



Australian Government
Department of Home Affairs

Joint agency submission to the Review of the National Emergency (2022 New South Wales) Declaration 2022

Senate Standing Committee on Legal and Constitutional Affairs

28 September 2022

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Introduction

The Department of Home Affairs, the Department of the Prime Minister and Cabinet (PM&C) and the National Emergency Management Agency (NEMA) welcome the opportunity to provide a joint agency submission to the Senate Standing Committee on Legal and Constitutional Affairs as part of its review of the National Emergency (2022 New South Wales Floods) Declaration 2022 (the Declaration).

In February and March of 2022, significant rainfall generated as a result of the La Nina weather event resulted in severe flooding in areas on the East Coast of Australia. As a result of this flood event, 21 lives were lost in New South Wales and Queensland and more than 14,500 homes and properties were damaged or destroyed.

On 11 March 2022, the Governor-General issued the Declaration under section 11 of the *National Emergency Declaration Act 2020* (the NED Act) in response to widespread flooding which impacted significant areas of New South Wales. This was the first time that a national emergency declaration had been made under the Act since its enactment in December 2020.

Under section 14A of the NED Act, the Senate Standing Committee on Legal and Constitutional Affairs must commence a review of any national emergency declaration within 12 months of it being made, and report the Committee's findings to the Senate as soon as practicable after completing the review. As outlined in the Explanatory Memorandum to the NED Act, this review is intended to ensure that the effectiveness of the national emergency declaration framework is assessed in relation to each declaration made, and the unique circumstances that gave rise to it, to allow the framework to be refined based on experience.

This submission provides background information on the NED Act and its operation, the March 2022 flooding event and Commonwealth assistance provided as part of response and recovery efforts.

Further information on the national emergency declaration framework is available in the joint agency submission to the Senate Standing Committee on Legal and Constitutional Affairs in its 2021 inquiry into the NED Act.¹

Background

NED Act overview

The NED Act provides the power for the Governor-General, acting on advice from the Prime Minister, to declare a national emergency, in the event of, or in anticipation of, a nationally significant emergency. A national emergency declaration is intended to:

- send a clear public signal about the significance of an emergency
- mobilise Commonwealth Government agencies to act swiftly in support of the response effort, and
- allow the Commonwealth to use its capabilities and emergency powers, in the event of a nationally significant crisis, to complement any state or territory response.

The NED Act was developed in response to Recommendation 5.1 of the Report of the Royal Commission into National Natural Disaster Arrangements (the Royal Commission). In its response to the Royal Commission, the Government accepted this recommendation and committed to introducing legislation to establish a power to declare a national emergency, noting that it would subsequently work with the states and territories after the legislation was passed to examine actions that the Commonwealth could take to complement any state and territory response to a national emergency.

¹ This submission is available online: <https://www.aph.gov.au/DocumentStore.ashx?id=dd3ff9ca-3b6a-400a-9aa8-3e6c390920c4&subId=706401>

The NED Act and the *National Emergency Declaration (Consequential Amendments) Act 2020* (the Consequential Amendments Act) were passed by the Parliament on 10 December 2020.

The legislative framework takes an 'all hazards' approach, encompassing a broad range of natural and human-induced disasters, while ensuring that national emergency declarations are only made in exceptional circumstances, where the scale and consequence of the harm caused (or anticipated) rises to significant national impact.

On 1 July 2022, the Department of Home Affairs assumed responsibility for administration of the NED Act and the Consequential Amendments Act. Before this time, the Acts were administered by the Attorney-General's Department. The national emergency declaration arrangements are operationalised by NEMA, which was established on 1 September 2022 as an executive agency within the Home Affairs portfolio, combining the functions of Emergency Management Australia (EMA) and the National Recovery and Resilience Agency (NRRA). PM&C is responsible for advising the Prime Minister in relation to national emergencies, and maintains the Australian Government Crisis Management Framework, which outlines the Australian Government's approach to preparing for, responding to and recovering from crises.

Thresholds for declaring a national emergency

Before the Governor-General can make a national emergency declaration, the Prime Minister must be satisfied of the thresholds and consultation requirements outlined in section 11 of the NED Act.

In summary, the Prime Minister must be satisfied that:

1. an emergency has occurred, is occurring or is likely to occur, and
2. the emergency has caused, is causing or is likely to cause 'nationally significant harm' in Australia or in an Australian offshore area, and
3. 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
4. any one of the following applies:
 - the affected state(s) and/or territory(ies) has/have requested in writing a national emergency declaration be made, or
 - because of the emergency, it is not practicable for such a request to be made, or
 - the emergency has affected, is affecting or is likely to affect Commonwealth interests, or
 - 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.

The Act provides a definition of 'nationally significant harm', as harm that has a significant national impact because of its scale or consequences, and is any of the following:

- harm to the life or health (including mental health) of an individual or group of individuals,
- harm to the life or health of animals or plants
- harm to the environment
- damage to property, including infrastructure, or
- disruption to an essential service.

This threshold is intended to be high, with the intention that declarations would only be made in exceptional circumstances. The Explanatory Memorandum to the NED Act provided a number of examples of what might constitute nationally significant harm, including:

- where there is widespread damage across multiple jurisdictions as a result of a catastrophic natural disaster or multiple simultaneous/consecutive disasters (e.g. 2019-20 Black Summer Bushfires)

- where an incident causes extensive loss of life, damage to property, or risks to health (e.g. a major chemical incident or large-scale terrorist attack)
- where there is severe disruption to one or more essential services (e.g. in the context of cyber-security or space weather incidents), or
- where the continuity of the executive government of a state or territory is incapacitated or significantly disrupted.

Before seeking a national emergency declaration, the Prime Minister must consult with the government of each affected state or territory (subsection 11(2)). This consultation need not occur if the state or territory requested the declaration be made, or if the Prime Minister is satisfied it is not practicable to consult (subsection 11(3)).

Powers under a declaration

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

The making of a declaration signals to the Australian community – and to all levels of government across Australia – the severity of the emergency. It also provides clarity about the Commonwealth's role and the statutory powers available to Commonwealth Ministers to handle a particular emergency event.

When a national emergency declaration is made:

1. Responsible Commonwealth Ministers may exercise emergency powers listed as a 'national emergency law' in section 10 of the NED Act – a list of these laws and the Minister and Agency currently responsible for those laws is at [Attachment A](#).
 - There are a range of existing emergency powers across the Commonwealth statute book which were amended by the Consequential Amendments Act.
 - These amendments provide an alternative or streamlined test where the emergency power can be used if a national emergency has been declared.
 - The list of national emergency laws provides Ministers with a full picture of powers that may be used when a national emergency declaration is in force.
2. Responsible Commonwealth Ministers may suspend, vary or substitute administrative 'red tape' requirements in Commonwealth legislation where doing so would benefit the community.
 - The Act lists the kinds of provisions which may be modified in this way in subsection 15(1), including provisions which require information to be provided in writing, or verification of a person's identity, or the reporting or notification of a matter to a Commonwealth authority.
3. The Prime Minister may require Commonwealth entities to report on stockpiles, resources and response options.
4. Telecommunications providers must give the Commonwealth, States and Territories such help as is reasonably necessary for the purpose of preparing for, responding to or recovering from an emergency to which the national emergency declaration relates.

A national emergency declaration does not need to be in place for the Australian Defence Force to provide assistance under the Australian Government Crisis Management Framework (AGCMF), or for the Commonwealth to provide financial assistance to individuals and businesses affected by the emergency. However, the existence of a national emergency declaration is one possible basis for payments under social security laws.

2022 February/March floods

Overview of the flooding event

From late February 2022, Australia's east coast endured several intense weather systems that led to record rains and flooding, causing significant damage to critical infrastructure (including rail, roads, power and telecommunications), property, the agricultural sector and numerous critical supply chains.

The flood event was one of the most severe in Australia's history with over 14 million people living in New South Wales and Queensland impacted. As at 9 March, there had been 21 fatalities. State Emergency Services received more than 22,200 requests for assistance across New South Wales and Queensland. More than 2,046 flood rescues had been performed in New South Wales alone and more than 5,300 buildings deemed uninhabitable. Services Australia received more than 607,600 applications for assistance in New South Wales and Queensland.

Essential services across both states were impacted, with widespread power and communications outages. A number of schools and child care facilities closed, and some communities were without clean drinking water.

The floods had a significant impact on key rail and road freight routes, isolating communities and affecting access to food, fuel and medical assistance. These disruptions extended far beyond the flood affected regions, with food and grocery shortages occurring in far north Queensland and parts of the Northern Territory due to rail line damage north of Brisbane.

The destruction and devastation that occurred in flood affected communities was well beyond previous experience and followed previous bushfires, floods and COVID-19. These significant, compounding and concurrent events placed a severe mental and physical toll on individuals in these communities.

Key dates during the flood event are outlined in the timeline at [Attachment B](#).

Summary of Commonwealth assistance

A range of Commonwealth agencies provided assistance to complement state response and recovery efforts.

On 25 February 2022, the Australian Government Disaster Response Plan (COMDISPLAN) was activated in anticipation of non-financial Requests for Assistance (RFAs) from affected states in response to severe weather and flooding. The then EMA (now NEMA) established a dedicated Crisis Coordination Team shortly after to facilitate RFAs across both New South Wales and Queensland, including the provision of rotary wing aircraft for search and rescue operations, and aerial assets to conduct large scale aerial imagery and mapping.

Aviation support to search and rescue missions in New South Wales began on 28 February 2022, including the rescue and evacuation of 56 residents across the Northern Rivers Region including Lismore, Ballina, Gundurimba, Woodburn, Dunoon, Bungawalbin, Upper Wilsons Creek, Kyogle, Swan River and Upper Main Arm.

On 27 February 2022, EMA, through Geoscience Australia, activated the European Commission's Copernicus Emergency Management Service to provide satellite-based flood extent imagery for Commonwealth and state authorities. A total of 62 images were captured across 16 locations. The service was deactivated on 11 March in consultation with the New South Wales and Queensland governments.

EMA deployed Liaison Officers to the New South Wales State Emergency Operations Centre (NSW SEOC) and the Queensland State Disaster Coordination Centre (QLD SDCC) for the duration of the event, who assisted with timely facilitation of Commonwealth support.

Throughout the crisis, EMA convened regular meetings of the Australian Government Crisis Recovery Committee (AGCRC), bringing together Commonwealth agencies to provide a coordinated Australian Government response in support of New South Wales and Queensland.

The National Coordination Mechanism (NCM) also facilitated multiple discussions between jurisdictional governments, Commonwealth agencies and relevant industries, including Banking & Finance, Food and Grocery, Agriculture, Telecommunications and Logistics to facilitate common national situational awareness, stabilise the situation and coordinate the national response to the event.

The Director-General of EMA also chaired several meetings of the Commissioner's and Chief Officer's Strategic Committee (CCOSC), to facilitate common national situational awareness and resource sharing offers across jurisdictions.

Australian Government Disaster Recovery Payment (AGDRP) and the Disaster Recovery Allowance (DRA) were activated in response to the South East Queensland and New South Wales severe weather and flooding (February to April 2022). Over 1.3 million claims for AGDRP were approved. In addition to the Disaster Recovery Funding Arrangements, a further \$225 million was committed to flood resilience and recovery measures through the 2021-22 and 2022-23 financial years.

Defence's support to the east coast floods of February to March 2022 was particularly significant, peaking at over 7,100 personnel on OP FLOOD ASSIST 2022 duties across Queensland and New South Wales. Defence was involved in supporting preparation activities, such as door knocking and sandbagging, and acted early to position personnel and assets into affected regions to assist local response operations.

Defence helicopters rescued over 110 people and provided reconnaissance and logistic support to isolated areas. Defence also conducted hydrographic and diving clearance tasks in the Brisbane River and in Moreton Bay, Queensland, and provided detailed aerial reconnaissance to inform damage assessment and task prioritisation. As the flood waters receded, and response effort moved into relief and recovery operations, Defence undertook wide scale road clearance, debris removal, food distribution, welfare checks, and logistic support tasks for state agencies.

Commonwealth support to NSW requests for non-financial assistance provided by Defence during the response and relief phases was managed by Emergency Management Australia under the AGCMF (COMDISPLAN) and was not connected to or reliant on the national emergency declaration.

The Department of Social Services provided more than \$19.2 million in additional funding under Financial Wellbeing and Capability (FWC) Activity services (Emergency Relief, Food Relief and Financial Counselling), to directly assist individuals, families and communities experiencing financial crisis as a result of the New South Wales and Queensland floods in February and March 2022.

This additional funding was on top of annual base funding of around \$50 million for Emergency Relief, \$44 million for Financial Counselling and almost \$1.4 million for Food Relief across Australia.

These programs are intended to assist people in financial stress and hardship and are not specifically designed to respond to floods or another natural disasters.

The sector-led National Coordination Group (NCG) ensured there was a collaborative, timely and coordinated approach to Emergency Relief, Food Relief and Financial Counselling across Australia during the floods in February and March 2022. The NCG continues to monitor the impacts of the floods on the demand for Emergency Relief and Food Relief, and will provide the Minister for Social Services with advice on where additional support is most needed.

National Emergency (2022 New South Wales) Declaration 2022

Process of making the Declaration

Officials met on 27 February, 2 March, 4 March, and 8 March 2022 to discuss the flood event through the AGCRC. The thresholds for a national emergency declaration were considered at these meetings, however officials concluded that the relevant thresholds were not met.

On 9 March 2022, the then Prime Minister, the Hon Scott Morrison MP, announced his intention to recommend the Governor-General make a national emergency declaration.

On 9 March 2022, officials from PM&C, EMA, NRRA, the Attorney-General's Department, the Department of Treasury, Services Australia and the Australian Climate Service (Bureau of Meteorology, Geoscience Australia, CSIRO, and Australian Bureau of Statistics), having reviewed the best available data and information at the time for New South Wales and Queensland, found the events across New South Wales satisfied criteria to be defined as 'a severe to catastrophic national disaster' in accordance with the Australian Disaster Preparedness Framework.

On 10 March 2022, the Director-General of EMA, in consultation with the AGCRC, advised the then Prime Minister that the destruction and devastation that occurred in the flood affected communities was well beyond previous experience, and that the cumulative and compounding flooding events were considered to meet the threshold for a national emergency declaration. In providing this advice, the following criteria were assessed:

- historical analysis and recurrence,
- the concurrency, compounding effects and scale of these events,
- demographics,
- weather impacts,
- economic impacts,
- flood extent,
- vulnerability and disadvantaged populations information, and
- essential services impacted and duration.

On 11 March 2022, the Governor-General issued the Declaration, for the maximum allowable period of three months.

Officials reviewed the Declaration on a monthly basis, to inform advice on whether it should be continued, adjusted, or deactivated. On 5 May 2022, the AGCRC assessed the relevant criteria to inform a further recommendation on the possibility of extending, varying or revoking the Declaration. The AGCRC agreed that the Declaration should remain in place.

At the final review on 27 May 2022, the AGCRC assessed it was appropriate to allow the Declaration to expire at the end of the three month period, based on the situation having transitioned to medium to longer term recovery. The Declaration ceased on 10 June 2022.

Effect of the Declaration

The Declaration provide a clear public message from the Commonwealth Government about the severity and significance of the flood event. This is evidenced in the significant domestic and international media coverage of the Declaration. There were at least 156 references to the national emergency declaration across domestic print and online media during the period 8 to 12 March 2022. This media coverage heightened public awareness of the event, and the need for collective action to support affected communities.

The Declaration also served to rally Commonwealth Government action in support of response and recovery efforts.

On 23 March 2022, the then Secretary of PM&C wrote to Secretaries of Departments responsible for administering national emergency laws, requesting that they consider whether affected areas of New South Wales would benefit from suspension, variation or modification of any administrative requirements under any laws that administered by their Department, and/or whether relevant powers under national emergency laws should be exercised to assist in the flood response and recovery.

Ultimately, no national emergency laws were used under the NED Act in relation to the Declaration, due in part to the timing of declaration, occurring at a point by which Commonwealth agencies were already providing assistance.

Next steps

The Department of Home Affairs is currently reviewing the operation of the NED Act, building on consultation with states and territories undertaken by the Attorney-General's Department in 2021. This is in line with the Government's response to the Royal Commission report.

Separately, the Department of Home Affairs is working with NEMA to take steps to improve the implementation of the national emergency declaration framework. This includes ensuring that the NED Act is properly embedded in emergency management processes and arrangements, and is tested through national-level crisis exercises. It also involves working with Commonwealth agencies to ensure they are positioned to act swiftly in the event of a national emergency, by considering in advance how emergency laws or reduced red tape might improve or fast-track their contributions to the response effort.

Relevant agencies are also undertaking ongoing work to ensure that key decision makers under the NED Act, including the Prime Minister, are well supported in their deliberations. This includes through revisions to the NED Act Aide-Memoire, developed in 2021 to assist the Prime Minister and senior officials with execution of the obligations and powers under the NED Act, and also the development of an officials' checklist to inform consideration of the relevant thresholds.

In preparation for the 2022-23 High Risk Weather Season, NEMA leadership are conducting a series of formal engagements with State and Territory Commissioners and officials. This engagement includes briefing on the NED Act.