

SENATE LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION
COMMITTEE

REVIEW OF THE OPERATION OF THE *NATIONAL EMERGENCY
DECLARATION ACT 2020*

RESPONSES TO QUESTIONS TAKEN ON NOTICE

THE STATE OF QUEENSLAND

QUESTION 1

Senator KIM CARR: Deputy Commissioner, you may need to refer this to a political authority in Queensland. As an officer I don't want to put you in the position where you feel in any way compromised. Under section 11(2)(3), prior to declaring a national emergency the Prime Minister is not required to consult with the government of a state or territory if the Prime Minister is satisfied that it is not practicable to do so. This is a point that Senator Scarr raised with you. Does that provision need to be amended so we are clear as to what the circumstances are to avoid a situation where the Prime Minister claims that it is not practicable to consult with the state or the territory and bypasses the civil authorities—in the call-out of troops, for instance—without good reason?

Mr Wassing: From a broader legislative perspective, I would have to refer that. From a practical perspective or an operational strategic perspective, I can say from personal experience that there are limited circumstances where, when you have to make a decision, you are not able to consult all the people you need to. The pre-work with respect to the understanding, rehearsing, practising and exercising of those arrangements is therefore really important.

ANSWER:

The Commonwealth Attorney-General's Department is currently undertaking a second phase of work consulting with states and territories to identify opportunities to improve and enhance the *National Emergency Declaration Act 2020* (NED Act) framework. The Queensland Government has nominated a representative to take part in this consultation process.

The Queensland Government welcomes this opportunity to work with the Commonwealth Government and with other states and territories to provide greater rigour and accountability and to develop a common understanding of the intended practical application of the NED Act, including the circumstances in which a unilateral declaration may be made.

The Queensland Government's view is that a unilateral declaration should be made only in exceptional circumstances. Any amendments to the NED Act required to provide for stronger statutory parameters around a decision not to consult should be developed through the consultative process and include consideration of existing legislation and frameworks, such as the Defence Assistance to the Civil Community arrangements, the Australian Government Crisis Management Framework, the National Catastrophic Natural Disaster Plan, the Commonwealth Government Disaster Response Plan. Careful consideration is required to

ensure there are no unintended limitations for the Commonwealth, state or territory governments of any amendments to the NED Act.

QUESTION 2

Senator KIM CARR: During the bushfires I recall that a controller of the New South Wales State Emergency Service was on the public media saying he wasn't aware of the deployment of ADF personnel. Such circumstances occurred recently. There were disputes in Victoria about the deployment of the ADF. There have been genuine natural disasters, such as bushfires, but there could also be under this legislation other matters that go beyond natural disasters, such as a civic disturbance. There might be a dispute as to whether Commonwealth assistance is required. Legislation of this type is there for a long time. We should not be governed just by what has happened recently. In the future, different ministers may operate under different principles. We have to look at the implications for the legislation in those circumstances. Would you agree?

Mr Wassing: I would probably need to refer that to someone in a more legislative role or context.

Senator KIM CARR: In doing so, could you provide the committee with advice on the definitions Queensland would like to see around the terms 'emergency', 'Commonwealth interest', 'nationally significant harm' and 'consultation processes'? Could we get some specific words from the Queensland government on those matters?

Mr Wassing: We can do that—and through the proposed consultative process that would, no doubt, be part of the conversation.

Senator KIM CARR: And whether there is a view as to why the leader of the opposition—bearing in mind the leader of the opposition sooner or later changes; people should not assume automatically that it is just the current circumstances—should be consulted prior to the declaration of a national emergency. What is the view of the Queensland government on those circumstances? I am sure that in Queensland they would consult the leader of the opposition on everything. The principle is what I am looking for here. Are there any other legislative changes the Queensland government would be seeking?

Mr Wassing: For us it is about the clarity as how the act is to be practically applied, both for our own arrangements and for the public.

Senator KIM CARR: There are obviously administrative questions. I am talking about legislative changes that we should recommend as part of this review process. If there is any advice you could tender on that, it would be appreciated.

Mr Wassing: I understand.

ANSWER:

As noted above in response to Question 1, the Queensland Government welcomes the opportunity to participate in consultation with the Commonwealth Government and state and territory governments about the NED Act framework. The Queensland Government's view is that greater clarity about the practical operation of the Act is essential to develop a common understanding and to ensure that the legislation and the framework supporting it is robust and embeds appropriate levels of accountability regarding the exercise of powers under the Act.

It is considered that the consultative process is the appropriate forum to develop a clear, common understanding between all jurisdictions on the intended practical operation of the

Act, to develop arrangements about how the Commonwealth Government can provide support to states and territories in dealing with emergencies and to identify potential legislative improvements.

As noted above, any amendments to the NED Act, including appropriate definitions for key terms, required consideration of existing frameworks and legislation to ensure there are no unintended limitations for the Commonwealth, states or territory governments.

The Queensland Government considers that whether a requirement should be included in the NED Act for the Prime Minister to consult with the Leader of the Opposition prior to making a declaration is a matter for the Commonwealth Government.

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