



SUBMISSION

Review of the Operation of the *National Emergency Declaration Act 2020*

**The Senate Legal and Constitutional Affairs Constitutional
Committee**

23 March 2021

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INTRODUCTION

The ACT Government makes this submission into the review of the *National Emergency Declaration Act 2020* (Act) by the Senate Legal and Constitution Affairs Legislation Committee (Committee).

The ACT Government notes that the Committee is conducting the review pursuant to section 18(a) of the Act and is due to report its finding to the Senate by 30 June 2021.

The ACT Government acknowledges the opportunity to support the Committee to undertake its review and agrees to this document being made public.

ISSUES

Establishment of the Act

The ACT Government notes that the establishment of the Act by the Australian Government was in response to recommendation 5.1 from the *Royal Commission into National Natural Disaster Arrangements* (Royal Commission):

Recommendation 5.1 Make provision for a declaration of a state of emergency

The Australian Government should make provision, in legislation, for a declaration of a state of national emergency. The declaration should include the following components:

- (1) the ability for the Australian Government to make a public declaration to communicate the seriousness of a natural disaster*
- (2) processes to mobilise and activate Australian Government agencies quickly to support states and territories to respond to and recover from a natural disaster, and*
- (3) the power to take action without a state or territory request for assistance in clearly defined and limited circumstances.*

The ACT Government, as it indicated in its response to the Royal Commission, is supportive of the recommendation but wishes to present a number of matters for the Committee to consider. The development of the Act to apply to all-hazards rather than just natural disasters is also supported.

The ACT Government notes that the Act was passed by Parliament on 10 December 2020, and, given Royal Asset on 15 December 2020.

Application of the Act to Territories

The ACT Government notes that the Commonwealth territories are captured by the Act, including external territories and the Jervis Bay territory. Given the unique arrangements and laws applicable in each Commonwealth territory, the Australian Government may wish to specifically review and document the arrangements in each Commonwealth territory. This review could provide additional assurance that the administrative arrangements in place for all Commonwealth territories can run smoothly in the event of a national emergency.

Amendment to the Australian Government’s Crisis Management Framework

The Australian Government Crisis Management [Framework](#) (the Crisis Framework) describes the arrangements enabling the Australian Government’s ‘all hazards’ crisis management approach. The Crisis Framework, version 2.3 (October 2020) precedes the establishment of the Act.

The ACT Government recommends that the Australian Government, as soon as practicable, amend the Crisis Framework to recognise the Act and its relevant provisions.

Supporting documentation

Noting the significance of a declaration of a national emergency by the Governor-General, the ACT Government recommends that the Australian Government develop supporting documentation to enhance clarity and understanding of the Act’s applications. This supporting document should be developed in consultation with states and territories.

The *Guidelines for requesting support from the Australian Defence Force (Call Out) under Part IIIAAA of the Defence Act 1903 by States and Territories* provide a useful and proven model for developing this supporting documentation.

Requirements to consult prior to the declaration of a national emergency

Section 11(2) of the Act states “Before the Governor-General makes a national emergency declaration in relation to an emergency, the Prime Minister must consult with the government of each State or Territory (if any) in which the Prime Minister is satisfied the emergency has caused, is causing or is likely to cause nationally significant harm.”

The ACT Government strongly supports this provision noting the potential community confusion that could arise if a national emergency declaration is in conflict, or misaligned, with emergency declarations made by states and territories under their emergency management laws.

The ACT Government recommends the Australian Government engages the National Cabinet mechanisms, where time allows, to ensure that all governments are consulted with prior to a proposed declaration being declared.

Requirements to advise states and territories of the emergency declaration if consultation not practicable

Section 11(3) provides that the Prime Minister is not required to consult with the government of a state or territory about a proposed national emergency declaration if:

- the government of the State or Territory requested the making of the national emergency declaration, or

- the Prime Minister is satisfied that it is not practicable to do so.

A similar exception to the requirement for the Prime Minister to consult the governments of the states and territories also applies to a variation by the Governor-General to extend a national emergency declaration under section 12(1) (see section 12(3)).

The ACT Government considers that there would be very few circumstances in which it would not be practicable for the Prime Minister to consult with the governments of the affected states and territories prior to a declaration being made. There would be significant benefit in describing the types of anticipated circumstances as part of the development of supporting documentation as previously described in this Submission.

The ACT Government notes that there is no provision in the Act for the Prime Minister or the Australian Government to notify the government of an affected state or territory that a national emergency declaration has been recommended or will be made in circumstances where consultation was determined to be not practicable.

It is recommended that the Act be amended to incorporate a requirement to inform the governments of all affected states and territories when a national emergency declaration is made, regardless of whether consultation has occurred. This requirement should also be included as a principle in supporting documentation.

Ministerial powers to modify administrative requirements during a national emergency

The ACT Government notes that section 15 of the Act allows Ministers to modify, by way of legislative instrument, specified administrative requirements of a law of the Commonwealth while a national emergency declaration is in force. The ACT Government supports the requirement that the responsible Minister be satisfied that:

- it is in response to circumstances relating to the emergency to which the national emergency declaration relates, and
- making the determination will be of benefit to the public, or a section of the public.

To provide for underpinning support of this process, the Australian Government may wish to undertake a review of Commonwealth laws that are most likely to be modified during a national emergency.

The review could form part of the Australian Government's disaster response plans.

Reporting on the exercise of powers etc. under national laws

The ACT Government supports section 17 of the Act which requires the administering Minister of a national emergency law (defined in section 10) to provide a report to the Minister administering the Act to table in each House of Parliament as soon as practicable. It is noted that the report must include details about the powers that have been exercised or the functions that have been performed under the relevant national emergency law.

The ACT Government also supports section 18 which requires the Senate Standing Committee on Legal and Constitutional Affairs to review the Act immediately after it commences and again by the fifth anniversary of the day the Act commences.

These provisions provide public transparency and accountability for the operation of the Act.



Security and Emergency Management Branch
Justice and Community Safety Directorate
T. 13 22 81
Online: accesscanberra.act.gov.au/app/ask/

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