



Australian Government

Department of the Prime Minister and Cabinet

Department of Home Affairs

National Emergency Management Agency

A large blue-tinted graphic of a globe with a digital grid overlay, showing continents and lines of latitude/longitude. The globe is set against a dark background with light streaks and a blue triangular shape on the right side.

Joint Agency Submission to the Review of the National Emergency Declaration Act 2020

Senate Legal and Constitutional Affairs Legislation Committee

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1. Introduction

The Department of Home Affairs (Home Affairs), the Department of the Prime Minister and Cabinet (PM&C) and the National Emergency Management Agency (NEMA) are pleased to provide a joint submission to the Senate Legal and Constitutional Affairs Legislation Committee's (the Committee) Review of the *National Emergency Declaration Act 2020* (NED Act).

The Committee's Review marks over half a decade since the NED Act came into effect on 16 December 2020. Australia's risk environment across all hazards has continued to be challenging. Increasingly frequent, severe and costly natural disasters are converging with rapidly evolving human-induced threats. In this context, the Committee's statutory review of the NED Act is an opportunity to ensure the NED Act remains fit for purpose now and into the future.

This submission provides the Committee with an overview of the NED Act and outlines:

- the principles underpinning the NED Act,
- the scope and operation of the NED Act,
- the oversight and governance arrangements of the NED Act, and
- the current and emerging threat environment.

Further information on the National Emergency Declaration framework is available in the joint submission from the Attorney-General's Department (AGD), Home Affairs and PM&C to the Committee's 2021 inquiry into the NED Act, and in the joint submission from Home Affairs, PM&C and NEMA to the Committee's inquiry following the 2022 National Emergency (NSW Floods) Declaration.

2. Overview of the NED Act

The NED Act was established in response to Recommendation 5.1 of the Royal Commission into National Natural Disaster Arrangements following the devastating Black Summer bushfires of 2019-2020. It received Royal Assent on 15 December 2020 and is the Commonwealth's primary all-hazards emergency management legislation.

The operation of the NED Act does not exclude, interfere with or override the primary responsibilities that states and territories have for emergency management within their jurisdictions, or the constitutional, legal and regulatory frameworks governing that responsibility. Rather, it enables the Australian Government to rapidly support states and territories to respond to a National Emergency and to act effectively and decisively where it is within the Australian Government's responsibility to do so.

The NED Act enables the Governor-General, on advice of the Prime Minister, to declare a National Emergency. A National Emergency can only be declared if the emergency meets certain legislated thresholds and requirements under section 11 of the NED Act. These conditions include that the Prime Minister is satisfied that:

- an emergency has recently occurred, is occurring or is likely to occur, and
- the emergency has caused, is causing or is likely to cause nationally significant harm in Australia or in an Australian offshore area, and
- 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, and
- any of the following applies:
 - a. the affected state(s) and/or territory(ies) has/have requested in writing a National Emergency declaration be made, or
 - b. it is not practicable for such a request to be made because of the emergency, or
 - c. the emergency has affected, is affecting or is likely to affect Commonwealth interests, or

- d. 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.

A National Emergency Declaration can be made for an initial period of up to three months. In recognition that the impacts of some National Emergencies may extend beyond three months, the NED Act enables the Governor-General, on advice of the Prime Minister, to extend the duration in which the National Emergency Declaration is in force in additional three-month blocks. To do so, the Prime Minister must be satisfied (among other things) that for reasons relating to emergency management, it is desirable for the declaration to be in force for a longer period for the purposes of one or more national emergency laws. The Governor-General may also vary or revoke a National Emergency Declaration on advice of the Prime Minister.

Once declared, a National Emergency enlivens emergency powers for the Australian Government. These emergency powers are designated “national emergency laws” under section 10 of the NED Act. During a National Emergency, the exercise of these national emergency laws is streamlined, which expedites the response to the crisis. A National Emergency Declaration also enlivens emergency powers for responsible ministers to suspend, vary or substitute procedural “red tape” requirements in legislation they administer (section 15) and for the Prime Minister to require accountable authorities of the Commonwealth to provide specified information for the purposes of preparing for, responding to and recovering from the National Emergency (section 16).

Oversight, governance and reporting requirements are built into the NED Act. Section 17 of the NED Act requires the Minister responsible for administering the relevant national emergency law to report on the exercise of powers or performance of functions under such laws used during a National Emergency. Sections 14A and 18 of the NED Act establish requirements for the Committee to review the NED Act – the first by 30 June 2021 (completed), five years after it came into effect (currently underway), and within 12 months following each National Emergency Declaration.

2.1 National Emergency responsibilities across Government

On 1 June 2022, responsibility for the administration of the NED Act transferred to Home Affairs from AGD through a machinery of government change. NEMA, which was established on 1 September 2022, supports the operationalisation of a National Emergency Declaration, including through the National Coordination Mechanism (NCM) and the National Situation Room (NSR). PM&C is responsible for supporting the Prime Minister’s consideration of a National Emergency Declaration.

Together, Home Affairs, PM&C and NEMA are responsible for providing advice on policy and operational matters relevant to the NED Act. Each Australian Government department and agency is responsible for advising their respective ministers on the exercise of any powers under legislation they administer that are national emergency laws or might be relevant under section 15 of the NED Act.

3. Principles underpinning the NED Act

The NED Act recognises and enhances the role of the Australian Government in preparing for, responding to and recovering from emergencies that cause, or are likely to cause, nationally significant harm.

Declaring a National Emergency sends a clear signal to the public and international partners about the severity and significance of an emergency and mobilises Australian Government resources to support state- and territory-led emergency preparedness, response, relief and recovery.

To achieve this, the NED Act is underpinned by four key principles:

- nationally significant harm,
- all-hazards approach,
- time-limited declarations, and
- national emergency laws.

3.1 Nationally significant harm

Nationally significant harm is central to the consideration of a National Emergency Declaration. Section 10 of the NED Act defines “nationally significant harm” as harm that:

- i. has a significant national impact due to its scale or consequences; and
- ii. is any of the following:
 - a. harm to the life and health (including mental health) of an individual or group of individuals;
 - b. harm to the life or health of animals or plants;
 - c. damage to property and infrastructure;
 - d. harm to the environment;
 - e. disruption to an essential service.

Nationally significant harm is defined to capture various ways in which an emergency may negatively impact Australians, Australia or the national interest. The high threshold ensures declarations are made only in limited circumstances where the national impact is significant.

3.2 All-hazards approach

The NED Act takes an all-hazards approach to ensure it is not unduly limited to specific hazards. The all-hazards approach means a National Emergency may be declared regardless of the cause of the emergency (for instance bushfires, floods, tropical cyclones, cyberattacks, terrorism, sabotage, etc.). This means a National Emergency could encompass a broad range of natural and human-induced emergencies. A National Emergency is also not confined to incidents occurring in isolation and may be declared for consecutive, concurrent and compounding emergencies.

3.3 Time-limited declarations

As defined in section 10 of the NED Act, “emergency management” means emergency risk reduction, preparedness, response and recovery engaged before, during or in the immediate aftermath of an emergency. Paragraph 17 of the Revised Explanatory Memorandum to the *National Emergency Declaration Bill 2020* (the Revised EM) emphasises “the definition of emergency management is not intended to extend beyond the immediate aftermath of an emergency. The declaration of a national emergency is intended to be time-limited, and ordinary processes should be restored once the immediate response and recovery need is addressed.” Accordingly, the duration of a National Emergency Declaration is restricted under section 11 of the NED Act to be time-limited (up to three months).

Given the inherent uncertainty and complexity of emergency management, section 12 of the NED Act does allow a National Emergency Declaration to be extended in additional three-month blocks to ensure

emergency powers continue to be available if necessary and appropriate to respond to or recover from a National Emergency.

3.4 National emergency laws

When a National Emergency Declaration is in force, relevant responsible ministers and officials can exercise a designated list of “national emergency laws”. These laws allow:

- responsible ministers and officials to use streamlined or alternative statutory tests for the exercise of specified existing emergency powers;
- responsible ministers to suspend, vary or substitute “red tape” requirements in legislation they administer; and
- the Prime Minister to require Commonwealth entities to provide information relevant to the National Emergency, including reporting on stockpiles, assets, resources and emergency response options.

3.4.1 Streamlined use of existing emergency powers

Section 10 of the NED Act designates 35 national emergency laws. These laws are a list of provisions across Commonwealth statutes that contain powers that may be enlivened while a National Emergency Declaration is in force. When a National Emergency Declaration is in force, responsible Commonwealth ministers and officials can use the corresponding law, often with a streamlined or simplified alternative test. Making a National Emergency Declaration does not mean these provisions are automatically enlivened (for instance, a National Emergency Declaration does not automatically enliven Australian Government emergency support payments), nor does it create a positive duty obligation for ministers or officials to use these emergency powers (for instance, the Minister for Home Affairs is not required to exercise emergency powers under the *Security of Critical Infrastructure Act 2018* just because a National Emergency is declared). The alternative, simplified thresholds do not otherwise alter or remove the existing important safeguards around the use of those powers.

3.4.2 Ministers’ power to suspend, vary or substitute “red tape” requirements

During a National Emergency, responsible ministers may, by making a determination under section 15 of the NED Act, suspend, vary or substitute procedural “red tape” requirements in legislation they administer where doing so would benefit the public or a section of the public impacted by the National Emergency. This power is designed to temporarily expedite access to Government support and services in circumstances where usual regulatory requirements may obstruct or hinder the Government’s response to a National Emergency.

For example, this power may be exercised in circumstances where:

- due to a flood or fire, a person may be unable to produce certain proof of identity documents, which may otherwise prevent them from obtaining Commonwealth support; or
- a person or entity may be unable to have certain documents certified or signatures witnessed due to the imposition of public health measures during a pandemic.

Section 15 of the NED Act tightly restricts this power to the modification of procedural requirements and explicitly sets out the types of procedural requirements that may be modified when a National Emergency Declaration is in force.

Subsection 15(8) further restricts the use of this power by exempting certain Acts or provisions of Acts from being suspended, varied or substituted during a declared National Emergency. These exemptions recognise the enduring importance of these provisions during a National Emergency.

3.4.3 Prime Minister’s power to require Commonwealth entities to provide information relevant to the emergency

When a National Emergency is declared, section 16 of the NED Act enables the Prime Minister, by written notice, to require accountable authorities of the Commonwealth to provide specified information for the purposes of preparing for, responding to and recovering from the National Emergency. This power is intended to provide emergency managers with access to critical information and a comprehensive

understanding of Australian Government resources available to support the emergency response. Examples of information the Prime Minister may request include stockpiles of medical supplies, assets or other resources held by a Commonwealth entity as well as options or recommendations relating to actions that may be taken by the Government.

4. Scope of the NED Act

As guided by the key principles above, the NED Act is designed to respond to acute emergencies which are likely to cause, are causing or have caused nationally significant harm, regardless of the hazard type. Emergency powers under the NED Act are time-limited and have the greatest utility before, during or in the immediate aftermath of a crisis where usual response capabilities are overwhelmed and streamlining Australian Government support expedites response efforts. It is intended that National Emergencies be declared for severe and extreme crises affecting Australia, including compounding or concurrent emergencies. National Emergencies can only be declared in exceptional circumstances, where the scale and consequence of the harm caused (or anticipated) reaches the “nationally significant harm” threshold. The all-hazards approach provides necessary flexibility so as not to limit the circumstances in which a declaration can be made in relation to certain types or kinds of defined emergencies. It also ensures the NED Act is applicable to any future emergencies Australia may face, including those beyond current contemplation and experience.

The NED Act is not designed for a National Emergency to be declared to manage slow-onset hazards such as algal blooms, droughts or coastal erosion. These types of long-term hazards require a sustained and ongoing response rather than the exercise of time-limited, emergency powers. The NED Act is also not designed to respond to chronic social issues, including religiously-motivated hatred or gender-based and domestic violence. Emergency powers enlivened when a National Emergency Declaration is in force have limited utility in responding to or managing these types of events and issues. These types of chronic challenges are better managed through sustained and consistent measures, which may include government investment and policy and legislative change.

The NED Act does not override state and territory emergency management legislation or declarations during a National Emergency. It also does not interfere with states’ primary responsibility for emergency management within their jurisdiction.

Similarly, the declaration of a National Emergency does not automatically override or suspend other Commonwealth legislation, nor does it provide unlimited emergency powers to Australian Government senior officials, ministers or the Prime Minister. A National Emergency is not required to activate some forms of Australian Government emergency support, including the provision of disaster payments to affected individuals or the deployment of the Australian Defence Force to support emergency response or recovery.

5. Operation of the NED Act

The NCM is the peak senior officials' crisis coordination mechanism as defined in the Australian Government Crisis Management Framework (AGCMF). The NCM provides the convening mechanism to bring together the Australian Government, state and territory governments and non-government representatives immediately before, during and after a crisis, providing a national picture of crisis to governments and key stakeholders. The NCM has proven to be a flexible forum for ensuring consistent shared situational awareness, coordination, communication and collaboration during a range of crises.

The Australian Government NCM (NCM-AUSGOV) is a specialised NCM that supports a shared whole of Australian Government picture of a crisis, with participants drawn from across the Australian Government. The NCM-AUSGOV is often used to inform whether the threshold for advising the making of a National Emergency Declaration has been reached. This assessment may involve reviewing a checklist of conditions and statutory thresholds. Key to the assessment is determining if the crisis event is causing, has caused, or is likely to cause, nationally significant harm. The assessment of NCM-AUSGOV participating agencies informs subsequent briefing, should it be necessary, to the Prime Minister by PM&C on the need to make a National Emergency Declaration, in consultation with the Australian Government Lead Coordinating Senior Official (LCSO) responsible for the management of the hazard under the AGCMF and with support from Home Affairs and NEMA as required.

When the Prime Minister is satisfied that an emergency event meets the threshold for making a National Emergency Declaration, the Prime Minister will make a recommendation to the Governor-General to declare a National Emergency.

A National Emergency Declaration can be requested by an affected state or territory government. The Prime Minister may also unilaterally recommend to the Governor-General to declare a National Emergency if appropriate, for example, where the nationally significant harm does not, or will not, affect a state or territory because it is occurring in an Australian offshore area. However, in most cases, it is intended that the Prime Minister would consult relevant state and territory counterparts prior to recommending the Governor-General make a National Emergency Declaration.

Home Affairs, PM&C and NEMA, in consultation with the LCSO responsible for the management of the hazard and other agencies as appropriate, may also meet separately outside an NCM-AUSGOV to make an initial assessment about whether the National Emergency Declaration threshold has been met. However, given the national emergency laws under the NED Act span many Commonwealth agency portfolios, whole-of-government consideration of a National Emergency Declaration is made collaboratively through the NCM-AUSGOV wherever possible.

Recognising an NCM-AUSGOV may be called for a range of reasons (including to discuss specific operational matters relating to a broader crisis or incident), the consideration of a National Emergency Declaration has been a standing agenda item at NCM-AUSGOVs where such discussion is appropriate. Since the NED Act came into effect, only one National Emergency Declaration has been made – the *National Emergency (2022 New South Wales Floods) Declaration 2022* (the 2022 declaration).

6. Oversight and governance arrangements

The NED Act establishes reporting requirements regarding the exercise of emergency powers under the NED Act and requires scheduled and retrospective statutory reviews of the NED Act and National Emergency Declarations.

Section 17 of the NED Act requires a minister responsible for administering a national emergency law to prepare and give to the Minister for Home Affairs (as the minister responsible for administering the NED Act) a report where the national emergency law is exercised for the purposes of the declaration. This includes the “red tape” cutting power and the Prime Minister’s information gathering power under sections 15 and 16 of the NED Act. The report must be given as soon as practical once the declaration ceases (or, if the declaration is extended, within three months after the declaration came into force and every subsequent period of three months that the declaration remains in force). Once received, the Minister for Home Affairs must table a copy of this report in each House of Parliament as soon as practicable.

Sections 14A and 18 of the NED Act establish requirements for the Committee: first, to review the operation of the NED Act and report on its findings by 30 June 2021 (completed); second, to commence a review five years after the NED Act came into effect (currently underway); and third, begin a review of each National Emergency Declaration by the first anniversary of the day the declaration is made. The Committee must report its findings to the Senate as soon as practicable upon completion of each review.

The Committee’s current review of the operation of the NED Act is the final statutory review of the NED Act that will be conducted before the next National Emergency strikes - all future statutory reviews of the NED Act hereafter will be retrospective (i.e. within 12 months following a National Emergency Declaration).

6.1 Findings and recommendations of previous statutory reviews

6.1.1 First statutory review

In its first statutory review of the NED Act, delivered in June 2021, the Committee acknowledged concerns in relation to the exemption of a National Emergency Declaration and subsequent extensions from disallowance. The Committee recommended the Australian Government consider amending the NED Act through the removal of subsection 12(5), so that any extension beyond the three-month period is subject to parliamentary disallowance. Home Affairs, PM&C and NEMA understand these concerns and recognise the importance of appropriate oversight mechanisms in the NED Act.

The Revised EM provides reasoning to support a National Emergency Declaration being exempt from disallowance:

“A core objective of the declaration is to clearly signal to the Australian community the severity of the emergency event, and provide certainty about the Commonwealth’s role, and the statutory powers that are available, in respect of a particular emergency event. This objective would be undermined if such a declaration were disallowable, as the prospect of disallowance is likely to call into question the status of the emergency event.

“This exemption also reflects the critical nature of the declaration, which puts into effect a range of mechanisms that may be employed to respond to the emergency event. The making of the declaration ensures that urgent and decisive action can be taken in response to a nationally significant emergency event. This also provides the greatest level of certainty for emergency response agencies about the legal framework under which they are operating, including the various legal obligations and duties that may flow from the making of a declaration. If a declaration were disallowed, it would destabilise the framework under which emergency response agencies are operating, leading to uncertainty and potential delays in the response and recovery effort where time is of the essence.”

– Revised EM, paragraphs 48-49.

Similarly, the Revised EM notes the extension of a National Emergency Declaration being exempt from disallowance is consistent:

“The exemption reflects the critical nature of the declaration, its objective in providing clarity about the severity of an emergency event, and ensures that urgent and decisive action can be taken with certainty in response to a nationally significant emergency event.”

- Revised EM, paragraph 56.

The Australian Government Response to the Senate Committee’s Report Recommendations, tabled on 9 May 2024, noted all recommendations and stated, “given the passage of time since the report was tabled, a substantive Government response is no longer appropriate”.

6.1.2 Second statutory review

The Committee’s review of the 2022 declaration, delivered in February 2023, recommended that any changes to the NED Act consider the findings of the two operational reviews conducted by the Senate to date.

The Australian Government agreed to this recommendation in its response, which was tabled on 19 November 2024.

7. Current and emerging threat environment

Since the NED Act's establishment in 2020, Australia's threat environment has changed across both human-induced and natural hazards. Australia is facing the most challenging threat environment in recent history. Crises and catastrophes are no longer a distant threat. Increasingly frequent and severe natural disasters are being driven by our changing climate. Our region faces escalating competition on multiple levels – economic, military, strategic and diplomatic. Convergent natural disasters and security threats will continue to threaten Australians and our way of life.

Climate change is driving more severe, compounding and cascading natural hazards. Australia's National Climate Risk Assessment 2025 highlights extreme natural hazards will increase into the future, with concurrent severe events and reduced time between severe events becoming more common. The Independent Review of Commonwealth Disaster Funding, released on 25 October 2024, found the total economic cost of natural disasters is projected to increase from \$11.8 billion in 2023-24 to \$40.3 billion in 2049-50.

Human-induced crises and threats are also increasing. In his 2025 Annual Threat Assessment, the Director-General of the Australian Security Intelligence Organisation warned "Australia is facing multifaceted, merging, intersecting, concurrent and cascading threats" with the security environment becoming more dynamic, more diverse and more degraded. The Director-General was particularly concerned by the concurrency of crises – "it's everything, everywhere, all at once" – and the willingness of some regimes to engage in "high harm" activities to pursue their strategic interests, contributing to a more degraded security environment. Authoritarian regimes have been assessed as growing more willing to disrupt or destroy critical infrastructure to impede decision-making and sow social discord. Cyber-enabled sabotage is an acute concern for Australia that may hinder our ability to respond to emergencies.

Around the world, governments are recognising these threats and taking action. Following the COVID-19 pandemic and in the face of deteriorating regional security, the United Kingdom, Canada, the United States of America, the European Union, Singapore, Japan and others are enhancing their emergency and crisis response arrangements to ensure they remain fit for purpose. The Australian Government too has taken significant action to uplift its emergency response arrangements and capabilities, for example the Government has:

- established the National Emergency Management Stockpile (NEMS);
- upgraded the NSR, including launching the National Joint Common Operating Picture (NJCOP) and establishing a crisis intelligence capability to anticipate impacts on consequences for emerging events;
- strengthened legislation and regulations to protect Australia's critical infrastructure (CI), including amending the *Security of Critical Infrastructure Act 2018* in 2021, 2022 and 2024 to better manage the consequences of all hazards on CI assets;
- released the 2023-2030 Australian Cyber Security Strategy to support the Government's vision of a future with stronger cyber protections;
- launched the first Australian Cyber Response Plan and Australian Government Domestic Security Crisis Plan, and updated existing national crisis plans under the AGCMF;
- implemented the National Crisis Exercise Program;
- introduced an annual National Preparedness Summit as part of the National Preparedness Program ahead of each higher risk weather season; and
- completed a comprehensive review and update of the AGCMF in 2023.