



23 March 2021

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Committee Secretary

RE: National Emergency Declaration Act 2020

The St Vincent de Paul Society National Council (the Society) welcomes the opportunity to make this submission with respect to the National Emergency Declaration Act 2020.

The Society provides on-the-ground assistance to those in need through its 50,000 volunteers and members and 6,000 employees across Australia.

The Society's primary activities involve the provision of emergency relief, accommodation and support services. Most recently, the Society was funded by the Australian Government (Government) to provide national emergency assistance in response to the 2019-20 bushfires, drought and COVID-19.

The Society has prepared two submissions to the parliamentary inquiry into the *Lessons to be learned in relation to the Australian Bushfire Season 2019-20* (No. 47, 47.1) and a submission to the Royal Commission into National Natural Disaster Arrangements ([NND.001.01084](#)).

We note the Royal Commission's statements that state and territory governments are responsible for responding to, and recovering from, natural disasters; and that the Australian Government's role is one of support – it provides assistance to states and territories, and its capabilities complement state and territory responses. The Royal Commission agreed with the Government's view that it does not wish to replicate or assume state and territory government responsibilities.ⁱ

We agree that this principal should underpin the legislation.

The Society notes that the National Emergency Declaration (Consequential Amendments) Bill 2020 was passed by both houses on 10 December 2020. For the record, the Society:

- agrees with the view that in a crisis, everyday Australians should not have to navigate the complexities of the Federation—they just need a system that worksⁱⁱ and delivers assistance to them in their own community
- supports this review of the Act, noting the importance of full consultation with the states and territories given that the Bill was drafted quickly and provides the Prime Minister with unilateral power to declare a national emergency in a state or territory without consulting with the respective premier or chief minister
- supports a Senate committee review of the powers in this legislation every time a national emergency is declared; and
- recognises the need for expediency when it comes to declaring a national emergency but considers that this should be tempered with appropriate checks and balances in place to improve accountability and transparency of decisions being made.

We were disappointed the Government did not support other amendments proposed by Labor including that the Prime Minister consult with the Leader of the Opposition prior to declaring a national emergency and, that a declaration of a national emergency be disallowable by the parliament.

We note the queries raised by the Standing Committee for the Scrutiny of Bills (Standing Committee) about why it was necessary to provide the executive with a broad power to declare a national emergency where key terms are undefined and whether the bill could be amended to include an inclusive definition of 'emergency' and 'Commonwealth interest' or provide additional guidance on the exercise of these powers.ⁱⁱⁱ

The Standing Committee was advised by the Attorney-General that this approach was taken to ensure the framework supports an 'all hazards' approach and to not limit the circumstances in which a declaration can be made.^{iv} Further, that the term 'emergency' should be read in conjunction with the definition of 'national significant harm' and that the Revised Explanatory Memorandum provides guidance on what constitutes 'emergency' for the purpose of the framework.

We support the Standing Committee's views that the breadth of undefined terms invites 'a great reliance on the good faith of persons exercising powers under the bill; and, that laws which affect rights and liberties should not be drafted on the assumption that those using them will necessarily always be of 'good faith'.^v

We are concerned that the combination of undefined terms, the discretionary powers to the Governor-General, the exemption from disallowance and, the fact that once a national declaration is in place ministers may modify the operation of primary legislation (clause 15), means that too much power rests in the hands of a few, with insufficient oversight. Safeguards are needed to deter any inappropriate actions and support transparency.

We note the view that the objective of the Act is to clearly signal to the Australian community the severity of an emergency event and to provide certainty about the Commonwealth's role.^{vi} We agree with the Standing Committee's position in that we do not see how disallowance would call into question the status of an emergency event.^{vii}

The Society considers, as a minimum, the Act should be amended so that national emergency declarations made under subclause 11(1) and extensions under 12 (1) are subject to the usual parliamentary disallowance process (by omitting subclauses 11(6) and 12(5)).^{viii} An inclusive definition of 'Commonwealth interest' should also be added.

Thank you for considering this submission.

Yours sincerely

Mr Toby oConnor
Chief Executive Officer

ⁱ Royal Commission into National Natural Disaster Arrangements. Ch.5. Declaration of national emergency, para 5.9. Accessed at: [Chapter 5: Declaration of national emergency | Royal Commission into National Natural Disaster Arrangements](#)

ⁱⁱ House of Representatives. 9 December 2021. National Emergency Declaration Bill 2020, National Emergency Declaration (Consequential Amendments) Bill 2020. Second Reading Speech. Helen Haines MP. p. 11125. Accessed at: [hansard_frag.pdf;fileType=application/pdf \(aph.gov.au\)](#)

ⁱⁱⁱ The Senate. 9 December 2020. Standing Committee for the Scrutiny of Bills. Scrutiny Digest 18 of 2020. pp.10-11.

^{iv} The Senate. 17 February 2021. Standing Committee for the Scrutiny of Bills. Scrutiny Digest 3 of 2021. Accessed at: [National Emergency Declaration \(Consequential Amendments\) Bill 2020 – Parliament of Australia \(aph.gov.au\)](#)

^v The Senate. 17 February 2021. Standing Committee for the Scrutiny of Bills. Scrutiny Digest 3 of 2021. p. 34.

^{vi} The Senate. 9 December 2020. Standing Committee for the Scrutiny of Bills. Scrutiny Digest 18 of 2020. p.11.

^{vii} The Senate. 9 December 2020. Standing Committee for the Scrutiny of Bills. Scrutiny Digest 18 of 2020. p.12

^{viii} The Senate. 17 February 2021. Standing Committee for the Scrutiny of Bills. Scrutiny Digest 3 of 2021. p. 35, with reference to The Senate. 9 December 2020. Standing Committee for the Scrutiny of Bills. Scrutiny Digest 18 of 2020. pp.11-14