467.

National Emergency Declaration Act 2020

The *National Emergency Declaration Act 2020* (Cth) (the Act) enables a national declaration to be made in response to an emergency that has caused, is causing or is likely to cause nationally significant harm in Australia or in an Australian offshore area.¹⁷ Queensland notes that the Act does not define ‘emergency’, rather focussing on the harm caused by the emergency which must have a significant national impact because of its scale or consequences and involve harm to the life or health of individuals, animals or plants; damage to property; harm to the environment; or disruption to an essential service.¹⁸

In this regard, the Act goes beyond the scope of the Royal Commission into National Natural Disaster Arrangements (the Royal Commission) which was tasked with, amongst other things, examining the responsibilities of, and coordination between the Commonwealth, state, territory and local governments relating to natural disasters.¹⁹ The Royal Commission recommended that legislation provide for the ability for the Australian Government to make a public declaration for the purpose of communicating the seriousness of a natural disaster.²⁰

This recommendation, made specifically in the context of natural disasters, has been used as the basis for legislation allowing a national emergency declaration to be made in other circumstances, such as for a public health emergency, chemical or radiological incident, terrorist attack or the failure of major infrastructure.²¹ This expands the potential impact of the Act beyond natural disaster arrangements into arrangements in place for states and territories to respond to these types of situations without the benefit of a thorough review process, such as occurred with the Royal Commission, or consultation with states and territories.

The Commonwealth government did not undertake consultation with Queensland prior to the introduction of the National Emergency Declaration Bill 2020 or provide Queensland with an opportunity to consider the implications of the broader declaration making power on its existing arrangements for emergencies which are not caused by a natural disaster before passage of the Bill.

The Act provides a broad discretion for the Prime Minister to request a national emergency declaration, including the ability to unilaterally request a national declaration without a request or even consultation with an affected state or territory.²² This broad discretion, combined with the broad definition of ‘nationally significant harm’, provides little clarity on the circumstances in which a national emergency declaration is likely to be made.

As outlined above, Queensland has well-established disaster management arrangements based on locally-led responses to natural disasters supported by district, State and Commonwealth action when necessary. Queensland considers that these arrangements are robust and based on practical experience and are consistent with the view of the Royal Commission that states and territories have primary responsibility for disaster management.

¹⁷ *National Emergency Declaration Act 2020* (Cth) s 11.

¹⁸ *National Emergency Declaration Act 2020* (Cth) s 10.

¹⁹ Letters patent to Royal Commission into National Natural Disaster Arrangements.

²⁰ Report of the Royal Commission into National Natural Disaster Arrangements, recommendation 5.1.

²¹ National Emergency Declaration Bill 2020, Revised Explanatory Memorandum, page 13-14.

²² *National Emergency Declaration Act 2020* (Cth) s 11(1)(c)(ii) – (iv), s 11(3).

The Royal Commission stated that careful consideration needed to be given to the threshold for making a declaration.²³ Queensland considers that consultation with states and territories is required to provide greater rigour and accountability about when the Commonwealth can make a national emergency declaration, in particular when a declaration can be made unilaterally.

The circumstances in which a national declaration can be made should confirm that states and territories retain primary responsibility for disaster management and are best-placed to make decisions regarding activation of disaster management arrangements and that therefore, a unilateral declaration should be made only in exceptional circumstances. This would endorse the Royal Commission's view of the relationship between the states and territories and the Commonwealth in disaster management²⁴ and implement the Commission's recommendation that the power to take unilateral action without a state or territory request for assistance is to be in clearly defined and limited circumstances.²⁵

The making of a national emergency declaration should also take into account the transition from pre-declaration to post-declaration arrangements for an event which escalates to become the subject of a national emergency.

Consultation is also required about the actions the Commonwealth may take to support state and territory governments in responding to emergencies. The Act includes a definition of 'national emergency laws' which is stated to be an authoritative list of the provisions across the Commonwealth statute book that contain powers that may be enlivened, or the operation of which may be modified, while a national emergency declaration is in place.²⁶ It appears that national emergency laws are pre-existing emergency-related provisions along with the new administrative and information powers in the Act. Queensland seeks to clarify whether it is intended to expand the powers that the Commonwealth may exercise during a national emergency declaration beyond those identified on this list.

Queensland's disaster management arrangements include existing mechanisms to facilitate Commonwealth action including the deployment of the Australian Defence Force. Queensland's view is that the legislative provisions enabling a national emergency declaration should be supported by clear and agreed governance arrangements with the states and territories to avoid potential operational or public confusion and to ensure that Commonwealth action is taken in the most effective and efficient way. These arrangements should not compromise Queensland's mature disaster management arrangements and should embed sufficient flexibility to be tailored so that they are fit for purpose, fit for place, and address the specific needs arising from local impacts.

Queensland welcomes the opportunity to undertake consultation with the Commonwealth and with other states and territories to develop arrangements for the national emergency declaration process including how the Commonwealth can provide support to states and territories in dealing with emergencies.

END

²³ Report of the Royal Commission into National Natural Disaster Arrangements, para 5.65.

²⁴ Report of the Royal Commission into National Natural Disaster Arrangements, page 20.

²⁵ Report of the Royal Commission into National Natural Disaster Arrangements, recommendation 5.1.

²⁶ National Emergency Declaration Bill 2020, Revised Explanatory Memorandum, page 11.