

Submission Number: NND.001.00109

Submission Of: Mark Andrew Zanker

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What is your submission based on? I am making this submission based on my professional knowledge, qualifications or experience or on behalf of a group or organisation

What is your area of professional expertise? Former Assistant Secretary Attorney-General's Department (CTH)

If you are lodging your submission on behalf of a group or organisation, what is the name of the group or organisation?

Your Submission

In your experience, what areas of the bushfire emergency response worked well?

The response of the fire services, paid and voluntary was superb. The Australian Broadcasting Corporation's coverage both on television and radio was excellent. The ABC has long played an invaluable role in emergency broadcasting. It should have a special appropriation of emergency coverage quarantined from its general appropriation for emergency purposes.

In your experience, what areas of the bushfire emergency response didn't work well?

The response from the Federal Government was very lacklustre. They did not seem to appreciate the magnitude of the disaster. They had failed to heed warning was the Emergency Leaders group, the Climate Council and others (including Ross Garnaut's forecast that the effects of climate change on wildfires would likely start to become apparent by 2020). Their lack of a coherent policy on climate change will inevitably result in more catastrophes.

In your experience, what needs to change to improve arrangements for preparation, mitigation, response and recovery coordination for national natural disaster arrangements in Australia?

There are already very good arrangements in place for for dealing with natural disasters, as mentioned in the attachment to this submission. The production of more long winded documents will not be of assistance. The Federal Government could have involved itself more in coordination simply in reliance on the executive power in section 61 of the Constitution. The Commonwealth has a role in emergency management and the defence of the lives and property of citizens by virtue of being the central government of a federated polity. It also has power to make grants to the states and territories where financial resources are needed.

Is there anything else you would like to tell the Royal Commission?

See the attachment.

Do you agree to your submission being published? Yes I agree to my submission being published in my name

Supporting material provided:

009NaturalDisasterSub.pdf

Submission by [REDACTED] private citizen of [REDACTED]
[REDACTED]

I will begin by commenting on TORs b and d as set out in the Letters Patent establishing your commission.

TOR b. Australia's arrangements for improving resilience and adapting to changing climatic conditions, what actions should be taken to mitigate the impacts of natural disasters, and whether accountability for natural disaster risk management, preparedness, resilience and recovery should be enhanced, including through a nationally consistent accountability and reporting framework and national standards; and

TOR d. any relevant matter reasonably incidental to a matter referred to in paragraphs (a) to (c).

In commenting on this TOR, I wish to start by drawing the attention of the Commission to Chapter 6 of the the Australian Emergency Management Arrangements Handbook. This chapter deals with catastrophic disasters. It makes the following points:

[REDACTED]

2. In my opinion, the Australian Government did not recognise that the 2019-20 bushfires were a catastrophe, or that if they did, they did not wish to acknowledge it. 2019 was a year of many catastrophes - the ongoing "drought", substantial loss of soil moisture, an unprecedented number of severe dust storms in NSW - indeed more than I can ever remember, the fish kill disaster in the Darling River at Menindee and at other locations in the Murray Darling river system are all the consequences of a discernible and worrisome shift in climate.

3. All through this crisis, government ministers and other commentators were coming out with the usual ridiculous platitudes about bush fires and drought being normal occurrences in Australia from which we recover and then resume business as we had carried it on before. It is convenient for them to ignore history, climate science (see for example the presentations given at the 2009 4 Degrees and Beyond Climate Conference at Oxford University collected here: <https://podcasts.ox.ac.uk/series/4-degrees-and-beyond-international-climate-conference>) and severe weather events such as the tornadoes of 29 September 2016 that destroyed 22 high voltage power pylons in mid northern South Australia, (described in The Guardian article linked here: <https://www.theguardian.com/australia-news/2016/sep/29/south-australia-blackout-explained-renewables-not-to-blame>) The Commonwealth government ignored these events entirely and obfuscated and frankly lied about the South Australian tornado event because to acknowledge the realities of the matter would have exposed the stupidity of the policies they have pursued since 2013 to undermine, if not destroy the renewable energy industry and to prop up the coal industry. Whilst obviously these are not matters within the remit of your Commission to discuss, they are nevertheless of crucial importance.

4. The government has repeatedly been warned of the devastating effects of fires in our increasingly dry climate, for example by the National Centre for Climate Restoration (Breakthrough) (<https://www.breakthroughonline.org.au/about-1>) the Climate Council and the Emergency Leaders for Climate Action. In April 2019 the Emergency Leaders for Climate Action issued a statement (see <https://emergencyleadersforclimateaction.org.au/statement/>) addressed to the Commonwealth, State and Territory governments. The statement called on the governments to cease diminishing the funding of natural resource management and fire fighting agencies. It also asked that a parliamentary inquiry be convened into whether Australian emergency services are adequately resourced and equipped to cope with increasing natural disaster risks due to climate change. The government ignored this entirely. In order to be seen to be doing something, it has established your commission with very limited terms of reference, and which really, given the history of royal commissions and other inquiries into fires, starting with Stretton in Victoria back in 1939, is unnecessary. Indeed, the establishment of your Commission seems to me to be a diversionary tactic by the government in order to ensure that its own significant policy failings are obscured.

5. Another important issue perhaps concerns what we regard as an emergency. In many cases, but not all fires are an overwhelming, rapid emergency that requires a rapid response. Floods are frequently predictable for example in riverine communities in Australia because downstream people will know, or will have access to information which enables them to assess

whether and where to relocate property or livestock, for example to higher ground. Cyclones are ordinarily tracked by the Bureau of Meteorology and warnings are given well in advance of the likely movement of the cyclone, its intensity and capacity to cause damage.

6. Sea level rise seems not to be universally recognised as an emergency situation, although it is one. Because it is slow moving it is able to be explained away as the consequence of some 1 in 100 year event, or similar platitudinous and erroneous assessment. Consider, for example the case of the demolition of the Stockton Childhood Care Centre on the north side of the Hunter River at Newcastle. This event naturally was the subject of much publicity in Newcastle (see this discussion in the Newcastle Herald: <https://www.newcastleherald.com.au/story/6422645/end-of-an-era-stocktons-childcare-centre-demolished-under-threat-of-collapse/>). Whilst there have been ad hoc responses to this state of affairs by the NSW state government and local authorities, none of these responses seem to involve any sensible planning for what is likely to occur even in heavily populated areas of the coast, such as Collaroy and the northern beaches area in Sydney. (see linked item about coastal erosion from ABC's 7.30 report of 19 December 2019: <https://www.youtube.com/watch?v=8zhDRYm8qQ0>) Similarly, Geraldton and Fremantle in WA are suffering severe erosion, as shown in this item from ABC News Western Australia (<https://www.youtube.com/watch?v=gYI05iGYb9U> and also here: <https://www.abc.net.au/news/2019-07-31/erosion-washing-away-beaches-up-and-down-wa-coast/11359006>) Nothing effectual has been done to help the folk of the Torres Strait - sandbagging will not suffice - there needs to be an orderly withdrawal strategy that enables these people to be given a new and better life before disaster strikes, which it inevitably will, and this should not be a laughing matter amongst politicians (<https://www.youtube.com/watch?v=rGMrGIAHUq0>).

7. Water shortages in rural areas have already bitten hard in some communities, such as Menindee, Giralambone, Walgett and Euchareena as discussed in this item from The Guardian from September 2019: <https://www.theguardian.com/australia-news/2019/sep/15/parts-of-regional-nsw-set-to-run-out-of-water-by-november>

8. Government responses to these water shortages have been ad hoc. Indeed, communities such as Menindee found themselves reliant on bottled water donated by other communities, and distributed by volunteer groups, as outlined here: <http://honisoit.com/2019/05/driving-water-to-collarenebri/> None of this is satisfactory - communities cannot have primary responsibility for dealing with these issues, as they lack the resources to do so.


9. It is my submission that changes to administrative arrangements for improving resilience to disasters and emergencies will be of no effect whatsoever until governments recognise the climate crunch, as described by Professor Schellnhuber at the Oxford conference referred to in paragraph 3 above, and that your Commission should so state in its report.

TOR a. *the responsibilities of, and coordination between, the Commonwealth and State, Territory and local Governments relating to preparedness for, response to, resilience to, and recovery from, natural disasters, and what should be done to improve these arrangements, including with respect to resource sharing;*

10. The current arrangements for emergency management in Australia are set out in some detail in the Australian Emergency Management Arrangements Handbook published by the Australian Institute for Disaster Resilience. I consider this document to be quite comprehensive in its coverage of the subject matter.

11. I note that the National Strategy for Disaster Resilience, that can be downloaded from the Department of Home Affairs website, was published 9 years ago in 2011, and a perusal of it gives rise to some questions about its continuing relevance, especially in the face of unprecedented disasters such as the 2019-20 bushfires, which engulfed almost the whole of the Great Dividing Range with ferocity, and in areas of rainforest which had not burned in living memory. The document could do with some revision, as it is unduly repetitive and waffly, as illustrated by this extract from the foreword written by Roger Wilkins and Margot McCarthy:





12. This document proposes that communities should be primarily responsible for disaster responses and that government agencies should augment community efforts. I consider this is no longer realistic. The angry response of many citizens to politicians in the aftermath of the 2019-20 fires demonstrates to my mind that they felt that the assistance and guidance provided by governments fell far short of their expectations. The huge efforts put in by volunteers and communities was not adequately supported, as far as they were concerned. The predictions of the Emergency Leaders about the effect of inadequate resourcing of emergency services long before the fire crisis began came true during that crisis.

13. Only irresponsible governments would continue with current policy settings, such as those enunciated in the current National Strategy document. The production of more long winded documents will do nothing to improve the current arrangements.

TOR 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;
- (iv) whether, in the circumstances of such a national declaration, the Commonwealth Government should have clearer authority to take action (including, but without limitation, through the deployment of the Australian Defence Force) in the national interest;

14. In considering whether changes are needed to the legal framework, it is necessary first to consider what policy objectives would be sought to be achieved by doing so. People in the community seem to support the idea of calling out the Australian Defence Force (ADF) because they have superior logistics and engineering capabilities to emergency services or natural resource management agencies that can be ordered into service and given specific tasks to deal with, such as the evacuation of civilians from Mallacoota, and these activities can be carried out at no cost to the affected communities.

15. ADF assets and capabilities are used for national law enforcement activities, such as apprehending asylum seeker vessels in northern waters,

or illegal fishing vessels operating in the exclusive economic zone around the Territory of Heard Island and the McDonald Islands in the Southern Indian Ocean, for example. It makes sense to use ADF assets and personnel in these cases in the absence of similar capabilities on the part of civilian agencies.

16. Whether or not civilian state and territory based organisations should have logistics and engineering capabilities similar to those of the ADF is ultimately a question of the best use of finite government resources.

17. Accordingly, I think your commission should recommend to the government that the issues raised in TOR c. ought to be referred to the relevant ministerial council and policy departments to determine whether an intergovernmental agreement is necessary, and whether the formula for distribution of Commonwealth grants to the States and Territories should include a specific component for emergency responses, on the basis that natural disaster risks will differ depending on geographic and meteorological considerations relevant to those geographic areas.

18. For completeness, I do not see why the government could not declare a state of national emergency administratively, or in reliance on the executive power in section 61 of the Constitution, without the need for legislative authority to do so. The scope of the executive power of the Commonwealth has been dealt with extensively in migration cases in the Federal Court and the High Court. The judgment of Gageler J in Plaintiff M68-2015 v Minister for Immigration and Border Protection [2016] HCA 1 (3 February 2016) is a detailed exposition of the executive power. How or whether these issues should be dealt with is a matter for government, not your Commission as it involves matters that are not fixed in time, and could never be comprehensively be dealt with in an inquiry of the kind you have been directed to conduct.

19. Your commission has also been directed by the letters patent to have regard to the following matters:

the findings and recommendations (including any assessment of the adequacy and extent of their implementation) of other reports and inquiries that you consider relevant, including any available State or Territory inquiries relating to the 2019-2020 bushfire season, to avoid duplication wherever possible;

ways in which Australia could achieve greater national coordination and accountability — through common national standards, rule-making, reporting and data-sharing — with respect to key preparedness and resilience responsibilities, including for the following:

land management, including hazard reduction measures;

wildlife management and species conservation, including biodiversity, habitat protection and restoration;
land-use planning, zoning and development approval (including building standards), urban safety, construction of public infrastructure, and the incorporation of natural disaster considerations;
any ways in which the traditional land and fire management practices of Indigenous Australians could improve Australia's resilience to natural disasters.

20. Two hundred and thirty two years down the track it maybe somewhat late to consider the wider adoption of indigenous land management practices. Those who have read Bill Gammage's book *The Biggest Estate of Earth* would be aware that so much damage has already been done to habitat protection, biodiversity and the land generally that we have passed beyond the point of no return. Moreover there is a considerable degree of hypocrisy evident in these requirements - irrigated agriculture and irresponsible over allocation of water have dried up rivers and seriously damaged the cultural and spiritual heritage of Aboriginal communities. How can we recognise only one aspect of Aboriginal connection to and understanding of the land, without recognising all of them, including those connections that are inconvenient to the economic interests of some sectors of white European inhabitants of the country.

21. Should you have any questions about my submission, please contact me by telephone on [REDACTED] or by email at [REDACTED]