Issues Paper:
Constitutional Framework for the Declaration of a State of National Emergency
The Royal Commission into National Natural Disaster Arrangements was established on 20 February 2020 in response to the extreme bushfire season of 2019-20 which resulted in devastating loss of life, property and wildlife, and environmental destruction across the nation.

The Letters Patent for the Royal Commission set out the terms of reference and formally appoint Air Chief Marshal Mark Binskin AC (Retd), the Honourable Dr Annabelle Bennett AC SC and Professor Andrew Macintosh as Royal Commissioners.

This paper was published on 8 May 2020.

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Purpose of this Issues Paper

Terms of Reference (c):
... whether changes are needed to Australia’s legal framework for the involvement of the Commonwealth in responding to national emergencies, including in relation to the following:
(i) thresholds for, and any obstacles to, State or Territory requests for Commonwealth assistance;
(ii) whether the Commonwealth Government should have the power to declare a state of national emergency;
(iii) how any such national declaration would interact with State and Territory emergency management frameworks; ...

1. This Issues Paper explores legal considerations surrounding the concept of a declaration of a “state of national emergency”\(^1\) by the Commonwealth of Australia. In so doing it also considers the making of similar declarations by the states and territories. It identifies potential legal issues in how such a national declaration might operate and interact with existing state and territory emergency management frameworks.

2. While the Royal Commission will explore the concept of a national emergency declaration broadly, the objective of this paper is to consider the constitutional framework for a declaration of a state of national emergency within Australia’s federal system of government. To that extent, this Issues Paper only explores constitutional and related legal questions and not questions of policy.


4. Importantly, this paper does not contain findings or conclusions on any issues. This paper will be relevant to the next stages of the Royal Commission’s public engagement, in particular to its upcoming public hearings and further issues papers the Royal Commission plans to publish, seeking public responses.

What is the purpose of a state of emergency declaration?

5. A “state of emergency” declaration can be an important step in responding to a natural disaster or other large emergency situation. For example, emergency declarations in the states and territories allow certain authorised people (such as state emergency services personnel) to exercise “emergency powers” while responding to a natural disaster.

6. A declaration may also be symbolic and convey to the general public the seriousness of the situation. In the context of the Black Saturday bushfires, the Victorian Bushfires Royal Commission noted that ‘such a declaration would have recognised the gravity of the situation and might have sharpened emergency agencies’ focus on community safety and warnings’.\(^2\)

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\(^1\) Term of Reference (c)(ii).
7. At the Commonwealth level, a consequence of declaring a state of national emergency could be to enable the Commonwealth to respond to large-scale natural disasters more quickly, without the necessity of waiting for a formal request for assistance from a state or territory. A national declaration could also work to streamline and identify existing powers and functions (which could then be implemented) to enable a more efficient and effective national response to a natural disaster. The making of such a declaration would not preclude a state or territory from making a request for assistance or the integration of such a request as a part of the response.

8. The Commonwealth Government does not currently have any formal arrangements to declare a state of national emergency.

**What examples exist in the states and territories?**

9. All states and territories have statutory frameworks in place that allow them to declare a state of emergency or state of disaster in certain circumstances.

10. The definition of what constitutes an ‘emergency’ or a ‘disaster’ differs in each state and territory. Generally, an ‘emergency’ is defined as an actual or imminent event that requires a significant and coordinated response, and represents a threat to life, persons, animals, property or the functioning of an essential service. An ‘emergency’ tends to include events such as natural disasters, pandemics or terrorist acts.

**Declaring a state of emergency or disaster**

11. Each state and territory takes a slightly different approach to how a state of emergency or disaster declaration is made, how long a declaration lasts for, and which powers become available while a declaration is in force. Generally, there are three approaches taken by the states and territories in making a declaration.

12. Each of these approaches is set out in more detail in Tables 1-3 in Appendix A. However, they can be summarised as follows:

*Single emergency declarations – states of emergency or disaster in NSW, Victoria and Queensland*

13. In New South Wales (NSW), Victoria and Queensland, there is a single category of emergency declaration. This is known as a ‘state of emergency’ in NSW and as a ‘state of disaster’ in Victoria and Queensland.

*Multiple categories of emergency – declarations in the ACT, NT, Tasmania and South Australia*

14. In the Australian Capital Territory (ACT), the Northern Territory (NT), Tasmania and South Australia, there are different categories of emergencies which authorise and enact different emergency powers and procedures.

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3 Emergencies Act 2004 (ACT) s 4 (definition of ‘emergency’); State Emergency and Rescue Management Act 1989 (NSW) s 4(1); Emergency Management Act 2013 (NT) s 8 (definition of ‘emergency’); Public Safety Preservation Act 1986 (Qld) s 4 (definition of ‘emergency situation’); Disaster Management Act 2003 (Qld) ss 13 (meaning of ‘disaster’), 16 (meaning of ‘event’); Emergency Management Act 2004 (SA) s 3; Emergency Management Act 2006 (Tas) s 3 (definition of ‘emergency’); Emergency Management Act 1986 (WA) s 3 (definition of ‘emergency’).

4 Note that this paper does not consider arrangements that are in place in Australia’s external territories.

5 State Emergency and Rescue Management Act 1989 (NSW) ss 33-35; Emergency Management Act 1986 (Vic) ss 22-24; Disaster Management Act 2003 (Qld) ss 64-73.
Staged approach – emergency situations or states of emergency in Western Australia

15. In Western Australia, there may be an ‘emergency situation’ or a ‘state of emergency’ declaration, which reflect different stages of an emergency.⁶

Powers during a state of emergency

16. Once a state of emergency is declared, certain powers become available to authorised persons for the duration of the state of emergency. These powers have the overarching objective to allow effective disaster management in an emergency situation; however, the exact scope of the power differs between jurisdictions.

17. Generally, the following powers are available in each state and territory:

(a) control the movement of people, animals or things (including by closing roads or buildings);
(b) remove people or animals from certain places;
(c) enter or take possession of property in the course of the emergency;
(d) forcibly evacuate people within certain areas or places;
(e) direct persons or bodies to take certain actions; and
(f) use reasonable force in certain circumstances (such as to enter land or, in some cases, to ensure compliance with directions of an authorised officer).

18. In contrast, the following powers are not uniformly available across states and territories:

(a) the power to destroy property, structures or substances in the course of emergencies (not exercisable in the NT);
(b) search and seizure powers (not exercisable in the NT);
(c) the power to use or shut down essential utilities (such as electricity) within a declared area (not exercisable in the NT); and
(d) powers to gather information (not exercisable in the NT and Queensland).

19. In most states and territories (except for Victoria), a person who interferes with, or fails to comply with, the exercise of emergency powers may commit an offence or be subject to a fine or other penalty.

20. Even where powers are similar between states and territories, the extent and nature of the powers may differ, including when, how and by whom powers can be exercised. A short summary of the characteristics of authorisation in the emergency laws of each state and territory is included at Table 4 in Appendix A.

Independent oversight

21. The state and territory emergency management frameworks are subject to varying levels of independent oversight. In most jurisdictions, quality assurance and policy development in relation to emergency management is primarily within the responsibilities of the relevant emergency management agency (such as, for example, Emergency NSW or the WA State Emergency Management Committee). The actions of these agencies, and emergency services personnel more broadly, are subject to the general oversight mechanisms that apply to other public bodies in each jurisdiction, including administrative review in some cases.

22. In Victoria and Queensland, an Inspector-General of Emergency Management (IGEM)⁷ has been appointed to provide a specific oversight and quality assurance mechanism in relation to the emergency management frameworks in those states.

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⁶ Emergency Management Act 2005 (WA) ss 50 (emergency situation), 56 (state of emergency).
⁷ Emergency Management Act 2013 (Vic) ss 61-74; Disaster Management Act 2003 (Qld) ss 16B-16Q.
23. The key functions of the IGEM in these states include:

(a) to review and assess the effectiveness of disaster management by the State;
(b) to make and review disaster management standards; and
(c) to assess the performance of entities responsible for disaster management.

24. In Queensland, the IGEM assesses and reports on the performance of entities, or the State as a whole, against the Standard for Disaster Management (DM Standard). Any issues concerning performance are identified by the IGEM and advice is provided to the Minister. The IGEM is authorised to use any powers it deems necessary to conduct inquiries into the effectiveness of disaster management and performance. However, the IGEM’s role is advisory and does not involve making binding determinations or imposing penalties in relation to particular conduct.

25. The IGEM in Victoria operates in a similar advisory capacity and has similar powers to the Queensland IGEM. In Victoria, the IGEM reviews and evaluates the performance of entities, or the State as a whole, in accordance with its Assurance Framework.

Limitation of liability and compensation

26. In all states and territories, certain emergency services officers cannot be held civilly or criminally liable for anything they do in the honest or good faith exercise of their emergency powers.

27. In most jurisdictions, compensation may be available for a person who suffers an injury, or loss or damage, as a result of an emergency officer exercising emergency powers.

What emergency response arrangements already exist at a Commonwealth level?

28. The Commonwealth lacks an express constitutional power to declare a state of national emergency. It may, however, have the power to do so either through the executive power in s 61 of the Constitution, namely as part of its “nationhood power”, or through its suite of legislative powers. These matters are considered further below.

Responding to a state or territory request for civil assistance

29. Although it is not provided for by legislation, the Commonwealth has arrangements in place to provide physical assistance to states and territories on request during non-violent emergencies, including in response to natural disasters. This process is governed by the Australian Government Disaster Response Plan (COMDISPLAN), in conjunction with the Defence Force Aid to Civil Community (DACC) framework when ADF assistance is required. The deployment of any resources in these circumstances would need to

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9 Disaster Management Act 2003 (Qld) s 16C(j).
10 Disaster Management Act 2003 (Qld) s 16C(k) and (l).
12 See, eg, Emergencies Act 2004 (ACT) s 198; Emergency Management Act 2013 (NT) s 113; State Emergency Service Act 1989 (NSW) s 25; Public Safety Preservation Act 1986 (Qld) s 47; Fire and Emergency Services Act 2005 (Qld) s 153C; Disaster Management Act 2003 (Qld) s 144; Fire and Emergency Services Act 2005 (SA) s 127; Emergency Management Act (SA) s 32; Emergency Management Act 2006 (TAS) s 58; Victoria State Emergency Service Act 2005 (Vic) s 42; Emergency Management Act 2013 (Vic) s 75; Fire and Emergency Services Act 1998 (WA) s 37; Emergency Management Act 2005 (WA) s 100.
13 Emergencies Act 2004 (ACT) s 199; Emergency Management Act 2006 (Tas) s 54; Emergency Management Act 2005 (WA) s 78; Public Safety Preservation Act 1986 (Qld) s 47; Emergency Management Act 2013 (NT) s 109.
be authorised under the executive power of the Commonwealth in s 61 of the Constitution (discussed in
detail below).

30. Under COMDISPLAN, authority to request Commonwealth assistance is vested in one nominated official in
each state and territory jurisdiction (for example, the Emergency Management Commissioner –
Victoria).14 Before a request is made, the state or territory must have “exhausted all government,
community and commercial options to provide that effect.”15 However, a formal emergency declaration
within the relevant state or territory is not required to authorise a request for assistance.

31. Once a request is received, Emergency Management Australia (EMA) assesses it and liaises with the
relevant state agency. If a deployment of the ADF is required, this will be governed by the DACC
framework, which provides for different categories of response, depending on the scale of the emergency.

32. Importantly, when Commonwealth officials (including ADF personnel) are deployed in response to a state
or territory request for civil assistance, it seems they do not enjoy special powers or legal protections in
the course of their duties. Instead, in most cases where it is required, the Commonwealth personnel rely
on the powers of the authorities they are assisting and their legal status in exercising those powers is
often unclear.

What is the source of Commonwealth power to make a
declaration of a state of national emergency?

33. In Australia’s federal system of government, the powers to make laws about certain things and take
certain actions are distributed between the state and Commonwealth governments in accordance with
the Constitution. The Commonwealth government has also granted powers of self-government to the ACT
and NT, such that they now operate in a way similar to states.

34. Generally, the Commonwealth is only permitted to make laws about things that it has express or implied
responsibility for under the Constitution.16 This can include making laws about things that are not
expressly listed in the Constitution if those matters are referred to the Commonwealth by the states,17 or
where they are incidental to the execution of other powers that the Constitution provides.18

35. In addition to law-making (or “legislative”) powers, all Australian governments are vested with certain
“executive powers” that authorise them to do certain things. Generally, the Commonwealth government’s
executive power will be set out in statutes (such as by the law that grants the emergency powers
discussed above, for example). However, there are certain things the Commonwealth can do that do not
require any statutory authority. These powers include those that were traditionally vested in the Crown,
such as the power to appoint the Governor-General, to declare war or peace,19 or to conduct inquiries and
Royal Commissions (also known as “prerogative powers”).20

36. At the Commonwealth level, a declaration of a state of national emergency could only be made if it is
authorised by the Commonwealth’s executive powers or by statute (and this statute must be within the

14 COMDISPLAN at [2.1.1]-[2.1.2].
15 COMDISPLAN at [1.4.6].
16 For example, Constitution ss 51, 52.
17 Constitution s 51(xxxvii).
18 Constitution s 51(xxxix). Incidental powers are also implied into other heads of legislative power: see for example
Burton v Honan (1952) 86 CLR 169 at 177.
19 Farey v Burvett (1916) 21 CLR 433 at 452.
20 Huddart Parker and Co Pty Ltd v Moorehead (1909) 8 CLR 330 at 378.
scope of the Commonwealth’s legislative power). Therefore, it is necessary to consider the legal mechanisms through which a declaration could be made.

**Exercise of executive power?**

37. To address the question of whether a declaration of a state of national emergency could be made in reliance on the Commonwealth’s executive power, it is necessary to first provide a brief overview of the relevant aspects of the Commonwealth’s executive power.

38. The executive power of the Commonwealth is found in s 61 of the Constitution. It states:

   The executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor-General as the Queen’s representative, and extends to the execution and maintenance of this Constitution, and of the laws of the Commonwealth.

39. The limits of the executive power under s 61 have not been, and probably cannot be, exhaustively defined. However, in *Williams No. 1*, French CJ of the High Court set out the following powers as falling within the scope of the executive power:

   [T]he executive power referred to in s 61 extends to:
   - (a) powers necessary or incidental to the execution and maintenance of the laws of the Commonwealth;
   - (b) powers conferred by statute;
   - (c) powers defined by reference to such of the prerogatives of the Crown as are properly attributable to the Commonwealth;
   - (d) powers defined by the capacities of the Commonwealth common to legal persons;
   - (e) inherent authority derived from the character and status of the Commonwealth as a national government.

40. The first two categories above “(a)” and “(b)” refer to the Executive Government (the Prime Minister and other Ministers and their government departments) exercising powers that are conferred by statutes enacted by the Parliament. As discussed further below, any such legislation must be supported by one or more of the Commonwealth’s heads of legislative power (and must not infringe any constitutional limitations).

41. The fourth category above “(d)” – the powers of the Commonwealth common to legal persons – is a limited category and does not appear to provide any real authority for the Commonwealth to take action in the event of an emergency (or at least, does not provide authority for the Commonwealth to take actions beyond those that other legal persons are able to take) and may now be even more limited following the decisions in the *Williams* cases.

42. The third “(c)” (the prerogative powers) and final “(e)” (inherent authority derived from the character and status of the Commonwealth as a national government) categories above refer to the Commonwealth’s non-statutory executive power. These powers may support the Commonwealth to take action in response to an emergency in some circumstances. Determining the actions that the Commonwealth might take requires consideration of the limits of the Commonwealth’s executive power.

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21 *Williams v Commonwealth* (2012) 248 CLR 156 (*Williams No. 1*) at [22], [121], [483], [560].
22 *Williams No. 1* at [22].
23 *Williams No. 1* and *Williams v Commonwealth [No 2]* (2014) 252 CLR 416 (*Williams No. 2*).
power relative to both the powers of the states and the powers of the other branches of the federal government. This concept is sometimes referred to as the ‘breadth’ of executive power.

Non-statutory executive power: prerogatives of the Crown

43. The executive power in s 61 of the Constitution includes the prerogative powers that have not fallen into disuse and that have not been replaced by legislation. As mentioned briefly above, the prerogatives of the Crown are the common law powers of the Queen that were inherited by the Commonwealth at Federation. The prerogatives might include the power to expropriate property in a defence emergency (and possibly other emergencies). However, the Courts have highlighted the uncertainty concerning the scope of prerogative power in times of emergency.

44. On the current state of the law, the existence and scope of any prerogative power to take action affecting private rights in Australia, even in a time of crisis or emergency, appears uncertain. Recent case law suggests the prerogative power informs the content of s 61 but does not provide its limits.

Non-statutory executive power: The inherent authority derived from the character and status of the Commonwealth as a national government

45. The Commonwealth’s non-statutory executive power in s 61 of the Constitution includes such power that is derived from the character and status of the Commonwealth as a national government. This aspect of the executive power encompasses powers necessary for ‘the protection of the body politic or nation of Australia’.

46. In Pape v Commissioner of Taxation (Pape), a majority of the High Court (French CJ; Gummow, Crennan and Bell JJ) held that the payment of the ‘tax bonus’ during the Global Financial Crisis was supported by the executive power of the Commonwealth (combined with the incidental legislative power in s 51(xxxix) of the Constitution). Gummow, Crennan and Bell JJ relevantly said (emphasis added):

The Executive Government is the arm of government capable of and empowered to respond to a crisis be it war, natural disaster or a financial crisis on the scale here. This power has its roots in the executive power exercised in the United Kingdom up to the time of the adoption of the Constitution but in form today in Australia it is a power to act on behalf of the federal polity. ... The present is an example of the engagement by the Executive Government in activities

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26 Davis v Commonwealth (1988) 166 CLR 79 (Davis) at 93.
27 Attorney-General v De Keyser's Royal Hotel [1920] AC 508; Burmah Oil Co Ltd v Lord Advocate [1965] AC 75. However, in Walker Corporation Pty Ltd v Sydney Harbour Foreshore Authority (2008) 233 CLR 259, a full court of the High Court appeared to express at least some doubt as to the continuing existence of what it described as the ‘war prerogative’ (at [29]), referring, inter alia, to the earlier decision Johnston Fear & Kingham & Offs Printing Co Pty Ltd v The Commonwealth (1943) 67 CLR 314 at 318: ‘It may be that the prerogative of the Crown authorizes the seizure and use of property in the course of war-like operations without any compensation to the owner’. See also Emergency Powers in Australia, HP Lee et al., second edition, Cambridge University Press, at page 80.
28 See for example Burmah Oil Co Ltd v Lord Advocate [1965] AC 75 at 110 per Lord Reid and 145 per Lord Pearce.
29 Ruddock v Vadarlis (2001) 110 FCR 491 at 538–9 per French J.
31 Pape v Federal Commissioner of Taxation (2009) 238 CLR 1 (Pape) at [215] per Gummow, Crennan and Bell JJ; see also Davis at 109–110.
33 Pape at 89 [233], 91-2 [242]. See also Victoria v Commonwealth (1975) 134 CLR 338 at 397-8.
peculiarly adapted to the government of the country and which otherwise could not be
carried on for the public benefit.

47. This aspect of the non-statutory executive power (sometimes referred to as the ‘implied nationhood
power’) is not unlimited – and it can only be invoked in a manner consistent with Australia’s federal
structure.\footnote{Pape at [127]; see also Williams No. 2 at [83].} Accordingly, “[t]he existence of powers deduced from the establishment and nature of
the Commonwealth as a polity is clearest where Commonwealth executive action involves no real
competition with the States”.\footnote{Davis at 93.}

48. In \textit{Pape}, the majority did not consider the payment of the ‘tax bonus’ to stimulate the national
economy during the global financial crisis to interfere with the constitutional distribution of powers,
and considered that only the Commonwealth had the resources to address the crisis.\footnote{Pape at [127], [133] per French CJ; 91-92 per Gummow, Crennan and Bell JJ.} By contrast,
members of the High Court in \textit{Williams No 1} rejected an argument that the executive power
supported the National School Chaplaincy Program, on the basis that the states clearly had the
capacity and means to provide for such a scheme.\footnote{See at [146] per Gummow and Bell JJ; [500] per Crennan J.}

49. A further limitation is that this aspect of non-statutory executive power may not support coercive
action affecting the rights of individuals.\footnote{See Plaintiff M68/2015 v Minister for Immigration and Border Protection (2016) 257 CLR 42 at 98 [134]-[135] per
Gageler J.} Even if the Commonwealth’s non-statutory, non-
prerogative executive powers did authorise certain coercive actions in limited circumstances, the
High Court may approach questions of this nature conservatively.\footnote{Pape at [10] per French CJ.}

\textbf{Could a declaration of national emergency be made in reliance on the executive power?}

50. Having regard to the discussion above, it may be that the (non-prerogative, non-statutory) executive
power may only support the making of a declaration of a state of national emergency that has a
limited practical effect. For example, the executive power could support the making of a declaration
that was only symbolic in nature.

51. It may be that other consequences could also flow from a declaration made under the executive
power. For example, the Commonwealth may be able to make its own personnel (such as the ADF or
members of the Australian Public Service) or resources (such as aircraft or vessels) available to assist
a state in the performance of their responsibilities in certain circumstances, provided that in the
performance of those activities the Commonwealth personnel would be subject to the civil and
criminal law. Executive power is already exercised in a similar way to deploy non-financial assistance
in response to state or territory requests (as discussed above). It is possible that such a declaration
may also authorise the Commonwealth to act without a state or territory request in circumstances
where those activities to be carried out by the Commonwealth personnel were peculiarly within the
Commonwealth’s capabilities (‘peculiarly adapted to the government of a nation and which cannot
otherwise be carried on for the benefit of the nation’\footnote{Victoria v Commonwealth (the AAP Case) (1975) 134 CLR 338 at 397-8.}). Any declaration of a state of national
emergency made in reliance on the executive power should not be understood to mean an
expansion of Commonwealth executive power, but simply an action taken within the existing scope
of that power.

52. Alternatively, states and territories could also amend their laws to give some more substantive effect
to a non-prerogative, non-statutory declaration of a state of national emergency made under the
Commonwealth’s executive power – that is, so that a national declaration could trigger certain

\footnote{Gageler J.}
powers under state or territory laws. Any such arrangements would need to be developed having regard to constitutional limitations. This is a separate consideration to a referral of power (which is discussed below).

### Question 1
The Royal Commission invites comment on:

a. Whether the Commonwealth has power to declare a “state of national emergency” and give effect to such a declaration?

b. Whether there is any legal significance to it being a “declaration”?

c. Whether there are any legal constraints or limitations on that power? For example, in making such a national declaration, would the emergency need to be such that it affects national interests, or be of a national scale, or be the subject of Commonwealth power?

### An exercise of the Commonwealth’s legislative power?

53. As mentioned above, the Commonwealth government may declare a state of national emergency if it is authorised to do so by statute. This approach has been taken by the states and territories, which have each introduced laws that expressly authorise the making of emergency declarations and confer certain powers on authorised personnel while a declaration is in force.

54. To enable a national declaration to be made that has real, substantive effect (beyond that symbolic function mentioned above), it may be necessary to have such a declaration supported by legislation. However, as discussed below, any legislation would need to be supported by heads of Commonwealth legislative power and could only deal with matters within the scope of those powers or is necessarily associated with, or incidental to, those powers.

### General principles

55. The Commonwealth’s legislative powers derive from the Constitution. Sections 51 and 52 of the Constitution provide that the Commonwealth Parliament has the power to make laws for the peace, order, and good government of the Commonwealth with respect to the subjects listed in those sections. The Commonwealth Parliament and state and territory Parliaments can each legislate with respect to the topics listed in s 51. The Commonwealth Parliament can exclusively legislate with respect to the heads of power enumerated in s 52. Several other provisions of the Constitution set out other legislative powers of the Commonwealth Parliament. For example, s 122 provides that the Commonwealth Parliament may make laws for the government of various territories.

56. The Commonwealth Parliament does not have express powers under the Constitution to make laws with respect to a declaration of a state of national emergency.

57. However, this does not of itself mean that the Commonwealth’s legislative powers do not extend to making laws with respect to making such declarations. Rather, so long as a law relating to making such declarations can be characterised as being with respect to one or more of the Commonwealth Parliament’s legislative powers, the law will be supported by the Commonwealth’s legislative powers, even if it deals with a topic (such as making such declarations) that is not, of itself, the subject of an express Commonwealth legislative power.

### Characterisation of a law

58. The High Court has established principles of ‘characterisation’ of a Commonwealth law, to determine whether it is supported by the Commonwealth’s legislative powers. The High Court has developed the following process:
(a) First, determine the character of the law in question ‘by reference to the rights, powers, liabilities, duties and privileges which it creates’.41
(b) Secondly, construe the relevant Commonwealth legislative power as set out in the Constitution ‘with all the generality that the words admit’.42
(c) Thirdly, assess whether the law as so understood is a law with respect to that head of legislative power as so construed by assessing whether there is a sufficient connection between the law and the head of legislative power.

Subject matter legislative powers

59. Most Commonwealth legislative powers concern particular subject matters.

60. If the law acts directly on the subject matter of the legislative power, a sufficient connection will exist as long as the legal or practical operation of the law is not ‘so insubstantial, tenuous or distant’ that the law ought not be regarded as enacted with respect to that subject matter.43 If a sufficient connection does exist, ordinarily, ‘the justice and wisdom of the law, and the degree to which the means it adopts are necessary or desirable, are matters of legislative choice’.44

61. In addition, in relation to the legislative powers of the Commonwealth Parliament, it has been held that ‘everything which is incidental to the main purpose of a power is contained within the power itself so that it extends to matters which are necessary for the reasonable fulfilment of the legislative power over the subject matter’,45 or alternatively that ‘every grant of power conferred by s 51 extends to the making of laws in relation to matters necessary to achieve the main purpose or purposes of that power’.46 This is sometimes described as the ‘incidental’ aspect of heads of Commonwealth legislative power. It has further been held that a provision of a law will be with respect to the incidental aspect of a particular legislative power if there is a relevant and sufficient connection with the subject matter of the power, and that ‘in determining whether such a connection exists, it is material to have regard to the purpose of the provision in question and to the reasonableness of the connection between that law and the subject matter of the power’.47

Purposive legislative powers

62. In contrast, some legislative powers are said to involve notions of purpose or object,48 and are described as ‘purposive’ powers. Principally, these are the ‘defence’ power (s 51(vi) of the Constitution) and some aspects of the ‘external affairs’ power (s 51(xxix) of the Constitution). A law can be characterised as being with respect to a ‘purposive’ legislative power if it is reasonably capable of being regarded as appropriate and adapted for achieving the purpose of the legislative power.49

Laws can have more than one character

63. Importantly, it has been held that a law can have more than one character.50 Some laws can be characterised as being both with respect to a subject matter that is within the Commonwealth’s legislative powers, and as being with respect to a subject matter that is not within the Commonwealth’s legislative

41 See for example New South Wales v Commonwealth (Work Choices Case) (2006) 229 CLR 1 at [142].
42 See for example R v Public Vehicles Licensing Appeal Tribunal (Tas); Ex parte Australian National Airways Pty Ltd (1964) 113 CLR 207 at 225.
43 See for example Melbourne Corporation v Commonwealth (1947) 74 CLR 31 at 79.
44 See for example Grain Pool of Western Australia v Commonwealth (2000) 202 CLR 479 at [16], quoted in the Work Choices Case at [142].
45 See for example Burton v Honan (1952) 86 CLR 169 at 177.
46 See for example Huddart Parker Ltd. v. The Commonwealth (1931) 44 CLR 492 at 515-516.
47 See for example Nationwide News Pty Ltd v Wills (1992) 177 CLR 1 at 27-28.
48 See for example Stenhouse v Coleman (1944) 69 CLR 457 at 471.
49 See for example Richardson v Forestry Commission (1988) 164 CLR 261 at 308.
50 See for example Commonwealth v Tasmania (Tasmanian Dam case) (1983) 158 CLR 1 at 270 per Deane J.
powers. It has been held that a dual characterisation of this nature does not, on its own, render the law invalid.\textsuperscript{51}

**Laws dealing with the declaration of a state of national emergency**

64. A law that deals with the declaration of a state of national emergency could be a valid law of the Commonwealth, if it can be characterised as being with respect to one or more of the Commonwealth’s legislative powers, even though a declaration of a state of national emergency is not, of itself, expressly stated as being the subject matter of one of the Commonwealth’s legislative powers.

65. The Commonwealth’s legislative powers which may be exercised to support laws that provide for a declaration of a state of national emergency are outlined below.

66. Whether the legislative powers of the Commonwealth Parliament would support a law that deals with a declaration of a state of national emergency depends upon exactly what the law provides for, and in particular, on what the effects of making the declaration are intended to be. Accordingly, a view cannot be reached in the abstract about whether such a law would be within the legislative powers of the Commonwealth Parliament.

**Scope of the Commonwealth’s legislative powers**

67. For brevity, this paper only briefly comments (in very broad terms) on some of the Commonwealth’s legislative powers which may be the most relevant to a declaration of a state of national emergency.

**The external affairs power in s 51(xxiv)**

68. Section 51(xxiv) enables the Commonwealth Parliament to make laws with respect to external affairs, and of particular relevance, enables the Commonwealth Parliament to make laws with respect to the implementation of international agreements to which Australia is a party which are sufficiently specific as to enliven the power. The treaties implementation aspect of the external affairs power supports laws that are capable of being reasonably considered as appropriate and adapted to give effect to the treaty.\textsuperscript{52}

69. There is no treaty that deals expressly with declarations of states of national emergency. However, particular treaties that enliven the external affairs power could be relevant to declarations that deal with particular types of national emergencies or natural disasters. There are several treaties that include potentially relevant obligations, including, for example, the *Convention for the Protection of the World Cultural and Natural Heritage* and the *Paris Agreement* and related treaties that deal with climate change.

**The power to make grants to the states in s 96**

70. This power enables the Commonwealth to make grants to the states ‘on such terms and conditions as the Parliament thinks fit’. The Commonwealth can therefore (and regularly does) grant money to the states on condition that they distribute the money to particular persons for particular purposes.

**The Territories power in s 122**

71. This is a broad power to make laws for the government of the territories. The High Court has described s 122 as a near plenary grant of power to the Commonwealth to make laws that operate in and for a territory.\textsuperscript{53}

\textsuperscript{51} See for example *Tasmanian Dam case* at 151 per Mason J, at 179-180 per Murphy J, at 215 per Brennan J, at 270, 275, 276 per Deane J.

\textsuperscript{52} See for example *Tasmanian Dam Case* at 130-131, 172, 232, 259; *Victoria v Commonwealth* (1996) 187 CLR 416, 487-8 (the ‘Industrial Relations Act Case’).

\textsuperscript{53} *Spratt v Hermes* (1965) 114 CLR 226, 241-2 per Barwick CJ.
The corporations power in s 51(xx)

72. This power supports laws regulating the activities, functions, relationships and the business of a ‘constitutional corporation’ or creating rights, benefits or imposing obligations on ‘constitutional corporations’ – that is, foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth.54

The interstate or overseas trade and commerce power in s 51(i)

73. This power would support laws designed to protect or promote inter-state and overseas trade and commerce.55

The communications power in s 51(v)

74. This power enables the Commonwealth to make laws with respect to postal, telegraphic, telephonic, and other like services. ‘Other like services’ includes services such as broadcast television,56 and is generally thought of as extending to the internet. For example, this power would include laws relating to Australia Post, the Australian Broadcasting Corporation and the National Broadband Network.

The power to make laws with respect to Commonwealth places in s 52

75. This power enables the Commonwealth Parliament to make laws with respect to ‘the seat of government of the Commonwealth, and all places acquired by the Commonwealth for public purposes’.57

Referral of powers in s 51(xxxvii)

76. Another possibility for the Commonwealth would be to seek a referral of powers from the states in relation to a declaration of a state of national emergency. Section 51(xxxvii) of the Constitution enables the Commonwealth Parliament to legislate with respect to matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any state or states. If the states referred to the Commonwealth the power to make laws with respect to emergencies that were occurring on a national scale, including taking measures for the response to, resilience to, and recovery from natural disasters, this would provide a clear basis for Commonwealth legislation dealing with those matters.

77. Commonwealth legislation based on referrals of power would override inconsistent state laws (at least while the referral remained in force). However, the extent to which this occurs would depend on the scope and content of the referral that is made.

78. Territories are not able to refer legislative powers in a similar manner. However, the Commonwealth would be able to rely on s 122 of the Constitution to make similar laws that apply in relation to the territories.

The incidental power in s 51(xxxix)

79. Among other things, this power enables the Commonwealth to legislate with respect to matters falling within the executive power of the Commonwealth. This power, in combination with the executive power in s 61 of the Constitution that was discussed in the previous section, might support legislation that deals with declarations of states of national emergency. However, as noted in the above discussion, if any such legislation were to rely only on s 61 and s 51(xxxix) of the Constitution, the extent to which the laws could have substantive effect or include features such as coercive powers may be limited.

55 See for example Airlines of NSW Pty Ltd v New South Wales (1965) 113 CLR 54.
56 Jones v Commonwealth (No 2) (1965) 112 CLR 206
57 Constitution of Australia 1901 (Cth) s 52(i).
80. Legislation with broader application, and which provides more substantive powers, may be supported by a combination of the incidental power (in ss 51(xxxix) and 61) and various other constitutional heads of power.58 This includes all of the powers discussed above.

81. In combination, these powers may support a Commonwealth law being enacted that grants to the Commonwealth a reasonably wide range of powers in relation to a declaration of a state of national emergency. Recent support for the use of powers in such a way can be found in the High Court judgment in the Work Choices case.59

**Limitations to the Commonwealth’s legislative powers**

82. In addition to being supported by one or more heads of power, for any Commonwealth legislation that provides for a declaration of a state of national emergency to be valid, it is required to comply with relevant limitations on powers set out, or implicit, in the Constitution. In this next section, some of the key limitations that might be relevant to a law dealing with the declaration of a state of national emergency are summarised. Depending on the nature of any laws that might eventually be proposed, further limitations may also be relevant.

*Melbourne Corporation principle*

83. The so-called ‘Melbourne Corporation’ principle is based on statements in the High Court60 that the Commonwealth Parliament cannot legislate to impair the continued existence of the states as independent political entities or their capacity to function as governments.

84. A Commonwealth law will be invalid if it contravenes this principle. Such a law would be invalid either wholly or to the extent that it contravenes the principle.61

85. The principle, however, does not prevent the enactment of a Commonwealth law that does no more than provide power for the Executive arm of the Commonwealth to declare a state of national emergency, where the declaration had no substantive effect.

86. However, if the intention is for the declaration to have a substantive effect, particularly on the operation of other laws, then the application of this principle may need to be considered in more depth.

*Acquisition of property*

87. Depending on the details of any model that might be settled on, it is possible that, following a declaration of a state of national emergency, particular persons would be permitted to undertake a range of actions under Commonwealth law that could have an impact on property of other persons. This could be property owned by a state or territory government or by an individual. For example, it might be that persons would be authorised to acquire and use particular property as part of the response to the national disaster. Alternatively, persons might be authorised to undertake certain activities on particular areas of land, to the exclusion of the owner of the land.

88. The Commonwealth’s powers to make legislation that acquires property of others is limited by the Constitution.

89. Section 51(xxxi) of the Constitution provides the Commonwealth Parliament with the power to make laws with respect to ‘the acquisition of property on just terms from any State or person for any purpose in

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58 See the Work Choices case at [51].
59 See the Work Choices case at [51].
60 Melbourne Corporation v Commonwealth (State Banking Case) (1947) 74 CLR 31 at 82.
61 This would depend on whether aspects of the law that did not contravene the principle could be severed from aspects of the law that did (applying s 15A of the Acts Interpretation Act 1901).
respect of which the Parliament has power to make laws’. The same principle applies in relation to land in a territory.\textsuperscript{62}

90. The High Court interprets the term ‘property’ in s 51(xxxi) of the Constitution liberally. It extends to ‘every species of valuable right and interest’.\textsuperscript{63} It is ‘not to be confined pedantically ... to some specific estate or interest in land recognised at law or in equity’; it extends also to ‘innominate and anomalous interests’.\textsuperscript{64} Accordingly, s 51(xxxi) is relevant not only in relation to land (real property), but it is also relevant in relation to acquisitions of other rights and interests that would not ordinarily be considered as ‘property’ at common law.

91. There is a body of law around what is meant by ‘acquire’ in the context of s 51(xxxi) of the Constitution. Whether property would be ‘acquired’ in the relevant sense would depend on the effect of the state of national emergency declaration. However, depending on how the relevant laws were to operate, it appears possible that some property might be ‘acquired’ in the relevant sense.

92. The ‘just terms’ compensation that is payable has been described as the sum at which a willing but not anxious vendor would sell to a willing but not anxious purchaser.\textsuperscript{65}

\begin{center}
Question 2
The Royal Commission invites comment on whether there are any constitutional or other legal limitations on what actions the Commonwealth may take in response to a state or territory’s request for assistance in responding to a natural disaster?
\end{center}

**Who is the decision-maker?**

93. At law, the relevant person or entity to make a national declaration will depend on:

\begin{enumerate}
\item[(a)] the source of power relied on to make the order (ie whether it is made in reliance on executive power or power under statute, or in collaboration with the states and territories); and
\item[(b)] the powers such a declaration will enliven.
\end{enumerate}

**Authority for making a declaration**

94. The power to declare a state of emergency or disaster in all states and territories is vested in a single person, typically the Premier or Chief Minister. There is utility in vesting the power to make a declaration in a single person as it allows quick and decisive decision making.

95. Similarly, at the Commonwealth level, the authority to make a declaration of a state of national emergency could be vested in a particular person, for example, the Prime Minister, the Minister responsible for emergency management, or the Governor-General.

\textsuperscript{62} Wurridjal v Commonwealth (2009) 237 CLR 309 at 357 per French CJ, at 385, 386 per Gummow and Hayne JJ, at 419 per Kirby J. This decision only applied to land in the Northern Territory. However, the reasoning of the decision does not focus on any particular characteristic of land within the Northern Territory, and appears to apply equally to land in any territory referred to in s 122 of the Constitution.

\textsuperscript{63} Minister for Army v Dalziel (1944) 68 CLR 261 at 290.

\textsuperscript{64} Bank of New South Wales v Commonwealth (1948) 76 CLR 1 at 349 per Dixon J.

\textsuperscript{65} Spencer v Commonwealth (1907) 5 CLR 418 at 441 per Isaacs J; Boland v Yates Property Corporation Pty Ltd (1999) 167 ALR 575 at [79] per Gleeson CJ; at [266]-[269] per Callinan J.
Further decision-making

96. In addition to consideration as to who has the authority to make a declaration, consideration should also be given to who has the power to exercise specific powers or functions enlivened by that declaration.

Declarations subject to review

Duration of a Commonwealth declaration

97. It will likely be reasonable for any declaration to be subject to a limited and/or defined period. This may ensure that the extraordinary powers that might flow from the declaration are not the ‘status quo’. The appropriate length of a declaration would relate to the powers or functions that are enlivened following a declaration.

98. As noted above, all emergency declarations made pursuant to state and territory legislative powers prescribe a period of operation. Similarly, under the Biosecurity Act, a declaration of a biosecurity emergency or human biosecurity emergency must not be longer than the relevant Minister considers appropriate and, in any case, must not be longer than three months. However, the Governor-General may extend the emergency period for up to three months at a time in prescribed circumstances.66

Oversight in a Commonwealth context

99. Consideration may also need to be given to the implementation of any oversight and accountability measures. This consideration could be separated into two parts: the review of the making of the declaration, and the review of the powers exercised in accordance with the declaration.67

Question 3

The Royal Commission invites comment on the following questions:

a. Can the Commonwealth enact legislation to provide for the involvement of the Commonwealth in responding to national emergencies? If so, could such legislation rely upon one or more of the enumerated heads of power contained in section 51 of the Commonwealth Constitution and/or any other sources of legislative power in the Constitution?

b. If so, would this power be subject to any legal constraints or limitations expressed or implied in the Constitution?

66 Biosecurity Act 2015 (Cth), s 444.
67 Section 75(v) of the Constitution provides for ‘an entrenched minimum provision of judicial review’ of administrative action; Bodruddaza v Minister for Immigration and Multicultural Affairs (2007) 228 CLR 651 at [46]. While Commonwealth legislation cannot displace this minimum judicial review, it could provide for additional or enhanced review procedures.
## Appendix A

### Table 1 – Single Declarations

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Power to declare</th>
<th>Geographical location</th>
<th>Duration</th>
</tr>
</thead>
<tbody>
<tr>
<td>NSW</td>
<td><strong>Premier</strong> is able to declare a state of emergency or disaster if they are satisfied that an event constitutes a significant danger to life or property in NSW.⁶⁸</td>
<td>A state of emergency or disaster may be declared in respect of the <strong>whole state or specified emergency or disaster areas</strong>.⁶⁹</td>
<td>The declaration has immediate effect and will remain in force until it is revoked or for a specified period up to a maximum of: 30 days (although a further declaration may be made during the period for the same subject matter).⁷⁰</td>
</tr>
<tr>
<td>Victoria</td>
<td><strong>Premier</strong> is able to declare a state of emergency or disaster if they are satisfied that an event constitutes a significant danger to life or property in Victoria.⁷¹</td>
<td>A state of emergency or disaster may be declared in respect of the <strong>whole state or specified emergency or disaster areas</strong>.⁷²</td>
<td>The declaration has immediate effect and will remain in force until it is revoked or for a specified period up to a maximum of 1 month (although a further declaration may be made during the period for the same subject matter).⁷³</td>
</tr>
<tr>
<td>Queensland</td>
<td>The <strong>Minister for Fire and Emergency Services</strong>⁷⁴ and the <strong>Premier</strong>, or a <strong>District Disaster Coordinator</strong> (with Ministerial approval), may declare a disaster situation exists if they are satisfied that: (a) a disaster has happened (or is likely to happen); and (b) an exercise of disaster powers will be required to minimise the loss of life or injury to humans, property damage, or damage to the environment.⁷⁵</td>
<td>A state of emergency or disaster may be declared in respect of the <strong>whole state or specified emergency or disaster areas</strong>.⁷⁶</td>
<td>The declaration has immediate effect and will remain in force until it is revoked or for a specified period up to a maximum of 14 days (unless extended by regulation or an additional declaration).⁷⁷</td>
</tr>
</tbody>
</table>

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⁶⁸ *State Emergency and Rescue Management Act 1989* (NSW) s 33(1).

⁶⁹ *State Emergency and Rescue Management Act 1989* (NSW) ss 32A (definition of ‘emergency area’), 33(1).

⁷⁰ *State Emergency and Rescue Management Act 1989* (NSW) s 35(2).

⁷¹ *Emergency Management Act 1986* (Vic) s 23(1).

⁷² *Emergency Management Act 1986* (Vic) ss 23(1), (3) (definition of ‘disaster area’).

⁷³ *Emergency Management Act 1986* (Vic) s 23(6).


⁷⁵ *Disaster Management Act* (Qld) ss 64, 69.

⁷⁶ *Disaster Management Act 2003* (Qld) ss 64, 69.

⁷⁷ *Disaster Management Act* (Qld) ss 71, 72A, 73 (in relation to declarations made by the Premier and Minister).
Table 2 – Multiple categories of emergency

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Power to declare</th>
<th>Type of declaration</th>
<th>Duration</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT</td>
<td>The Minister may make a state of alert declaration if satisfied that an emergency is likely to occur in all or part of their state or territory.</td>
<td>Either a state of alert or a state of emergency may be declared.78 A state of alert requires the Minister to provide situation reports to the community and allows the appointment of an emergency controller. A state of emergency will authorise the use of broader emergency powers.</td>
<td>A state of alert will end when a state of alert is declared by the Chief Minister or Premier. A state of emergency will remain in force until it is revoked.</td>
</tr>
<tr>
<td>Tasmania</td>
<td>The State Controller may make a state of alert declaration if satisfied that an emergency is likely to occur in all or part of their state or territory.</td>
<td>Either a state of alert or a state of emergency may be declared.79 A state of alert authorises the use of some emergency powers by state and regional controllers.80 A state of emergency will authorise the use of broader emergency powers.</td>
<td>A state of emergency will remain in force for a specified period of up to 14 days.81</td>
</tr>
<tr>
<td>Northern Territory</td>
<td>The Minister can declare the existence of an ‘emergency situation’ or ‘state of emergency’. The Administrator (or two Ministers acting together) may declare a ‘state of disaster’.</td>
<td>The following may be declared: an ‘emergency situation’ (where an event has occurred, or is likely to occur, and the Minister is satisfied that emergency powers will be required for response and recovery operations), a ‘state of emergency’ (if an emergency situation has occurred and further emergency powers are required) and a ‘state of disaster’ (if a disaster has occurred and further emergency powers are required).82 An ‘emergency’ and a ‘disaster’ are similar in definition, except disasters include situations requiring assistance from outside the NT.</td>
<td>An emergency situation will continue until it is revoked. This including during periods in which a state of emergency or state of disaster are declared, or for three days after a tropical cyclone warning.83 The state of emergency will remain in force for three days or until revoked or extended.84</td>
</tr>
<tr>
<td>South Australia</td>
<td>The State Controller may declare a ‘major incident’ or a ‘major emergency’ and the</td>
<td>Declarations may be made for a ‘major incident’, a ‘major emergency’ and a ‘disaster’.86 Each declaration may be made in</td>
<td>Under a declaration, emergency powers are enacted for authorised personnel for a period of:</td>
</tr>
</tbody>
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78 Emergencies Act 2004 (ACT) ss 151 (state of alert), 156 (state of emergency).
79 Emergency Management Act 2006 (Tas) ss 41A (state of alert), 42 (state of emergency).
80 Emergency Management Act 2006 (Tas) ss 41A-41D (which allow for various powers to be prescribed to and exercised by state and regional controllers).
81 Emergency Management Act 2006 (Tas) s 42(3)(b). Note, however, that a declaration in relation to a pandemic disease in humans or animals may last up to 12-weeks.
82 Emergency Management Act 2013 (NT) ss 18 (emergency situation); 19 (state of emergency), 21 (state of disaster).
83 Emergency Management Act 2013 (NT) ss 18, 23.
84 Emergency Management Act 2013 (NT) ss 20, 23.
86 Emergency Management Act 2004 (SA) ss 22 (major incident), 23 (major emergency), 24 (disaster).
### Table 3 – Staged declarations

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Power to declare</th>
<th>Type of declaration</th>
<th>Geographical location</th>
<th>Duration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Western Australia</td>
<td>The State Emergency Coordinator or the relevant hazard management agency (which includes, for example, the Police Commissioner and the FES Commissioner) is able to declare that an emergency situation exists. The Minister may declare a state of emergency exists.</td>
<td>An emergency situation may be declared where an emergency has occurred, or is occurring or is imminent, in a particular area of the state, and there is a need to use emergency powers to prevent the loss of life or injury to humans or animals, damage to property, or damage to the environment. The Minister may declare a state of emergency exists in the whole of, or any part of, the state, in circumstances where the Minister: (a) has considered the advice of the State Emergency Coordinator; (b) is satisfied that an emergency has occurred, or is occurring or imminent; and (c) is satisfied that extraordinary measures are required to prevent the loss of life or injury to</td>
<td>Emergency situations are declared in a particular area of the state. State of emergencies are declared where a state of emergency exists in the whole of, or any part of, the state.</td>
<td>A declaration of emergency situation remains in force for three days unless revoked or extended. A state of emergency declaration remains in force for three days or until revoked or extended.</td>
</tr>
</tbody>
</table>

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85 *Emergency Management Act 2004 (SA)* ss 22 (major incident), 23 (major emergency), 24 (disaster).


88 *Emergency Management Act 2005 (WA)* s 50.

89 *Emergency Management Act 2005 (WA)* s 50.
### Table 4 – Extent of emergency powers

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Key areas</th>
</tr>
</thead>
<tbody>
<tr>
<td>Victoria</td>
<td>Victorian Police are authorised to close roads, prohibit a person from entering the area, direct any person to leave the area and authorise a person to stay in the area if appropriate. The Minister provides direction to any government agencies concerning activities to be undertaken, or refrained from being undertaken, in a state of emergency.</td>
</tr>
<tr>
<td>Queensland</td>
<td>The Chairperson of the State group or a relevant district disaster coordinator, holds the power to authorise a declared disaster officer to exercise general or limited powers. A declared disaster officer includes police officers, fire officers, ambulance officers, health officers or any other relevant persons. This authorisation however, must be conditional and can be made orally or in writing, but if orally provided should be made in writing as soon as reasonably practical. Requirement for written authorisation of any destruction of any building or structure.</td>
</tr>
<tr>
<td>NSW</td>
<td>The Minister provides direction or authorisation to any government department to do or refrain from doing things in order to respond to the emergency. The Minister may direct or authorise an emergency services officer to undertake required activities and as such permits officers to do anything necessary to ensure compliance with the directive, including the use of reasonable force.</td>
</tr>
<tr>
<td>Western Australia</td>
<td>The hazard management agency (which may be any government agency or department) with the authorisation of the State Emergency Coordinator, may delegate, to any officer or employee of the agency general or specific powers in relation to responding to the state of emergency. Hazard management officers are delegated broad powers such as the restriction of movement and the gathering of information while an emergency situation is in force.</td>
</tr>
<tr>
<td>ACT</td>
<td>The Emergency Controller is able to make directions for emergency response, including the direction of services (i.e., services in relation to gas, electricity, water, waste disposal). The Chief Minister may also alter the Emergency Controller’s powers at any time.</td>
</tr>
<tr>
<td>NT</td>
<td>Emergency powers in the Northern Territory are more limited than in other states and territories, where powers are open to broad interpretation. The Minister is charged with delegating power to authorised officers to carry out emergency operations, recovery operations and operations to protect lives or property.</td>
</tr>
</tbody>
</table>

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90 Emergency Management Act 2005 (WA) s 56.
91 Emergency Management Act 1986 (Vic) s 36B.
93 Emergency Management Act 2003 (Qld) s 75.
94 Emergency Management Act 2003 (Qld) s 77(2).
95 State Emergency Rescue and Management Act 1989 (NSW) s 36.
96 State Emergency Rescue and Management Act 1989 (NSW) s 37.
97 Emergency Management Act 2005 (WA) s 5.
99 Emergency Management Act 2005 (WA) s 72A.
100 Emergencies Act 2004 (ACT) s 106A.
<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Key areas</th>
</tr>
</thead>
<tbody>
<tr>
<td>South Australia</td>
<td>The State Co-ordinator must take any action necessary to implement the State Emergency Management Plan. Authorised officers are delegated broad powers whereby they may, in addition to other powers, restrict a person from carrying on a business, make use of gratuitous services or use 'any prescribed power' deemed relevant. An authorised officer is such persons as the State Co-ordinator sees fit to appoint.</td>
</tr>
<tr>
<td>Tasmania</td>
<td>The State Controller may exercise and delegate to authorised persons emergency powers, which are given an exhaustive meaning in Schedule 1 of the Emergency Management Act 2006 (Tas), however, in specific circumstances, the State Controller and Regional Controllers may exercise Special Emergency Powers which allow for any action deemed to be appropriate for emergency management to be undertaken.</td>
</tr>
</tbody>
</table>


103 *Emergency Management Act 2004 (SA)* s 17.

104 *Emergency Management Act 2006 (Tas)* Schedule 2.