



22 March 2021

Ms Sophie Dunstone
Committee Secretary
Senate Legal and Constitutional Affairs Committee
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Canberra ACT 2600

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Operation of the *National Emergency Declaration Act 2020*

Dear Ms Dunstone

Thank you for your email of 10 February 2021 addressed to Mayor Mark Jamieson, President of the Local Government Association of Queensland (LGAQ), regarding a review of the operation of the *National Emergency Declaration Act 2020*. Please find below LGAQ's submission to the review.

INTRODUCTION

In accordance with section 18 of the National Emergency Declaration Act, 2020 (the act) the Senate Legal and Constitutional Affairs Committee is conducting a review of the operation of the Act and will report to the Senate by 30 June 2021.

This response is to the Legal and Constitutional Affairs Legislation Committee's invitation, dated the 10 February 2021, to the LGAQ to make a submission.

ABOUT LGAQ

The Local Government Association of Queensland (LGAQ) is the peak body for local government in Queensland. It is a not-for-profit association established solely to serve councils and their individual needs. The LGAQ has been advising, supporting and representing local councils since 1896, allowing them to improve their operations and strengthen relationships with their communities.

The LGAQ does this by connecting councils to people and places that count; supporting their drive to innovate and improve service delivery through smart services and sustainable solutions; and delivering them the means to achieve community, professional and political excellence.

The LGAQ represents all of Queensland's 77 councils.

SUBMISSION

The simplified outline of the Act found in Division 1, Section 4, states:



The Governor General may make a declaration, called a national emergency declaration, in certain circumstances, including if the Prime Minister is satisfied that an emergency (whether occurring in or outside Australia) is causing harm that is nationally significant in Australia or in an Australian offshore area.

If a national emergency declaration is in force, a Minister may determine that certain provisions of Commonwealth laws are modified in specified ways if certain conditions are satisfied.

Provisions that may be modified include those requiring a person to provide a signature or to report matters to a Commonwealth agency.

If a national emergency declaration is in force, the Prime Minister may require Secretaries of Commonwealth Departments and others to provide information to assist in preparing for, responding to or recovering from the emergency.

A national emergency declaration also has effect for the purposes of other Commonwealth laws (called national emergency laws). Such laws provide that, if a national emergency declaration is in force, certain powers can be exercised, or functions can be performed. If those powers are exercised or functions are performed, the Minister responsible for administering the relevant national emergency law must prepare a report about that and give it to the Minister administering this Act for tabling in Parliament.

A Senate Committee must begin a review of the operation of this Act immediately after the Act commences and begin a further review of the operation of the Act within 5 years after that. A Senate Committee must also begin a review of each national emergency declaration by the first anniversary of the day on which the declaration is made.

In April 2020, the LGAQ submitted to the National Royal Commission into the Black Summer Bushfires directly responding to questions regarding the Commonwealth power to declare a national emergency. The submission included the following:

Whether the Commonwealth Government should have the power to declare a state of national emergency;

In the event of specific events such as the bush-fires subject of this inquiry the declaration of an emergency should rest with the State Government, based on information from local governments or where multiple local government areas are adversely affected.

There are circumstances, the Covid 19 situation for instance, where the Commonwealth may issue broader information on which the State can consider the declaration of a disaster. Such is the case in Queensland at the current time regarding the Covid-19 Pandemic. It is unclear as to what benefits would be achieved through the declaration of a National Emergency. In the state context, such declarations enable additional powers to be exercised by authorised persons. In terms of a bush fire response, it is difficult to hypothesise what additional powers the Commonwealth may wish to exercise in addition to what is already available to them under existing legislation.

How any such national declaration would interact with State and Territory emergency management frameworks



The consideration that emerges here again is, what would the declaration of an emergency at a National level trigger? Greater consideration should be afforded to the value of a declaration of an emergency at a national level. Any federal response would need to be seamlessly integrated with exiting State arrangements and systems.

Whether, in the circumstances of such a national declaration, the Commonwealth Government should have clearer authority to take action (including, but without limitation, through the deployment of the Australian Defence Force) in the national interest;

Actions taken by the Commonwealth should be in consultation with the Queensland Government in accordance with the QDMA.

Queensland has a defined system in place across all aspects of prevention, preparedness, response and recovery that is based on an escalation of needs and consultation between the Local Disaster Management Group, District Disaster Management Groups and the State Government.

Commonwealth Government assistance should be underpinned by direct requests from the Queensland State Government on behalf of their local government/s. Queensland has a strong system of disaster response underpinned by its volunteer emergency sector, in particular the State Emergency Service (SES) and the Rural Fire Service (RFS). Should the capacity of these services be compromised or overwhelmed by any disaster event the capacity to provide intra-state assistance and inter-state assistance has been well tested and proven sound. Presently the ADF is included as an ex-officio member of the QDMC and consequently is already represented for disaster activations that occur in Queensland.

Where military assistance may be required, the process has generally proven to be cumbersome and difficult to navigate.

DAC 1 requests are currently in place for immediate response by the military on a local level, and which were successfully demonstrated during the 2019 Townsville flooding, but requests beyond that prove both complex and confusing.

The Commonwealth should consider the implementation of a system that allows ease of application and deployment as requested. The deployment of military, beyond a DAC 1 request, should only be undertaken upon request to the Commonwealth by the State reflecting the needs of the local government/s where a request for assistance has been made.

The Commonwealth should also consider revisiting its funding arrangements to allow for greater funding capacity to local governments in hazard risk assessment and mitigation works in partnership with State Government agencies.

CURRENT POSITION

Part 2, Section 11 of the act outlines the process for the Governor-General to make a **national emergency declaration**.



Section 11(1) states:

- (1) The Governor General may make a declaration (a **national emergency declaration**) if the Prime Minister is satisfied that:
 - (a) an emergency has recently occurred, is occurring or is likely to occur (whether in or outside Australia); and
 - (b) the emergency has caused, is causing or is likely to cause nationally significant harm in Australia or in an Australian offshore area; and
 - (c) any of the following subparagraphs apply:
 - (i) the governments of each State and Territory in which the emergency has caused, is causing or is likely to cause nationally significant harm have requested, in writing, the making of the declaration;
 - (ii) because of the emergency, it is not practicable for a request to be made under subparagraph (i);
 - (iii) the emergency has affected, is affecting or is likely to affect Commonwealth interests;
 - (iv) the making of the declaration is appropriate, having regard to the nature of the emergency and the nature and severity of the nationally significant harm; and
 - (d) for reasons relating to emergency management, it is desirable for the declaration to be made for the purposes of one or more national emergency laws.
 - (2) 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.
 - (3) Subsection (2) does not require the Prime Minister to consult with the government of a State or Territory if:
 - (a) the government of the State or Territory requested the making of the national emergency declaration under subparagraph (1)(c)(i); or
 - (b) the Prime Minister is satisfied that it is not practicable to do so.
- Requirements for a national emergency declaration*
- (4) A national emergency declaration must:
 - (a) be in writing; and
 - (b) specify:
 - (i) the emergency to which the declaration relates; and
 - (ii) the nature of the emergency and the circumstances that gave rise to it; and
 - (iii) the period for which the declaration is in force.
- Note: The declaration may be varied under sections 12 and 13.
- Period for which a national emergency declaration is in force*
- (5) The period specified for the purposes of subparagraph (4)(b)(iii):
 - (a) must not be longer than the period that the Prime Minister considers necessary for the purposes of emergency management; and
 - (b) in any case, must not be longer than 3 months.
- Note: The period may be extended under section 12 and the declaration may be revoked under section 14.
- National emergency declaration is not subject to disallowance*
- (6) A national emergency declaration is a legislative instrument, but section 42 (disallowance) of the Legislation Act 2003 does not apply to the declaration.



Regarding Section 11 (1) (c), LGAQ submits that, in accordance with our original submission made to the Royal Commission into Bushfires and Natural Hazards in 2020, that this section should not apply to “any of” the provisions and be clear that a **National Declaration** will only be made on the request of an affected State or Territory, in writing. There is no disagreement with Section 11(1) (c) (ii), regarding circumstances that might make it impractical for the State to make the request, but sections (iii), (iv) and Section 1(d) are not supported. Each of these areas empowers the Commonwealth Government to advance the National Declaration without the consent or request of the affected State or Territory.

Part 3 of the Act – **Modification of administrative requirements during a national disaster**, is supported by LGAQ. It remains a constitutional provision of the States and Territories to manage emergencies and disasters within their jurisdictions and request Commonwealth assistance if required. Part 3 of the Act is, by its design, intended to reduce “red tape” and in application should reduce complex bureaucratic provisions that might limit the effective deployment of necessary assistance, logistics and/or funding.

CONCLUSION

Broadly, the LGAQ is supportive of the legislation in its attempt to ensure a more streamlined process of collaboration, cooperation and coordination between each State and Territory and the Commonwealth Government.

The LGAQ also submits that this legislation should provide practical and timely assistance to the State, and not be a provision that overrides or ignores individual State and Territory processes and capacity in managing defined emergencies and disaster events. In all the circumstances a **national emergency declaration** should be made on the request, in writing, of an affected State or Territory.

Notwithstanding the intent of the proposed legislation, the LGAQ continues to assert that locally led response and recovery will deliver the best outcomes for impacted communities. It is critical that the new legislation, when triggered, recognises the well-established protocols that support the effective coordination across local, State, Territory and Commonwealth governments.

On behalf of the LGAQ I thank the Senate Legal and Constitutional Affairs Committee for the opportunity to provide this submission.

Yours sincerely

Greg Hallam AM
CHIEF EXECUTIVE OFFICER