# Royal Commission into National Natural Disaster Arrangements

*If Governments can lock-in nearly everyone in a State on the pretext of a pizza, should they be given more emergency powers? Apparently, many think so. I don’t.*

Earlier this year, the Prime Minister was lambasted for not doing enough about bushfires, which while terrible, were somewhat short of popular depictions of a continent consumed by flame. There were shrieks for: Federal declaration of a ‘climate emergency’; boots on the ground; a new core role for Defence forces – to respond to domestic emergencies. Little thought was given to what might result.

On 12 January, amid howling criticisms, the Prime Minister was interviewed on ABC TV. Interpretation of his remarks as ‘admissions’ about climate change pleased the faithful but missed the point. That point being: the hysteria led the Prime Minister to wish for an ability to unilaterally declare national emergencies so as to ‘send in the army’ etc. And in his words: engage in ‘more pre-emptive posturing’. Which involves increasing the power of the Home Affairs portfolio.

Yet he also said the Commonwealth was already operating at the ‘very edge’ of the Constitution.

His intention to establish a Royal Commission to look into this was derided by some who said there had been countless, ignored, bushfire inquiries. Again, missing the point: he wanted the Commission to consider his wishes. For that reason, it was to cover all natural disasters not just bushfires.

The Royal Commission’s interim observations, published 31 August, had bad news for the Prime Minister: States are responsible for dealing with natural disasters.

Meanwhile, the Covid pandemic showcased State emergency powers. Premiers and officials introduced measures to protect public health but went overboard via unnecessary, arbitrary and potentially illegal actions. Recent examples include: the Melbourne curfew; Queensland restricting funerals to 100 persons while allowing 50,000 to attend a football match; the closing down of South Australia ostensibly because of a pizza.

The Commonwealth Government’s pandemic response has not been ideal either. It went beyond delegating functions into abdicating responsibility - for quarantine - by failing to check State performance, contributing to disastrous results. Like State Governments, it was reluctant to seek authority from Parliament. Limited after-the-fact scrutiny by a Senate Committee has heard serious concerns about its infringements of democratic principles.

The eagerness of Governments to deploy Defence assets and personnel in potentially extra-legal adventures, such as border closures, was another problem – not least when the Commonwealth wanted the borders opened! The personnel were not merely involved in administrative or medical activities but in ‘crowd control’ which conceivably could require the use of force. As such, the army has been used as a (supplement to) domestic police force.

Reports had such aberrations cheered on, with polls acclaiming State politicians according to the outlandishness of what was dished out – even when State laws precluded those politicians from making the applauded decisions. Perhaps this was predictable in a country now notorious for toilet paper rushes. Whatever the case, it must have reinforced the Prime Minister’s wish to declare his own emergencies.

Into this environment the Royal Commission delivered its report on 30 October 2020. While the report covered many topics, this note is limited to the recommendation regarding declaration of a national emergency:

*‘5.1 The Australian Government should make provision, in legislation, for a declaration of a state of national emergency. The declaration should include the following components:*

*(1) the ability for the Australian Government to make a public declaration to communicate the seriousness of a natural disaster*

*(2) processes to mobilise and activate Australian Government agencies quickly to support states and territories to respond to and recover from a natural disaster, and*

*(3) the power to take action without a state or territory request for assistance in clearly defined and limited circumstances.’*

The report argued the outlook is alarming - States alone may not be able to respond effectively to disasters. While the Australian Government’s relevant primary role is to support States, it has ‘*unique capabilities*’ and can take ‘a *broader view…’.* It also implied the Constitution is not a problem for Commonwealth emergency responses.

The reason given for a national emergency declaration is essentially to ‘signal’ the severity of a disaster. This suggests a declaration would be symbolic - hence unobjectionable, perhaps even laudable. Certainly, that is the commentary so far.

However, that is bunkum.

Symbolism is not needed. Those directly affected by a natural disaster, for example a bushfire, would not need a Prime Ministerial ‘signal’ about their situation. Those not so affected would be bombarded by the media – any Prime Ministerial signal would be redundant to them. And while the report claimed a declaration could activate Commonwealth agencies etc, that would be done faster and better by relevant Ministers and established procedures.

To the extent a declaration is such a signal, it is political grandstanding. That the proposal is for it to be made by a political actor – the Prime Minister – confirms this.

Yet that only deals with the recommendation’s first component. There are big problems with the other two.

The very idea of legislation means ‘the signal’ is not just about the disaster but activation of extraordinary powers for the Prime Minister and the Home Affairs portfolio. Powers such as to ‘put boots on the ground’. That is the point of the other components of the recommendation, (2) and (3), which envisage unilateral exercise of powers – without consent of States.

True, the report said unilateral action should only be in exceptional cases - when a State is incapacitated and lives are at stake etc. Yet the recommendation is not so constrained.

The report also recommended an increase in the scope of the Department of Home Affairs in emergency responses. This might foreshadow some control of ‘boots’ by that Department.

Not only did the report fail to make out a policy case for yet more legislation for ‘emergencies’, there is a considerable risk use of its proposed legislation may evolve in unexpected ways, even beyond the ‘very edge’ of the law. As has been the case with State legislation in the pandemic, it may encourage Executive Government use of power inconsistent with our democracy.

Questions about Government power grabs have recently been raised re Commonwealth legislation used in emergencies. One example is the Biosecurity Act (2015) which does not ‘self-evidently’ support all the measures listed for use – even after the Governor General makes an emergency declaration. This is because those measures may not be relatable to sources of Commonwealth (legislative) power.

Another is the Defence Act. A recent post in Pearls etc., by former Defence Secretary Mr Paul Barratt AO, claims Governments have used this Act to effectively usurp the Governor General’s Constitutional role in declaring war.

More troubling, Mr Barratt’s post drew attention to draft legislation which supposedly aims to enhance preparedness of the Defence Force and Reserve to respond to emergencies at home. The draft – introduced some months before the Royal Commission’s report - proposes a system to effectively by-pass Constitutional requirements and enable the Government to direct Defence to deal with undefined civil emergencies including by the use of force.

The Royal Commission’s remarks on the proposed legislation were limited to the desirability of providing indemnities to Defence personnel and making it easier to call-out the Reserve. It ignored the issues identified by Mr Barratt.

It also ignored other issues identified in Pearls such as the ever-expanding cavalcade of ‘threats’ perceived by the Department of Home Affairs – which might be seen by a Prime Minister as emergencies justifying ‘boots on the ground’.

Is it telling the report gave no reason for recommending the Prime Minister – rather than the Governor General – be able to declare a national emergency and possibly send in the army?

Is it telling the recommendation is verbose and badly drafted – e.g. in saying that the declaration should include the ability to make a declaration?

Is it telling the report offers a fundamental misconception - that Governments legislate? It should have stated parliaments legislate and that history warns about potential catastrophic consequences of alternatives.

Is it also telling the report mentioned a referral of power from the States as the way to legitimately extend Commonwealth power? And ignored referendums?

The Prime Minister’s January wish has been exposed as wanting to create some type of militia without directly asking Australians.

That tinpot idea should have been condemned by commentators since the day it was made. It should have been rejected out of hand by the Royal Commission.

It would be foolish to adopt the Royal Commission’s proposals regarding any Commonwealth declaration of emergency without first asking Australians at a referendum.

In the meantime, those braying for more emergency powers ought to reflect on the six-day confinement of South Australian citizens to their homes - ordered by their Government - supposedly because of a lie about a pizza.

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