



**ALGA**  
Australian Local  
Government Association

# National Emergency Declaration Act 2020

ALGA Submission to the Senate  
Standing Committee on Legal and  
Constitutional Affairs

# Introduction

The Australian Local Government Association (ALGA) welcomes the opportunity to provide a submission to the Review of the *National Emergency Declaration Act 2020* (the Review), being undertaken by the Senate Legal and Constitutional Affairs Legislation Committee (the Committee).

ALGA is the national voice of local government in Australia, representing 538 councils across the country. In structure, ALGA is a federation of state and territory local government associations. This submission should be read in conjunction with any separate submissions received from state and territory associations as well as individual councils.

## Background

The *National Emergency Declaration Act 2020* (the Act or the legislation) establishes the framework for declaring a National Emergency Declaration (NED or declaration) by the Governor-General on the advice of the Prime Minister. The Act enables the Commonwealth to activate specific powers under other legislation to prepare for, respond to, or recover from nationally significant emergencies. These powers allow for streamlined actions such as redirecting resources, easing regulatory requirements (e.g. air traffic management), and facilitating rapid access to essential supplies. The Act enables the Commonwealth to activate specific powers under other legislation to prepare for, respond to, or recover from nationally significant emergencies. These powers allow for streamlined actions such as easing regulatory requirements or facilitating rapid access to additional resources.

The Act requires the Senate Legal and Constitutional Affairs Committee (the Committee) to undertake periodic reviews - following enactment, on the fifth anniversary of commencement, and after each NED declaration.

ALGA's comments for this review take into account:

- the Committee's recommendations from the first operational review of the Act, tabled in the Senate on 30 June 2021;
- the subsequent review and Committee recommendations arising from the declaration in response to the 2022 NSW floods; and
- stakeholder submissions provided to both reviews.

## ALGA comments

Broadly, ALGA is supportive of the Act and its objective of enabling the Commonwealth to respond effectively and rapidly to emergencies that cause nationally significant harm by mobilising resources, reducing regulatory barriers, and coordinating a unified response.

Local governments play a critical role across the entire emergency management continuum: preparing communities for disasters; protecting and maintaining critical infrastructure; supporting the operation of evacuation centres; and providing timely, essential communication to residents. Councils also have a long-established role in coordinating recovery services and, with their strong community ties and detailed

knowledge of local conditions, are best placed to identify and respond to community needs and priorities following an emergency.

There is significant pressure on councils with natural disasters becoming more frequent, more severe, and often occurring simultaneously across Australia. ALGA supports the Act's intention to deliver a more streamlined, coordinated, collaborative and cooperative approach between all three levels of government. The Commonwealth government has important legislative or regulatory requirements that may be expediently eased or modified to deliver better outcomes for communities during a natural disaster.

Throughout previous reviews of the Act, the Committee and multiple stakeholders have raised recurring thematic and systemic issues. ALGA shares these concerns and expands on them in detail below.

### ***Overriding individual state/territory processes***

Part 2, section 11 of the Act provides that the Governor-General may make a declaration under several conditions, including where the affected state or territory government has made a written request for such a declaration. The Act also requires that before recommending a national emergency declaration, the Prime Minister must consult with the government of the jurisdiction in which the Prime Minister is "*satisfied the emergency has caused, is causing, or is likely to cause nationally significant harm.*"

However, subsection 11(3) enables the Prime Minister to make a recommendation without such consultation if:

- (a) the state or territory has already requested the declaration; or
- (b) the Prime Minister is satisfied that consultation is not practicable.**

This section of the NED legislation effectively enables a unilateral decision to be made, without consideration of, or consultation on, the specific support needs of disaster-affected communities.

Local governments consistently demonstrate that locally led response and recovery efforts deliver the most effective outcomes for affected communities. Councils operate with established, place-based approaches to planning for, responding to and recovering from emergencies, supported by their respective state or territory governments. While the specific mechanisms differ across states and territories—shaped by each jurisdiction's emergency management legislation—the overall process is broadly consistent: local governments identify and communicate what is needed during a disaster to their state or territory authorities, who then engage with the Commonwealth for additional resourcing or support as required.

The current NED legislation that allows the Prime Minister to make a declaration with no consultation with states or territories risks interference with jurisdictional emergency management frameworks, processes, protocols and policies. This interference could have unintended negative consequences for councils and the communities they support during what is already a stressful and chaotic time, and actually undermine strong response and recovery activities that a council and/or state government has already implemented. Lack of consultation presents a risk that the support or assistance delivered under the NED – particularly if it is not financial support – does not align with what communities genuinely require.

ALGA understands there is a difficult balance the legislation must strike: ensuring declarations are made quickly enough for communities to access additional support, while also confirming that the affected state welcomes such a declaration, and that the support it is being provided will meet its needs.

## National Emergency Declaration Act 2020

ALGA therefore recommends that this review consider amending the Act to ensure that the principle of subsidiarity is embedded throughout the declaration process. Specifically, ALGA suggests that a national emergency declaration should **not** be made without consultation with the affected state or territory government, if that government has not already requested a declaration be called itself.

The inclusion of state and territory governments means that local government could then be consulted through their jurisdictional-specific emergency management arrangements, allowing for Commonwealth coordination and deployment of additional resources to be targeted to what communities actually need.

### **Definitions**

During previous reviews of the Act, stakeholders consistently raised concerns about the breadth and opacity of key terms in the legislation—most notably the fact that the term “emergency” is not defined.

Without a clear statutory definition, local governments are exposed to inconsistent interpretations and the risk of the Act being applied in ways that exceed its intended scope. This ambiguity creates uncertainty for councils about when the legislation may be triggered, what obligations may follow, and how responsibilities interact with state and territory arrangements. A lack of definition also undermines national consistency, particularly in multi-jurisdictional events where clarity is most needed.

To address these concerns, ALGA recommends that consideration be given to amending the Act to provide a clear, contemporary definition of what constitutes an emergency—including the nature, scale and duration of events, and how they are delineated from routine incidents or local-level disruptions. Greater clarity would support councils to understand their roles, ensure proportionality in the use of Commonwealth powers, and improve operational alignment across all levels of government.

### **Additional comments**

ALGA recognises that this review is confined to the legislation itself; however, we wish to draw the Committee’s attention to several operational issues that arise once a declaration is made and which we encourage the Committee to consider as part of its deliberations.

### **Longer-term recovery**

The legislation stipulates that a declaration “must not be longer than three months,” although it may be extended multiple times, with each extension limited to a further three-month period.

However, councils continue to provide substantial support to their communities long after national assistance has ceased—often for many years. While the initial influx of aid and resources accompanying a declaration is valuable, it represents only a short-term intervention.

Furthermore, the legislation provides that a NED may be revoked at any time if “the Prime Minister is satisfied that, in all the circumstances, it is appropriate to do so.” This creates the possibility that additional resources provided by the Commonwealth for a disaster-affected area may be withdrawn without notice, which could interrupt longer-term recovery initiative such as mental-health services or temporary accommodation for displaced residents; create uncertainty for service providers; and place sudden and substantial financial and operational pressures on councils to fill the gaps left by withdrawal of national assistance.

Accordingly, any declaration should include consideration of the long-term recovery trajectory of the affected community, including the significant and enduring recovery responsibilities and costs borne by councils. In addition, information on when national assistance will be scaled back or withdrawn needs to be clearly communicated, so that councils can plan effectively and avoid abrupt disruptions to essential recovery services.

### ***Funding***

Without increased financial resourcing for councils to strengthen their community's disaster-preparedness, and implement locally led climate-adaptation measures, the frequency of declarations is likely to rise in response to increasingly frequent and severe climatic events. As these events escalate, the burden on national mechanisms such as NED declarations will continue to grow, placing pressure on Commonwealth resources and increasing overall recovery costs.

Investing in locally delivered resilience and mitigation initiatives provides a more sustainable and cost-effective approach. Early, community-level interventions can reduce the scale of damage, shorten recovery periods, and lessen the need for national declarations. Strengthening local capacity therefore serves the Commonwealth's broader fiscal interest by minimising future liabilities and reducing the likelihood of repeated or large-scale NEDs.

### ***Supporting information***

During consultation with across our state and territory local government associations, it became apparent that the NED legislation is not something that many local governments have much awareness of, or experience in. This is not surprising given it is a Commonwealth Act, and has only been used once during the 2022 NSW/QLD floods.

ALGA considers it valuable to establish an operational interface that clarifies roles, responsibilities, and expectations during a declaration. Such an interface should set out:

- Clear delineation of responsibilities across Commonwealth, state, and local government during the period of a declaration, including clarity on which level of government communicates key decisions or information to the community
- Guidance on how Commonwealth assistance will integrate with state emergency-management frameworks and recovery arrangements (and associated local government emergency management plans.
- Information- and data-sharing protocols between the Commonwealth, state government and local governments, with clear processes for sharing situation reports, impact assessments, and resource updates, including agreed frequency and format.
- Further clarification by the Commonwealth as to what elements of the NED may be of application, interest, or benefit to local government.
- Expected timeframes for the provision of additional national resourcing, along with transparent guidance on when and how this assistance may be scaled back or withdrawn.

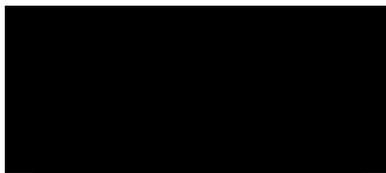
Activation and revocation criteria and transparent triggers for activating, extending, or revoking a declaration, and how this information is fed down to local governments and communities.

## Conclusion

ALGA appreciates the intent of the National Emergency Declaration Act and supports its objectives to enhance Australia's safety and security through expedited, nationally coordinated assistance during emergencies of significant scale. However, the Act must not operate in a way that overrides established jurisdictional processes or the experience and capabilities of local governments.

This review provides an important opportunity to clarify key definitions, strengthen consultation requirements, and ensure the declaration process aligns with the principles of effective emergency management. ALGA encourages the Committee to consider these refinements, so the Act continues to function as a transparent, consistent and proportionate mechanism for national emergency response.

If you would like clarification or further details on any of the content in this submission, please contact Nadia Osman, Emergency Management Policy Director on [REDACTED].



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