SUBMISSION
ROYAL COMMISSION INTO NATIONAL NATURAL DISASTER ARRANGEMENTS

CLIMATE JUSTICE PROGRAMME
4 MAY 2020
Dear Air Chief Mark Binskin AC (Retd), the Honourable Dr Annabelle Bennett AC SC and Professor Andrew Macintosh,

The Climate Justice Programme¹ welcomes the opportunity to provide a submission to the Royal Commission into National Natural Disaster Arrangements (‘Bushfires Royal Commission’). The Climate Justice Programme is a non-profit organisation that uses the law to fight for climate justice.

We were the world’s first non-profit organisation entirely dedicated to using the law to combat climate change, and continue to be a global leader. We are lawyers, community members and activists who believe in the pursuit of climate justice, through the development of climate law. The Climate Justice Programme has been fighting for climate justice since 2003.

Our organisation is based on the South Coast of NSW and has been directly impacted by the bushfires of 2019-2020. For months our organisation was effectively crippled as we experienced an almost constant emergency from the bushfires and followed by the floods. As we have been recovering from these natural disasters alongside our community on the South Coast, we now face the devastating impacts of the coronavirus pandemic.

Our submission relates specifically to the following Terms of Reference of the Bushfires Royal Commission contained in the Letters Patent:

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;

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;

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

In addition, we express our support for the expansion of existing and new Aboriginal groups specialising in a range of management activities, planning, preparation, and response and recovery activity on Country to improve Australia’s resilience to natural disasters.

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1. That all levels of government acknowledge that the 2019-2020 bushfires were the worst in Australia’s history and were due to unprecedented extreme weather, drought, heatwaves, dry thunderstorms, and many days of Severe, Extreme and Catastrophic fire danger.

2. That all levels of government recognise that climate change is the principal driver of more extreme weather.

3. That future planning for bushfire risk management in Australia recognise that climate change is now a major driver of increased bushfire danger and that further increases in global temperature are likely to increase the length and severity of the fire season; to restrict the opportunity for safe and effective hazard reduction burning; and to increase the risk associated with bushfire events across Australia.

4. To minimise the impacts of future projected climate change on bushfire weather, that the Australian government and other levels of government commit to more effective climate change mitigation strategies and targets in accordance with the objectives of the Paris Agreement, to keep warming well below two degrees and pursue efforts to keep warming to below 1.5 degrees. All levels of government must address the root cause of the increased extreme weather in order to protect human rights and meet their duties to care for Australian citizens.

5. To address the climate crisis, all levels of government must stop any new fossil fuel developments and must phase out fossil fuel facilities by 2030. Emissions from within Australia and from coal exported from Australia and burned elsewhere in the world have both contributed to the climatic changes that drove the 2019-2020 bushfire season.

6. All levels of government need to introduce a moratorium to halt all logging in Australia, particularly in known koala habitat, to enable the survey, monitoring and conservation of koalas and other species and ecological communities impacted by the 2019-2020 bushfires. A moratorium on logging is also needed to dramatically reduce carbon emissions from deforestation and to help drawdown carbon emissions.

7. As some climate change impacts are already locked in, all levels of government must recognise and take a critical role in building community preparedness and resilience.

8. Governments at all levels must support ongoing research and resourcing to track and predict changes in the climate, and to develop resilience, adaptation and mitigation strategies, and to fund community education and engagement. Resourcing of critical research agencies such as the Bureau of Meteorology and CSIRO must be adequate and sustained.

9. The Commonwealth needs to establish a National Climate Disaster Fund, which is independently administered and dedicated to meeting the increasing costs of climate-related natural disasters. The National Climate Disaster Fund needs to be initially funded by a levy on greenhouse gas producers and major emitters. A levy of $1 per tonne of all coal, gas and oil produced in Australia could initially raise around $1.5 billion, and would decrease to nil as fossil fuels are phased out. The National Climate Disaster Fund could be integrated with a nationally consistent accountability and reporting framework and national standards for improving resilience and adapting to unavoidable climate change.
10. Governments at all levels must act to prevent the displacement of people due to natural disasters, and must act to protect the rights of people who experience short, medium or long term displacement due to natural disasters.

11. Any expansion of Commonwealth powers to allow the Federal Government to respond to national emergencies, including climate-related natural disasters, must be accompanied by increased protection of human rights through a national bill of rights, or alternatively integrate human rights protections into any proposed legislative changes.
Overview

1. The Australian bushfires of 2019-2020 are the worst wild fires on record in the world. The unprecedented fires have burned more than 18.6 million hectares (46 million acres; 186,000 km$^2$) with hundreds of fires, mainly in the southeast of the country. More than 2,000 homes have been lost, and 48 people have died. It is estimated that more than one billion animals were killed.

2. The 2019-2020 bushfires have had an enormous ecological, human and economic cost, with devastating impacts. According to a survey conducted by The Australia Institute, approximately 57% of Australians were directly affected in some way by the bushfires. An estimated 80% of the Blue Mountains Heritage Area and 53% of Queensland’s Gondwanaland ancient rainforests were burnt. The IPCC has warned that climate change is already having an effect on food security and agriculture worldwide. Ash from the fires is likely to have serious environmental impacts.


more than $100 billion. In March 2020, the Insurance Council of Australia estimated that there have been losses of $2 billion from 27,132 insurance claims.

4. Public health was also affected as a result of the fine particle air pollution caused by bushfire smoke. An estimated 5.1 million Australian adults had health impacts from the smoke in the 2019-2020 bushfires. Although not surveyed, children are more vulnerable to air pollution than adults, and it can be inferred that approximately 1.5 million children experienced health impacts as a result of the smoke.

5. Poppy, Broulee

‘When the fires came I felt really scared of what might happen. I was really worried about Lulu [Poppy’s little sister]. I thought ash would come down and catch her clothes on fire. I decided is there is another fire we pack Lulu first and meet at the letterbox. Mum and I have begun feeding the birds. My favourite one is Mr Tickles and now there is a Mrs Tickles. I hope they bring new chicks soon.’

Bushfire smoke air pollution is harmful even for short-term exposures, but the length of exposure during these bushfires is unprecedented. This is likely to lead to future health complications such as increased risk of several cancers, chronic health conditions like respiratory and heart disease, stroke and premature death. Ambient air pollution is estimated by WHO to contribute to 4.2 million deaths globally per year. Children, older people, people

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with respiratory and chronic illnesses, and those who work outdoors are particularly vulnerable to harm from bushfire smoke.\(^{12}\)

**Nick Hopkins, Malua Bay\(^{13}\)**

‘This is the day the climate crisis became personal for me. We knew our house was not able to be defended to a bushfire of this severity driven by the climate crisis.’

6. For many who experienced the 2019-2020 bushfire season, the land became essentially uninhabitable, and thousands were evacuated from impacted areas such as the South Coast of NSW. These people were unable to live at their homes for weeks, and those who stayed had to fight fires to survive, or seek shelter on beaches and overcrowded evacuation points.

7. Many were without electricity for weeks, and entire areas were cut off from essential supplies as the highways became unpassable. Local economies were brought to a standstill, with many businesses forced to close due to the devastating impacts of the bushfires. The Climate Justice Programme and many others were effectively crippled, as the people who make up our organisation tried to stay safe, and were cut off from the world as electricity was lost and mobile phone towers burned.

**Dr Keely Boom, Executive Officer of the Climate Justice Programme**

‘It is difficult to talk about the impacts of the 2019-2020 bushfires. My family and I were evacuated from our home for over 5 weeks. My husband went missing on New Year’s Eve while on a work shift. I didn’t hear from him for 24 hours as we both lost reception and the radio even went out as well. My last contact with him telling me that he could see flames up ahead. He ended up getting stuck sheltering on the beach at Malua Bay with a thousand other people under a fire storm. I was so scared that he had been caught by the fire and that I might not ever see him again.’

‘We sheltered at Tuross Head Country Club twice, and both times the black leaves fell around us. My parents and my brothers defended their homes and survived. I had endless days and nights of worrying for their safety.’

‘We narrowly escaped the fire storm that came into Moruya on 23 January 2020. There had been no forecast of it coming to Moruya that day, but it blew in and the winds were so strong no aircraft could fly. A person died in the fires just South of Moruya that day. I didn’t know him personally but I knew of him.’

‘Every time I went to town I saw another friend who had lost their home or narrowly escaped the fires. My horse died, partly due to smoke inhalation. When we returned home

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the bush all looked black, and the flood came soon after. Some areas still haven’t started regrowing yet.’

‘I grew up on a farm helping my family fight bushfires. I even had a ride in an RFS helicopter as a kid. But the bushfires of 2019-2020 were like nothing I had seen in my childhood. I feared that our land had become uninhabitable and that my family and I had become climate refugees. We have returned now, but when will the fires come again? I fear for the future if drastic action is not taken on the climate crisis.’

8. Australia needs to take a leadership role in ensuring that the world stops climate change. Currently, Australia does not provide the necessary strong leadership on climate change. In December 2019, Australia was ranked worst in terms of policy, and sixth worst overall, out of 57 nations assessed on the Climate Change Performance Index. The Federal Government was described as ‘an increasingly regressive force’. Deforestation is a primary driver in the climate crisis. Land-use changes are second only to fossil fuel production in causing climate change. Australia has been identified as a global deforestation hotspot by WWF, and is the only developed country on the list.

9. The New South Wales and Queensland Governments have introduced legislation over recent years to make land clearing and deforestation easier and needs to do more to stop emissions. NSW land-clearing approvals have increased 13-fold since laws were relaxed in 2016. More than 38,000ha were approved to be cleared last financial year. The New South Wales Government is seeking to expand coal seam gas, despite the fact that the methane emissions contribute to the climate crisis and that the Government is failing to implement recommendations from the chief scientist.

10. The Federal Government and New South Wales Government need to continue to prioritise recovery from the 2019-2020 bushfire season, even in the midst of the coronavirus pandemic. Many people in bushfire affected communities are still living in sheds, caravans and tents, with limited or no access to running water and sewerage services. The Government needs to immediately address the basic needs of these bushfire-affected people to ensure that they have shelter and other necessities provided.

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17 Ibid.
Lindy Marshall, Cobargo

Ms Marshall is now living in her caravan near Cobargo on the NSW South Coast.

‘There are still people living here in tents, there are still people with inadequate water, there are still people with no sanitation.’

‘My mental health is not good – probably similar to most of the people around here – I have good days and I have bad days.’

11. Recovery at the community level needs to be community-focused and integrate climate solutions. Additional resilience and employment could be in the form of small-scale projects, such as rooftop solar, rainwater tanks, and greater support for small-scale farmers. Support for these types of projects would assist local communities to recover and develop greater resilience while practising physical distancing. The Federal Government needs to collaborate with local communities to find innovative means of supporting bushfire recovery in the midst of the coronavirus pandemic.

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Changing Climatic Conditions

Bushfire Risk and Changing Climatic Conditions

12. Global average temperatures have risen by approximately 1°C between 1880 and 2020, according to the Intergovernmental Panel on Climate Change. Since 1910, temperatures in Australia have increased by just over 1°C, with most warming occurring since 1950. Southeast Australia has experienced a long-term increase in extreme fire weather, and an increase in the length of the fire season. The warmer temperatures in Australia have also increased the severity of extreme heat events and increased the severity of drought conditions during periods of below-average rainfall. Eight of the ten warmest years recorded in Australia have been since 2005. Streamflows within Australia have declined, including the Murray-Darling Basin and in the South East Coast. Streamflows in Australia have declined by two thirds to three quarters since the 1970s.

13. Scientific evidence indicates that climate change is unequivocally explained by human activity, and that bushfire seasons will become significantly longer and more intense in southern Australia in the near future. The Intergovernmental Panel on Climate Change (IPCC), Australian Climate Council, Australian Bureau of Meteorology (BoM) and the Australian Commonwealth Scientific and Industrial Research Organisation (CSIRO) all agree that climate change has contributed and will continue to contribute to an increase in the intensity and length of fire seasons in Australia due to an increase in temperatures and dry conditions.

14. In 2014, the Intergovernmental Panel on Climate Change report (the IPCC report) predicted that days with extreme or very high fire danger in Australia would increase by 2-30% by 2020 and 5-100% by 2050. Data from BoM indicates that the number of days for extreme or high fire danger were more than twice the average in large parts of eastern Australia in Spring 2019. In February 2020, CSIRO noted that 2019 was the driest and hottest year since records

22 Ibid.
23 Ibid.
began in 1900, with the highest number of elevated fire weather days on record. The mean temperature was 1.52 degrees above average.\textsuperscript{30}

15. The 2019-2020 Australian bushfires were unprecedented in their size and intensity, and went beyond all projections, with more than 21\% of the Australian forest biome was burnt in a single season.\textsuperscript{31} Scientists have noted that the “more flammable future” projected to occur due to climate change appears to have eventuated earlier than anticipated.\textsuperscript{32} Data from the United Nations Environment Programme (UNEP) confirms that the 2019-2020 bushfires in Australia were “far from normal.” The number of fires in New South Wales remained fairly constant from 2003 to 2018, but more than tripled in 2019. 37 of the last 40 years were the warmest on record since 1880, and the six warmest years were the last six years.\textsuperscript{33}

16. In 2007, Lucas et al forecast that climate change would make dangerous fire seasons become more common, that the more extreme years would become even worse, and that ‘marginal’ years would become more dangerous.\textsuperscript{34} The Bureau of Meteorology has reported that the 3 years from February 2017 to January 2020 are the driest on record when averaged over the Murray-Darling Basin and NSW. This period has seen the lowest rainfall on record across large parts of western and eastern NSW through the cool season, from April-October. In addition, NSW experienced average maximum (+2.44°C departure from 30-year average 1961-1990), minimum (+1.45°C) and average temperatures (+1.95°C) that were the highest ever recorded. Extended periods of hot and dry conditions which combine with strong winds provide the conditions for major bushfire events. The extreme drought experienced in NSW contributed to the drying of soils and fuel loads.

17. A number of climatic drivers impact upon major droughts and bushfires in southeast Australia, particularly strong negative El Nino-Southern Oscillation (ENSO), strong positive Indian Ocean Dipole (IOD), and late season monsoonal events, and strong negative Southern Annular Mode (SAM) events.\textsuperscript{35} 2019 recorded the strongest positive IOD event since 1997 and provided a major driver for the widespread warm and dry conditions experience in NSW in late 2019, which combined with a strong and fairly long-lasting positive SAM event. Climate research has identified a strong positive association between temperatures and fire occurrence in the southern hemisphere, particularly in relation to the coupling of lightning-ignited fire events and SAM trends.

\textsuperscript{32} Matthias M. Boer, Victor Resco de Dios, and Ross A. Bradstock, ‘Unprecedented burn area of Australian mega forest fires’ (2020) 10 \textit{Nature Climate Change} 171-172.
18. Human-induced climate change is exacerbating the impacts of these climate drivers particularly as global temperature rise has accelerated over recent decades. The risks of human-caused climate change increasing the threats of bushfires in Australia have been known by state and federal governments for more than a decade. In 2008, the Garnaut Climate Change Review was presented to the Australian Federal Government, which stated that:

Recent projections of fire weather (Lucas, et al., 2007) suggest that fire seasons will start earlier, end slightly later, and generally be more intense. This effect increases over time, but should be directly observable by 2020.

19. Research released in 2007 by Bushfire CRC, the Australian Bureau of Meteorology, and the CSIRO Marine and Atmospheric Research found that the number of days of ‘very high’ and ‘extreme’ fire danger dangers would increase by 2020. The number of ‘extreme’ fire danger days were forecast to increase 5-25% by 2020 for low scenarios (global temperature increase by 0.4°C) and 15-65% for the high scenarios (global temperature increase by 1°C). Australia and the world more broadly have followed the high scenario pathway, with a temperature increase of approximately 1°C.

20. Warnings were also given in 2019 in the lead up to this catastrophic bushfire season. In 2019, former fire and emergency chiefs warned the Prime Minister that the 2019-2020 fire season presented unprecedented levels of fire risk due to the impacts of climate change. The Bushfire and Natural Hazards CRC (federally funded) warned in August 2019 that there was ‘above normal fire potential’ for the southeast and other parts of Australia.

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Paul Adcock, Yowrie (near Cobargo) who lost his home

‘I firmly believe that we have got to decarbonise the economy. It is time for people to get real – we know what the science says. We’ve got to stop the carbonisation the atmosphere going even further.’

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21. Climate change has contributed to the bushfire crisis through a number of ways, particularly through increasing the fire frequency and intensity of the fires. The fire season was particularly dangerous due to severely below average fuel moisture, record-breaking temperatures and

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39 Ibid.
drought associated with long-term trends of warmer and dryer weather in Australia. Climate change made the 2019-2020 bushfire season worse than it would have otherwise been. The World Weather Attribution Network found that fire danger conditions were four times more severe due to human-caused climate change. The fire danger risk facing NSW and Australia more broadly will continue to multiply if the climate crisis is not stopped.

22. There is perhaps no other nation with vulnerability to the climate crisis as great as Australia. Our wealth as a developed nation and great cultural traditions of volunteering and mateship give us a higher degree of resilience than many. Yet as we saw in the 2019-2020 bushfire crisis, even our material and cultural wealth cannot shield us from an uninhabitable land. If the climate crisis is not halted, our land will become uninhabitable.

**Rachel, Potato Point**

‘On the 8th of January, I started getting calls from people who were back at their properties: ‘Can you come help us? We have kangaroos here with burnt feet.’ They couldn’t move, they wouldn’t recover; they’d starve to death. I had to euthanise 12 kangaroos in that one day. That was really awful. That was my worst day. Working with WIRES and being a shooter, I knew that job would fall to me. Now it’s time to focus on the regrowth, the repopulation, and out of this WIRES has received this amazing uptake of new volunteers.’

23. The IPCC report notes that although some of the potential impacts of climate change now appear to be very difficult to avoid entirely (damage to coral reefs and loss of mountain ecosystems and some native species), some impacts (such as damage to ecosystems and settlements, loss of life and economic loss due to bushfires in Australia) have the potential to be substantially reduced by effective global action. In order to reduce the risk of these potential impacts, the IPCC notes that “rapid, far-reaching and unprecedented changes in all aspects of society” are required to limit warming to 1.5 degrees instead of 2 degrees. Global net human-caused emissions of carbon dioxide (CO₂) need to fall by 45% by 2030, and be zero by 2050 to avoid severe irreversible consequences. New analysis indicates that the hot and dry conditions that led to the 2019-2020 bushfire crisis in Australia would be eight times more likely to happen once global heating reaches 2 degrees.

24. Australia has been severely impacted by the bushfire season of 2019-2020. It is time to now step up and not allow our current high emissions pathway to commit us to seasons of this
nature and worse on a more frequent basis. We call upon the Bushfires Royal Commission to recognise the urgent threat posed from human-caused climate change through more frequent and severe bushfire seasons similar to or worse than the 2019-2020 bushfire season.

25. All levels of government must meet this threat by adopting and enacting ambitious and enforceable greenhouse gas emissions targets that reduce emissions by at least half over the next decade and reach zero emissions by 2050. All levels of government need to rapidly introduce and support more solar and wind energy, and phase out fossil fuel production. Government also needs to support regenerative agriculture and immediately cease logging of native forests.

26. Human-induced climate change is causing fire seasons to commence earlier and last longer, which reduces the opportunity to undertake safe and effective hazard reduction burning. If human-caused climate change is not stopped, temperatures will continue to rise, and there will be more heatwaves and drought within southeast Australia.

27. It is essential that the Federal Government recognise the urgency of addressing the climate crisis and place climate policies at the centre of policy and planning decisions. The government must commit to no new fossil fuel projects and to the phasing out of existing fossil fuel projects.

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Logging and Changing Climatic Conditions

28. There have been some calls for increasing logging in response to the 2019-2020 bushfires, including logging in national parks.49 The forestry industry and its supporters have been advocating for the selecting logging or thinning of national parks. In response to the 2019-2020 bushfire season, there have been some calls for the forestry industry to log National Parks. The Australian Forest Products Association advocated for logging National Parks in January 2020, stating that salvaging timber ‘from all burnt forests across all impacted tenures’ would minimise fuel loads and meet timber supply requirements.

29. However, scientific research shows that post-fire logging would significantly undermine regeneration. Larger trees that remain in burnt areas provide extremely important habitat for arboreal animals, including koalas and birds that require hollows for nesting. Logging in burnt areas would likely severely impact the ability of animal, bird and insect populations to recover, with flow on impacts on ecosystems from the roles of these populations (e.g. soil turnover and seed dispersal). Logging and fire can drive the collapse of forest ecosystems, and can occur over a long period of time in a way that is ‘hidden’.50

30. Logging does not necessarily reduce the risk of bushfires and may increase fire risk. Impacts depend upon the nature of the slash left behind and subsequent growth of shrubs, fire adapted tree species and weeds.51 A number of the largest bushfires of 2019-2020 were started from lightning strikes on state forest or private property (e.g. Badja Fire 302,500 ha, Currowan 312,599ha, and Dunn Road fire 333,940ha).

31. Research from 2014 studied hundreds of thousands of trees that had burned in the 2009 Victorian bushfires and found that there was an elevated bushfire risk in areas that had been logged, starting 7 years after logging and lasting for another 50 years.52 The fires around Kinglake and Marysville were about 25% more severe due to logging in those areas.

32. Many threatened fauna, flora and ecological communities have been severely affected by the 2019-2020 bushfires, to the extent that some species may become extinct. Extensive surveys and monitoring is required to ensure the conservation of species and communities impacted by the 2019-2020 bushfires. The koala has been threatened by extinction in burnt areas, particularly in northern NSW. Logging needs to cease to ensure the conservation of species and communities, including koalas.


33. Deforestation is a primary driver in the climate crisis. Land-use changes are second only to fossil fuel production in causing climate change. As mentioned previously, **Australia has been identified as a global deforestation hotspot by WWF, and is the only developed country on the list.** Almost 40% of native vegetation in NSW has been cleared, and most of the remaining vegetation is highly degraded. Just 9% of the remaining vegetation is in good condition. The forests of NSW are home to an incredible array of animals and birds, including the koala, powerful owl, greater glider, and spotted quoll. There are now less than 36,000 koalas left in NSW, and most of the populations are declining.

34. The carbon stock of forests that are commercially logged is significantly less on average than the carbon stock of natural, undisturbed forests (up to 40-60% less). The forests of southeast Australia have far larger carbon stocks than is recognised. The remaining natural intact forests of Australia constitute significant standing stock of carbon that need to be protected from logging and other activities that would release carbon. **In contrast, if all of the carbon currently stored in the 14.5 million ha of eucalypt forest in southeast Australia were released, this would raise global carbon by a huge 3.3 parts per million by volume.** Curbing deforestation provides a highly effective way to reduce emissions.

35. The Stern Review identified that deforestation as the ‘single largest source of land-use change emissions, responsible for over 8 GtCO\textsubscript{2}/yr in 2000.’ Areas that are logged release carbon from vegetation left to decay, and from within the soil that has been disrupted. In addition, there is substantial potential for carbon sequestration within the forests of Australia if allowed to re-grow. Currently, logging is a primary driver for climate change and its increase in bushfire risk, but a moratorium would cease emissions and allow Australia’s forests to drawdown emissions.

36. In order to stop climate change, Australia needs to cease logging. A **moratorium on logging would address climate change in two ways:** first, it would reduce emissions caused by logging because carbon would remain in the forests; and second, it would allow the forests to drawdown carbon through regrowth of forests in logged areas.

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55 Ibid.
56 Ibid, 8.
57 Ibid, 37.
58 The Stern Review, ‘Emissions from the Land-Use Change and Forestry Sector’.
60 Brendan Mackey et al, Green Carbon: The role of natural forests in carbon storage (ANU Press, 2008).
61 Ibid, 37.
Key Preparedness and Resilience Responsibilities

**Government Responsibilities**

37. There is strong evidence that the Commonwealth and State governments have failed in their duty of care to Australian citizens by not taking adequate steps to mitigate the effects of climate change. The Commonwealth and State governments had ample time to prepare for extreme fire events, but have consistently failed to take meaningful action. A 2008 government commissioned report, the Garnaut Climate Change Review, eerily predicted that “fire seasons will start earlier, end slightly later, and generally be more intense. This effect increases over time, but should be directly observable by 2020,” which is precisely what occurred.62

38. Instead of preparing for this, the Commonwealth government has demonstrated an unwillingness to act, with many Ministers of the current Australian government still openly doubting the science of climate change in 2020.63 For example, Australian Natural Disasters Minister David Littleproud stated that he didn’t know if climate change was manmade and downplayed the link between bushfires and climate change in September 2019.64 In November 2019, the midst of the bushfire crisis, the Deputy Prime Minister Michael McCormack dismissed the link between bushfires and climate change as the “ravings of some pure, enlightened and woke capital city greenies.”65 Climate scientist Michael Mann recently noted that “[Prime Minister] Morrison has shown himself to be beholden to coal interests and his administration is considered to have conspired with a small number of petrostates to sabotage the recent UN climate conference in Madrid (“COP25”).”66

Jake Egan, who lost his home on New Year’s Eve67

‘After the firestorm passed that was a powerful emotional experience. At least we survived bodily and almost psychologically.’

‘I urge all Australians to speak up and demand action now. We cannot let ourselves be in for too much more of what’s to come.’

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39. Insufficient government action to mitigate climate change is likely to cause damaging financial instability. The Chair of the Financial Stability Board’s Taskforce on Climate Related Disclosure expressed the view in 2017 that “warming of the planet caused by greenhouse gas emissions poses serious risks to the global economy and will have an impact across many economic sectors.... The risk climate change poses to businesses and financial markets is real and already present.” The Bank for International Settlements warned in January 2020 that “climate change is a source of financial (and price) instability: it is likely to generate physical risks related to climate damages, and transition risks related to potentially disordered mitigation strategies.” Climate change impacts and mitigation strategies involve “physical and transition risks that interact with complex, far-reaching, nonlinear, chain reaction effects. Exceeding climate tipping points .... requires immediate and ambitious action towards a structural transformation of our economies, involving technological innovations that can be scaled but also major changes in regulations and social norms. Climate change could therefore lead to “green swan” events and be the cause of the next systemic financial crisis.”

40. There is a growing international consensus that climate change threatens human rights such as the right to life, and that States have a legal duty to prevent harm from climate change. In the Dutch *Urgenda* case in 2019, the Dutch Supreme Court found its government in breach of the rights to life and privacy for failing to increase its emissions reductions targets to mitigate climate change. The Court stated that the Dutch government must urgently and significantly reduce emissions immediately in line with its human rights obligations. The United Nations High Commissioner for Human Rights, Michelle Bachelet, noted that “the decision confirms that the Government of the Netherlands and, by implication, other governments have binding legal obligations, based on international human rights law, to undertake strong reductions in emissions of greenhouse gases.”

41. In October 2018, the United Nations Human Rights Committee adopted General Comment No. 36 on the Right to Life, which provides further guidance on the interpretation of this human right in relation to protection from environmental harm. It notes that States are obligated to take appropriate measures to address conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their lives with dignity, including degradation of the environment. This should include measures to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors. In *Portillo Cáceres v Paraguay* in September 2019, it was noted that there was an “undeniable link” between environmental protection and human rights, and that States are

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required to take all appropriate measures to protect its people from threats that are reasonably foreseeable.73

**Unnamed mother who sheltered with her 3 year old daughter and 6 year old son on Malua Bay beach on New Year’s Eve**74

‘I was angry and scared about our government’s inaction on climate change before, but now I am furious and terrified. This disaster was exactly what I needed to snap me out of my funk, feeling like all of my activism and personal eco-choices were not achieving anything and thinking I needed to step back and regroup.

All I could do down on that beach was protect my kids. And that’s what climate activism is all about – protecting our kids.

It is going to fuel me through 2020, as we collectively take the wheel and swerve this country away from ecological suicide.’

42. Sixteen children from other countries have recently filed a landmark complaint to the United Nations Committee on the Rights of the Child, due to lack of government action on climate change. They allege that the Member States’ failure to tackle climate change constitutes a violation of child rights.75 The United Nations *Convention on the Rights of the Child* (CROC), of which Australia is a signatory, recognises the inherent right to life of every child, and requires that State Parties “ensure to the maximum extent possible the survival and development of the child.”76 It further requires State Parties to “recognise the right of every child to a standard of living adequate for the child’s physical, spiritual, moral and social development.”77

43. The Planning Institute of Australia, the peak body for the planning profession, is of the view that climate change mitigation and adaptation should be a core concern for planners. Its policy positions recommend “Adopting the Precautionary Principle approach, as uncertainty is not a justification for delaying action.”78

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73 United Nations Human Rights Committee, Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2751/2016 (20 September 2019) Un Doc CCPR/C/126/D/2751/2016 http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPrCAqkhKb7yhsjvf8jil%242FdlDNP1S9Ejbt9NQFAeKm6x3%3h%2fFrdIhCAq5mehv%2FTQWGVWxGIG9qxCMDHlP%2fF25S5BdToB8KePC5IUhW9PcaG7S236CezabY2pdmuRnSUqjEufZg%3d%3d.

74 Eliza McPhee, ‘Masked moth­er who desperately sheltered her children aged three and six on a beach as fire hit a New South Wales town reveals how the horrifying ordeal has changed her life forever’ (Daily Mail Australia, 5 January 2020) https://www.dailymail.co.uk/news/article-7851291/Mother-protects-children-evacuated-Maluabay-NSW-bushfires.html.


Governments at all levels in Australia also have obligations to ensure adaptation and the resilience of Australians in response to the climate impacts that are not being experienced and those forecast for the future. Governments need to provide financial support for Australians who experience loss and damages due to climate change, whether it is from increased and more frequent bushfires, or other natural disasters.

**Corporate Responsibilities**

The costs of inadequate action on the climate crisis will cost the Australian public billions of dollars over time. However, the corporations that have extracted Australia’s fossil fuels and logged Australia’s forests have made immense profits in the process. Australia’s biggest greenhouse gas emitters and producers have externalised the true costs of their products upon the Australian public, with the costly nature of fossil fuels and deforestation becoming ever more evident. In order to meet their responsibilities to support resilience, governments have a responsibility to enact a natural disaster levy on Australia’s largest greenhouse gas emitters and producers, including corporations who export fossil fuels for burning overseas. A natural disaster levy on Australia’s biggest climate polluters would force these corporations to internalise the true costs that they have forced upon the Australian public.

The Australia Institute has proposed that the Commonwealth establish a National Climate Disaster Fund, initially funded by a levy of $1 per tonne of all coal, gas and oil produced in Australia to help pay for some of the increasing costs of climate disasters.79 A levy of $1 per tonne would currently initially raise around $1.5 billion a year,80 and decrease to nil as fossil fuels are phased out. Natural disasters currently cost Australians around $13 billion each year, and the costs are expected to rise with the climate crisis.81 Polling undertaken for The Australia Institute found that 62% of Australians support the introduction of a fossil fuel levy to pay for climate change impacts.82 The National Climate Disaster Fund should be independently administered and dedicated to the challenge of the escalating costs of climate-related natural disasters.

**Responsibilities towards People Displaced in Australia**

The Australian Commonwealth and State governments should further consider the rights of internally displaced people within Australia. The IPCC’s first report in 1990 stated that the greatest single impact of climate change may be on human migration.83 In 2010, the UNFCCC recognised that mobility – migration, displacement and planned relocations – are an important form of adaptation to climate change. The Cancun Adaptation Framework invites all parties to undertake greater understanding, coordinating and cooperating on climate change-induced displacement, migration and planned relocation, where appropriate, at national, regional, and international levels.

Thousands of people fled from their homes in bushfire-impacted regions throughout the 2019-2020 bushfire season. Some went to the homes of friends or family in their region; others went to evacuation centres or camped by beaches; and others left the regions to go to...

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80 Ibid.
81 Ibid.
82 Ibid.
Canberra, Sydney or elsewhere. The people of Mallacoota in Victoria were forced out of their homes into the sea by the bushfires, and were later evacuated by the Navy.

Nick Ritar, Mallacoota evacuee aboard HMAS Choules

‘We are Australia’s first climate refugees. We are the first of many.’

‘It does feel very surreal being climate change refugees in our own country. I’m standing here sandwiched between several large shipping containers with Australian AID written on the side of them, and my fear is that we’re not the last climate refugees in Australia.’

‘Yesterday I walked along Mallacoota’s main beach, Bastion Point Beach and every few metres there was another beautiful, iconic Australian bird… A kookaburra, a rainbow lorikeet, a king parrot, a wood pigeon, a barn owl, a magpie, a new Holland honeyeater and it just went on and on and on.’

49. Although the term “climate change refugee” does not exist in international law, UNHCR has stated that people displaced due to climate change may still be in need of international protection. Internal displacement in Australia due to extreme weather events such as bushfires is likely to be exacerbated by the fact that many previously inhabited areas will become uninsurable and eventually uninhabitable. Tens of millions of people are expected to be displaced by global heating in the next decade.

50. In 2008, the Office of the High Commissioner for Human Rights undertook a study on climate change and human rights. The study considered how climate change impacts specific rights, vulnerable groups, forced displacement and conflict. The study found that efforts to address climate change must draw upon human rights principles and standards. Governments in Australia must move beyond traditional modes of assistance and reactive governance models if they are to address the human rights risks that climate change poses to Australians.

51. The displacement of people during the 2019-2020 bushfire season reflects the human rights dimensions of climate change within Australia. Internally displaced people are particularly at risk because of the material, social and psychological challenges that they face in displacement. Governments must ensure that people displaced internally within Australia

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84 Deborah Snow, Peter Hannam and Natassia Chrysanthos, “Australia’s first climate change refugees” (4 January 2020) Sydney Morning Herald


88 Michael Mann, ‘Is Australia’s bushfire crisis a sign that our country is becoming uninhabitable?’ (15 January 2020) 2CC Podcasts

89 Kate Lyons, ‘Climate refugees can’t be returned home, says landmark UN human rights ruling’ (20 January 2020) The Guardian

90 A/HRC/10/61.
have access to food, housing, water, health and general wellbeing. A human rights approach is essential to ensure that the needs of these vulnerable people are prioritised and met both on an immediate basis and in recovery.\textsuperscript{91}

52. The \textit{Guiding Principles on Internal Displacement} (‘Guiding Principles’) provide 30 standards of protections for internally displaced people. Although the Guidelines are not binding, the UN General Assembly has recognised them as an important authority and encouraged all relevant actors to utilise them when faced with situations of internal displacement. In 2005, the World Summit stated that they are ‘an important international framework for the protection of internally displaced persons.’\textsuperscript{92} Principle 1 of the Guiding Principles provide that:

> ‘Internally displaced persons shall enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country. They shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced.’

53. The Guiding Principles provide that national authorities have the primary duty and responsibility to provide protection and humanitarian assistance to people internally displaced within their jurisdiction (Principle 3.1). Principle 4.2 recognising the special needs of children, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons and the entitlement that these people have to protection and assistance which meets their special needs if they are internally displaced.

54. Operational guidelines have been developed based upon the Guiding Principles. For example, the Operational Guidelines on the Protection of Persons in Situations of Natural Disasters applies a human rights based approach to natural disaster situations.\textsuperscript{93}

55. Disaster risk reduction refers to the ways in which local communities, governments, civil societies and others can prepare for and limit the impact of disasters.\textsuperscript{94} All levels of government in Australia are responsible for protecting their populations, including by ensuring that disaster risk reduction is integrated into economic and financial policies. Strategies that governments may use in disaster risk reduction include:\textsuperscript{95}

55.1 Physical infrastructure;

55.2 Strengthening the resilience of affected persons;

55.3 Expanding early recovery capacities;

55.4 Building national and local humanitarian response systems, disaster management systems, and participation mechanisms.

\textsuperscript{91}See also Nansen Conference on Climate Change and Displacement, \url{http://www.unhcr.org/4ea969729.pdf}. Principle 1 states: ‘responses to climate and environmentally-related displacement need to be informed by adequate knowledge and guided by the fundamental principles of humanity, human dignity, human rights and international cooperation.’

\textsuperscript{92}See A/HRC/13/21, paras. 2 and 41-44.

\textsuperscript{93}A/HRC/16/43/Add.5. See also Framework on Durable Solutions for Internally Displaced Persons, A/HRC/12/21/Add.4.

\textsuperscript{94}Chaloka Beyani, Special Rapporteur on the Human Rights of Internally Displaced Persons, ‘Climate change and internal displacement,’ (Brookings Institute: Project on Internal Displacement, 2014).

\textsuperscript{95}Ibid.
56. Early warning systems around bushfire and other natural disaster risks must be supported by political will, commitment and response mechanisms. Legal preparedness should include measures to:

56.1 Preserve and restore family unity (e.g. during evacuations);
56.2 Replace personal documentation through rapid and simplified procedures;
56.3 Protect housing, land and property rights through registration;
56.4 Resolve property disputes after a disaster;
56.5 Ensure that there is no discrimination (e.g. based on gender, age or ethnicity) during disaster relief interventions;
56.6 Facilitate delivery of national and international relief assistance.

57. If people need to be relocated from natural disaster areas, governments should ensure that human rights safeguards are integrated throughout the process. Affected persons should be involved in decision making where possible, provided information about why they are being displaced, and the free and informed consent of people should be sought whenever possible.

58. If climate change is not stopped, Australia may face large numbers of people who are internally displaced on a more frequent and lengthy basis. People living in evacuation centres for weeks on end, as occurred in the 2019-2020 bushfire season, are at risk to sexual and gender-based violence, and other threats to personal safety. The security of their homes also become increasingly at risk, and the 2019-2020 bushfire season saw looting of vacant homes.

\[
\text{Bec Winter, who fled her Rosedale home but returned to find her home robbed, twice}\]

‘They’ve emptied all the clothes from my drawers and thrown all my bathroom stuff on the ground.’

‘They took my cashbox, but that is where I actually keep my EFTPOS receipts, so they wouldn’t have gotten anything. They even came back for a second round and took more of my personal belongings which would mean nothing to them. Honestly, I just went, ‘there is not much more they can take.’ Do they want our clothes as well?

‘People are extremely angry... it is such a dog act to do in times of crisis where nobody is in their right headspace. We have all been affected in some way.’

59. The Australian government and state governments must ensure that adaptation and resilience measures are identified and enacted to minimise the risks of the protracted displacement of
people due to natural disasters and the impacts of the climate crisis. A number of factors make durable solutions to displacement more likely, which include:\(^{98}\)

59.1 Ensuring a transition early on from humanitarian assistance to early recovery and reconstruction. People should be able to return to their places of origin and rebuild as soon as possible.

59.2 Re-establishing local economies and livelihoods, encouraging self-reliance and promoting the participation of internally displaced persons in all activities, including the delivery of humanitarian assistance.

59.3 Taking into account the needs of receiving communities, including mechanisms which address possible integration tensions and challenges.

Legal Framework around National Emergencies

Existing Emergency Laws

60. The Merriam-Webster Dictionary defines ‘national emergency’ as ‘a state of emergency resulting from a danger or threat of danger to a nation from foreign or domestic sources and usually declared to be in existence by governmental authority.’\(^99\) A national emergency can be classified as a threat to society that has the potential to overwhelm it, impede its functioning or lead to its collapse.

61. In NSW a state of emergency is declared under the State Emergency and Rescue Management Act 1989 (NSW) (the Act) when the premier believes there is ‘a significant and widespread danger to life or property in New South Wales’.\(^100\)

62. In a declared State of emergency, which the Premier can revoke at any time under section 33 of the Act, the Minister has extended powers including the following:

62.1 The Minister may direct any government agency to do or refrain from doing any act, or to exercise or refrain from exercising any function (section 36);

62.2 The Minister may direct, or authorise an emergency services officer to direct evacuation (if satisfied that it is necessary or convenient to do so for the purpose of responding to an emergency) (section 37);

62.3 The Minister may direct, or authorise an emergency services officer to direct a number of closures including the closure to traffic, public or private places and shutting off certain supplies including gas or electricity (section 38); and

62.4 The Minister may take possession and make use of any person’s property, for the purposes of responding to the emergency (section 39).

63. An initial State of Emergency was declared on 11 November 2019 and a second was declared on 19 December 2019 when NSW was faced with dangerous fire conditions. On 2 January 2020, the NSW Government declared a third State of Emergency.

64. Queensland and Victoria declared a state of emergency in relation to the bushfires.\(^101\) The ACT declared a State of Emergency on 31 January 2020.

65. The 2009 Victorian Bushfires Royal Commission recognised the symbolic influence of declaring a state of emergency:

65.1 ‘Even if practical cross-agency and community cooperation was already in evidence and no additional coercive powers were needed, such a declaration would have recognised the gravity of the situation and might have sharpened emergency agencies’ focus on community safety and warnings.’\(^102\)


\(^{100}\) State Emergency and Rescue Management Act 1989 (NSW) s 33.


66. The Commonwealth currently has no overarching power to declare a ‘national emergency’. The Commonwealth holds some residual power to deal with national emergencies that are of such a scale that only the Commonwealth can appropriate deal with them. In *Pape v Commission of Taxation* [2009] HCA 23, a majority of the High Court accepted that the Global Financial Crisis was of such a scale that the Executive could appropriate money from consolidated revenue to make payments to people for the purposes of economic stimulus. Gummow, Crennan and Bell JJ said jointly that ‘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 [of the Global Financial Crisis].’ (at [233]).

67. There are no Commonwealth emergency powers, other than their role in liaising with state governments in responding to the emergency.\footnote{103} In the wake of the 2019-2020 bushfires the Federal Government called for expanded Commonwealth powers in dealing with emergencies at a national level.\footnote{104}

### The 2019-2020 Bushfire Season: Part of the Climate Emergency

68. During the 2019-2020 bushfires, 18 million hectares of land burned over the 2019-2020 bushfire season, destroying over 5,900 buildings including over 2,800 homes. Air pollution stemming from the fire affected most major cities, with Canberra reporting in January 2020 the worst air quality index of any major city in the world.\footnote{105} The Government’s response was criticised for being too reactive, given that there were predictions of a natural disaster of this kind in April 2019. Failure to facilitate collective action and garner more resources both nationally and internationally, did not effectively address the disaster or minimize the risk of the situation escalating.\footnote{106}

69. The *National Strategy for Disaster Resilience* (2011) states that ‘Natural disasters are a feature of the Australian climate and landscape and this threat will continue, not least because climate change is making weather patterns less predictable and more extreme.’\footnote{107} The *National Strategy for Disaster Resilience* recognises that ‘Scientific modelling suggests that climate change will likely result in an increased frequency and severity of extreme weather events.’\footnote{108} It also provides that ‘Climate change represents a most fundamental national security challenge for the long term future.’\footnote{109}

70. The present level of warming due to climate change has already placed the Earth at an unsafe temperature. Natural disasters including heatwaves, bushfires, droughts, crop failures, cyclones and coastal flooding are all symptoms of this unsafe temperature and threaten to overwhelm societal structures. Endless economic growth is unsustainable and will lead to

\footnote{104}Ibid.
\footnote{105}https://www.unenvironment.org/news-and-stories/story/ten-impacts-australian-bushfires
\footnote{107}Council of Australian Governments, National Strategy for Disaster Resilience: Building the resilience of our nation to disasters (2011), iv.
\footnote{108}Ibid, 1.
resource and economic overshoot. Climate change is an accelerant to social instability, as it contributes to food and water shortages. This has led to social breakdown and conflict in other areas of the world including the Middle East, the Maghreb and the Sahel, due to rising food prices.¹¹⁰

71. The global cost of inaction on climate change is projected to reach US$23 trillion a year by the end of the century, putting the world into the equivalent of five global financial crises a year), with Australia particularly economically vulnerable with projections suggesting ‘losses of A$159 billion a year through the impact of sea level rise and drought-driven collapses in agricultural productivity’. The cost for individual households has been estimated at $14,000.¹¹¹

72. In May 2019, a bipartisan United Kingdom Parliament approved a motion to declare an environmental and climate emergency.¹¹² A number of cities around the world have declared an environment and climate emergency,¹¹³ with 1,487 governments and 30 countries having now recognised or declared a climate emergency with a total population of over 820 million covered.¹¹⁴ The City of Darebin, in Melbourne, was the first council in the world to recognise the climate emergency in 2016.¹¹⁵

73. As recognised in the National Strategy for Disaster Resilience, Australia will face natural disasters of increasing frequency and severity due to climate change. Bushfires of the scale and duration of the 2019-2020 bushfire season are a horrific example of such climate-related natural disasters and the risks that climate change poses to Australia. A more comprehensive and national framework is needed to recognise, mitigate and adapt to the risks posed by climate-related natural disasters.

**Human Rights Safeguards**

74. A national framework that seeks to address, mitigate and adapt to the risks of natural disasters and the influence of climate change upon these natural disasters, must be accompanied by comprehensive human rights safeguards. It has been documented that many of the most serious violations of human rights occur during emergencies, when states use extraordinary powers to address threats to civil order.¹¹⁶

75. Any increase in Commonwealth powers for emergency management must ensure that human rights safeguards are enacted at the national level. Australia has limited human rights protections under the Constitution and through the ratification of a number of international

¹¹⁵ Ibid.
human rights treaties. However, unlike most progressive Western nations (including the United Kingdom, United States and Canada), Australia does not have a national Bill of Rights. Recent High Court decisions have brought a significant amount of controversy to this area, and particularly in states of crisis or emergency, clear and definitive protection of Australians’ human rights must be guaranteed, if such significant powers were to be given to the Federal Government. Falling short of the enactment of a bill or charter of rights, specific safeguards protecting citizens’ human right should be integrated into any emergency legislation.

76. The Office of the United Nations High Commissioner for Human Rights has clearly articulated the need for governments to be exceptionally human rights focused in their paper titled ‘Understanding Human Rights and Climate Change’. They stated:

‘Climate change impacts, directly and indirectly, an array of internationally guaranteed human rights. States (duty-bearers) have an affirmative obligation to take effective measures to prevent and redress these climate impacts, and therefore, to mitigate climate change, and to ensure that all human beings (rights-holders) have the necessary capacity to adapt to the climate crisis.

Climate justice requires that climate action is consistent with existing human rights agreements, obligations, standards and principles. Those who have contributed the least to climate change unjustly and disproportionately suffer its harms. They must be meaningful participants in and primary beneficiaries of climate action, and they must have access to effective remedies.’

77. The 2019-2020 bushfires illustrate the increasing role that climate change will have in creating natural disasters and emergencies. It is clear that the climate crisis is the greatest risk to human rights and equality that Australia, and more broadly humanity, has ever faced. The solutions to the climate crisis require a radical transformation of human society, including businesses, land stewardship, and international relations. Climate justice and human rights must be enshrined within our emergency response.

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