



27 January 2026

National Emergency Declaration Act Review Submission from the Government of South Australia

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

Thank you for the opportunity to provide a submission in support of the review of the *National Emergency Declaration Act 2020* (Cth) (the Act). Recent events both in South Australia and nationally demonstrate the importance of contemporary and effective emergency management arrangements.

In 2024, the South Australian (SA) Government commissioned an independent review of the *Emergency Management Act 2004* (SA), which is the principal legislation for SA's emergency management arrangements. The review led to significant legislative amendments which came into force in December 2025. We hope that our recent experience will be of benefit to the Committee. Please see recommendations from the Government of South Australia below.

Definition of 'Emergency'

The Act does not provide a definition of the term 'emergency' despite being a key condition for the making of a national emergency declaration under s11(1) of the Act. The revised explanatory memorandum to the *National Emergency Declaration Bill 2020* (which later became the Act) states that the term 'emergency' was intentionally not defined in the Act to support an 'all hazards' approach. It advises that emergency should be interpreted using its natural and ordinary meaning and cites the Macquarie Dictionary definition of 'emergency' being '*an unforeseen occurrence; a sudden and urgent occasion for action*'. The revised explanatory memorandum then goes on to set out in some detail the circumstances which would, and would not, constitute an 'emergency' under the Act.¹

¹ Australian Government (2020). *Revised Explanatory Memorandum, National Emergency Declaration Bill 2020*.

https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2F6647_ems_a0aa59ac-9164-461a-8f73-1370eec53075%22

South Australia is increasingly experiencing a changing emergency management landscape driven by the effects of climate change, including the introduction of new and slow-onset ecological events. Emergencies are increasingly being caused or compounded by climate change and extreme weather events. Contemporary emergency management arrangements must account for the increasing impact of climate change on the type, frequency, severity and duration of some emergencies. At present, the Act is silent on the nexus between climate change and emergencies in Australia, and fails to account for new, complex and slow onset emergencies caused or compounded by climate change. The natural and ordinary meaning of ‘emergency’, as set out in the revised explanatory memorandum, does not capture the changing emergency management landscape and the rise of slow-onset emergency events.

While flexibility is an important feature of emergency management arrangements, failure to clearly define what constitutes an emergency in the Act invites uncertainty and ambiguity when considering the need for a national emergency declaration. The omission of a definition for what constitutes an emergency (or disaster) in the Act is at odds with established emergency management legislation in all other states and territories. To avoid the need to refer to the detailed guidance in the revised explanatory memorandum, a clear but broad definition of ‘emergency’ should be included in s10 of the Act, which is supported by previous reviews by the Senate Legal and Constitutional Affairs Legislation Committee which included recommendations to clarify the meaning of key terms such as ‘emergency’.²

Recommendation 1: The Australian Government amend the *National Emergency Declaration Act 2020* to include a clear definition of what constitutes an ‘emergency’, consistent with corresponding state and territory emergency management legislation, following consultation with state and territory governments.

Recommendation 2: the Australian Government amend the *National Emergency Declaration Act 2020* to include reference to the nexus between climate change and emergencies, and reference to climate induced and slow onset ecological emergencies.

Definition of ‘Commonwealth interest’

Section 11(1) of the Act sets out conditions for making a national emergency declaration. This includes s 11(1)(c)(iii) which states that ‘...*the emergency has affected, is affecting or is likely to affect Commonwealth interests*’. This condition is repeated in ss 12(1) and 13(1) of the Act. The Act is silent on what constitutes ‘Commonwealth interests’, again introducing uncertainty and ambiguity when considering the need for a national emergency declaration. The revised explanatory

² Australian Government (2024). *Australian Government response to the Senate Legal and Constitutional Affairs Legislation Committee report: National Emergency Declaration Act 2020*. P3.
<https://www.homeaffairs.gov.au/reports-and-pubs/PDFs/ned-act-2020.pdf>

memorandum provides some guidance, stating that it's '*intended to reflect the full extent of the Commonwealth's constitutional interests*' and provides some potential examples.³

Given that s11(1) would likely be required in extraordinary circumstances, it is important that key terms are clearly defined and easy to interpret. The Act allows the Australian Government to use extensive power to respond to emergency events and as a result, should not be so heavily reliant on extrinsic material in its interpretation. We note that previous reviews by the Senate Legal and Constitutional Affairs Legislation Committee included recommendations to clarify the meaning of key terms such as 'Commonwealth interests'.⁴

Recommendation 3: The Australian Government amend the *National Emergency Declaration Act 2020* to include a clear definition of what constitutes 'Commonwealth interests', following consultation with state and territory governments.

Definition of 'Animals', 'Plants' and 'Environment'

The definition for 'nationally significant harm' in s10 of the Act includes reference to harm to animals, plants and the environment, however the Act does not define these terms. The inclusion of clear definitions for these terms is a common feature of state, territory and Commonwealth biosecurity legislation, for example the *Biosecurity Act 2025* (SA) sets out clear details for each. Providing definitions for these terms in the Act will reduce uncertainty and ambiguity when forming a view as to whether an emergency poses a risk of nationally significant harm.

Recommendation 4: The Australian Government amend the *National Emergency Declaration Act 2020* to include a clear definition of 'Animals', 'Plants' and 'Environment', including both terrestrial and marine ecosystems, following consultation with state and territory governments.

Reference to a subordinate framework for national emergency declarations

In all states and territories, emergency management legislation establishes and governs a subordinate policy framework – often known as the state emergency management plan (or similar). The development and maintenance of these subordinate frameworks is an important feature of emergency management arrangements across Australia. State emergency management plans provide additional clarity around agency and individual roles and responsibilities, governance and operational arrangements, and underpin strong cross-sector collaboration. Regular maintenance of these subordinate

³ Australian Government (2020). *Revised Explanatory Memorandum, National Emergency Declaration Bill 2020*.

⁴ Australian Government (2024). *Australian Government response to the Senate Legal and Constitutional Affairs Legislation Committee report: National Emergency Declaration Act 2020*. P3.

frameworks ensures that emergency management arrangements remain contemporary and encourages continuous improvement.

Effective coordination, collaboration and information and resource sharing can be challenging during an emergency. However, these are significantly improved by the application of well understood and practical frameworks such as state emergency management plans. Inter-jurisdictional coordination during a nationally significant emergency can be even more challenging and would greatly benefit from the development and maintenance of a clear, practical and nationally agreed framework.

A framework for national emergency declarations could provide clarity on relationships, roles and responsibilities, set out clear processes and thresholds, and identify what Commonwealth support and resources will become available to states and territories during a declaration. We note that previous reviews by the Senate Legal and Constitutional Affairs Legislation Committee included recommendations to develop a coordinated framework for all jurisdictions to operate effectively under the Act.⁵

Recommendation 5: The Australian Government consult with state and territory governments to develop and maintain a framework for national emergency declarations, named as a subordinate policy under the *National Emergency Declaration Act 2020*. The Australian Government Crisis Management Framework may be suitable to be adapted to this role.

State and territory thresholds for requesting a national emergency declaration

Sections 11(1)(c)(i), 12(1)(c)(i) and 13(1)(c)(i) allow the government of each state or territory, affected by an emergency, to make a request in writing for a declaration, extension and/or variation of a national emergency declaration. The Act (and any subordinate national framework) would benefit from greater clarity on what thresholds, if any, state and territory governments need to meet before making a written request for a national emergency declaration. For instance, whether a state or territory level emergency declaration should be made, extended, varied or revoked in the first instance. It is currently unclear how the national emergency declaration fits with existing state and territory emergency management frameworks.

Section 10 includes a definition of ‘nationally significant harm’, and s11(1)(b) includes nationally significant harm among the conditions for a national emergency declaration. It is possible that this definition could be amended to clarify the thresholds for a national declaration. Nationally significant harm could include emergencies that affect more than one state or territory, emergencies that overwhelm or are beyond the capacity of one or more state or territory governments to manage, or emergencies that have resulted in local or statewide emergency declarations.

⁵ Australian Government (2024). *Australian Government response to the Senate Legal and Constitutional Affairs Legislation Committee report: National Emergency Declaration Act 2020*. P3.

Recommendation 6: The Australian Government amend the *National Emergency Declaration Act 2020* to include clear thresholds for state and territory governments to meet prior to requesting the declaration, extension and/or variation of a national emergency declaration, or otherwise provide guidance in a nationally agreed framework (see recommendation 4), following consultation with state and territory governments.

Requirement to notify affected states and territories of a national emergency declaration

Sections 11(2), 12(2) and 13(1A) require the Prime Minister to consult with the government of each state or territory in which an emergency has or may cause nationally significant harm. Sections 11(3)(b), 12(3) and 13(1B) allow for the Prime Minister to waive this responsibility if satisfied that it is not reasonably practicable to do so.

The Act does not require the Australian Government to notify the government of affected states or territories that a national emergency declaration has or will be made. This omission introduces ambiguity and could lead to state and territory governments first learning about a national emergency declaration via media reporting rather than from the Australian Government. This is of particular significance in circumstances where the Prime Minister has not consulted with affected governments pursuant to sections 11(3)(b), 12(3) and 13(1B).

State and territory governments would benefit from a notification mechanism which provides them with as much time as reasonably practicable to ensure their state-level emergency management arrangements compliment the Australian Government's approach. Under the *Emergency Management Act 2004* (SA), the SA Government has four emergency declaration types available to it which can be used to signal to the public the seriousness of a risk posed. To avoid confusion to the public, the SA Government would benefit from notification of the Australian Government's exercise of national emergency declarations to ensure its decision to declare, extend or revoke a declaration is consistent at all levels of government. Similarly, if the Australian Government would like to make a national emergency declaration to assist in emergency response and recovery operations, it will be beneficial to know as soon as practicable to coordinate state and federal resources.

Recommendation 7: The Australian Government amend the *National Emergency Declaration Act 2020* to require the Australian Government to notify affected state and territory governments prior to the declaration, variation or revocation of a national emergency declaration, unless prevented from doing so by the nature or consequences of the emergency.

Introduction of a national ‘state of alert’ declaration

The 2024 review of the *Emergency Management Act 2004* (SA) identified the benefit of introducing a new ‘state of alert’ declaration type. The review found that historically in South Australia, emergency declarations for ‘traditional’ emergencies, such as major bushfires were only issued for short periods of time. In more recent years, emergency declarations have operated for extended periods for complex emergencies such as COVID-19 and the 2022-23 River Murray flood event.

Some protracted emergencies do not occur in a linear fashion – for example, the risks presented by COVID-19 ebbed and flowed throughout the course of the pandemic. During periods of diminished risk, reduced public restrictions often appeared at odds with the statewide Major Emergency declaration. The review recommended that South Australia introduce a new scalable declaration type, such as the ‘state of alert’ declaration used in ACT and Tasmania, which allows jurisdictions to more easily scale up and down during emergency as appropriate.⁶

The object of the *National Emergency Declaration Act 2020* (Cth) is to ‘recognise and enhance the role of the Commonwealth in preparing for, responding to and recovering from emergencies that cause, or are likely to cause, nationally significant harm.’ Given there is only one declaration type available to the Australian Government, it is possible that the ability to identify, prepare for and potentially mitigate the impacts of nationally significant emergencies is limited. Introduction of a new scalable declaration type may improve the Australian Government’s ability to identify, prepare for and respond to nationally significant emergencies in a more timely and flexible manner.

Recommendation 8: The Australian Government amend the *National Emergency Declaration Act 2020* to introduce a scalable national declaration type or types, including ‘state of alert’ or similar, following consultation with state and territory governments.

Regulations

Section 19 of the Act allows the Governor General to make regulations to carry out or give effect the Act. The Act is currently not supported by regulations. Should the Australian Government develop regulations for the Act, we note the importance of consulting with state and territory governments prior to their issue to resolve any inconsistencies with state and territory emergency management legislation and arrangements.

⁶ Peg Consulting (2024). *Independent Review of the Emergency Management Act 2004: Final Report*. Government of South Australia. Pp38-43. <https://yoursay.sa.gov.au/emergency-management-act-review>

Recommendation 9: The Australian Government undertake to consult with state and territory governments prior to introducing regulations in support of the *National Emergency Declaration Act 2020*, to resolve any inconsistencies with state and territory arrangements.

Summary of recommendations

Recommendation 1: The Australian Government amend the *National Emergency Declaration Act 2020* to include a clear definition of what constitutes an ‘emergency’, consistent with corresponding state and territory emergency management legislation, following consultation with state and territory governments.

Recommendation 2: the Australian Government amend the *National Emergency Declaration Act 2020* to include reference to the nexus between climate change and emergencies, and reference to climate induced and slow onset ecological emergencies.

Recommendation 3: The Australian Government amend the *National Emergency Declaration Act 2020* to include a clear definition of what constitutes ‘Commonwealth interests’, following consultation with state and territory governments.

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Recommendation 9: The Australian Government undertake to consult with state and territory governments prior to introducing regulations in support of the *National Emergency Declaration Act 2020*, to resolve any inconsistencies with state and territory arrangements.