

NATIONAL EMERGENCY (2022 NEW SOUTH WALES FLOODS) DECLARATION **2022**

EXPLANATORY STATEMENT

Issued by authority of the Attorney-General

in compliance with section 15J of the *Legislation Act 2003*

PURPOSE AND OPERATION OF THE INSTRUMENT

Section 11(1) of the *National Emergency Declaration Act 2020* (the Act) provides for the Governor-General to make a National Emergency Declaration if the Prime Minister is satisfied that:

- a) an emergency has recently occurred, is occurring or is likely to occur (whether in or outside Australia); and
- b) the emergency has caused, is causing or is likely to cause nationally significant harm in Australia or in an Australian offshore area; and
- c) any of the following subparagraphs apply:
 - i. the governments of each State and Territory in which the emergency has caused, is causing or is likely to cause nationally significant harm have requested, in writing, the making of the declaration;
 - ii. because of the emergency, it is not practicable for a request to be made under subparagraph (i);
 - iii. the emergency has affected, is affecting or is likely to affect Commonwealth interests;
 - iv. the making of the declaration is appropriate, having regard to the nature of the emergency and the nature and severity of the nationally significant harm; and
- d) for reasons relating to emergency management, it is desirable for the declaration to be made for the purposes of one or more national emergency laws.

The purpose of the instrument is to make a national emergency declaration to support the response to the 2022 New South Wales Floods. This emergency is causing nationally significant harm to the life and health of individuals, animals and plants; damage to property including infrastructure; harm to the environment; and disruptions to essential services in flood-affected areas in New South Wales.

CONSULTATION

The Act specifies that the Prime Minister, who is responsible for providing advice to the Governor-General on the making of this instrument, may make a national emergency declaration if the Prime Minister is satisfied that the making of a declaration is appropriate, having regard to the widespread and extreme nature of the emergency and the nature and severity of the nationally significant harm. In accordance with subsection 11(2) of the National Emergency Declaration Act, the Prime Minister has consulted with the Premier of

New South Wales which is aware of the Prime Minister's intention to make a National Emergency Declaration.

The Attorney-General's Department consulted key government stakeholders prior to the making of this instrument, including senior departmental officials in the Department of the Prime Minister and Cabinet and the Department of Home Affairs.

REGULATORY IMPACT STATEMENT (RIS)

A RIS was prepared for the introduction of the Act, which concluded that the regulatory impact would be minimal. In the limited time available and in the context of the current flood emergency, no further RIS was prepared for this instrument on the basis that the regulatory impact would be minimal. The Office of Best Practice Regulation advised that the instrument is unlikely to have more than a minor regulatory impact, and therefore the preparation of a RIS is not required.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Human rights implications

This instrument engages the following rights:

- the right to life in Article 6 of the *International Covenant on Civil and Political Rights* (ICCPR)
- the right to health under Article 12 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), and
- the right to an adequate standard of living in Article 11 of the ICESCR.

The right to life in Article 6 of the ICCPR

Article 6 of the ICCPR places a positive obligation on governments to take appropriate measures to protect the right to life of those within its jurisdiction.

A key objective of the instrument is to promote the right to life. The instrument promotes the right to life by seeking to prevent and mitigate harm to human life caused by the emergency. The instrument strengthens and expedites the Commonwealth Government's ability to respond to and recover from an emergency that has caused, is causing, and is likely to continue to cause, nationally significant harm. Nationally significant harm includes, among other things, harm that has a nationally significant impact because of its scale or consequences, to the life of an individual or group of individuals.

The right to health in Article 12 of the ICESCR

Article 12 of the ICESCR provides that all people have the right to the highest attainable standard of physical and mental health. It provides that basic steps to be taken by

governments to achieve the full realisation of the right to health shall include, among other things, those necessary for:

- the improvement of all aspects of environmental and industrial hygiene
- and the prevention, treatment and control of epidemic diseases, endemic, occupational and other diseases, and
- the creation of conditions which would assure to all medical service and medical attention in the event of sickness.

A key objective of the instrument is to promote the right to health. The instrument promotes the right to health by seeking to prevent and mitigate harm caused by the emergency. The instrument strengthens and expedites the Commonwealth Government's ability to respond to and recover from an emergency that has caused, is causing, and is likely to continue to cause, nationally significant harm. Nationally significant harm is harm that has a nationally significant impact because of its scale or consequences and that is any of the following:

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

These types of harm are likely to impact on the Australian community's right to health. For example, damage to property will impact access to basic shelter and housing. Damage to infrastructure or an essential service will impact access to medical services and sanitation.

The instrument will streamline and expedite the immediate response to and recovery and promote the right to health by:

- assisting to prevent or mitigate a greater proportion of the harm caused by the emergency
- enabling relief to be provided to individuals and communities affected by the emergency more promptly, and
- supporting efforts to more rapidly and effectively recover from the harm caused by the emergency.

Expediting the Commonwealth's emergency response and recovery efforts is also likely to reduce the likelihood and severity of second-order consequences flowing from an emergency that may be detrimental to physical and mental health, such as individuals being displaced from disaster-affected areas, or experiencing an extended loss of income.

The instrument promotes the right to health by enabling ministers to suspend, vary or substitute procedural requirements that may be a barrier to people in disaster-affected areas accessing benefits or services. This power will assist to ensure that people who may have lost personal documentation, or may not have access to an authorised witness, are able to access those benefits or services in a timely fashion.

The right to an adequate standard of living in Article 11 of the ICESCR

Article 11(1) of the ICESCR protects the right to an adequate standard of living, including food, water and housing. Governments have an obligation to ensure the availability and accessibility of the resources necessary for the realisation of this right.

A key objective of the instrument is to promote the right to an adequate standard of living. The instrument promotes this right by seeking to prevent and mitigate harm caused by the emergency.

The instrument strengthens and expedites the Commonwealth Government's ability to respond to and recover from an emergency that has caused, is causing, and is likely to continue to cause, nationally significant harm. Nationally significant harm is harm that has a nationally significant impact because of its scale or consequences and that is any of the following:

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

These types of harm are likely to impact on the right to an adequate standard of living. For example, harm caused to plants, animals and the environment could impact on Australia's food production systems, food security and water supply. Damage to property could impact access to, and supply of, housing. Damage to infrastructure or an essential service could impact access to medical services, sanitation and basic goods.

The instrument also promotes the right to an adequate standard of living by enabling Ministers to suspend, vary or substitute procedural requirements that may be a barrier to people in disaster-affected areas accessing payments, benefits or services. This ensures that people who may have lost personal documentation or may not have access to an authorised witness are able to access those payments, benefits or services in a timely fashion.

Conclusion

The instrument is compatible with human rights. It promotes the right to life, health and an adequate standard of living by enabling the Commonwealth to better respond to and recover from emergencies that impact individuals and communities.

NOTES ON SECTIONS

PART 1 – Preliminary

Section 1 – Name

Section 1 provides that the title of the instrument is the National Emergency (2022 New South Wales Floods) Declaration 2022.

Section 2 – Commencement

The instrument commences immediately after the instrument is registered.

Section 3 – Authority

Section 3 provides that the instrument is made under section 11 of the *National Emergency Declaration Act 2020*.

Section 4 – Emergency to which this instrument relates

Section 4 provides that the instrument relates to the 2022 New South Wales floods.

Section 5 – Nature of emergency and circumstances that gave rise to it

This section outlines the nature of the emergency for which the national emergency declaration is made and the circumstances that gave rise to it.

Paragraph 5(1) indicates that the emergency to which the declaration relates is the widespread catastrophic flooding that is occurring across New South Wales.

Paragraph 5(2) provides that the floods are causing nationally significant harm. Nationally significant harm is defined in section 10 of the Act as harm that:

- (a) has a significant national impact because of its scale or consequences; and
- (b) is any of the following:
 - (i) harm to the life or health (including mental health) of an individual or group of individuals;
 - (ii) harm to the life or health of animals or plants;
 - (iii) damage to property, including infrastructure;
 - (iv) harm to the environment;
 - (v) disruption to an essential service.

Nationally significant harm is intended to include situations where there is widespread damage as a result of a catastrophic natural disaster or multiple simultaneous or consecutive disasters. The destruction and devastation that has occurred in flood affected areas is well beyond previous experience and comes off the back of previous bushfires, floods and COVID-19.

As at 11 March 2022, there have been 8 fatalities in New South Wales, more than 2,000 flood rescues, over 22,000 requests for assistance and more than 2,900 buildings deemed uninhabitable.

Section 6 – Period during which this instrument is in force

This section provides that the declaration takes effect immediately after it commences and ends 3 months after that commencement. This timeframe is necessary to support recovery operations in flood affected areas in New South Wales.