Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2020.

As set out in the explanatory notes, on 29 January 2020, a public health emergency was declared under section 319 of the *Public Health Act 2005* due to the outbreak of COVID-19 in China. The declared public health emergency was extended until 31 December 2020 through regulation.

The closing date for written submissions is **Wednesday, 13 January 2021 at 5.00 pm**.

Submissions should be sent to:
Email: hec@parliament.qld.gov.au
or

Postal Address:
Committee Secretary
Health and Environment Committee
Parliament House
George Street
BRISBANE QLD 4000

Submitter:-Chris McDermott.,

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Typed by HB,
Dictated by Chris McDermott.

Situation 1

I would like to bring to your attention that the Qld State Department giving extension Covid 19 Notices to Landlords in the rent for the Civid 19 person has well been extended well well past the infection date of the Covid 19 victim, and even though the Covid 19 person who was sick and is no longer sick, can still keep getting the no Rent form which is then sent unto the Land lord from the Tennant who had the Covid-19 Sickness. I know of a Health Practitioner [redacted] has said to me over the Phone that One (1) of her patients a Landlord has informed her [redacted] that the issuing of the Covid -19 Notices (from the Qld Department who looks after these Notices), has been going on continually ever since, and what has happened was that the Landlord [redacted] has to sell her house and property just to get rid of the Liability from the Tenant, that the Covid 19 Virus under the Act has created, and so the Landlord [redacted] ended up selling her property just to get the unwanted tenant out of her life altogether and there was no other way of getting rid of this very troublesome tenant, and now the new owner has the old Tenant with the old problem. So Notices under the Act should only be extended for the Two (2) week sickness period only and say another One (1) or at the very most Two (2) weeks after the Covid -19 sickness has gone from the sick Patient.

Situation 2

There is going to be created **a Great Humanitarian Crisis** of Homeless people from any time after April 2021 onwards because the Banks in Australia owe overseas Derivatives of $53 Trillion Dollars which the Australian Banks do not have to record in their Books here in Australia, however the Federal Government is slowly changing that and the Banks in Australia are going to in the future have to show their Liabilities overseas as well in the Future. In the meantime the State Governments are going to be forced to cater for the, for instance the 40,000 people that are going to have foreclosures Notices sent to them in April 2021 as Rachael Slade from Corporate Group of the NAB said over the 4BC Radio last year around September 2020 because NAB have said they will forgo the monthly repayments of housing for One (1) Year and that will expire this April 2021 and the other Banks are doing the same.

All up with all the 7 Big Banks, Wespac, NAB, ANZ, Clth, Macquire Bank, St George Bank, HSBC Bank, who $53 Trillion overseas debts, there are about 3.5 Million People in Australia being effected by the Foreclosure Notices Given, and there is eventually going to be 3.5 million Homeless because the Deposits in the Australian deposit accounts are not protected as assured by Director of APRA and are only protected up to $250,000.00c and if that. He use to work for the IMF and I would not trust him at all. Malcolm Turnbull use to work for Goldman Sacks in Sydney in 1986 and that how Malcolm Turnbull made his money or his 30 pieces of Silver. And it's going to get worse than that. The federal Gov is going to pay the rent for these Homeless people from Centrelink and the a commodore powers given to the State Police will came from the State Governments who are now Left wing in the States. The rent will payed by Centrelink will eventually send the Federal Government into a Debt that you just don't want to know about. And that's how the United Nations will later on takeover administration of Australia and these Federal Politicians don't even know what is going on after next year 2021. Well after that, the United Nations will be saying there is an international Housing Crisis throughout the World and the Europeans and North America and all the good countries of the world are going to House these people who number from Africa alone 800,000,000, and also from India and from China. At first the Homeless Crisis will be managed by Australia and the State Governments. Later on, say 15 years' time when the United Nations slowly but very gradually take over the Sovereign duties of the States via debt and Monetary manipulation in connection with the Federal (nearly 1.5 Trillion owed to foreign Banks because of the Corona Virus) and State Government Debts i.e. Qld $118 Billion, and say Victoria $80 Billion owed to overseas banks),via I call them 'The King Henry Laws' it's going to be the United Nations that will make people in Australia as said before starting with One (1) person per spare bedroom with the State Government forcing by State Legislation to make people take into their home One (1) person per spare bedroom, but the plan is, this will increase as planned up by the United Nations to 9 people per spare Bedroom later on in about 13 to 15 years' Time, in all these countries and that's how they are going to convince us that there is an overpopulation problem and people must be culled. This is about 2036AD but the preliminaries moves are taking place silently and Politicians are being 'sleep walked' and manoeuvred into this bad position now, and it **must be stopped**. It's called 'Agenda 2021'. One (1) of the Australian Senators or and an administration Assistant had a forum overseas about it 8 years ago, and I saw that presentation on 'you tube' also. It was a woman talking and she produced very credible documents.

This is going to be forced onto everybody by State Gov and possibly Federal Gov by Legislation to be forced to take people into our homes by giving the State Police 'Commodore Powers' to Commodore Spare Bedrooms and empty Houses to let the people who were affected by the Banking Crisis who lost their money in their bank Account to prop up the banks because of APRA, into our Homes and the Rent payed to us will be paid by Centrelink of the Federal Gov for these People which will debt the Australian Country Big Time and to bring it under the United Nations later on down the track. Many Farmers will have to leave the land and there could be a food shortage as a result also.

After World War 2 there were 50,000 or so Homeless Returned Serviceman and Returned Service tried to squat in Unused warehouses. The High Court found in R v Foster [1949] HCA 16; (1949) 79 CLR 43 (6 June 1949) the Tenant squatter was evicted. Also in Queensland Newspapers Pty Ltd v McTavish [1951] HCA 51; (1951) 85 CLR 30 (3 October 1951) that the squatter McTavish was evicted by the High Court. The Court mentioned if the State passed the Law it may be Ok, but using the Police which deals in Criminal matters to enforce a 'Civil Process' may not be Ok. One (1) is a 'Criminal Process' (Police) and the other (Rental and Tenancy) is a 'Civil Process'. It's never been done before with Personal Bedroom/s in One's own house, but what the Government should do is Rent out a Paddock say 100 acres from a Farmer and **put up a Big Tent like the Seven day Adventists do once a year at the their approx 100 Acre Farm outside or near, between Caboolture and Buderim and put Homeless people up like that with a 50 Rent a Loo's etc or Rent out the many many empty warehouses that have no one in these warehouses in the suburbs. They are all vacant.** The other thing you need to know is that I have heard the Police being called to evict a Tenant who had gone passed his lease term and the Tenant was packing up his bags after the Police told him he must leave, however the tenant went back inside the House packed his bags and at the same time was Punching, wrecking and making Fist Holes in the Plaster Walls of the House and the Owner said to the Police, there he goes again and the Police witnessed it and the Police said to the Owner of the House there is nothing we can do about it, and the Police and the Owner just had to watch the House being wrecked by the disgruntled Tenant who was very Violent and Vindictive and the Tenant that was leaving took it out on the House he was leaving. What about Wilful Destruction of Private Property- that charge should have been laid but the Qld Police did nothing?

Remember and Remember this well. It's one (1) thing renting out a House to someone who you can choose to live in your own house whether you are living there or not, but it is a totally different matter when you lose the right to choose whether or not who can live in your house and you lose the right to Terminate a Tenant and you are struck with this Tenant not matter what he does to you or your house. And let's not forget it is going to be worse for young Families who are bringing up Young Children as these 20% of the Population whether they be Australians who smoke and Drink, or foreigners like Muslims or Indians or Chinese who have completely different customs, it will also affect them as well as they will feel the same way about being forced to live with Chinese, or Indians, even if they are the same Nationally, they will feel the same way as we do. It's like a Rape of your Privacy and your own space. If these Malcolm Roberts amendments to the Banking Crisis and Other Measures Act 2018 (Clth) don't get up and Gazetted **this will occur** and the Two (2) leaders Scott Morrison and

Anthony Albanese of the Labour/Liberal Parties are in on it. This has been agreed to behind closed doors in November 2014 in at the G20 Conference here in Brisbane to do away with Cash from anytime October 2021 onwards. **We Must Not Do Away With Cash**. The USA has done away with the Compass Passe Act 1868 which forbade the USA Army and Defence Force going into a State without the express permission from the State itself, now the president of the USA thanks to the Democrats can March into a State without permission from the State Government in the USA. Also in January 2016 the USA have passed International Martial for itself and its Military Bases.

Just remember the Defence Act Clth by Prime Minister Howard was amended in 2006 under one (1) of the Terrorism Laws in 2005/2006 so that the Clth Executive Government can now Order the Defence Force to March into a State, without the States Permission, even though that part of the Defence Act is unconstitutional, because that section of the defence Act conflicts with Section 119 of the Clth Constitution where that says basically that is on an Application from the State Governor and the State Cabinet (The Premier, the Attorney General and other Inner members of the State Cabinet) to call the Army into a State. It is not for the Executive Federal Government to March into a State without Permission. The Federal Court and even the Supreme Court will knock out (Declare those Defence Act Statutes amended by the Terrorism Laws, Unconstitutional) those Illegal Statutes so fast, you would not believe it. The Defence Act (Clth) has been amended also on the 8 December 2020 so that Foreign Armies can come into Australia with complete Immunity. Also under the Same Act Foreign Police can come into Australia with complete immunity and you cannot sue them. **This is no longer a 'Conspiracy Theory'. This is a 'Conspiracy Fact'**. I enclose the Explanation Notes to the Amendments to the Defence Act passed by the Australian Senate 8th January, 2020 and also the Federal Government Hansard with the Senate passing the Bill at Pages 102 and 103 of that Document.

I have seen from many personal experiences that 20% of the population are very nasty and uncomfortable people to live with. I have lived with people under someone else's lease and people under my Lease and it has been very bad for me either way. I found your own Tenants will steal from you, come in at all hours of the night with their uninvited Friends, drink and smoke in your own House, play load music, swear half the night, arguments.

I have lived with people at Boarding School which was shocking to say the least, and live with People at sea who were most of the Time Drunk and Violent, and at Share Houses and the experience was never a Good one. Just remember 20%-25% of the Population are not very Savoury people to live with. 5% of them will put their Fists through the Walls as they have Tempers. I have seen many fights over food and smoking and coming in at all hours of the Night about people making a noise etc, bringing in their girlfriends at all hours of the Night and Carrying on. I have been punched out by a Foreigner Captain who was Danish and who was an Illegal immigrant into Australia, and I and my fellow Ship Mates all had Foot Rot and Tinea. [redacted] He, this Danish Captain was forced and made to leave Australia because of his mistreatment of Australians – Thank God. I hear so much on what's going on in Darwin Too. I know 2 Australian Women

in Darwin who live together and the Indians and the Blacks from Africa have broken into their place and Stolen from them and forced themselves unto the Australian women sexually. The Two (2) Australian Women had to get out fast of their premises and find somewhere else to live in Darwin. If this Trend with the Housing Crisis continues, next year in 2021 people in the States (Australia) could very well lose their Rights on who they can include and exclude onto their properties, if these Malcolm Roberts Banking Amendments don't get up and Gazetted. These Unwanted Tenants (3.5 Million of them in Australia) are going to cause so much stress on the entire Community. The Brisbane City Council is working with the Qld State Government on how many bedrooms in Brisbane People have now. And you see all around Brisbane and Sydney these empty new High Rise Buildings being built and no one in them – why. Because everything is being ready for the Housing Crisis next year from April 2021 onwards. This is going to be an International Crisis and is going to affect China Big Time and the Chinese Government knows about this. On the program 60 minutes about 3 years ago, 60 Minutes was showing how the Chinese Government were building 6o Cities to House a Million people in each city so the Chinese can Hose 60 Million people in the near future. All the 60 Cities are empty at the moment. This is because the Bank HSBC owned by Rothschild is in trouble over in China and in Australia.

Have not you noticed the Qld Government has built buildings all around Brisbane and have put high Rises in the suburbs and a lot of these Units are empty? Because they are preparing for the 'Great Humanitarian crisis' and as One (1) Brisbane City Councillor (BCC) of the BCC said 'There coming' and this was way back in 2016 with the Council Meeting with the Kenmore/Brookfield/Bellbowrie/Pinjarra Hills/Moggill Residents and the Mayor Quin with his BCC Cabinet.

So there intention of the International Monetary Fund 'IMF' in connection with the United Nations which already determines how many Immigrants come to this country every year to to 'House' these Homeless people into our homes and let Centrelink pay their Rent, which will eventually Bankrupt the country and put us under the United Nations and the United will slowly take over the administration of Australia with the debt from the Federal Government being put unto the Land as an 'International Caveat' or a Mortgage on the Land and eventually all Land in Australia will be no longer Private and will be owned by the United Nations which is a Trust set up by the 15 Central Banking Families of Europe and North America and some of those owners are: Warburg, Goldman Sachs, Fould, Rockefeller, Rothschild, Oppenheimer, and the rest of those names you can find at page 52 in the Book Tragedy and Hope by Dr Coral Quigley. You can buy this very factual book which can be put into evidence into any Court at Amazon for about $25.00c and for $15.00c postage. This book briefs the files at the Foreign Relation Commission over a 200 year down to 1,500 pages. Another Book is 'None dare called it Conspiracy' by Gary Allen, and Larry Abraham.

What I am trying to tell you in this. When the Banks state to give default Notices on the unpaid Mortgages and people have nowhere to go, DO NOT put them in other people houses. Put them in unused warehouses like they did with the Returned Services Men at the end of World War 2 or set these homeless people up in Big Tents. You must do this for Two (2) Reasons. First it will save Australia big Money, and Two (2) when the next Virus comes from

about October 2021 and it will finish around March 2025 it will limit the number of the people that the new virus will Kill. The UN Program can change, so those dates as planned at the moment, can change. If you 'herd' people in Houses, the Kill Rate will go through the Roof. I have seen a United Nations Graph for the Countries of the World and I see Australia and the UK. I think from memory the UK is to go down 40 Million People and Australia down to 15 Million people. They will try and find a cure for this new virus and they won't be able too. It will string like mad when it attaches itself to your skin and it will borrow into your skin and go into the blood stream. It will be very painful and first. Then the pain will stop, then after about 12 to 24 hours and stringing will be all over the skin and people will die from just pain. This Virus will be Air borne and there will be nothing you can do about it. Except close the foreign Borders now. Don't let anybody back into the country until after April 2025. That means Tourism, Universities, make Universities Open up overseas. DO NOT bring foreign Students back into this country every. This New Virus was developed by the World Health Organisation 'WHO'. And if you get a Vaccination for the Covid-19 Virus later on when it becomes available in Australia after April 2021 it will modify itself every 6 months and new strains will come and this new strain will be this new virus. I told you so. However the government knows better and you and everybody else will now take the consequences. **The good thing is there want be so many cars on the road and there will be more parking spaces available on the Road and no more Water Shortages**. The flu shots never give you complete immunity because these bugs are changing and are getting better every year and, One (1) day, just like how we found out that giving Penicillin for every Flu in the 1960's, the bugs were starting to get use to Penicillin and they Drug Industry has had to come up with other drugs and the Drug industry, has warned us time and time again that we are coming to the end of our Drug cures, as the Bugs are getting so powerful and strong in that the Human Race has made them that way because the Bugs have developed along the way with our medicine. Don't go down there. **Close the Foreign Borders and END IMMIGRATION PERMENTANTLY** as also at the moment we have **not got the water supply** for too many more people in Australia and we are the driest continent on the Earth.

So DON"T get sucked into the 'Great Humanitarian Crisis' talked about by the ABC Radio and I can see they are coaching the Australian Public to accept this and it is the wrong way to go. Also the USA War of Independence was started not because of the Tax on Tea in the USA back in 1768 but when the United Kingdom made the colonists in the USA house the UK Army in residential Housing. And that is why it is in the USA Constitution you cannot Force unto the Public the housing of the Army or Navy and or Air Force into a Private House to live with the owner without the owner's consent in the USA. It had nothing to do with the Tea Party and the Tax on Tea. That is Rubbish.

The United Nations army or any foreign must not be allowed to come into Australia because of any Virus, old or for the New Planned Virus which could come from October 2021 onwards, but keeping in mind, the Agendas 2021 and 2030 can change with regards to dates and Timing. So we are up against the 15 Big Families overseas who can change their timetable to suit. Just remember that. Also the Qld Police are listed in 2001 under the Uniform Commercial Code in the USA under 2 Women. The Qld Gov still assumes liability under the Police Service Administration Act 1990 (Qld) for the Qld Police but, keep in mind the Qld Police is now listed from around 1971 by Roy Whitrod (A Past Director of ASIO) then the Commissioner of the Qld Police as a company. And keep in mind the Private Prisons that have been created slowly since 1990 and keep in mind the Fema Camp owned by the United Nation that was built in Robina, Gold Coast around 2012, and keep in mind Clth Minister Eric Abetz refused to build this 'thing' at Robina and he got the sack from the Prime Minister probably from Tony Abbott who is now living in the UK, I wonder why.

Please do some of your research if you don't believe me. I enclose some enclosures and some professor's submissions of delegated legislation and the consequences of delegated Legislation.

Keep Up the Good Work.

Kind Regards,

Chris McDermott.,
[redacted]
Email: [redacted]

Report from the UK

COVID OPENS UP THE 'HARD ROAD' TO A NEW WORLD ORDER

– BY IAIN DAVIS –

Among many similar globalist states, the UK State runs a public-private partnership between government, financial institutions, multinational corporations, global think tanks, and well-funded third sector organisations, such as so-called non-governmental organisations (NGOs) and large international charities. Through a labyrinthine structure of direct funding, grant-making and philanthropy, the UK State is a cohesive globalist organisation that works with selected academic and scientific institutions and mainstream media (MSM) outlets to advance a tightly controlled, predetermined narrative. This designed consensus serves the interests and global ambitions of a tiny group of disproportionately wealthy people.

This group of parasites, often misleadingly referred to as the "elite," exploit all humanity for their own gain and to consolidate and enhance their power. They control the money supply and the global debt – a debt owed to them. Human beings are forced to pay tax which, via government procurement, flows directly to the private corporations they own. War, security, infrastructure projects, education and healthcare, provide profits and are used by the *parasite class* to socially engineer society.

Globally, they fund all political parties with any realistic chance of gaining power, and they own the MSM and spend billions lobbying policymakers. Through think tanks and the actions of 'independent' political activists, such as the FPAction Network, they directly fund political campaigns in exchange for politicians' loyalty to *them*, not to the electorate. Through their tax-exempt grant-making foundations, such as the Bill and Melinda Gates Foundation (BMGF), they control the scientific, medical and academic orthodoxy.

This global network of oligarchs is moving towards the final stages of its long-held plan to construct a single global system of governance. Often referred to as the New World Order (NWO), it is a collaboration between supranational political organisations, like the United Nations and the European Union, controlled scientific authorities, such as the Intergovernmental Panel on Climate Change (IPCC) and the World Health Organisation (WHO), global financial institutions, including the World Bank, IMF, ECB and Bank for International Settlements (BIS), globalist organisations like the World Economic Forum (WEF), NGO's like the World Wildlife Fund (WWF) and policy-making think tanks such as the Council on Foreign Relations (CFR), Club of Rome and the Trilateral Commission.

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COVID-19 A FANTASTIC OPPORTUNITY

The UK State is but one prominent tentacle of this emerging global governance system. As such, it has capitalised on the COVID-19 crisis to create the conditions for a new global economic and political model. While COVID-19 appears to be a nasty strain of the common coronavirus, managing this 'crisis response' to a pandemic is merely window dressing for the planned re-engineering of society.

In partnership with Johns Hopkins Center for Health Security and the BMGF, the WEF were the chief architects of "Event 201," an international conference held in November 2019, which plotted, in quite precise detail, the coming global lockdown and the world's media response to a global coronavirus pandemic. Event 201 was staged merely a matter of months before a global coronavirus pandemic broke out. Both the government lockdown and MSM response have proceeded exactly as they predicted.

To say this is all just a coincidence, and not worthy of further scrutiny, is beyond obtuse. The WEF's extensive and detailed 'COVID-19 Action Platform' was up and running on 12 March 2020. The day after, the WHO declared a global COVID-19 pandemic.

It is clear from the WEF's own words that they see COVID-19 as a fantastic opportunity. They state:

> The Covid-19 crisis, and the political, economic and social disruptions it has caused, is fundamentally changing the traditional context for decision-making.... As we enter a unique window of opportunity to shape the recovery, this initiative will offer insights to help inform all those determining the future state of global relations, the direction of national economies, the priorities of societies, the nature of business models and the management of a global commons.

This is a proposal for global governance which supersedes national sovereignty. It is as simple as that.

It is remarkable that there are still so many who accuse any who point to this long-standing New World Order plan, extensively documented and spoken about by political leaders for generations, of being so-called *conspiracy theorists*. One wonders if these people can read.

Referencing the COVID-19 opportunities, one of the founders, and current executive chairman of the WEF, Klaus Schwab, recently wrote:

> A sharp economic downturn has already begun, and we could be facing the worst depression since the 1930s. But, while this outcome is likely, it is not unavoidable. To achieve a better outcome, the world must act jointly and swiftly to revamp all aspects of our societies and economies, from education to social contracts and working conditions. Every country, from the United States to China, must participate, and every industry, from oil and gas to tech, must be transformed. In short, we need a "Great Reset" of capitalism.

Capitalism requires a reset because the model of *closed shop* crony capitalism, operated by the global parasite class for centuries, has reached 'the limits of growth'. Therefore, they need to create a new economic paradigm (the Great Reset) both to further centralise and consolidate their power and to fix their failing business model.

Following the 2008 banking collapse, while the people were forced to suffer austerity to bail out the banks with a form of highly selective *crony* socialism, the parasite class simply carried on piling up the debt. In the Basel Capital Accords III, supposedly designed to stop the wild market speculations of banks which caused the collapse, they effectively reduced the liquidity (capital reserve) requirements for banks, allowing them to lend even more.

This process of allowing banks to create fiat currency out of nothing has inevitably led to a global debt of approximately $260 trillion, which is more than three times the size of the planet's GDP. However, this is small potatoes compared to the scale of the financial products derivatives market that is estimated to be somewhere between $600 trillion to more than $1 quadrillion. While some say this is only the *notional* amount of the debt tied up in derivative contracts, the fact remains this is all debt.

Cumulatively, there isn't enough productivity on Earth even to service the interest on these debts, let alone pay them. Ultimately this is debt owed to the oligarchs who control the world's system of central banks. It is a Mickey Mouse system allowing monopolists to seize assets using their own funny money.

While the power to create all fiat money (out of nothing but debt creation) has afforded them immense economic and political control, 2008 demonstrated that their usury fraud can, and certainly will, collapse. Hence, *The Great Reset*.

It's important to understand that responding to a pandemic, or *saving lives*, has nothing to do with it.

The process of transition, laid out by the WEF as the Great Reset, builds upon the sustainable development goals of the UN's Agenda 2030. Founded upon the generational eugenicist ideology of the NWO oligarchs, the new global governance system will be a technocracy.

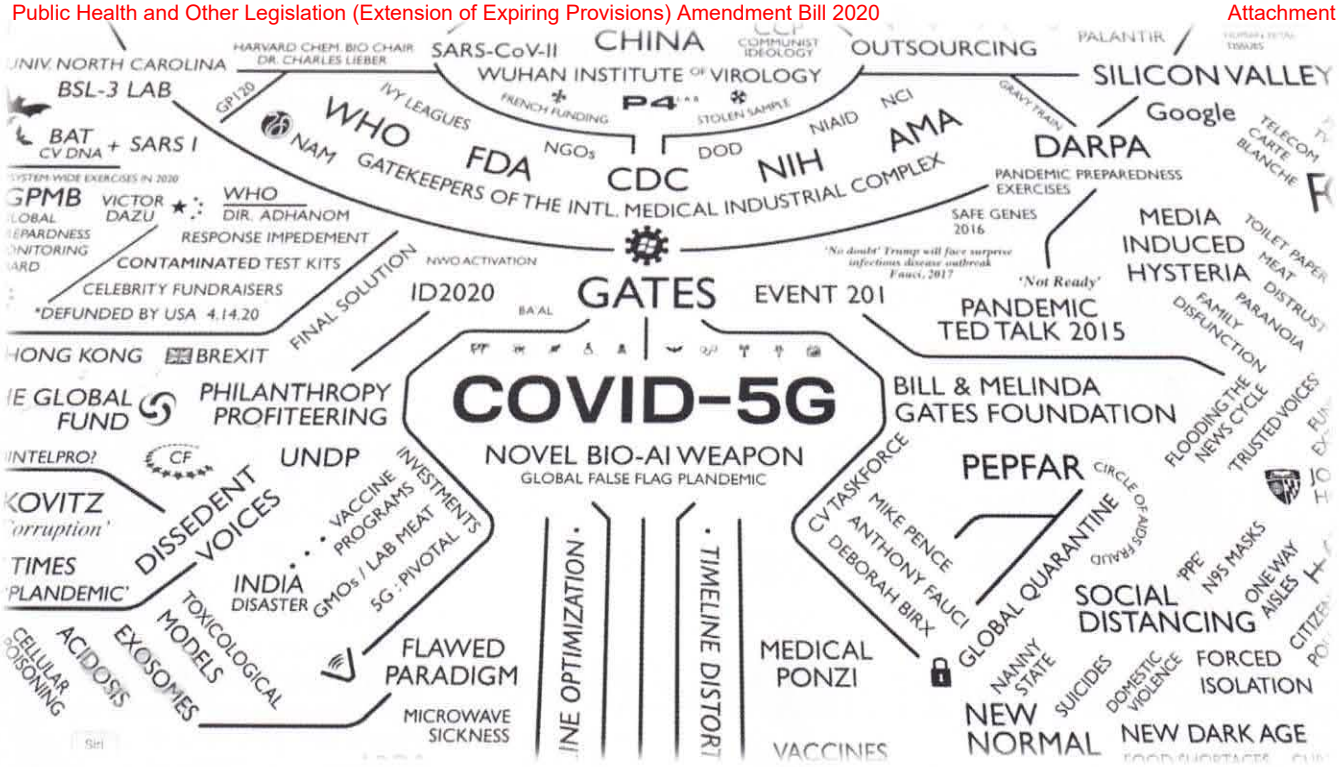
ABOVE: Richard N. Gardner's article "The Hard Road To World Order" appeared in the April 1974 issue of *Foreign Affairs*, the journal of the Council on Foreign Relations.

THE HARD ROAD TO WORLD ORDER

While *Technocracy* – rule by technocrats appointed or elected for their particular expertise – may sound appealing to some, the model proposed relies upon the destruction of nation states to be replaced by a distant global technocratic order that serves only the interests of its founding oligarchs and financial benefactors. This technocratic system was outlined in 1974 by former US ambassador Richard N. Gardner, member of the CFR and the Trilateral Commission, in his article "The Hard Road To World Order":

> Never has there been such widespread recognition by the world's intellectual leadership of the necessity for cooperation and planning on a truly global basis. Never has there been such an extraordinary growth in the constructive potential of transnational private organisations – not just multinational corporations but international associations of every kind in which like-minded persons around the world weave effective patterns of global action....
>
> The hope for the foreseeable future lies, not in building up a few ambitious central institutions of universal membership and general jurisdiction.... but rather in.... inventing or adapting institutions of limited jurisdiction and selected membership to deal with specific problems on a case-by-case basis.... providing methods for changing the law and enforcing it as it changes and developing the perception of common interests.... In short, the "house of world order" will have to be built from the bottom up rather than from the top down.... but an end run around national sovereignty, eroding it piece by piece, will accomplish much more than the old-fashioned frontal assault.

The *institutions of limited jurisdiction*, such as the IPCC and WHO, are already in place directing national government policy across the world. In Britain, it is the role of the



UK State to deliver the obligatory policy changes which are eroding national sovereignty, and through this vacuum creating a hub for a global governance technocracy. Through this process, it could be said that any elected governments of globalist states are essentially unconstitutional and treasonous.

The *common interest*, determined by the technocrat class at the behest of their corporate oligarch paymasters, is currently replacing individual liberties and freedoms. The human being is becoming little more than a *unit* to be managed and directed and, where necessary, disposed of. Inalienable human rights are being ignored utterly in pursuit of the *common interest*.

PUBLIC HEALTH AS BIOSECURITY

The global COVID-19 crisis is a catalysing event which has been misused to bring about the Great Reset. In order to convince the people to comply with their orders, the UK State has inculcated the population into a state of fear. States around the world have practised social engineering by deception – proselytising an unquestioning faith in an illusory form of science (scientism), behaviour modification, unlawful regulation and propaganda. They have used their obedient MSM to convince their peoples that the threat of COVID-19 is significantly greater than it actually is. Public health has become *biosecurity*, and there is no longer any such thing as a healthy human being. All humans are now suspected biohazards, and biohazards must be controlled or removed from society for the *common good*.

With the British people living in unwarranted fear, the UK State has been able to introduce draconian anti-democratic (quite literally) legislation. In other circumstances, this would have been impossible without significant revolt. Terrorising the public was essential to convince them to believe that the State had to remove all their rights and freedoms in order to *keep them safe*.

Initially deceiving the public that the *emergency measures* would be temporary, further behaviour modification was then used to force people to comply with a lengthening list of totalitarian regulations. The objective was to move people towards passively accepting the dictatorship of a surveillance state re-branded as "the new normal." Thus far, it appears most people have been sufficiently frightened into meekly accepting their enslavement.

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PUBLIC FACE OF GLOBALIST PROJECT: BILL GATES

Throughout the Great Reset transition, the public face of the globalist project has been Bill Gates. However, while Gates has used his wealth to seize control of global public health policy, he is just the current frontman for World Order 2.0. It is the technological possibilities presented by the Fourth Industrial Revolution which the architects of the world order are capitalising upon.

Pilot schemes, such as the BMGF-backed West African Wellness Pass, are already underway. By linking biometric identification, along the lines of the BMGF funded, Rockefeller and UN-backed ID2020, with cashless payment systems, all transactions can be centrally controlled in the rapidly approaching cashless society.

When your biometric identity includes your vaccine immunity status, there will be no necessity to legislate to

LEFT: Biosecurity in action... and likely coming to your world soon.... Irish-based ROQU Group has launched a world-first 'Health Passport' digital platform. It is designed to work with all official COVID tests so that everyone involved in some aspect of society can prove their health status.

make vaccines "compulsory." As long as you fully comply with your orders, you will be allowed controlled access to social and economic activity.

Systems like immunity passports and vaccine certificates will be used to control freedom of movement, the right to work and to access services and the community. As described by world order spokesman Bill Gates: "Eventually we will have some digital certificates to show who has recovered or been tested recently or when we have a vaccine – who has received it."

This new, centrally planned, global economy will be restricted only to *permitted* businesses.

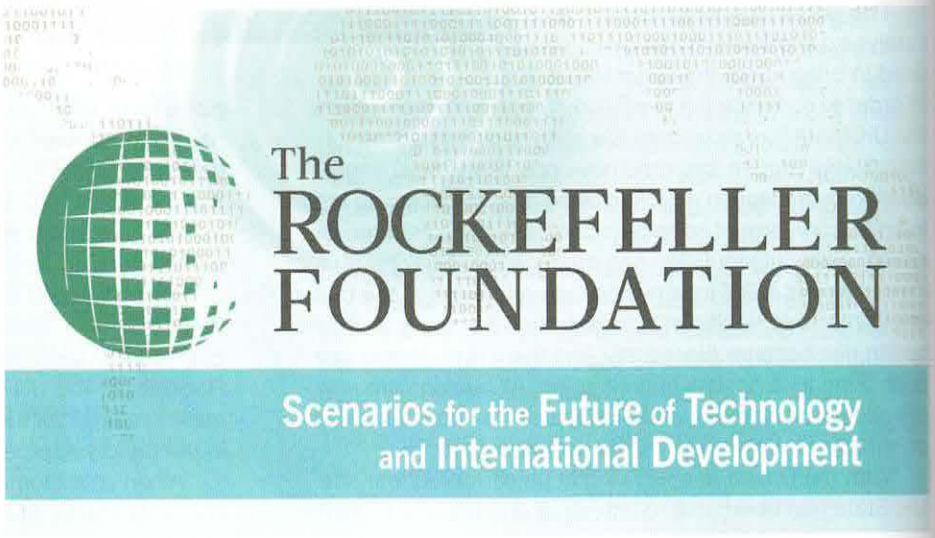
While vaccines may not be compulsory, you won't realistically be able to participate in society, employment, run a business or receive benefits, without the appropriate vaccine or immunity status. The BMGF have already invested more than $21 million in an MIT project to create a microneedle vaccine delivery system that will inject a reactive dye under the recipient's skin which can then be scanned by a reader. This pattern will act like an indelible barcode tattoo, enabling the global authorities to monitor and control your whereabouts and behaviour.

The New Zealand government has already alluded to a policy which will enable authorities to remove a person from their home and place them in a designated quarantine facility (a de facto detention centre). With an estimated population of five million and with just 22 alleged deaths *from* COVID-19 in the entire country (a population mortality risk of 0.0004%), and few or no deaths at all for the last four months, clearly these measures are not a response to any genuine public health crisis. Such a stringent quarantine policy in New Zealand was designed to maintain the level of fear and accustom the population to a technocratic dictatorship. It could also be a provocation that may encourage insurrection and revolt. With a monopoly on violence and the use of force, any violent uprisings will invariably benefit the authoritarian State, allowing authorities to claim further legitimacy amid an even more oppressive "crackdown."

Thus far, the global response to COVID-19 has deviated little from the Rockefeller Foundation's suggested "Lockstep" scenario in their 2010 report 'Scenarios for the Future of Technology and International Development'. Like Event 201, this is another example of the quite extraordinary prescience of the people who form global governance policy. They can not only predict, in almost perfect detail, what the media will discover and report, but also nature itself.

Removing the "infected" from their homes and incarcerating them in detention centres mirrors the policy suggestion of Dr Michael Ryan from the WHO. While New Zealand is the first nominally democratic State to raid family homes and remove people by force, it certainly won't be the last.

Continued on page 22...



RIGHT: For more on the Rockefeller Foundation's "Lockstep" scenario, see *New Dawn* Special Issue Vol 14 No 3.

The UK State has already given itself the power to do so in the Health Protections (Coronavirus) Regulations 2020. In this way, future economic activity will be administered by biosecurity States and based upon sustainable development goals. This new, centrally planned, global economy will be restricted only to *permitted* businesses.

Prior to his departure as governor of the Bank of England, in lockstep with the Great Reset, Mark Carney warned that companies that don't follow the correct sustainability policies, "will go bankrupt without question." In other words, lines of credit, without which business cannot hope to function, will be limited only to those who adopt the *approved* policies.

MINIMAL EMPLOYMENT IN THE NEW ECONOMY

This new economy will have minimal employment. Carney's successor Andrew Bailey has already stated that it would be important not to keep people in "unproductive jobs" and that job losses, as a result of the COVID-19 crisis, were inevitable. They would not have been *inevitable* had globalist States, like the UK, not responded to the crisis by shutting down the productive economy. The preposterous spin of the bankers and carefully chosen economists that the UK will simply bounce back from an unprecedented 20% drop in GDP is absurd. With *official* UK unemployment of 2.7 million, more than doubling in a single year, these numbers are merely the tip of a much larger iceberg.

There are currently an additional estimated 7.8 million British workers furloughed. That scheme is due to end in a couple of months. The management consultancy firm McKinsey & Company estimate that 7.6 million UK jobs are at risk. This will, as ever, disproportionately impact the lowest paid, with analysis suggesting that more than 50% of those at risk of unemployment are already in jobs paying less than £10 per hour.

These are the *unproductive jobs* and livelihoods Bailey wants to get rid of. Across Europe and the Americas, staggering levels of unemployment are seemingly unavoidable. It is not unreasonable to envisage at least six million long term unemployed in the UK. With the same pattern common to many developed nations, the social, economic and health impacts of this are almost beyond comprehension – a looming toll taken by the government's lockdown response to the supposed COVID-19 'pandemic' which has been far worse than the disease itself.

It is important to recognise that the global lockdown response was a political choice made to create the economic conditions for the Great Reset. It was not unavoidable, and there is no evidence that lockdowns make any difference to COVID-19 mortality. South Korea, Japan and Sweden did not impose full lockdowns, and all have better COVID-19 outcomes than countries like the UK and US.

Between 2014 and 2016, economic and social deprivation in England consistently accounted for a genuinely alarming 9.3-year average reduced life expectancy (YLLs) for males and, by 2016, shortened women's lives by 7.3 years. The economic devastation that will be wrought by the entirely unnecessary lockdown policy of the UK State, and others, measured in YLLs – will dwarf those lost to COVID-19.

They are currently spending billions globally on propaganda to convince us to accept their "new normal."

This is the price we will all pay for the parasite class' determination to bring about the Great Reset and change the world's economy and society to one centrally planned and controlled absolutely by them. They are currently spending billions globally on propaganda to convince us to accept their "new normal."

They require our consent if their plans are going to work. This means, in order to scupper them, all we need to do is refuse to comply. While peaceful protest is an important unifying right, ultimately it is what we do every day that will make the difference. There is a nasty, fascist authoritarianism building in the UK, and elsewhere. Yet all we need to do in order to defeat it is refuse, *en masse*, to follow its orders.

Unfortunately, the UK State are among those throwing everything at us to convince the masses to believe their frankly ridiculous, scientifically illiterate COVID-19 propaganda narrative. We only need wander to the local supermarket and witness the faceless, muzzled majority (masked) to know that the deception is working.

We are faced with an existential choice. We can either give up any childish pretensions that we live in a free and open democratic society that values liberty and plurality of opinion, and accept the fascist dictatorial rule of a global technocratic parasite, or we can exercise conscious resistance and refuse to comply with the orders of the State.

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THE 1% BLUNDER: How a Simple But Fatal Math Mistake by US COVID-19 Experts Caused the World to Panic and Order Lockdowns

– BY MALCOLM KENDRICK –

In February, US COVID guru Anthony Fauci predicted the virus was "akin to a severe flu" and would therefore kill around 0.1 percent of people. Then fatality rate predictions were somehow mixed up to make it look ten times WORSE.

When you strip everything else out, the reason for lockdown comes from a single figure: one percent. This was the prediction that COVID, if left unchecked, would kill around one percent of us.

You may not think that percentage is enormous, but one percent of the population of the world is 70 million people – and that's a lot. It would mean 3.2 million Americans dead, and 670,000 Britons [and 250,000 Australians].

Where did this one percent figure come from? You may find this hard to believe, but this figure emerged by mistake. A pretty major thing to make a mistake about, but that's what happened.

Such things occur. On 23 September 1998, NASA permanently lost contact with the Mars Climate Orbiter. It was supposed to go round and round the planet looking at the weather, but instead it hit Mars at around 5,000 mph, exploding into tiny fragments. It didn't measure the weather; it became the weather – for a few seconds anyway.

An investigation later found that the disaster happened because engineers had used the wrong units. They didn't convert pound seconds into Newton seconds when doing their calculations. Imperial, not metric. This, remember, was NASA. An organisation not completely full of numbskulls.

Now you and I probably have no idea of the difference between a pound second and a Newton second (it's 0.67 – I looked it up). But you would kind-of hope NASA would. In fact, I am sure they do, but they didn't notice, so the figures came out wrong. The initial mistake was made and was baked into the figures.

Kaboom!

With COVID, a similar mistake happened. One type of fatality rate was substituted for another. The wrong rate was then used to predict the likely death rate – and, as with NASA, no-one picked up the error.

In order to understand what happened, you have to understand the difference between two medical terms that sound the same – but are completely different. Rather like a pound second or a Newton second.

Where did this one percent figure come from? You may find this hard to believe, but this figure emerged by mistake.

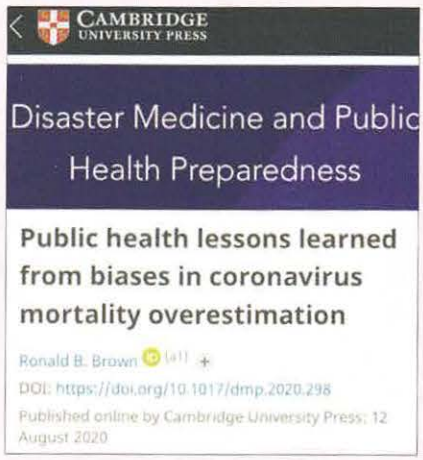
WHICH FATALITY RATE, DID YOU SAY?

First, there's the Infection Fatality Rate (IFR). This is the total number of people who are infected by a disease and the number of them who die. This figure includes those who have no symptoms at all, or only very mild symptoms – those who stayed at home, coughed a bit and watched *Outbreak*.

Then there's the Case Fatality Rate (CFR). This is the number of people suffering serious symptoms, who are probably ill enough to be in hospital. Clearly, people who are seriously ill – the "cases" – are going to have a higher mortality rate than those who are infected, many of whom don't have symptoms. Put simply – all cases are infections, but not all infections are cases.

Which means that the CFR will always be far higher than the IFR. With influenza, the CFR is around ten times as high as the IFR. COVID seems to have a similar proportion.

Now, clearly, you do not want to get these figures mixed up. By doing so you would either wildly overestimate, or wildly underestimate, the impact of COVID. But mix these figures up, they did.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Disaster Medicine and Public Health Preparedness

Public health lessons learned from biases in coronavirus mortality overestimation

Ronald B. Brown [et al.]

DOI: https://doi.org/10.1017/dmp.2020.298

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The error started in America but didn't end there. In healthcare, the US is very much the dog that wags the tail. The figures they come up with are used globally.

On 28 February 2020, an editorial was released by the National Institute of Allergy and Infectious Diseases and the Centers for Disease Control and Prevention (CDC). Published in the *New England Journal of Medicine*, the editorial stated: "... the overall clinical consequences of COVID-19 may ultimately be more akin to those of a severe seasonal influenza."[1]

They added that influenza has a CFR of approximately 0.1 percent. One person in a thousand who gets it badly, dies.

That quoted CFR for influenza was ten times too low – they meant to say the IFR, the Infection Fatality Rate, for influenza was 0.1 percent. This was their fatal – quite literally – mistake.

The mistake was compounded. On 11 March, the same experts testified to US Congress, stating that COVID's CFR was likely to be about one percent, so one person dying from a hundred who fell seriously ill. Which, as time has passed, proved to be pretty accurate.

At this meeting, they compared the likely impact of COVID to flu. But they used the wrong CFR for influenza, the one stated in the previous *NEJM* editorial. 0.1 percent, or one in a thousand. The one that was ten times too low.

FLU TOLL 1,000 – COVID TOLL 10,000

They matched up the one percent CFR of COVID with the incorrect 0.1 percent CFR of flu. Suddenly, COVID was going to be ten times as deadly.

If influenza killed 50, COVID was going to kill 500. If influenza killed a million, COVID was going to get 10 million. No wonder Congress, then the world, panicked. Because they were told COVID was going to be ten times worse than influenza. They could see three million deaths in the US alone, and 70 million around the world.

I don't expect you or I to get this sort of thing right. But I bloody well expect the experts to do so. They didn't. They got their IFR and CFR mixed up and multiplied the likely impact of COVID by a factor of ten.

Here's what the paper, 'Public health lessons learned from biases in coronavirus mortality overestimation', says:

"On March 11, 2020... based on the data available at the time, Congress was informed that the estimated mortality rate for the coronavirus was ten-times higher

than for seasonal influenza, which helped launch a campaign of social distancing, organizational and business lockdowns, and shelter-in-place orders."[2]

On 28 February it was estimated that COVID was going to have about the same impact as a bad influenza season – almost certainly correct. Eleven days later, the same group of experts predicted that the mortality rate was going to be ten times as high. This was horribly, catastrophically, running-into-Mars-at-5,000-miles-an-hour wrong.

ENTER THE MAD MODELLERS OF LOCKDOWN

In the UK, the group I call the Mad Modellers of lockdown, the Imperial College experts, created the same panic. On 16 March, they used an estimated IFR of 0.9 percent to predict that, without lockdown, COVID would kill around 500,000 in the UK.

Is this prediction anywhere close?

So far, the UK has had around 40,000 COVID deaths. Significantly less than 0.1 percent, but not that far off. Of course, people will say, *"We had lockdown... without it so many more would have died. Most people have not been infected..."* etc.

To answer this, we need to know the true IFR. Is it 0.1 percent, or one percent? If it is one percent, we have more than 400,000 deaths to go. If it is 0.1 percent, this epidemic has run its course. For this year, at least.

With swine flu, remember that the IFR started at around two percent. In the end, it was 0.02 percent, which was five times lower than the lowest estimate during the outbreak. The more you test, the lower the IFR will fall.

Where can we look to get the current figures on the IFR? The best place to look is at the country that has tested more people than anywhere else as a proportion of their population: Iceland.

As of the end of August, Iceland's IFR stood at 0.16 per cent.[3] It cannot go up from here. It can only fall. People can't start dying of a disease they haven't got.

This means that we'll probably end up with an IFR of about 0.1 percent, maybe less. Not the 0.02 percent of Swine Flu – somewhere between the two, perhaps. In short, the 0.1 percent prophecy has proved to be pretty much bang on.

Which means that we've had all the deaths we were ever going to get. And which also means that lockdown achieved, almost precisely nothing with regard to COVID. No deaths were prevented.

MANGLED BEYOND RECOGNITION

Yes, we are testing and testing, and finding more so-called cases. As you will. But the hospitals and ICUs are virtually empty. Almost no-one is dying of COVID anymore, and most of those who do were otherwise very ill.

Instead of celebrating that, we've artificially created a whole new thing to scare ourselves with. We now call a positive test a COVID "case." This is not medicine. A "case" is someone who has symptoms. A case is not someone carrying tiny amounts of virus in their nose.[4]

Now, however, you test positive, and you're a "case." Never in history has medical terminology been so badly mangled. Never have statistics been so badly mangled.

When researchers look back at this pandemic, they'll have absolutely no idea who died because of COVID, or who died – coincidentally – with it. Everything's been mashed together in a determined effort to make the virus look as deadly as possible.

Lockdown happened because we were told that COVID could kill one percent. But COVID was never going to kill more than about 0.1 percent – max.

That's the figure estimated back in February, by the major players in viral epidemiology. A figure that has turned out to be remarkably accurate. Bright guys... bad mistake.

Because we panicked, we've added hugely to the toll. Excess mortality between March and May was around 70,000, not the 40,000 who died of/with COVID. Which means 30,000 may have died directly as a result of the actions we took.

We protected the young, the children, who are at zero risk of COVID. But we threw our elderly and vulnerable under a bus. The very group who should have been shielded. Instead, we caused 20,000 excess deaths in care homes.

It was government policy to clear out hospitals, and stuff care homes with patients carrying COVID, or discharge them back to their own homes, to infect their nearest and dearest. Or any community care staff who visited them.

We threw – to use UK health secretary Matt Hancock's ridiculous phrase – a ring of steel around care homes. As it turned out, this was not to protect them, but to trap the residents, as we turned their buildings into COVID incubators. Anyone working in care homes, as I do, knows why we got 20,000 excess deaths. Government policy did this.

That is far from all the damage. On top of care homes, the UK Office for National Statistics estimates that 16,000 excess deaths were caused by lockdown.[5] The heart attacks and strokes that were not treated. The empty, echoing hospitals and A&E units. The cancer treatments stopped entirely.

Which means that at least as many people have died as a result of the draconian actions taken to combat COVID, as have been killed by the virus itself. This has been a slow-motion stampede, where the elderly – in particular – were trampled to death.

We locked down in fear. We killed tens of thousands unnecessarily, in fear. We crippled the economy, and left millions in fear of their livelihoods. We have trapped abused women and children at home with their abusers. We have wiped out scores of companies and crushed entire industries.

We stripped out the National Health Service, and left millions in prolonged pain and suffering, on ever lengthening waiting lists, which have doubled.[6] There have also been tens of thousands of delayed cancer diagnoses – the effects of which are yet to be seen, but the *Lancet* has estimated at least sixty thousand years of life will be lost.[7]

Lockdown can be seen as a complete and utter disaster. And it was all based on a nonsense, a claim that COVID was going to kill one percent. A claim that can now be seen to be utterly and completely wrong. Sweden, which did not lockdown, has had a death rate of 0.0058 percent.

It takes a very big person to admit they have made a horrible, terrible mistake. But a horrible, terrible mistake has been made. Let's end this ridiculous nonsense now. And vow never to let such monumental stupidity happen ever again.

▶ The above first appeared at www.rt.com/op-ed/500000-covid19-math-mistake-panic.

FOOTNOTES

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MALCOLM KENDRICK is a doctor and author who works as a GP in the National Health Service in England. His blog is www.drmalcolmkendrick.org and his book, *Doctoring Data – How to Sort Out Medical Advice from Medical Nonsense,* is available from www.doctoringdata.co.uk.

PANDEMIC BIOPOWER

The Post-Coronavirus State

– BY DR. BINOY KAMPMARK –

Platitudes offer useful padding in official announcements. The crippling effects of the coronavirus have provided much in the way of platitudinous fodder, not least about "getting to the other side" and "the new normal." These sound like code clichés for an optimistic future; they just as well serve as dark forebodings. The nagging question remains: What will the post-coronavirus state look like?

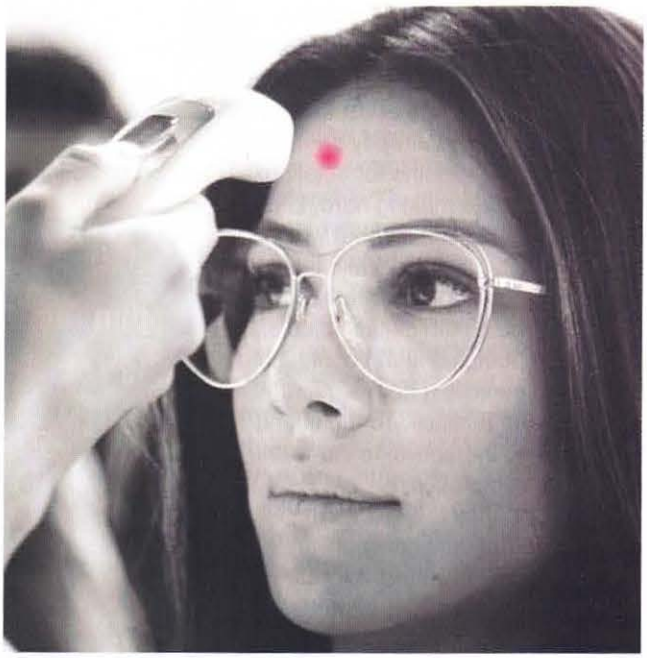
One thing comes to mind and we already see it in evidence: the spikily intrusive role of the state in the lives of human subjects.

Victorians in Australia got a flavour of this in the dramatic, even brutal intrusion of the state's police into the home of pregnant mother Zoe Buhler. The Ballarat resident had encouraged, over social media, attending a rally in defiance of pandemic lockdown measures. Still in her pyjamas, Buhler was handcuffed on 2 September before her partner and children, accused of incitement, an offence she did not understand. "I have an ultrasound in an hour because I'm pregnant," she pleaded.

An alarmed Caroline Overton, associate editor of *The Australian*, considered the actions "dictatorial, undemocratic, and dangerous" (*The Australian*, 3 Sep 2020). You could still support the lockdown and favour the saving of lives while opposing "cuffing anyone for posting about an upcoming protest on Facebook." The President of the Australian Human Rights Commission, Rosalind Croucher, was "dismayed" by the arrest. "Human rights are for everyone, everywhere, everyday." Even Victoria Police Assistant Commissioner Luke Cornelius had to concede that "the optics of arresting someone who is pregnant is terrible."

While the quest for a vaccine against the coronavirus is proving aggressive and determined (divided surely, but determined no less), its success will not see a withering away of state power. The pseudo war footing upon which the globe has been placed in responding to the virus will merely see an adaptation and adjustment; the post-pandemic regime promises to be stubbornly pervasive, a state of permanent emergency.

The pandemic war state is here to be preserved, its embalmers at the ready. As Shivshankar Menon notes crisply in *Foreign Policy* (20 March 2020), "government is back." The health departments of the globe have become muscular policing authorities, in many instances vested with powers of detention, incarceration and control over the public. States of emergency have become the purview of medical officers with enduring powers to issue mandates in the name of protecting public health. In a sense, the question on whether authoritarian states are better or otherwise in handling pandemic outbreaks, one floated in *The Lancet* in February this year, has become a moot one. All states, on some level, have entertained authoritarianism to control the pandemic, directing citizens towards acceptable forms of conduct while punishing transgressors.



This disconcerting meeting of part-Orwellian nightmare and public health policing is no accident. Students of such power would have found the pandemic state something of a logical culmination. One of the keenest of them, the French intellectual Michel Foucault (1926–1984), gazed at the human body and saw in it an object of governmental power. His Collège de France lectures of 1977–1978 furnished us with a definition of biopower, a contrived but

ABOVE: In August 2020, Victoria State police stormed the Ballarat residence of pregnant mother Zoe Buhler and arrested her. Zoe's offence? She had encouraged, over social media, attending a rally in defiance of pandemic lockdown measures.

useful tool to analyse "a set of mechanisms through which the basic biological features became the object of a political strategy, of a general strategy of power."[1] For him, the biopower links between vaccine and infectious disease management could already be made in 18th-century efforts in developing a vaccine for smallpox. These could be insidious, the state making hard, fast and ruthless decisions about what to do with the citizenry. While such an entity supposedly claimed to be improving the health of its subjects, it was only doing so in the context of re-enforcing existing norms, hierarchies and inequalities. To the fit and privileged go the spoils; to the weak, death and vulnerability.

This tendency found form in a more international context with the arrival of the concept of "global health." Sociologist Katherine E. Kenny observed this as a distinct feature of 21st-century policy, with global health being "the preferred label to govern the health of the global population."[2] With the coronavirus pandemic, this has become the key question troubling such thinkers as Erik Larsen who poses the essential question: "Has the coronavirus pandemic transformed the relationship between citizens, living bodies, and the powers that govern us?" (*Synapsis*, 15 May 2020).

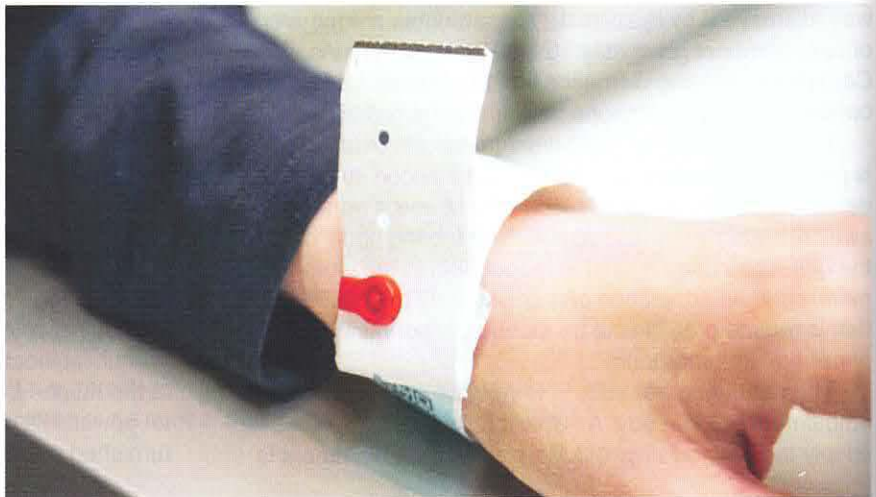
"Has the coronavirus pandemic transformed the relationship between citizens, living bodies, and the powers that govern us?"

NEW FORMS OF NORMALITY

Pandemic biopower supplies the link between massive, legally coddled surveillance and mass-marketed technology. It links the private intelligence complex and corporate sector with the government industrial complex. In the context of public health, this has taken on a significant meaning, ostensibly to monitor, measure and supposedly improve certain life processes. It is with irony that doing so comes from the dictates of the same sovereign state which can be nefarious in creating inequalities. Foucault calls this the power of determining "what must live and what must die." Far from such wistful slogans as "We are all in this together," biopower is selective and illustrates the nature of societal division. It is the sort of inequality that ensures that standards are different for ethnic minorities or socio-economic classes. It decides whether herd immunity – the approach taken in Sweden – is the preferred policy over viral elimination – the approach taken in New Zealand.

Beyond the pandemic phase of lockdowns and limitations, an image of the future is being readied for us, one described with disturbing flavour by the consulting firm Maplecroft in an assessment of the People's Republic of China (CCP). "We expect Beijing to retain extensive surveillance indefinitely, under the pretext of preventing a resurgence of the coronavirus. This will provide the CCP with even more fine-tuned powers to track, monitor and record private information."[3] Wrists, eyes and faces become passports, identifiers and digital markers in a battle against pandemics current and future, the body as a full paged passport to identify the next threat. In Hong Kong, the Department of Health tests arrivals for COVID-19 and issues a firm instruction to download the government StayHomeSafe app. A tracker wristband is also issued linking the user with the app. The human being is thereby hooked up, linked to a central, surveillance complex that ties matters of health with those of basic living.

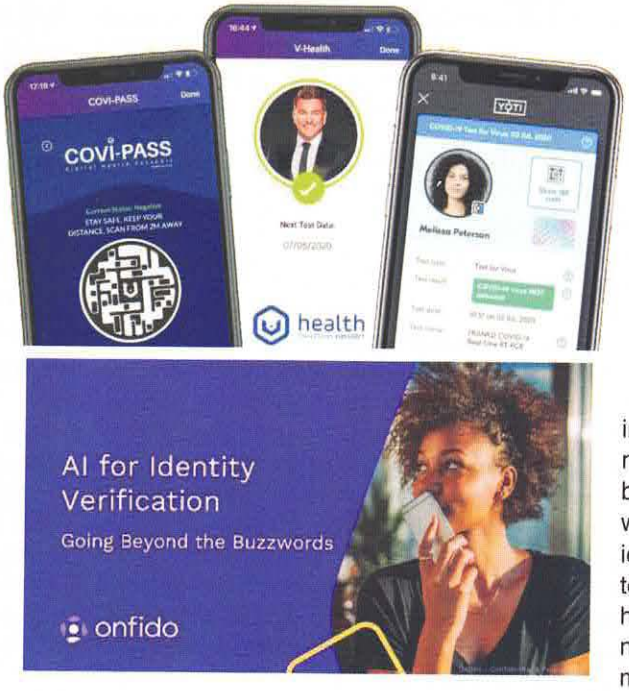
The mechanisms to assist such ends are assuming menacing forms. Globally, the use of such technology as drones by law enforcement authorities was already becoming normalised practice. Now, the pandemic state has deployed them to warn individuals to observe physical distancing, detect instances of fever and use facial recognition to detect the wearing of a mask. "We started thinking about ways of how we can limit the ability to transmit (COVID-19)," said Messod Bendayan, spokesman for the Daytona Beach Police Department in Florida. "Instead of risking an officer, we just fly the drone



RIGHT: All arrivals into Hong Kong were required to wear an electronic tracker wristband that connected to the government StayHomeSafe app.

and have the drone speak a message. It keeps officers safe and keeps people safe" (*USA Today*, 3 May 2020).

The use of such detection and recognition systems can be seen as part of a global program of excessive and indulgent bookkeeping, the sort of registration that commenced with the development of the ID card. Identity registries have proliferated, covering medical histories, creditworthiness and access to services. Biometric ID is often advertised as a panacea for inefficiency, backward development and economic stagnation. The Center for Global Development, a Washington-based think tank, is glowing about how "biometric ID can help improve public service delivery, advance progress on many of the Sustainable Development Goals, and helps shape global best practice in applications that use the technology." The novel coronavirus has inspired a flourishing of such practices.



ABOVE: Surveillance and tracking technologies are becoming embedded in the transport and travel infrastructure. A host of start-ups are offering verification systems to track and permit travel for COVID-free passengers and workers.

SURVEILLANCE AND IMMUNITY

With the focus on enabling a resumption of the global movement of people and goods, surveillance technologies are being embedded into the transport infrastructure. Jackie Snow, writing in *National Geographic* (13 August 2020), gives a descriptive spread of what the air traveller faces: the use of autonomous cleaning robots and enlisting non-contact tools to prevent viral transmission. "You can use your face without having to touch things as much," says Andrew O'Connor, the vice president of portfolio management at airport technology company Sita.

A burgeoning cybersecurity effort in technologies that would be usefully deployed by the pandemic surveillance state was already underway before the outbreak of COVID-19. The virus, and its infection, was merely the needed spur. The management and consultancy company McKinsey celebrated the "silver lining" of the calamity: "falling barriers to improvisation and experimentation that have emerged among customers, markets, regulators, and organisations" (McKinsey Digital, 22 April 2020).

This first took the form of tracking and monitoring technologies. China Mobile promoted a specific tracking service by sending text messages to Beijing residents informing them they could trace their movements over the previous 30 days. "It did not explain why users might need this," Reuters reported on 7 Feb 2020, "but it could be useful if they were questioned by the authorities or their employers about their travel." Chinese internet giant Baidu was also quick in developing an AI program that same month specifically to identify individuals not wearing protective masks. According to the company, employers need to check if staff are abiding by directives to wear masks at work; the authorities need to identify masked faces and check temperatures at busy transport hubs; and daily face check-ins need to take place even while masks are worn.[4]

Thermal imaging equipment deployed to identify potential coronavirus infections has been embedded into a global monitoring regime. Russian CCTV networks, coupled with digital passes on mobile phones, keep watch on transmission. Moscow Mayor Sergei Sobyanin, in easing most of the city's lockdown measures in June, promised that the smartphone app Social Monitoring, despite being flawed, arbitrary and intrusive, would remain. In India, facial recognition software systems have found use in the Indian cities of Pune and Pimpri-Chinchwad, part of a surveillance regime for "Home Quarantined" persons (*Planet Biometrics*, 30 March 2020). All of these developments ignore the dangers posed by faulty equipment, software and human error.

Thermal imaging equipment deployed to identify potential coronavirus infections has been embedded into a global monitoring regime.

To this can be added an entire compendium of apps designed to inform individuals at risk of infection, using variable levels of intrusion. Australia has its own COVIDSafe application, which collects mobile numbers, names (permitting the use of pseudonyms), age range, and postcodes. Australian government, state and territory officials insist that accessing information gathered by the app only takes place "if someone tests positive and agrees to the information in their phone being uploaded." Such information would only be used for the specific purpose of alerting "those who may need to quarantine or get tested."[5] This does not take away from the fact that such an app is yet another in the state armoury of surveillance and monitoring capable of being abused. To this can be added concerns about efficacy.

Continued on page 38...

IMMUNITY PASSPORTS

None of this has discouraged the arrival and threatened entrenchment of systems of verification and authentication that risk being globalised, notably in the realm of viral immunity. The global identity verification and authentication company Onfido took the cue from the pandemic, marketing solutions for clients keen to keep an eye on their working and travelling populations. In sales over the quarter ending on 30 June 2020, the firm saw a 40 per cent increase over the same quarter the previous year. Sales grew in the United States by a staggering 264 per cent (*Businesswire*, 9 July 2020). In the United Kingdom, Onfido has taken a particular interest in pushing a verification regime for those immune to the coronavirus. As *Forbes* (20 May 2020) describes it, the company is advertising "a system for citizens, guests and employees to have proof of immunity that is designed to help the individual prove their health status, but without them having to share other personal information."

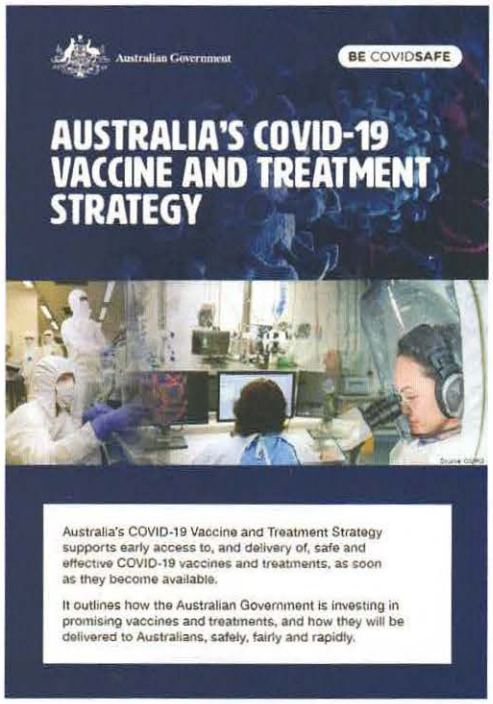
The Californian startup FaceFirst has gone so far as to tout the idea of a "coronavirus-immunity registry." It boastfully offers "digital identity solutions" that will replace "outdated legacy forms of physical identity including plastic cards, pin pads and passwords." The company will make use of machine learning algorithms "to aid in crime prevention and public safety." Accuracy and security are assured while providing clients such as "retailers, transportation centres, and other great organisations" the means to authenticate ID, improve the engagement of customers, foster loyalty and "create safer public spaces."

For FaceFirst, the technology in monitoring infection and the history of a sufferer can all be combined through face verification via a smartphone app. CEO Peter Trepp is boundlessly ambitious, knowing that taking the temperature of travellers will not be enough. "These are lots and lots of data points," he is quoted in *Forbes* (20 May 2020) as saying. "And my belief is that collectively data points can be helpful in determining how you fill an aeroplane, do you fill an aeroplane with everyone we believe to be virus-free, do you fill another aeroplane with everyone who has immunities to the virus." Having such a system in place also enables broader practical decisions to be made, like identifying those who require vaccination.

Trepp's attitudes are typical regarding such technology. Such creations can only do good; those who suspect it are Luddites in modern dress. What matters is the meaty solution and the problem it resolves; the broader ethical considerations which, in any case, take second place to the issue of suppressing the virus, are inconvenient and, in some cases, irrelevant. Convenience, speed of purpose, are what matter. He finds the personnel heavy approach of contact tracing, what he scoffs at as the "big Excel spreadsheet" approach, as "laughable," a paper clip vision of incompetence. He also asserts that such technology favours privacy: applications are optional, data de-centralised.

Not all health authorities have been warmed by such passports. They again more than hint at the dangers posed by the application of biopower. For one, they suggest medical exactitude, even conviction. The World Health Organization warned on 24 April 2020 that the use of immunity passports or "risk-free certificates" was premised upon the idea that those who had recovered from COVID-19 might have the antibodies against a second infection. Conclusive evidence on such a claim has yet to be found, with some people having sufficient antibodies in their blood to stave off infection, and others having negligible levels of "neutralising antibodies."[6]

Privacy International has also cited such concerns, quoting the WHO's cautionary note that "there is no guarantee" on how accurate an immunity passport or risk-free certificate actually is.[7] The organisation also finds the prospect of such passports deeply troubling, warning that digital ID systems invariably produce inequalities for those who lack access to one or who are unable to use it. Goods and services are thereby denied to some while being afforded to others. To this can be added tracking, profiling and surveillance.



The American Civil Liberties Union was even blunter about the consequences of such a regime. Such passports, according to Esha Bhandari and Renika Moore (*News & Commentary*, 18 May), could actually harm public health, incite the indigent to risk contracting COVID-19, broaden racial and economic disparities and "lead to a new health surveillance infrastructure that endangers privacy rights." The immunity passport system, unlike routine testing and screening, would divide the workforce. Those not-immune might never qualify for employment short of being infected and surviving COVID-19; those immune would be privileged.

IMMUNISATION AND WELFARE

Bigger picture pandemic compliance is in the offing, especially in the event a coronavirus vaccine is discovered. This promises to be a source of trouble, given the speed and urgency with which such are being sought. The risk of cutting corners and compromising safety is genuine. "My worry," writes virologist Shibo Jiang in *Nature* (16 March 2020), "is that this could mean a vaccine is administered before its efficacy and safety have been fully evaluated in animal models or clinical trials." Notwithstanding this, countries such as Australia have been more than open to the issue of mandatory compliance on immunisation, issuing public statements to that effect. With that comes

the procuring of a large stick to aid the effort. The position on this has not inspired confidence in the general population. Initially, Prime Minister Scott Morrison told radio station 3AW on 19 August 2020 that he would "expect it to be mandatory as you can possibly make it." Exemptions for medical grounds would be granted, but these would be stringent. By the time he ventured to discuss the same matter with Sydney radio 2GB, the message had changed. "It's not going to be compulsory to have to take the medicine."

The Health Minister Greg Hunt might be a better barometer on this, having given voice to the idea that a coronavirus vaccine, were it discovered, would encourage such measures as "no jab, no pay" to ensure reaching a 95 per cent vaccination rate. He is particularly proud of Australia's compliance regarding vaccination in general, but leaves the door open for a degree of persuasion. "It won't be mandatory, but it will be widely encouraged" (ABC News, 20 Aug 2020). Ominously, Hunt has suggested that the government is open to a broader linking of vaccination status with welfare payments, school attendance or travel. "We reserve the right, subject to medical advice, to take steps that might assist."

The mentality behind such an approach is not new. The modern state has found novel ways of tying citizens to its bureaucratic graces and charitable dispensations. The Australian policy of linking welfare to immunisation – the childcare benefit, the Family Tax Benefit A end-of-year supplement, and Child Care Rebate – was implemented in 2015, though requiring children to meet immunisation schedules was already a part of childcare payments since 1998. What was significant to the 2015 changes was the removal of exemptions from immunisation, which was approved by the then Minister for Social Services, a certain Scott Morrison. As a government budget review piece by Michael Klapdor and Alex Grove noted, "From 1 January 2016, children of all ages must be up-to-date with their childhood immunisations or lose eligibility for these payments, with exemptions granted only for medical reasons."[8]

The concern has been an ongoing one: that the risk posed to public health by non-vaccinated children is simply too great to countenance. The implications here, however, are broader: the strongarming of citizens into a regime that demands them to be good citizens of a post-pandemic order should they wish to partake of its fruits. Sceptics will be ostracised.

CHALLENGING PANDEMIC BIOPOWER

An enormous accretion of state power has taken place across governments and their agencies, withering liberties in the name of public health protection. Once gained and used, relinquishing them becomes improbable. Regulations can be passed with ease, citing health considerations. Officials can subject residents to control orders. Legal scrutiny is minimised. To that end, governments relish the ease in achieving goals, whether they do so accurately, effectively, or otherwise. Efforts to question the legality of their application have been halting and mixed. In Britain, a legal challenge to lockdown measures as disproportionate by businessman Simon Dolan failed. As Justice Lewis of the High Court held, the secretary of state had "not acted irrationally" or "disproportionately."[9] The groundwork for further expansion of state power in Britain has been laid.

In Australia, the picture is no less gloomy for those who might seek to challenge the scope of such powers. Policies limiting external movement have placed the state above and beyond scrutiny, a poor precedent for accountable democracy. The country remains at the forefront of international travel restrictions that are shrouded in reactionary opacity, potentially violating the freedom of exit and re-entry provisions of the Universal Declaration of Human Rights

and International Covenant on Civil and Political Rights. As the concerned economist Henry Ergas points out in *The Australian* (29 Aug 2020), such rights to movement can be justifiably limited but should be done sparingly, subject to scrutiny and vigilant oversight. According to the prime ministerial order issued on 18 March, travel bans and overall COVID-19 measures "have been exempted from regulatory review, which would otherwise have tested their necessity in the light of their goals and of the harms they impose."

The 6 August 2020 decision by the New Zealand Supreme Court offers certain encouragement. Some concern about the legality of the lockdown had already been expressed by law professors Andrew Geddis and Claudia Geiringer, despite previous failed legal attempts to challenge the legality of the measures. While expressing satisfaction at the successful health outcomes of the hard policy, Geddis and Geiringer were troubled by the slippery constitutional foundations upon which the lockdown rested upon. In a piece for the UK Constitutional Law Association (27 April 2020), they argued, for instance, that the executive government had moved beyond the operative guidelines of a "Section 70 notice" issued under the 1956 Health Act by a Health Officer to restrict movement.

A concerned Wellington lawyer, Andrew Borrowdale, tested those concerns, being particularly troubled by the early stages of the five-week lockdown. Between 26 March and 3 April, Prime Minister Jacinda Ardern and her officials directed New Zealanders to stay home under pain of penalty. The timing is important here: the stay home restrictions were only formally passed on 3 April.

The relevant minister, to enforce such measures, must issue an Epidemic Notice pursuant to the Epidemic Preparedness Act of 2006. Ardern did so on 24 March. Unfortunately for the prime minister, the Director-General of Health Ashley Bloomfield's Section 70 notice, which came into effect on 26 March, only covered the closure of businesses. It was, in other words, defectively narrow. There had been, for instance, no formal instrument legitimising the need for New Zealanders to stay at home in their "bubbles" or not go to such public spaces as the beach.

While the three-member Supreme Court dismissed two out of the three grounds, they accepted Borrowdale's first contention, in part. They noted announcements by the executive between 26 March and 3 April stating or implying that all New Zealanders needed to "stay at home and in their 'bubbles' when there was no such requirement." These measures duly limited "certain rights and freedoms affirmed by the New Zealand Bill of Rights Act 1990, including in particular, the rights to freedom of movement, peaceful assembly and association." The court accepted "that the requirement was a necessary, reasonable and proportionate response to the COVID-19 crisis at that time" but it "was not prescribed by law." Rather hearteningly, the judges acknowledged that even during "times of emergency, and even when the merits of the Government response are not widely contested, the rule of law matters."[10] The executive was not entitled to behave so absolutely.

NEW ABNORMALITIES

For the pessimistic international relations scholar Stephen M. Walt, the pandemic "will create a world that is less open, less prosperous, and less free. It did not have to be this way, but the combination of a fast-spreading virus, inadequate planning, and incompetent leadership has placed humanity on a new and worrisome path" (*Foreign Policy*, 16 May 2020). What this has done is usher in a new abnormal state of affairs between governments and their citizens, exacerbating the corrosive features that seek to undermine accountability, oversight and protections against a pandemic superstate. Inequalities have been laid bare. Short of partially successful court challenges as those mounted in New Zealand, the COVID-19 legacy, in terms of biopower relations, promises to linger indefinitely.

FOOTNOTES

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THE RUSH TO VACCINATE

Forced Inoculations and the Dangers of Profit-Driven Medicine

As we went to press, AstraZeneca's coronavirus vaccine trial had been suspended temporarily after a study participant suffered a "potentially unexplained illness." In the following, ***DR T.J. COLES*** *looks at why we should be worried.*

In a bid to win lucrative contracts from governments around the world, Big Pharma is racing to develop COVID-19 vaccines, despite warnings from health professionals that speedy trials could result in fatal errors – fatal for the public, that is, not for the Pharma giants that enjoy indemnity and government procurement.

Throughout vaccine history, inoculations that are brought to market too soon have a track-record of harming the very people that Big Pharma's public relations industries claim are meant to help: the Cutter Incident (1955) and the Swine Flu vaccine (1976) are just two such cases, examined below.

There are times when being vaccinated is a good idea, even with a rushed vaccine. For example, when the animal-derived Ebola virus struck West Africa in 2014, the virus had a 50 per cent fatality rate.[1] The rate of Ebola transmission is over 40 per cent, though luckily for humans the virus does not carry through the air, food, or water; unlike COVID-19 in the case of the former.[2] During such deadly epidemics, the chances of being killed by the given virus for the people in the vicinity of infected persons are incomparably higher than being injured or killed by the given vaccine, so it would make sense to take one. Given the high death rate, global and national authorities worked hard to contain Ebola before a vaccine could be created. As an indication of how long vaccines can take to develop, the Ebola virus was discovered in Congo in 1976. It was as late as December 2019 that the US Food and Drug Administration approved the Merck corporation's Ervebo, a preventative Ebola vaccine for adults.

Big Pharma is racing to develop COVID-19 vaccines, despite warnings from health professionals that speedy trials could result in fatal errors...

A vaccine for the less deadly but more contagious COVID-19 was expected in 18 months to two years – fast, given that vaccines typically take 10 to 15 years to develop

and be distributed. However, Russian and other health authorities claim to be successfully trialling COVID vaccines. Some experts are more sceptical.

SPEED KILLS: "IT WAS LISTED ON THE PACKAGE INSERT"

The UK's Wellcome Trust lists five steps in the development of vaccines: 1) Discovery research (2-5 years), 2) Pre-clinical (2 years), 3) Clinical development in three phases (4 years), 4) Regulatory review and approval (2 years), and 5) Manufacture and delivery. In total, the typical vaccine span is a decade.[3]

In 1954, Dr Jonas Salk (1914–95) developed the first inactivated polio vaccine by using a virus grown on monkey kidney cells, inactivating it with formalin. Over one million children were immediately trialled in the US and Canada at a cost of $54 million (in today's money). The vaccine was a long-term success, with paralysis declining from nearly 14 per cent of cases to 0.8 by 1961.[4] But the success was not without failure, including fatalities. Paul Meier of Chicago University writes: "The report of the field trial was followed by widespread release of the

vaccine for general use, and it was discovered very quickly that a few of these lots actually had caused serious cases of polio." Meier concludes: "Distribution of the vaccine was then halted while the process was re-evaluated."[5] In the same year, California's Cutter Laboratories caused 40,000 cases of polio, paralysed 200 children, and killed 10 when it put the live polio virus in 200,000 vaccines.[6]

Consider the Swine Flu vaccine. Between 1974 and '75, two cases of pig-to-human transmissions were detected in the US. Within a year, the New Jersey State Health Department had isolated a swine flu strain (H3N2) from soldiers in Fort Dix. The Advisory Committee on Immunization Practices of the US Public Health Service found that H1N1 and H3N2 could be transmitted and that people under 50 years of age, i.e., those whose parents had not lived through the Flu Pandemic of 1918, had no antibodies. An outbreak of Hsw1N1 (H1N1) plus background knowledge acquired from H1N1 military vaccines gave officials the idea to develop a vaccine for the anticipated epidemic. Big Pharma had just finished a generic seasonal flu vaccine (A/Victoria) using fertilised hen's eggs. The US Centers for Disease Control authorised the incorporation of the H1N1 virus into the A/Victoria vaccine. At a cost of $137 million, President Gerald Ford adopted the National Influenza Immunization Program, which vaccinated 45 million Americans.[7]

The Flu killed 400 people. The vaccine increased the risk of the neurological disorder Guillain-Barré Syndrome (GBS) in a ratio of 1/100,000 vaccines. At least 500 vaccine-linked GBS cases were confirmed. The link was reaffirmed by an Institute of Medicine review in 2003. The US Centers for Disease Control and Prevention states: "Scientists have multiple theories on why this increased risk may have occurred, but the exact reason for this association remains unknown."[8]

Rushed vaccines continued into the 1990s. Intussusception is a rare obstruction that causes the bowel to fold in on itself. In 1998, the US Food and Drug Administration approved RotaShield, a vaccine designed to prevent rotavirus gastroenteritis. The live oral vaccine was developed with public money via the National Institutes of Health and sold by Wyeth pharmaceuticals, based in New Jersey. Following the outbreaks, the CDC set up two emergency investigations and confirmed that the "RotaShield vaccine caused intussusception in some healthy infants younger than 12 months of age who normally would be at low risk for this condition."[9] RotaShield gave one in every 10,000 infants intussusception. The US CDC says: "the exact number of infants who received RotaShield is not known." Amazingly, before the product was banned, "intussusception was listed in the package insert of the vaccine as a possible side effect."[10]

Serious mistakes continue into the present. In the words of a Stanford University article, the GlaxoSmithKline-produced H1N1 vaccine Pandemrix had been "rushed to the market" in 2009.[11] The British government later admitted that the product can trigger narcolepsy in significant numbers of recipients and agreed that affected persons could claim from the Vaccine Damage Payments Scheme.[12]

COVID-19: RUSHING TO PROFIT

Coronavirus vaccine developer Dr Shibo Jiang praises vaccines and reassures us of their safety. However, he also notes: "Governments are understandably desperate for anything that would forestall the deaths, closures and quarantines resulting from COVID-19. But combating this disease demands a vaccine that is safe and potent."[13] Despite warnings from similarly eminent specialists, governments and drug companies are racing ahead with a COVID prevention product, having learned none of the lessons of the past – except that outbreaks are a chance to make money.

There are currently 160 SARS-CoV-2 vaccine candidates in development around the world. The frontrunner is the Oxford University-developed ChAdOx1 nCoV-19, which is produced in partnership with Anglo-Swedish giant AstraZeneca. At present, it uses the chimpanzee adenovirus to carry the sequenced SARS-CoV-2 gene to the protein spike in human cells. It attempts to stimulate the production of T immune cells to kill COVID cells. Recent trials found that seven-in-ten human volunteers felt fatigued after taking the injection, nearly seven-in-ten had headaches, and two-thirds experienced pain at the site of the injection.[14]

In the US, a company with a scandal-ridden past has been awarded COVID contracts. In September 1998, the US Department of the Army confirmed that its sole anthrax supplier, the Michigan Biologic Products Institute (MBPI), would be indemnified if its soldiers sickened from MBPI's vaccine. The company was later sold to the Maryland-based BioPort Corp. BioPort changed its name to Emergent BioSolutions.[15] A couple of years ago, Emergent BioSolutions revealed in internal documents that its nerve gas treatment product, Trobigard, was probably faulty and untested.[16] In July, it was announced that Emergent BioSolutions had been awarded $480 million to produce a

drug substance over a two-year period for Janssen Pharmaceuticals, whose parent company, Johnson & Johnson, is researching the investigational SARS-CoV-2 vaccine, Ad26.COV2-S.[17]

In this new Cold War climate, it is not surprising that Western propaganda organisations like the BBC and *New York Times* would allow the multibillionaire vaccine investor Bill Gates to appear on their platforms pushing for rushed vaccines (more below) while hypocritically attacking the Russian state over its own rushed vaccine. In mid-August, it was announced that the Gamaleya Research Institute of Epidemiology and Microbiology in Moscow had produced a COVID vaccine without completing Phase III trials. The *New York Times* quotes Dr Daniel Salmon, Director of the Institute for Vaccine Safety at Johns Hopkins University, who says of Russia's rushed vaccine: "I think it's really scary. It's really risky." Dr Natalie Dean, a biostatistician at the University of Florida, says: "[It] very unlikely that they have sufficient data about the efficacy of the product."[18] This is true, but why isn't the same standard applied to Western agencies?

Russia was also recently accused by Western intelligence agencies and their corporate media parrots of hacking to steal COVID vaccine secrets, presumably so that if the Russian vaccine turns out to be successful, the West can hide their embarrassment at having come second under a blanket of allegations concerning intellectual property theft.[19] The bigger question is: why is the West hiding its COVID vaccine research data? Shouldn't it be sharing it with Russia, China, and indeed the world?

With influenza and other epidemic or pandemic vaccines, Big Pharma has a golden opportunity to make massive profits.

CONCLUSION: "THERE WILL BE A TRADE-OFF"

With influenza and other epidemic or pandemic vaccines, Big Pharma has a golden opportunity to make massive profits. Corporations seek to minimise risk and maximise profit as part of their business model. Risk is minimised in vaccine research because the test-subjects are first defenceless animals – mice, guinea pigs, monkeys – that would otherwise kill their human torturers in an act of self-protection. If the animals sicken and die, more animals are tortured until the process is refined. Next, risk is transferred to human volunteers who are usually from economically deprived backgrounds and in need of cash in exchange for the use of their bodies.[20]

Once the drug has been tested on defenceless and vulnerable subjects, primarily by wealthy white people, it is then frequently trialled on larger numbers of people in low- and middle-income countries (LMICs), i.e., impoverished non-whites. Brazil and India are currently two testing-grounds for the Oxford vaccine. One bioethicist notes of vaccine trials in general: "From the perspective of those conducting the trials, a major benefit of LMIC is that it is easy to enrol patients who are willing to participate, particularly if they are poor."[21]

Corporations also enjoy patent monopolisation via intellectual property rights. The World Health Organization notes that generic vaccines do not exist because the parts

that constitute vaccines – adjuvants, antigens, excipients, DNA sequences, etc. – are owned by several inventors and companies.[22] Big Pharma also makes money from taxpayers. By the mid-2000s, government procurement accounted for half of the multibillion-dollar vaccine market in the US.[23] Via the Vaccination Assistance Act, over 40 per cent of US vaccines for children are federally-funded, 40 per cent are privately funded, and the rest is a blend of local and state procurement.[24]

One of the most sinister Big Pharma practices is lobbying for indemnity. In 1976, with the US government pushing the flu vaccine that triggered Guillain-Barré Syndrome (noted above), the Assistant Director for Programs at the US Centers for Disease Control, Dr Bruce Dull, argued that liability problems associated with vaccine development prevented corporations from enjoying further research and development. Indeed, the numerous US drug companies working on the vaccine demanded freedom from liability. In 1986, the lobbying was successful.[25] President Ronald Reagan signed the National Childhood Vaccine Injury Act, indemnifying drug companies from lawsuits.[26] In 2018, observes one medical policy journal: "The United States Supreme Court reached a decision recently, concluding that federal law protects vaccine makers from product-liability lawsuits that are filed in state courts and seek damages for injuries or death attributed to a vaccine."[27]

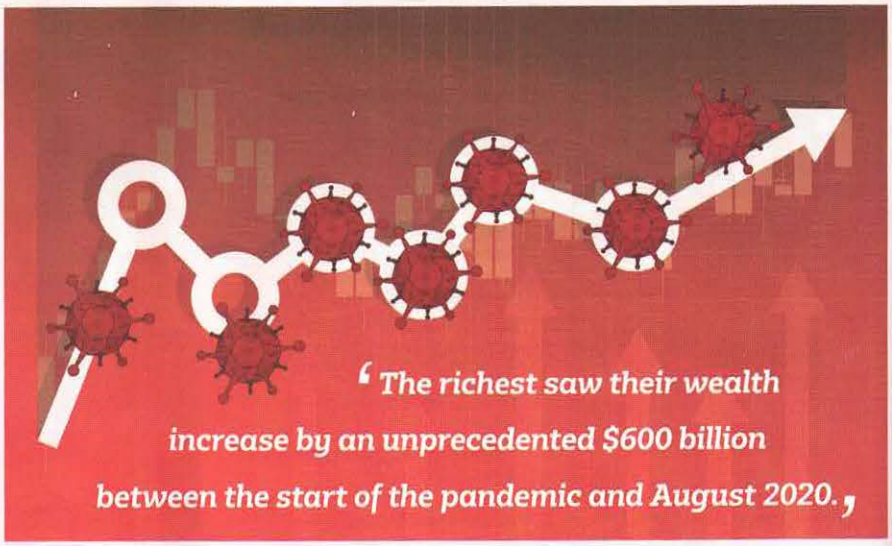
In April, the vaccine investor Bill Gates appeared on the BBC, saying: "If everything went perfectly, we could do slightly better" than 18 months, from development to distribution of the COVID vaccine. "But there will be a trade-off. We'll have less safety testing than we typically had. So, governments will have to decide, do they indemnify the companies?"[28] Notice that Gates's onus is on indemnification, not preventing deaths.

In late-July it was reported that the Anglo-Swedish giant AstraZeneca (valued at $117bn) had not only been granted government backing but also indemnity from product liability by 25 European countries, the specifics of which the company chooses not to disclose. Ruud Dobber, a Senior Executive, says: "This is a unique situation where we as a company simply cannot take the risk if in... four years the vaccine is showing side effects."[29]

The Great COVID Robbery

How the Rich & Powerful Benefit from Coronavirus

– BY DR. T.J. COLES –



There are hierarchies within hierarchies. At the bottom of the socio-economic pyramid are the so-called underclasses of homeless people and prisoners.

In New York, the number of COVID-related deaths of homeless people is over 60 per cent higher than for housed people.[1] In San Francisco, homeless deaths have tripled since coronavirus spread to the US.[2] In prisons, the situation is also appalling. By May, more than three thousand Californian prisoners had contracted COVID and 16 died.[3] Poor, uneducated individuals from broken homes constitute the majority of prisoners. Black people, Latinx-Hispanic, and Indigenous Americans are disproportionately incarcerated. Those groups also tend to be the poorest, more likely per capita than middle-class whites to suffer impaired health from alcoholism, drug abuse, etc., and therefore more susceptible to dying with COVID-19.[4]

On the next rung up the hierarchy ladder swing the permanently unemployed. Already claiming social security and owning no wealth and having no prospects, their lives have changed little from the COVID fallout. On a similar level are gig economy workers, whose fate has been more mixed. As offices, shops, entertainment venues, and other service providers closed, some Deliveroo, Uber Eats, and other workers went out delivering food and packages to furloughed, fired, and redundant workers. Others found that they had less or even no work, and no social security entitlements in the US and UK, as they were not covered by rushed unemployment legislation.[5] In Australia, working- and middle-class people were hit as unemployment reached over 7 per cent by June, a 21-year peak, and effective unemployment, such as furloughed staff and zero-hours labourers, exceeded 10 per cent.[6]

The middle-classes are often in a precarious situation: paying off mortgages for relatively pricey properties, spending big to maintain a good lifestyle (e.g., holidays, two cars), running small-to-medium-sized businesses, or being employed by large corporations looking for any excuse to reduce staff numbers. In July, the Australian consultancy firm Taylor Fry published a data map of COVID's relative financial impact on households. It found that inner-city suburbs face the sharpest decline. Director Pru Goward says: "The impact of this has been much more likely to be felt in middle-class households than in poor households."[7] The poor had nothing anyway; the middle had the most to lose.

As we go further up the wealth pyramid, the upper classes, consisting of millionaires up to multibillionaires, have their own hierarchy. Five-hundred-thousand individuals in the US worth between $1 million and $25 million dropped out of the millionaire bracket as their stocks collapsed, businesses went bust, and savings depleted.[8] Others did very well, financially. The richest saw their wealth increase by an unprecedented $600 billion between the start of the pandemic and August 2020.[9] Consider the new class of *centibillionaires*: those with $100 billion or more. They include Jeff Bezos, Bill Gates, and Mark Zuckerberg.[10]

AMAZON

For Jeff Bezos, billions of COVID-locked-down people were a captive audience: unable to go outside for extended periods, they bought food, clothes, entertainment products, gloves, masks, and hand sanitiser from his Amazon corporation.

By the end of July, Amazon had doubled its quarterly profits.[11] It also achieved this feat by setting a historic groundwork of allegedly paying its staff starvation wages,[12] working

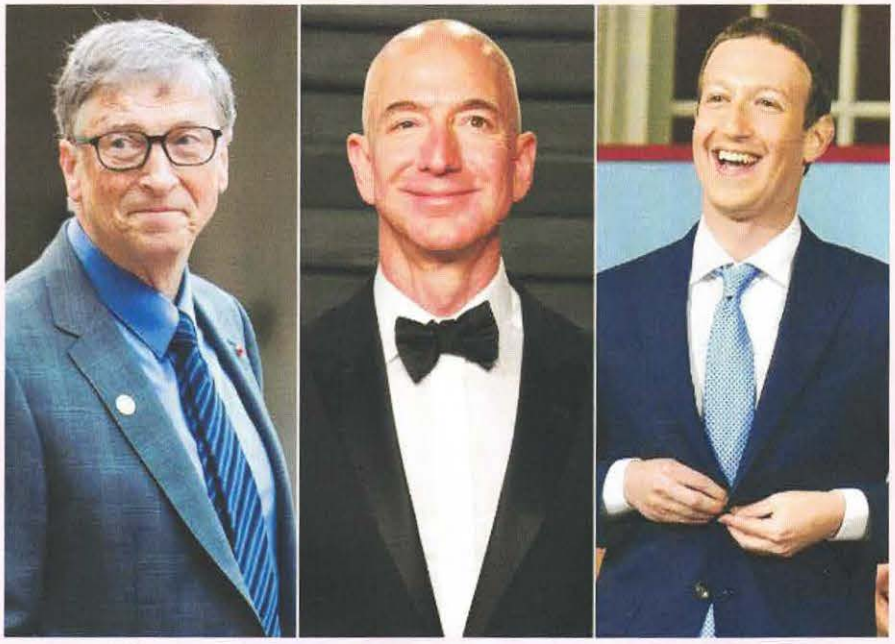
them to the point where many have to urinate in bottles rather than take a bathroom break,[13] and paying zero in federal income taxes in the US and little-to-nothing abroad.[14] Government procurement also gives Amazon a step up. The Australian government states: "The Amazon Web Services (AWS) arrangement makes it easier for Australian Government agencies to buy AWS products and services," including cloud, enterprise, and professional services.[15] In the UK, the Johnson regime sold Britons' National Health Service data to Amazon, Faculty (an AI firm), Google, Microsoft, and PayPal-founder Peter Thiel's Palantir company,[16] which was set up with CIA seed money via the latter's venture capital firm, In-Q-Tel.[17]

Amazon laid off its COVID critics. Two San Francisco-based designers, Emily Cunningham and Maren Costa, were sacked after circulating a petition condemning the company's COVID policies.[18] In Los Angeles, Amazon warehouse workers learned that they are not entitled to sick leave.[19] Warehouse worker Christian Smalls, who argued that cramped conditions made it impossible to socially distance, was fired for speaking out. At a shareholder meeting, Bezos defended the firings.[20] By 2015, more than eight-in-ten Black workers with Amazon held menial jobs.[21] This puts such workers on the front line, making them more susceptible than their managers to catching and spreading COVID. Data confirm that non-whites in white-majority countries are more likely to catch and die from COVID. Both Amazon and its subsidiary Whole Foods have failed to provide staff with personal protective equipment, leading to mass walk-outs. In New York, for instance, over 100 staff went on strike in late-March.[22]

These and other practices have made CEO Bezos even wealthier. Bezos added $13 billion to his fortune in a single day (20 July).

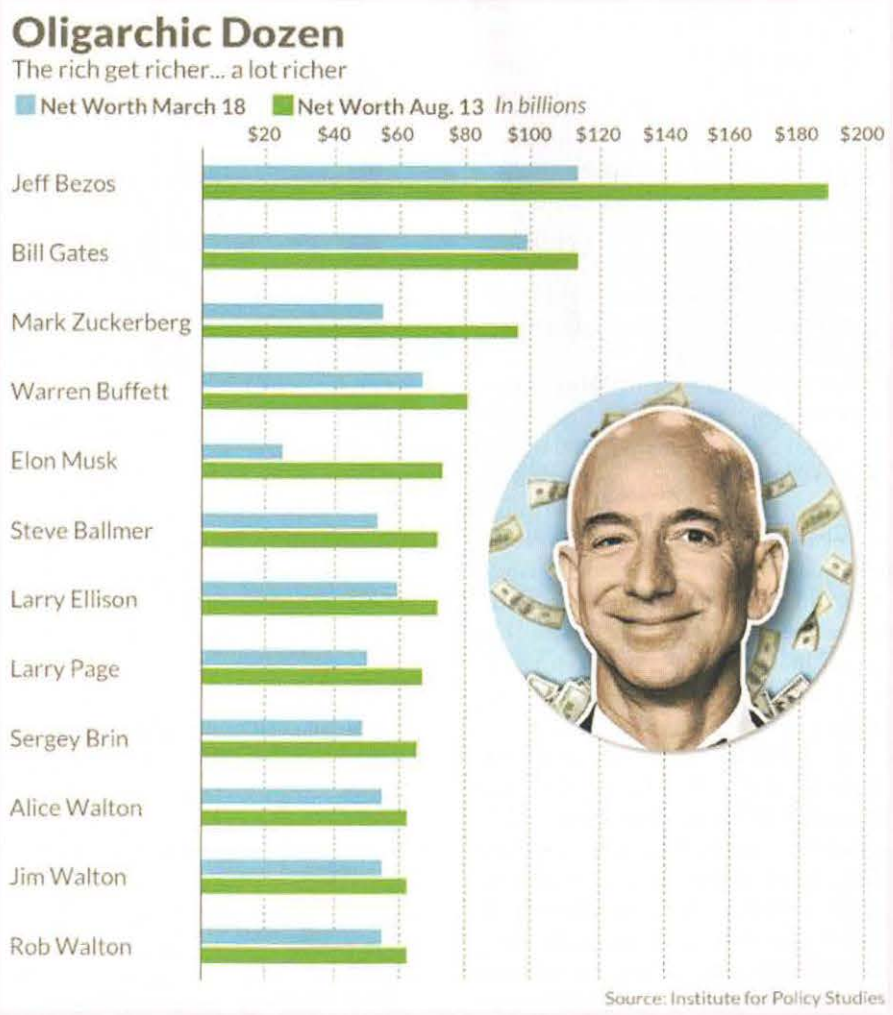
MICROSOFT & FACEBOOK

Another centibillionaire, Bill Gates, has two sources of mega-income: Microsoft and vaccine investments. In the case of the former, the multibillion-dollar company, which sits on $134 billion, saw its share prices increase (by over 13 per cent) as health and other facilities contracted its Azure cloud programme. Busi-



Bill Gates Jeff Bezos Mark Zuckerberg

According to the Institute for Policy Studies, the wealth of the top 12 billionaires in the US recently exploded to more than one trillion dollars – that's 13 digits. Since the pandemic first blew up in the US in March 2020, the "Oligarchic Dozen" enjoyed a 40% surge in combined wealth – or an increase of US$283 billion.



ABOVE: "Don't believe everything billionaires tell you." This work of 'subvertising' was spotted in a street somewhere in Britain.

nesses also encouraged staff to use Azure to work from home. *Schroders* notes: "As smaller businesses and start-ups flounder, this pandemic will likely make the largest tech firms even more powerful than before."[23] Gates's wealth grew by 12 per cent within five months of the crisis,[24] bringing his fortune to $115 billion.[25]

On the vaccine front, Gates's tax-free 'charity', The Bill & Melinda Gates Foundation, has invested $150 million in COVID vaccine research via the Serum Institute to produce 100 million doses that are aimed to cost $3 each.[26] At Davos in 2019, Gates told the World Economic Forum that his $10 billion investment in vaccines had, over the years, made $200 billion in returns.[27]

With billions of people trapped indoors, the use of Facebook to communicate with friends and family created the third centibillionaire – Mark Zuckerberg. Zuckerberg previously made his billions by allegedly violating the privacy of Facebook adherents, whom he called "dumb fucks."[28] Facebook profits from advertising revenue, targeting ads to users based on their browsing habits and the content of posts, as well as looking the other way while third parties buy and sell user-data.[29] Zuckerberg owns 13 per cent of Facebook and saw the company's share price rise 82 per cent between April and August.[30]

CONCLUSION

Crisis presents opportunity to profit from misery. The globalised corporate model of economic neoliberalism enables tax-dodging, monopolising, government-subsidised mega-companies to mushroom, making their shareholders and founding CEOs very rich. They gobble up smaller corporations in periods of chaos and put others out of business, as do the mafia when local store owners threaten their dominance or don't pay protection money.

Perhaps the biggest scandal is that many corporate giants, like Apple – the world's first trillion-dollar company – are holding on to trillions of dollars in assets. Instead of investing those assets in the real economy, to stimulate shared growth, they invest in money managers, like hedge funds and private equity firms, which tie public services, real estate, and pensions into a collapsible bubble, that bursts every decade or so in an endless boom-bust cycle. This time, COVID was the pin that pricked the bubble. Who knows what the next one will be.

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WORLD CHANGES: LIFE IN THE COVID GLOBAL ORDER

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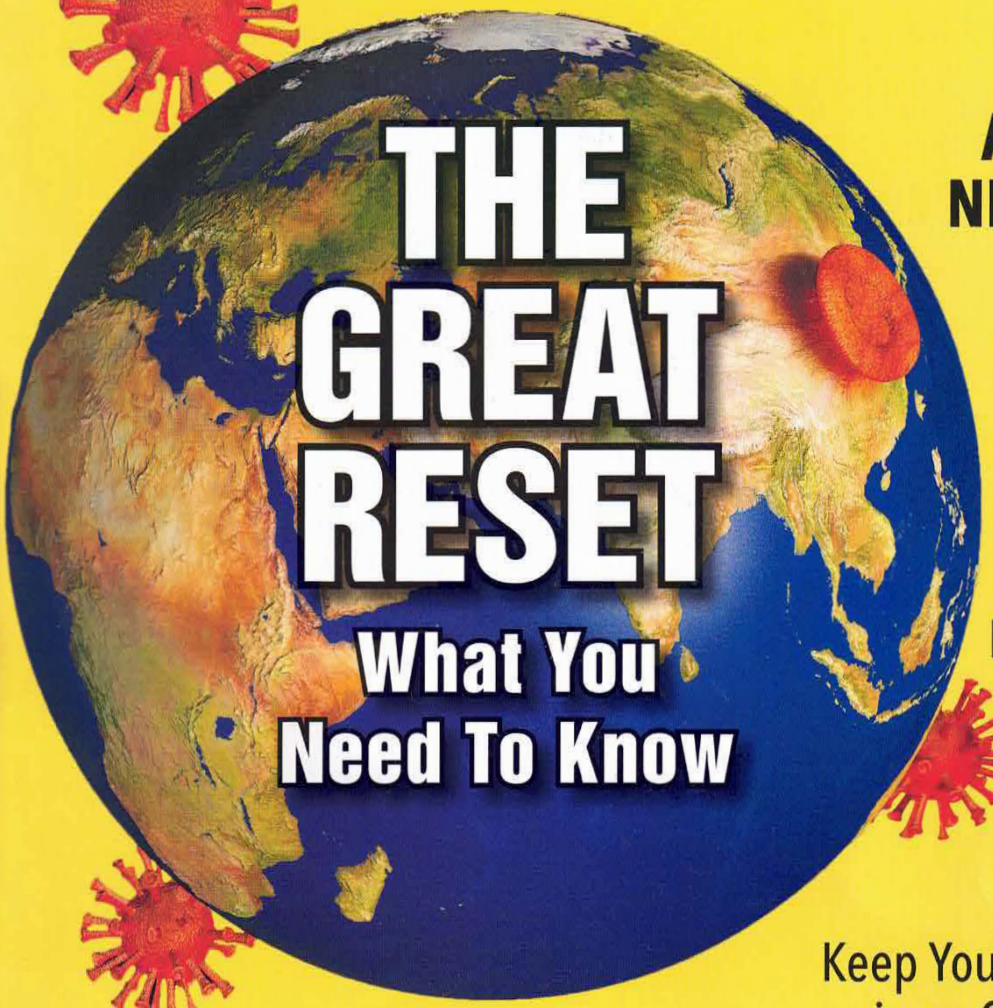

THE GREAT RESET
What You Need To Know

AUSTRALIA & NEW ZEALAND
Test Ground for Techno-Fascism

COVID-19
Hard Road to a New World Order

PANDEMIC BIOPOWER

Keep Your Personal Power in an Oppressive World

THE RUSH TO VACCINATE
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THE GREAT RESET

A Global Flu d'Etat

– BY PATRICK HENNINGSEN –

"Things will never be the same again" is a line we keep hearing, repeated *ad nauseum* by pundits and politicians alike. At the core of this neuro-linguistics reframing operation is the dubious premise that it's *the virus* which has transformed the world, forcing societies to re-order and re-engineer life on earth as we once knew it.

This "New Normal" is a direct result of government and corporate-mandated policies. Policies which are transforming society – lockdowns, business shutdowns, church and school closures, mandatory masks, etc.

Putting things into a sober perspective, even by the government's own numbers, this so-called 'novel' coronavirus hardly measures up to previously documented pandemics in history in terms of actual victims. According to most official estimations, the vast majority of people who come into contact with it – over 99 per cent – either remain asymptomatic or fully recover with no serious complications at all. More importantly, those recorded as hospitalised or dead from COVID-19 are overwhelmingly from one specific at-risk demographic: the elderly with multiple long-term chronic health conditions or comorbidities.

According to official public health statistics, the behaviour of this virus is uniform and *predictable*. It is not the unknown and 'unpredictable merciless killer' that can strike 'anyone at any time' – which governments and media have been so keen to portray after it emerged onto the global stage in January 2020. In other words, at no point has COVID-19 posed an existential threat to the general population.

Still, heavily invested stakeholders in this narrative are determined to advance the notion that SARS-Cov2 is something akin to the Bubonic Plague when in fact it's nothing of the sort. From the onset, computer-modelled predictions wildly overestimated death tolls in key countries. This was not by accident as the initial political and mass media campaign of shock and awe placed populations in an applied cognitive framework of helplessness and dependency.

The same psychological levers were activated in the immediate aftermath of the attacks of 11 September 2001.

Psychologically traumatised western electorates not only accepted any level of state and corporate security, infringement of civil liberties and invasion of privacy, many even demanded their governments prosecute overseas wars to eliminate the perceived threat, at that time, of al Qaeda and international terrorism. Subsequently, a *new normal* was rolled-out globally, a series of endless wars and a leviathan of 'anti-terror' measures and digital surveillance at home.

Despite efforts to try and convince the public that everyone is a potential terrorist, the climate of fear was difficult to maintain. The genius of the COVID crisis is that the Establishment has now managed to convince us that *everyone* is a potential carrier of a deadly pathogen and that anyone who so much as sneezes in the vicinity of anyone else could not only kill them but also trigger a deadly 'second wave' of the pandemic.

As a result, fear, paranoia, and extreme hypochondria are now the order of the day. That was phase one of *The Great Reset*.

ANZAC: BETA TESTING GROUND FOR A NEW WORLD ORDER

In terms of Anglo-American led international agendas and world orders, both Australia and New Zealand (ANZAC) constitute an important part of US and British power globally and serve as the leading western outposts in the Oceania and Pacific region. In so many ways, they are the tip of the globalist spear. They are unique in that they are part of the Anglosphere – sharing considerable overlap culturally, politically and geopolitically, but at the same time largely detached geographically from their cousins in Europe and North America.

Far from being a remote post-colonial outpost for the Anglo-American Atlanticist power bloc, these countries have become a crucial beta testing ground for new cutting-edge globalist policies of social control. Whether it's trial ballooning carbon taxes, or quietly implementing aspects of supra-national takeover efforts like the Trans-Pacific Partnership (TPP), or simply helping round-out the Anglo-American coalition to validate illegal wars like Iraq – the Atlanticists can always count on Australia to play their role in the US-led post-World War II neoliberal world order.

Australia's cooperation is critical, not least of all because it serves as a key military and intelligence node in the Five Eyes global signals and intelligence-sharing alliance. Arguably, this is why ANZAC rarely displays any discernible independence when it comes to foreign policy or cooperating with various Anglo-American-led global initiatives.

This subordinate relationship was laid bare in the groundbreaking documentary film, *Allies* (1983), which detailed how the Australian Security Intelligence Organisation (ASIO) functions as an effective subsidiary of America's Central Intelligence Agency (CIA), and the National Security Agency (NSA) that maintains one its most crucial global signals and data gathering facilities at Pine Gap near Alice Springs in central Australia. Such is the power of Washington's influence over Canberra that in 1975, under the guise of a "constitutional crisis," the agency was instrumental in removing Labor's duly elected Prime Minister, Gough Whitlam.

...fear, paranoia, and extreme hypochondria are now the order of the day. That was phase one of *The Great Reset*.

Australia dutifully played its role in all of Washington's illegal wars of aggression. From the Vietnam War to the Iraq War, and also the illicit Washington-led proxy war against Syria – Australia performs whatever mission Washington requires. They also feature heavily in Washington's geopolitical designs to encircle the People's Republic of China – an active geostrategic effort described in detail by award-winning Australian investigative journalist John Pilger in his 2016 documentary film, *The Coming War on China*.[1] For this reason, it's important for Australia to be firmly on board with any US and UK-led international effort.

More than any other crisis, COVID has provided the framework for an embryonic global government. If there is going to be any successful and timely roll-out of a new international order, it's going to be led by the United States and Britain, with the rest of the Five Eyes – Canada, Australia and New Zealand following in line.

This is also the case with any global security regimes, like the *War on Terror*, set in motion following the events of 11 September 2001. From a global technocracy point of view, the single biggest paradigm shift to come out of the War on Terror was a new and more invasive global security

and surveillance network – something that could never have achieved its near uniform adoption across all airports and travel hubs internationally without the world being led by the United States and its allies.

In this way, Australia and New Zealand are pivotal in extending Anglosphere influence halfway across the planet and into the southern hemisphere. This also applies to any post-COVID 'New Normal' agenda with its new systems of bio-surveillance, underpinned by an arch of crisis governed by an internationalised form of Medical Martial Law.

In the case of coronavirus, the ANZAC strategy is that of "Zero COVID," or total elimination of the virus (as if that was possible). Every leading epidemiologist will tell you that it's not possible to completely eradicate a widely circulated virus like SARS-Cov2. Nonetheless, true believers in government are still committed to this utopic pseudo-scientific party line.

It's not a case of whether the state would go *that* far to ensure pharmaceutical compliance – because it already has.

Australia's crisis came full tilt in August when the State of Victoria re-imposed a restrictive "Stage 4" lockdown following reports of a 'spike' in people testing positive for SARS-Cov2. The Premier of Victoria, Daniel Andrews, enthusiastically pressed ahead with one of the most extreme COVID lockdowns seen yet, all in response to initial reports of some 471 positive tests and only eight deaths – two men in their 60s, three men and two women in their 80s, and one woman in her 90s. As was expected, the overwhelming majority of deaths occurred in old-age care homes. The government and mainstream media arms quickly joined forces to reignite the 'pandemic' narrative that maintains COVID-19 is a serious threat to the general population.

Opportunistic governments will seize on any reports of 'cases' and quickly declare a state of emergency. To further complicate the official narrative, serious questions have now been raised about whether or not officials can correctly call these positive test results "cases" because there is no indication from PCR testing data exactly how many of these patients testing positive actually have an active virus in their system.[2]

Prime Minister Scott Morrison then weighed-in, announcing that he would back a mandatory vaccine. His comments were met with a sharp rebuke from rights advocates, and so Morrison was forced to retract his controversial remark.[3] But this wasn't a case of jumbling his words – more like a *Freudian* slip. Indeed, it was Morrison who helped pioneer one of those most extreme and coercive government programs in the world known as "No Jab, No Pay," a government policy that denies government benefits to individuals and families unless they vaccinate their children.

It's not a case of whether the state would go *that* far to ensure pharmaceutical compliance – because it already has. Now it's simply a question of when it will make its move to try and implement that scheme on a larger scale. It should also be noted that from the onset, Morrison has been coordinating closely with the World Health Organization (WHO) and its primary financier, Microsoft founder and billionaire vaccine mogul Bill Gates, who provided guidance for Australian federal government decision making as it relates to the country's 'pandemic' response policies.[4]

In the face of such thin evidence for lockdown, and with undue foreign influence and conflicts of interest, one could rightly ask why the population is not questioning the government more on its policies and regulations. One obvious explanation is the power of propaganda. Around the world, governments and their media proxies have waged an incredible campaign of fear, effectively traumatised many millions globally who are now emotionally invested in the idea they are living through a modern-day *Justinian Plague*.

Besides the familiar War on Terror-style trauma-based psychological manipulation tactics, there are other practical tools the government can deploy to ensure obedience throughout this now open-ended 'state of emergency'.

One strategy to ensure compliance from the electorate is to simply hand out cash, and lots of it. The Australian government has been incredibly generous in this respect, doling out substantial "Job Keeper" and "Job Seeker" payments. In addition to these pandemic payments, the gov-

The State of Victoria's harsh lockdown – and new powers granted to authorities to enforce it under its State of Disaster provisions – was met with shock by overseas commentators such as in the above online articles.

ernment also introduced several helpful legal instruments, chief of which is a moratorium on residential tenancy evictions.

From here, it's conceivable that government could proceed unfettered with state-mandated vaccines if it so wishes. The front end of the public relations and marketing campaign for this would be a relatively soft sell, something along the lines of, *"It's time. Time for all of us to get back to normal life – back to the footy, the barbie & beach, back to the people and things we love. Get your vaccine today."* You can almost hear the government campaign already. But the more substantial wedge will be financial. With millions now dependent on generous welfare payments, all the government has to do is extend its 'No Jab, No Pay' decree to the broader population.

In July, Australia announced the extension of its Job Keeper scheme until March 2021, a clear indication that the government was already committed to completing its *New Normal* checklist, therefore drastically lowering economic expectations in the near to medium term. However, once government aid to businesses runs out and general economic stagnation sets in, many will go to the wall with mass unemployment in the long run. Many Job Keeper beneficiaries will migrate into *Job Seekers* – on the dole for the foreseeable future.

ABOVE: Robert Kennedy, Jr., son of the late Robert F. Kennedy, has spent his life fighting for causes he holds dear, including controversial ones. For over three decades, Kennedy, Jr. served as an attorney for top environmental groups, going toe-to-toe in lawsuits against corporate giants. More recently, he's questioned the safety of vaccines, especially plans by Bill Gates to vaccinate the entire world against COVID-19.

BRAVE FLU WORLD

The Australian government now has the confidence to move forward in preparation for the World Economic Forum's *Great Reset* and subsequent transition into their much anticipated Fourth Industrial Revolution – a new world powered by 5G networks and with an industrial economy dominated by Artificial Intelligence (A.I.) and robotic automation.

Australia moves shoulder to shoulder with its antipodean neighbour New Zealand, whose government is currently headed by Tony Blair disciple Prime Minister Jacinda Ardern.

As with the comic book-style national security motifs that delineated the fabled *War on Terror*, governments have designed a brand-new set of colour-coded alert levels for corralling the public into various psychological states of compliance. In New Zealand there are four "alert levels," and Ardern was quick to move Auckland straight to bio-alert Level 3 after only 29 alleged COVID 'cases' were discovered. All the while assuring the public this was "in keeping with our cautionary approach and New Zealand's philosophy of going hard and going early," and that she would make sure "the cluster will be identified, will be isolated, and we can move to Level 2 in Auckland with confidence."

Having successfully implemented lockdowns, and now prepared to receive the latest range of COVID and flu vaccines, Ardern and Morrison can celebrate a relatively seamless transition from the War on Terror to the new and improved *Brave Flu World*. Notice the familiar pattern: whether it's a police state coup d'etat coming from the neoconservative right promising to keep the people 'safe' in a supposed War on Terror, or the imposition of Medical Martial Law coming from the neoliberal centrists and their radical left vanguard – promising to somehow 'eradicate the virus' through lockdowns, social distancing and mandatory muzzles (masks). The end result is always the same – a steep erosion of rights and civil liberties.

All this has not gone unnoticed, and there is a steadily growing opposition, most notably in Germany, the UK and in the US. During a recent anti-lockdown and pro-freedom demonstration in Berlin, Robert F. Kennedy Jr, son of Robert (Bobby) F. Kennedy and nephew of JFK, accurately described the high-tech tyranny we are currently experiencing.

"Governments love pandemics. They love pandemics for the same reason that they love war, because it gives them the ability to impose controls on the population that the population would otherwise never accept – by making institutions and mechanism for orchestrating and imposing obedience," said Kennedy.

"The pandemic is a crisis of convenience for the elites who are dictating these policies," Kennedy told a roaring crowd.

Kennedy likened the current medical authoritarian regime to Nazism – arguably an incredibly strong metaphor to invoke in front of a German crowd, but his words were met with cheers from the 200,000 strong crowd which attended this historic demonstration.

How the tables of history have turned, with Germany now leading the 'free world' in opposing the tyranny of the global technocracy to subjugate the population under Medical Martial Law.

ACCELERATING THE AGENDA

In addition to COVID and Big Pharma, RFK Jr also railed against the Establishment's 'new normal' agenda including using the air of hysteria as a pretext to expedite the cashless society, and also the rapid roll-out of untested 5G networks which he believes will usher in a new level of mass surveillance and data harvesting.

Kennedy believes that COVID has been used "to begin the process of shifting us all to a digital currency – which is the beginning of slavery."

Certainly, a strong argument can be made that this new transnational, corporatist technocracy is exactly what is

already happening under cover of the COVID crisis.

Ever since lockdowns were implemented in February and March of 2020, there was a simultaneous push for retailers and shops to only accept contactless payments, supposedly for 'safety reasons'. Few questioned the provenance of the idea. Where did these fears originate?

The genesis of the idea seemed to stem from two sources: the World Health Organization (WHO) and the corporate mainstream media. Early on, this conspiracy theory drifted out into the global information space based on 'unconfirmed reports' coming out of China. Not surprisingly, the western mainstream media enthusiastically latched on to this narrative, with one particular story appearing in the UK's *Telegraph* newspaper going viral on the back of an emotive headline, "Dirty banknotes may be spreading the coronavirus, WHO suggests."[5] There was no scientific or medical basis for this story, only vague reports out of China and Korea that they were sterilising banknotes to stop the spread of the virus.

To give the story teeth, the authors then employed a common tactic used frequently in mainstream propaganda known as the 'appeal to authority' – in this case an anonymous source at the prestigious Bank of England: *The Bank of England has acknowledged that banknotes "can carry bacteria or viruses" and urged people to wash their hands regularly.*

Of course, the suspicions were groundless, but in that initial atmosphere of fear it seemed that the public would believe anything while in collective fight-or-flight mode.

After coming under criticism for the initial theory, six months later a WHO spokeswoman walked-back the story, claiming "We were misrepresented."[6]

The damage was already done. The story had performed its function – successfully seeding the idea that cash was "dirty" and dangerous. The idea spread like wildfire because it validated some of the panic and hysteria rampant at the time.

Technology writers at MIT also weighed in, stating that "there isn't much evidence that quitting cash would make a difference, at least in the case of Covid-19.... You're more *likely* to pick up Covid-19 from people exposure than from the type of payment."[7]

Consider the original source of this bogus story which happens to be a key pillar of the New Normal globalist agenda: the WHO – whose chief funder (nearly $400 million per annum) happens to be the Bill & Melinda Gates Foundation. Some may write this off as just another coincidence, except for the fact that the Gates Foundation is one of the original backers of the global push for a cashless society. Not only is Bill Gates's Microsoft empire one of the lead developers in both facial recognition and digital ID systems, but the Gates Foundation also helped launch a global initiative to 'phase out cash' called *Better Than Cash*.[8]

With the authoritarian impulses of the state on full display during lockdown, and some police even threatening to check your grocery bag to see if you've obeyed the new rules and only purchased 'essential items', one can now see the absolute importance of free men and women reserving the right to make anonymous purchases with cash.

THE GREAT RESET: BLUEPRINT FOR A NEW WORLD ORDER

Throughout history, new empires and world orders have typically followed major upheavals, some natural and some man-made. Natural cataclysms could be geological like earthquakes and volcanic eruptions, cosmic events like meteor strikes, or more frequent and likely shifts in solar cycles and earthly climate shifts leading to long cold winters or dry summer droughts, both of which are inevitably followed by food shortages and mass famine.

No matter how powerful or wealthy they may have been prior to such calamity, few monarchs, empires or governments can withstand such turmoil imposed by Mother Nature and thus, any post-Armageddon situation will almost certainly feature some new regional or geopolitical order.

If we look back at pandemics throughout history, some initiated regional upheavals but not necessarily global ones. Of these, the medieval era Bubonic or 'Black' Plague that took hold of Europe (1347–1351) is most notable. In fourteenth-century Britain, the plague thinned-out the population, leading to an inevitable shortage of skilled labour which gave way to higher wages. This coincided with a collapse in livestock and land prices, opening the door to a new upwardly mobile and politically active class of Yeoman farmer. When the King and elites began imposing new taxation regimes, it led to social unrest and triggered one of the most important popular uprisings in English history, the *Peasants Revolt*, led by Wat Tyler, John Ball and Jack Straw.[9]

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THE HILL

Introducing the 'Great Reset,' world leaders' radical plan to transform the economy

BY JUSTIN HASKINS, OPINION CONTRIBUTOR – 06/25/20 11:00 AM EDT
THE VIEWS EXPRESSED BY CONTRIBUTORS ARE THEIR OWN AND NOT THE VIEW OF THE HILL

SOURCE: https://thehill.com/opinion/energy-environment/504499-introducing-the-great-reset-world-leaders-radical-plan-to

LEFT: In June, the World Economic Forum hosted a virtual meeting of the planet's most powerful business leaders, government officials and activists. Joining WEF founder Klaus Schwab was Prince Charles – one of the primary pushers of the Great Reset – along with UN Secretary-General António Guterres & bigwigs from the International Monetary Fund and major international corporations, including Microsoft. Activists from groups such as Greenpeace International and a variety of academics also attended the event or expressed their support for the Great Reset.

The lessons from history couldn't be any clearer: plagues and pestilence often amplify the social and political fissures already present in society, and the air of unpredictability can lead to a major upheaval in the aftermath of the pandemic.

Fast forward to the 21st century and we might ask the following question: rather than naturally occurring 'acts of God', could this same process of social and economic transformation be engineered? Indeed, this can work with man-made upheavals like World War I and World War II which resulted in the establishment of an entirely new global order. But in the absence of some new devastating world war, could ruling elites engineer a *new* world order?

It's remarkable how the international 'pandemic' response has been rolled-out so rapidly and efficiently. Historically, there have been other epidemics which claimed many more lives than that recorded under the banner of COVID. Why was the world poised and ready to roll-out this New Normal in a matter of weeks? Few dare ask this question for fear of being labelled a conspiracy theorist or worse, but it must be asked.

It's remarkable how the international 'pandemic' response has been rolled-out so rapidly and efficiently.

To initiate an international emergency requires a complete streamlining of the 'pandemic' narrative globally, with governments working in close partnership with corporate and state-run media outlets, and various academic institutions. Any official decrees must be rubber-stamped by trusted international public health NGOs like the United Nation's WHO, America's CDC, and the World Economic Forum's CEPI Vaccine Alliance.[10] Most of these vaunted institutions share a common thread: they are all subsidised and financed by either the Bill and Melinda Gates Foundation or a myriad of transnational pharmaceutical corporations that all have a clear vested interest in expediting an unprecedented global vaccination program.

This historic vaccination push is coupled with global adoption of a digital ID and 'Immunity Passport' regime, led by consortiums like the ID2020 Alliance[11] (major partner Microsoft), the Rockefeller Foundation and GAVI Vaccine Alliance. Both Microsoft and GAVI have direct ties to Bill Gates and the Gates Foundation. This is not only a veritable conspiracy, by its very definition it is a bona fide cartel.

Now that we've seen the stage show and who is orchestrating the special effects behind the curtains, it's time to look at who owns the theatre. If the post-COVID world is going to usher in a 'new world order', then it will have to be constructed from the ground up. That means reorganising whole societies and economies, including all aspects of life, be it private, professional, political, educational, religious, and most importantly – psychological.

Ideologically speaking, this is not different from the 'Year Zero' scenario of Pol Pot and the Khmer Rouge in Cambodia, or China's Cultural Revolution, both of which sought to 'reset' institutions and society. We see a similar technocratic architecture of social engineering emerging with the World Economic Forum (WEF) plan to leverage the COVID-19 crisis to launch what it's calling "The Great Reset."

It's already well established that the current global debt-based fiat financial system of bubbles and busts was due to burst again and that COVID merely accelerated that process. After the devastation wrought by lockdowns, the International Monetary Fund announced the global economy is facing the worst crash since the Great Depression (1929–1933), bringing advanced economies down to Third World levels in terms of debt to GDP ratios and unemployment. Prior to COVID, economic instability and extreme inequality were already beginning to destabilise the global political order, as protests cascaded across the world in 2019.

WEF'S 4IR

It's fair to ask the question: given the chance, if elites had the opportunity to enact a controlled demolition of this failing system, would they do it? As with any crisis, those well-placed to capitalise on events will consolidate more wealth, power and control, thus ensuring their position

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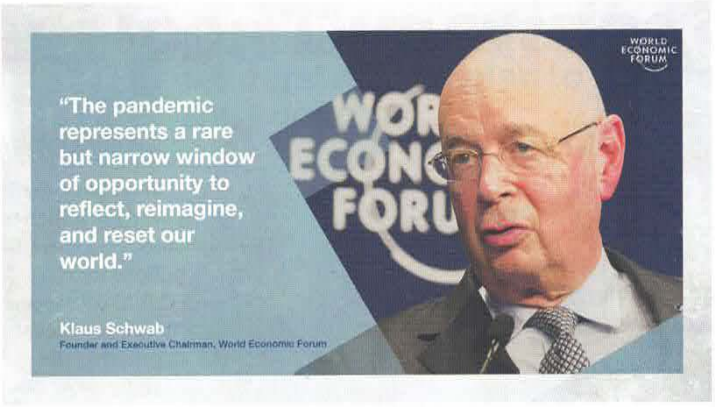
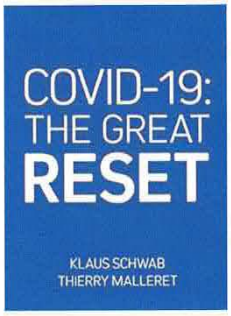
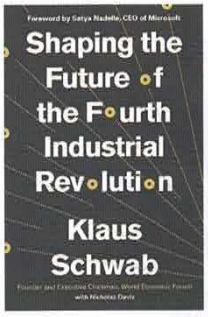
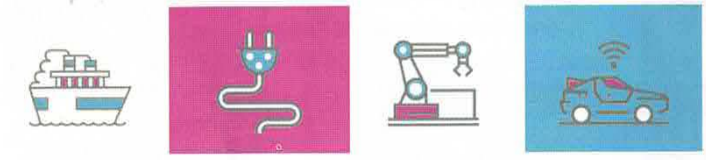


The Fourth Industrial Revolution is the global elite's vision for our future – whether we like it or not. The World Economic Forum's 2021 meeting is shaping up to be one of its most important as it attempts to coordinate its plans to 'save' the world.







1st Industrial Revolution
Water and Steam
Steam and water power replace human and animal power with machines

2nd Industrial Revolution
Electricity
Electricity, internal combustion engines, airplane, telephones, card, radio and mass production

3rd Industrial Revolution
Automation
Electronics, the internet and IT increase automaton and mass production

4th Industrial Revolution
Cyber-Physical Systems
Driverless cars, smart robotics, the internet of things, 3D printing

in the planetary pyramid. That's definitely been the case for lockdown winners like Amazon, Apple, Microsoft, and Facebook. These digital giants, along with other 'essential' service providers, are poised to take advantage of any rearrangement in a Fourth Industrial Revolution.

If you go to the WEF's website and look at their COVID Action Plan[12] under the heading "strategic intelligence," you can see their blueprint for this new global technocracy laid out in meticulous detail.[13] With the help of A.I., 5G and robotic automation, Davos luminaries and technocrats are hoping to implement their Great Reset – which is an economic reset designed to pave the way for a coming Fourth Industrial Revolution (4IR).

Make no mistake about it – 4IR is the global elite's vision for our future, even though they have not consulted the electorate of any democratic country to ask whether this is the right way forward. We're already signed-up, whether we like it or not.

Capstone countries in the global power pyramid do not necessarily have to physically subdue target nations as before. Now, where the developed world goes, the developing world has to follow, or risk being frozen out of the international political economy. In this way, COVID has provided the perfect mechanism for demanding compliance with global governance.

What the WEF provides is the ideological framework for this new world order, and the ideology is clearly that of a cold and unforgiving technocracy. It derives its moral justification from the belief that this restructuring of societies will somehow save humanity from its two main scourges: climate change and overpopulation. It derives its technical authority from sophisticated computer modelling and predictive algorithms. Sound familiar? In a technocracy, run like the scientific dictatorship in Aldous Huxley's classic novel *Brave New World*, anyone questioning whether these scourges really threaten humanity, or whether the computer models actually represent reality, is quickly labelled a heretic or worse – a threat to the 'common good'.

The guiding light for this Great Reset is a real-life version of Huxley's character as philosopher and chief, Mustafa Mons – WEF Founder and Executive Chairman Klaus Schwab, co-author of two seminal guidebooks for the global elite, *COVID-19: The Great Reset* (2020), and *Shaping the Future of the Fourth Industrial Revolution: A Guide to Building a Better World* (2018).

During a recent roundtable discussion in which the WEF brain trust outlined the Great Reset, Schwab said of the pandemic, "the effect will be similar to a world war."[14] This statement validates our previous analysis that COVID is being used as a pretext for a new world order in the same way world wars are used. Just like the Second World War's "greatest generation," today's crisis will serve as a new narrative for this generation and constitute what historians refer to as its 'living memory'. Bill Gates has also invoked the world war analogy as inspiration for his COVID vaccine effort, alluding to the 4IR:

"This is like a world war, except in this case, we're all on the same side.... During World War II, an amazing amount of innovation, including radar, reliable torpedoes, and code-breaking, helped end the war faster.... This will be the same with the pandemic."[15]

He then casually adds, "No one who lives through Pandemic 1 will ever forget it."

Does that mean we should expect a Pandemic 2? How would he know?

Their master plan is now coming into view. Schwab sees the Great Reset playing in three stages: 1) "Hot Phase" which is the pandemic itself, followed by 2) "Recovery" or New Normal phase, and lastly, 3) The Great Reset of global society marking the beginning of a new world order based on the principle of "interdependence."

Schwab believes this crisis will be the perfect preamble for the decarbonisation of global industry and the introduc-

tion of a nature-based "New Green Economy." The Great Reset will also mark a move away from shareholder capitalism, and towards *stakeholder* capitalism.

In preparation for the Great Reset, the WEF unveiled its 'Solutions Platform' for the Fourth Industrial Revolution's new plan for the economy and society. The WEF assures this will be a *woke* reset, "sustainable and inclusive," with "social justice" at the centre in order to generate "positive societal outcomes."

Why is it happening now? The 4IR plan logically follows recent moves by the US to *de-globalise* and begin to repatriate more of its manufacturing base. The globalisation era was built primarily on the back of the competitive advantage that cheap overseas labour provided for western corporations, which always translated into higher profits and shareholder dividends. With 4IR's new A.I. and automation economy, those overseas manufacturing jobs may become superfluous to requirement, meaning production can return to the West – a move which would make poorer countries even more dependent, pushing them further down the economic and geopolitical world league tables.

The only remaining question in this 4IR scenario is what to do with the swelling ranks of unemployed in the 'wealthy' West, those made redundant by government lockdown edicts, virtual and digital automation. Already we can see how most of them will be moved on to Universal Basic Income and various forms of state welfare.

If the ruling elite is resigned to the fact that many people will no longer be productive members of society, to end up as wards of the state, how long until they are considered a burden on the state?

"Most men and women will grow up to love their servitude and will never dream of revolution," said Huxley.

One of Huxley's main characters, John the Savage, was perplexed as to the point of this anodyne technocracy, exclaiming: "But I don't want comfort. I want God, I want poetry, I want real danger, I want freedom, I want goodness. I want sin."

Alas, there will be no place for John the Savage in this new Brave New World.

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The West's Great Economic Reset:

a Deep State agenda

By Peter Koenig © 2020

Imagine you are living in a world that you are told is a democracy—and you may even believe it—but in fact your life and fate is in the hands of a few ultra-rich, ultra-powerful and ultra-inhuman oligarchs. They may be called "Deep State", or simply the "Beast", or anything else obscure or untraceable, it doesn't matter. They are less than the 0.0001 per cent.

For lack of a better expression, let's call them "obscure individuals" for now.

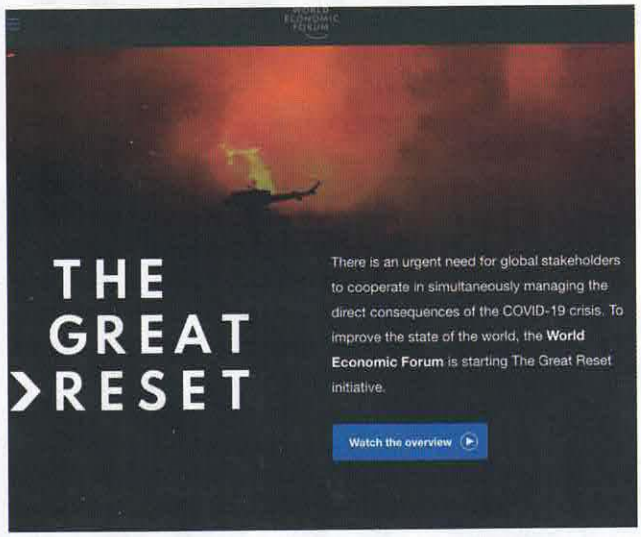
These obscure individuals who pretend to run our world have never been elected. We don't need to name them. You will figure out who they are, and why they are famous, and some of them totally invisible. They have created structures, or organisms without any legal format. They are fully out of international legality. They are a front for the Beast. Maybe there are several competing Beasts. But they have the same objective: A New or One World Order (NWO, or OWO).

These obscure individuals are running, for example, The World Economic Forum (WEF—representing Big Industry, Big Finance and Big Fame), the Group of 7 (G7), the Group of 20 (G20—the leaders of the economically "strongest" nations). There are also some lesser entities, called the Bilderberg Society, the Council on Foreign Relations (CFR), Chatham House and more.

The members of all of them are overlapping. Even this

expanded front combined represents less than 0.001 per cent. They all have superimposed themselves over sovereign national elected and constitutional governments, and over *the* multinational world body, the United Nations (UN).

In fact, they have co-opted the UN to do their bidding. UN Directors General, as well as the DGs of the multiple UN suborganisations, are chosen mostly by the US, with the consenting nod of their European vassals—according to the candidate's political and psychological profile. If his or her "performance" as head of the UN or head of one of the UN suborganisations fails, his or her days are numbered. Co-opted or created by the Beast(s) are also,



the European Union, the Bretton Woods organisations, World Bank and IMF, as well as the World Trade Organization (WTO), and—make no mistake—the International Criminal Court (ICC) in The Hague. It has no teeth; it is just to make sure the law is always on the side of the lawless.

In addition to the key international financial institutions, the World Bank and IMF, there are the so-called regional development banks and similar financial institutions, keeping the countries of their respective regions in check.

In the end it is financial or debt economy that controls everything. Western neoliberal banditry has created a system where political disobedience can be punished by economic oppression or outright theft of national assets in international territories. The system's common denominator is the (still) omnipresent US dollar.

"Unelected Individuals"

The supremacy of these obscure unelected individuals becomes ever more exposed. We, the People consider it "normal" that they call the shots, not what we call, or once were proud of calling, our sovereign nations and sovereignly elected governments. They have become a herd of obedient sheep. The Beast has gradually and quietly taken over. We haven't noticed. It's the salami tactic: You cut off slice by tiny slice and when the salami is gone, you realise that you have nothing left, that your freedom, your civil and human rights are gone. By then it's too late. Case in point is the US Patriot Act. It was prepared way before 9/11. Once 9/11 "happened", the Patriot legislation was whizzed through Congress in no time, for the people's future "protection". People called for it in fear, and bingo, the Patriot Act took about 90 per cent of the American population's freedom and civil rights away. For good.

We have become enslaved to the Beast. The Beast calls the shots on boom or bust of our economies, on who should be shackled by debt, when and where a pandemic should break out, and on the conditions of surviving the pandemic, for example, social confinement. And to top it all off, the instruments the Beast uses, very cleverly, are a tiny, tiny, invisible enemy, called a virus, and a huge but also invisible monster, called *fear*. That keeps us off the street, off reunions with our friends, and off our social entertainment, theatre, sports, or a picnic in the park.

Soon the Beast will decide who will live and who will die, literally—if we let it. This may not be far away. Another wave of pandemic, and people may beg, yell and scream for a vaccine, for their death knell, and for the super bonanza of Big Pharma—and towards the objectives of the eugenicists blatantly roaming the world.[1] There is still time to collectively say "no!" Collectively and solidarily.

Take the latest case of blatant imposture. Conveniently, after the first wave of COVID-19 had passed, at least in the Global North, where the major world decisions are made, in early June 2020, the unelected WEF Chairman, Klaus Schwab, announced "The Great Reset". Taking advantage of the economic collapse—the crisis shock, as in *The Shock Doctrine*—Mr Schwab, one of the Beast's frontmen, announces openly what the WEF will discuss and decide for the world-to-come in their next Davos Forum in January 2021.[2]

Will, We, the People, Accept the Agenda of the Unelected World Economic Forum?

It will opportunely focus on the protection of what's left of Mother Earth; obviously at the centre will be human-made, CO2-based "global warming". The instrument for that protection of nature and humankind will be the UN Agenda 2030, which equals the UN Sustainable Development Goals (SDG). It will focus on how to rebuild the wilfully destroyed global economy, while respecting the "green" principles of the 17 SDGs.

Mind you, it's all connected. There are no coincidences. The infamous Agenda 2021 which coincides with and complements the so-called (UN) Agenda 2030, will be duly inaugurated by the WEF's official declaration of The Great Reset, in January 2021. Similarly, the implementation of the agenda of The Great Reset began in January 2020, by the launch of the corona pandemic,

planned for decades, with the latest visible events being the 2010 Rockefeller Report with its "Lock Step Scenario", and Event 201, of 18 October in NYC which computer simulated a corona pandemic, leaving 65 million deaths within 18 months and an economy in ruin, programmed just a few weeks before the launch of the actual corona pandemic.[3,4,5]

The Race Riots

The racial riots, initiated by the movement Black Lives Matter (funded by the Ford Foundation and George Soros' Open Society Foundations), following the brutal assassination of the Afro-American George Floyd by a gang of Minneapolis police, (and spreading like brush fire in no time to more than 160 cities, first in the US, then in Europe), are not only connected to the Beast's agenda, but they were a convenient deviation from the human catastrophe left behind by COVID-19.[6]

The Beast's nefarious plan to implement what's really behind the UN Agenda 2030 is the little-heard-of Agenda ID2020.[7] It was created and funded by the vaccination guru Bill Gates, and so has GAVI (Global Alliance for Vaccines and Immunizations), the association of Big Pharma—involved in creating the corona vaccines, and which funds along with the Bill and Melinda Gates Foundation (BMGF) a major proportion of WHO's budget.

The Great Reset, as announced by WEF's Klaus Schwab, is supposedly implemented by Agenda ID2020. It is more than meets the eye. Agenda ID2020 is even anchored in the SDGs, as SDG 16.9: "by 2030 provide legal [digital] identity for all, including free birth registration". This fits perfectly into the overall goal of SDG 16 to: "Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels."[8]

Defense Secretary Ash Carter speaks with Klaus Schwab, founder and executive chairman of the World Economic Forum, during a special session of the forum's annual meeting in Davos, Switzerland, January 22, 2016.

Following the official path of the UN Agenda 2030 of achieving the SDGs, the "implementing" Agenda ID2020, which is currently being tested on school children in Bangladesh, will provide digitised IDs possibly in the form of nanochips implanted along with compulsory vaccination programs, will promote digitisation of money and the rolling out of 5G, which would be needed to upload and monitor personal data on the nanochips and to control the populace. Agenda ID2020 will most likely also include "programs" (through vaccination?) of significantly reducing world population. Eugenics is an important component in the control of future world population under a NWO/OWO[9] mysteriously built in 1980.

Marin City Black Lives Matter: George Floyd Protest
Marin County, California June 2, 2020

The ruling elite used the lockdown as an instrument to carry out this agenda. Its implementation would naturally face massive protests, organised and funded along the same lines as were the BLM protests and demonstrations. They may not be peaceful—and may not be planned as being peaceful. Because to control the population in the US and in Europe, where most of the civil unrest would be expected, a total militarisation of the people is required. This is well under preparation.

In his essay "The Big Plantation",[10] John Steppling reports from a NYT article that:

"at minimum 93,763 machine guns, 180,718 magazine cartridges, hundreds of silencers and an unknown number of grenade launchers have been provided to

state and local police departments in the US since 2006. This is in addition to at least 533 planes and helicopters, and 432 MRAPs—9-foot high, 30-ton Mine-Resistant Ambush Protected armored vehicles with gun turrets and more than 44,900 pieces of night vision equipment, regularly used in nighttime raids in Afghanistan and Iraq."

He adds that this militarisation is part of a broader trend. Since the late 1990s, about 89 per cent of police departments in the United States serving populations of 50,000 people or more had a PPU (Police Paramilitary Unit), almost double what existed in the mid-1980s. He refers to these militarised police as the "new Gestapo".

Even before COVID-19, about 15 to 20 per cent of the population was on or below the poverty line in the United States. The post-COVID lockdown economic annihilation will at least double that percentage, and commensurately increase the risk for civil turbulence and clashes with authorities, further enhancing the reasoning for a militarised police force.

China's Crypto RMB

None of these scenarios will, of course, be presented to the public by the WEF in January 2021. These are decisions taken behind closed doors by the key actors for the Beast. However, this grandiose plan of the Great Reset does not have to happen. There is at least half the world population and some of the most powerful countries, economically and militarily—like China and Russia—opposed to it. "Reset" maybe yes, but not in these western terms. In fact, a reset of kinds is already happening, with China about to roll out a new People's Bank of China-backed blockchain-based cryptocurrency, the crypto RMB, or yuan. This is not only a hard currency based on a solid economy, it is also supported by gold.

While President Trump keeps trashing China for unfair trade, for improperly managing the COVID-19 pandemic, for stealing property rights—China bashing no end—that China depends on the US and that the US will cut trading ties with China, or cut ties altogether, China is calling Trump's bluff. China is quietly reorienting herself towards the ASEAN countries plus Japan (yes, Japan!) and South Korea, where trade already today accounts for about 15 per cent of all China's trade, and is expected to double in the next five years.

Despite the lockdown and the disruption of trade, China's overall exports recovered with a 3.2 per cent increase in April (in comparison with April 2019). This overall performance in China exports was nonetheless accompanied by a dramatic decline in US–China trade. China exports to the US decreased by 7.9 per cent in April (in comparison with April 2019).[11]

It is clear that the vast majority of US industries could not survive without Chinese supply chains. The western dependence on Chinese medical supplies is particularly strong. Let alone Chinese dependence by US consumers. In 2019, US total consumption, about 70 per cent of GDP, amounted to $13.3 trillion, of which a fair amount is directly imported from China or dependent on ingredients from China.

The WEF-masters are confronted with a real dilemma. Their plan depends very much on the dollar supremacy which would continue to allow dishing out sanctions and confiscating assets from those countries opposing US rule; a dollar-hegemony which would allow imposing the components of The Great Reset scheme, as described above.

At present, the dollar is fiat money; debt money created from thin air. It has no backing whatsoever. Therefore, its worth as a reserve currency is increasingly decaying, especially vis-à-vis the new crypto-yuan from China. In order to compete with the Chinese yuan, the US Government would have to move away from its monetary Ponzi-scheme, by separating itself from the 1913 Federal Reserve Act and print her own US-economy and possibly gold-backed (crypto) money—not fiat FED money, as is the case today. That would mean cutting the more-than-100-year-old ties to the Rothschild and Co. clan-owned FED, and creating a real people's-owned central bank. Not impossible, but highly improbable. Here, two Beasts might clash, as world power is at stake.

Meanwhile, China, with her philosophy of endless creation would continue forging ahead unstoppably with her mammoth socioeconomic development plan of the 21st Century, the Belt and Road Initiative, connecting and bridging the world with infrastructure for land and maritime transport, with joint research and industrial projects, cultural exchanges—and not least, multinational trade with "win-win" characteristics, equality for all partners—towards a multipolar world, towards a world with a common future for humankind.

Today already more than 120 countries are associated with BRI, and the field is wide open for others to join, and

to defy, unmask and unplug The Great Reset of the West.

About the Author:

Peter Koenig is an economist and geopolitical analyst. He worked for over 30 years with the World Bank and the World Health Organization around the world in the fields of environment and water. He lectures at universities in the US, Europe and South America and writes regularly for Global Research, ICH, New Eastern Outlook (NEO), RT, Countercurrents, Sputnik, PressTV, and other internet sites. He is the author of *Implosion: An Economic Thriller about War, Environmental Destruction and Corporate Greed*, a fiction based on facts and his World Bank experience. He is also a co-author of *The World Order and Revolution!: Essays from the Resistance*. Koenig is a Research Associate of the Centre for Research on Globalization. This article originally appeared at GlobalResearch.ca on June 17, 2020; see https://tinyurl.com/y8xqqscs.

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Committee Secretary
Senate Standing Committee for the Scrutiny of Delegated Legislation
PO Box 6100
Parliament House
Canberra ACT 2600

24 June 2020

Dear Secretary,

My name is Jackson Ho, a Juris Doctor student at the University of Canberra. I am writing the submission as a member of the public to contribute to the inquiry into the 'Exemption of delegated legislation from parliamentary oversight'.

The submission will address both terms of references regarding (1) the appropriateness and adequacy of the existing framework for exempting delegated legislation from parliamentary oversight; and (2) whether the existing framework for exempting delegated legislation from parliamentary oversight should be amended, and, if so, how.

The submission comprises three pages. It addresses both terms of references together by first commenting on the appropriateness of various aspects of exemption under the current framework and then followed by recommendations.

Please let me know if I may provide any further assistance to the Committee. Thank you.

Yours faithfully,
Jackson Ho
[redacted]
Telephone: [redacted]

I INTRODUCTION

As the two main terms of reference are interconnected, the submission will address them together by first commenting on the appropriateness and adequacy of the existing framework for exempting delegated legislation from parliamentary oversight. Then, it provides opinions on whether the existing framework for exempting delegated legislation from parliamentary oversight should be amended, and, if so, how.

The *Australian Constitution* sets out the separation of power by vesting the legislative, executive and judicial powers in the Parliament, the Executive and the Judiciary respectively.[1] However, Australia also follows the Westminster system of government where members of the executive are also members of Parliament.

Also, the *Australian Constitution* did not provide for whether Parliament cannot or cannot delegate its legislative power to make law to a non-legislative body.[2] The High Court held *Baxter v Ah Way*,[3] *Roche v Kronheimer*,[4] and *Victorian Stevedoring and General Contracting Company v Dignan* ('*Dignan*') that Parliament may do so.[5] One caveat stated by Evatt J in *Dignan* was that Parliament cannot completely abdicate its legislative power.[6]

Abdication refers to a situation where the legislative power is delegated to a non-legislative body or person not subject to ministerial responsibility or is not a public authority created by Parliament.[7] Common law also recognises that a sovereign legislature cannot abdicate its legislative power.[8]

Overly extensive delegation of legislative power to a non-legislative body may also undermine the rule of law where those who enforce the law should be bound by those who created it instead of being one and the same.[9] In addition to the rule of law, the democratic accountability of Parliament, the transparency of law-making will also be undermined if delegated legislation is used excessively.

In addition, potential disallowance under parliamentary oversight allows for discourse between different stakeholders since the role of the Senate Standing Committee for the Scrutiny of Delegated Legislation is already nonpartisan.[10] The framework and prestige of the Committee for parliamentary oversight is conducive to informed discussion.[11] The exemption of delegated legislation from parliamentary oversight should be limited.

Therefore, exempting delegated legislation from parliamentary oversight poses further challenges to the rule of law, the democratic accountability and the transparency of public

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[1] *Constitution* chs I, II, III.
[2] Australian Law Reform Commission, *Traditional Rights and Freedoms—Encroachments by Commonwealth Laws* (Report No 129, March 2016) 448–9.
[3] (1910) 8 CLR 626, 637–8.
[4] (1921) 29 CLR 329.
[5] (1931) 46 CLR 73.
[6] Ibid 120.
[7] Australian Law Reform Commission (n 2) 449.
[8] *Commonwealth Aluminium Corporation Pty Ltd v A-G (Qld)* [1976] Qd R 231; *West Lakes Ltd v South Australia* (1980) 25 SASR 389.
[9] Denise Meyerson, 'Rethinking the Constitutionality of Delegated Legislation' (2003) 11(1) *Australian Journal of Administrative Law* 45, 52.
[10] Dennis Pearce and Stephen Argument, *Delegated Legislation in Australia* (LexisNexis Butterworths, 5th ed, 2017) 62–9.
[11] Ibid.

governance based on the same reasons and criticisms against regular and non-exempted delegated legislation above.

II COMMENTARY ON THE APPROPRIATENESS OF EXEMPTION & RECOMMENDATIONS

A *Appropriateness of Sections in the Legislation Act 2003 (Cth)*

Under s 44(2)(a) of the *Legislation Act 2003* (Cth), it allows for the primary legislation to provide that the disallowance provisions for parliamentary oversight do not apply.[12] Further, s 44(2)(b) also permits the use of delegated legislation to exempt other delegated legislation from the disallowance provisions and parliamentary oversight.[13] For example, regs 9 and 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015* (Cth) exempt a range of delegated legislation.[14]

The ground under s 44(2)(b) to exempt delegated legislation from parliamentary oversight is circuitous and problematic. It provides that one piece of delegated legislation may exempt another piece of delegated legislation from parliamentary oversight. The process is subject to less parliamentary scrutiny as it bypasses the law-making procedures for primary legislation in both houses of Parliament. Instead, this process would at best just subject the first piece of exempting delegated legislation to parliamentary oversight only if it was not already exempted by an Act or another piece of delegated legislation. Excessive use of such process would render the parliamentary oversight of disallowance meaningless.

Also, it gives rise to concerns of one delegated body or person conferring exemption to another that may undermine democratic accountability, transparency and legitimacy of Parliament, the Executive and the delegated bodies or persons.

It is recommended that the exemption of delegated legislation should only be made through primary legislation. The current framework should be amended to address and remedy the concerns and shortcomings arising from the implications under s 44(2)(b) of the *Legislation Act 2003* (Cth). The current exemptions made under regs 9 and 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015* (Cth) should also be thoroughly reviewed and moved to primary legislation should such review deem the exemptions appropriate.

B *Overall Inappropriateness of 'Henry VII clauses'*

'Henry VII clauses' in delegated legislation allows that delegated legislation to amend the primary legislation. Those clauses are inappropriate because (1) the delegated body or person may lack the democratic accountability and transparency in the law-making process; and (2) a comparable adage in constitutional law that 'a stream cannot rise above its source'[15] because the authority of the delegated legislation derives from the primary legislation. However, delegated legislation with such clauses can parcel out and modify contents of the primary legislation so that the delegated legislation, the delegated body or person may become 'a law unto itself'.

The current framework for the exemption of delegated legislation from parliamentary oversight should be amended to prohibit or restrict the exemption of delegated legislation with 'Henry VII clauses'.

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[12] *Legislation Act 2003* (Cth) s 44(2)(a).
[13] Ibid s 44(2)(b).
[14] *Legislation (Exemptions and Other Matters) Regulation 2015* (Cth) regs 9, 10.
[15] *Heiner v Scott* (1914) 19 CLR 381, 393; *Australian Communist Party v Commonwealth* (1951) 83 CLR 1, 258.

C *Appropriateness of Exemption During Emergencies*

In times of turmoil, greater flexibility for exempting some delegated legislation and a more expansive use of delegated legislation are necessary to address changing circumstances amid uncertainty. However, parliamentary scrutiny of delegated legislation may remain a pivotal safeguard during emergencies. As the Senate Standing Committee for the Scrutiny of Delegated Legislation is nonpartisan, it provides necessary checks and balances during times of emergencies to maintain pre-existing legislative standard for delegated legislation and to uphold existing rights and freedoms as far as possible for the public as a source of certainty during tumultuous times.

In *Liversidge v Anderson*, Lord Atkin, in his now celebrated dissent, stated that '[A]midst the clash of arms the laws are not silent. They may be changed, but they speak the same language in war as in peace.'[16] The case was decided during WWII on whether a defence regulation in England permitted the Home Secretary to determine subjectively, instead of objectively with evidence, the reasonable cause of someone being of hostile association or origin for ordering the person's detention. Unlike Lord Atkin's dissent, the majority held that the Home Secretary needed not have demonstrable evidence and his subjective opinion was sufficient.[17]

Similar to Lord Atkins' reasoning, the legality and legitimacy of all branches government remain the same bedrock of society in times of emergencies as in times of stability, parliamentary oversight of delegated legislation during emergencies will uphold the values fundamental to both societal and individual well-being. The exemption of delegated legislation during times of emergencies should therefore only be a last resort necessary to the extent of resolving or ameliorating the emergencies.

D *Additional Recommendations*

It is recommended that the *Legislation Act 2003* (Cth) be amended to allow for the power to review and disallow applicable delegated legislation at any time by the Senate Standing Committee for the Scrutiny of Delegated Legislation and either house of Parliament respectively. Currently, the review and disallowance processes focus almost exclusively on examining and disallowing the delegated legislation before it came into effect.[18] In contrast, the New Zealand House of Representatives may disallow applicable delegated legislation at any time.[19]

Furthermore, the *Legislative Act 2003* (Cth) may be amended to set out a prescribed period (for example, one year) that the exempted delegated legislation cannot be disallowed but after the expiration of that time period the Senate Standing Committee for the Scrutiny of Delegated Legislation may review and either house of Parliament may disallow that previously exempted delegated legislation.

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[16] *Liversidge v Anderson* [1941] 3 All ER 338, 361.
[17] Ibid.
[18] David Hamer, *Can Responsible Government Survive in Australia?* (Department of the Senate, 2004) 314–16.
[19] Legislation Act 2012 (NZ) s 42.

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4 June 2020

Dear Secretary

RE: Exemption of delegated legislation from parliamentary oversight

Thank you for the opportunity to make a submission to the Senate Standing Committee for the Scrutiny of Delegated Legislation in its inquiry into the 'Exemption of delegated legislation from parliamentary oversight'.

We write in our capacity as academics at the Faculty of Law, University of New South Wales. We are solely responsible for the views and content of this submission. We consent to this submission being published on the Committee's website and would be happy to speak with the Committee further regarding any aspect of it.

We note that the current inquiry stems from Recommendation 15 of the 2019 Report on Parliamentary Scrutiny of Delegated Legislation that the Government:

> *(a) review existing provisions exempting legislative instruments from disallowance, to determine whether such exemptions remain appropriate, and amend the Legislation Act 2003 to ensure all such exemptions are contained in primary legislation; and*
>
> *(b) publish guidance as to the limited circumstances in which it may be appropriate to exempt instruments from disallowance.*

We strongly support this recommendation. The current approach to exempting legislative instruments from disallowance lacks clear guiding principles and risks diminishing the Senate's function of providing democratic accountability over delegated legislation. The current approach also risks challenge in the High Court and the possibility of being rendered unconstitutional.

This submission has three parts:

Part 1: We explain the constitutional position in relation to delegation of legislative power at the federal level, and the challenge that exemption of delegations from parliamentary disallowance poses to this position.

Part 2: We set out two key principles that should guide exemptions from parliamentary disallowance processes.

Part 3: We explain where the current exemptions and exemption processes do not follow these general principles.

Part 4: We make five recommendations to give effect to the two key principles in light of the current practice.

Part 1: Constitutional position

Within our constitutional system, Parliament is the institution responsible for making the law. It fills this position because of its broad representative *nature*, with the widest and most diverse range of constituents represented in it, as well as its *practice* of conducting its activities in public, and subjecting them to challenge, debate and ultimately, an open vote for which its members will ultimately be accountable back to the people.

The separation of powers allows for the delegation of power between the Parliament and the Executive. However, to respect the status of Parliament, delegation of legislative power should only be done where the Parliament retains oversight of that power and retains responsibility for significant policy decisions that are made under it.

While there has yet to be an instance of delegations being ruled unconstitutional, this may occur if Parliament were to abdicate its responsibilities with respect to oversight. The potential for this can be traced back to the High Court's decision in *Victorian Stevedoring and General Contracting Co Pty Ltd and Meakes v Dignan* (1931) 46 CLR 73. This case has often been summarised as standing for the proposition that there are effectively no enforceable constitutional limits on the delegation of legislative power to the executive. However, this overlooks the reasoning of the judges, and particularly that of Dixon and Evatt JJ, who both indicated there may be constitutional limits to delegations.

Dixon J referred to the need for delegations to be supported by a head of legislative power, referring to both the need for the delegation not to be too wide or uncertain so as not to be a law with respect to a head of legislative power. He also said, rather delphicly, that the distribution of powers (separation of powers) may supply 'considerations of weight' affecting the validity of an Act creating a legislative authority.[1] He explained that limit no further. Evatt J also made remarks about the necessity of ensuring some minimum level of contact between the power and Parliament. These were described by Geoffrey Sawer as 'practical tests' dictating a minimum level of parliamentary supervision.[2] These included the nature of the delegate ('The further removed the law-making authority is from continuous contact with Parliament, the less likely is it that the law will be a law with respect to [the Commonwealth Parliament's powers]') and the 'restrictions placed by Parliament upon the exercise of power

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1 *Dignan* (1931) 46 CLR 73, 101.

2 Geoffrey Sawer, 'The Separation of Powers in Australian Federalism' (1961) 35 *Australian Law Journal* 177, 187.

by the subordinate law-making authority'.[3] He also saw the circumstance in which delegations were made as relevant to their validity, for example delegations during war may be wider than otherwise justified by the Commonwealth's powers.[4]

These comments have never been tested in future cases, but there have been a number of developments, both legal and in practice, which indicate that it might be time to revisit them. At the legal level, we draw the Committee's attention to the High Court's more recent decisions in the *Williams* litigation, in which the Court, in a different context, articulated a new constitutional limitation on the Commonwealth executive's power to spend money that mandated greater parliamentary oversight.[5] That decision drew on the doctrine of responsible government to create judicially enforceable constitutional limits, demonstrating a willingness of the Court to enforce the doctrine as a legal rather than political doctrine. While it has not been tested in the context of delegation, it demonstrates the willingness of the Court to engage with such matters.[6]

At the practical level, the Parliament's current system where delegated instruments are removed from parliamentary disallowance is one example of a contemporary practice that challenges the idea that Parliament retains final authority over parliamentary delegations. This may be vulnerable to a future constitutional challenge. Parliament should respond to this possibility by ensuring that any instances of removal from disallowance can be supported by well-articulated principle consistent with constitutional principle.

Part 2: Principles to guide exemptions from disallowance

The constitutional position dictates that where Parliament delegates law-making functions to the executive branch, there must be a mechanism to ensure that the executive has exercised those powers within the limits and in the manner that the democratically elected Parliament intended. Disallowance has been a 'vital component' of the Commonwealth Parliament's framework for ensuring that Parliament retains direct control over delegated law-making since 1904.[7] There is no equivalent or alternative political or legal mechanism through which the executive branch is held to account for the powers it exercises in making delegated legislation.

Any exemption from the disallowance process should be carefully drawn. We submit that the constitutional position of the Parliament requires that these be guided by two key principles.

First, exemptions from the disallowance process ought to be set out in primary legislation. Delegating the power to exempt certain instruments from disallowance to the executive—as *Legislation Act 2003* s 44(2)(b) of currently does—fundamentally undermines Parliament's role in overseeing delegated law-making.

Second, there must be clear justifications for exempting specific categories or types of delegated legislation from the disallowance process. Exemption categories should be drawn

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3 *Dignan* (1931) 46 CLR 73, 120.
4 Ibid 120-121.
5 *Williams v Commonwealth* (2012) 248 CLR 156 (*Williams (No1)*); *Williams v Commonwealth* (2014) 252 CLR 416 (*Williams (No 2)*).
6 See further analysis of this move in the Court's doctrine in Gabrielle Appleby and Joanna Howe, 'Scrutinising parliament's scrutiny of delegated legislative power' (2015) 15 *Oxford University Commonwealth Law Journal* 3.
7 Rosemary Laing (ed), *Odgers Australian Senate Practice* (14th ed, 2016) 1166.

as narrowly as possible to give effect to these justifications. We have identified **three** circumstances where exemptions can be clearly justified:

1. *By-laws of elected bodies:* The exemption of local council by-laws at the State level, and the by-laws of universities (including the ANU at the federal level under the *Australian National University Act 1991*) is justified on the basis that the democratic nature of the delegated law-making body provides the necessary accountability for these exercises of legislative power.
2. *Internal government processes:* These would include, for instance, the Prime Minister's directions to agency heads under *Public Service Act 1999* s 21 relating to management and leadership of APS employees, and other instruments issued for internal management purposes. These instruments do not have an impact on public rights, obligations, duties and as such Parliament may determine, for efficiency reasons, are not required to be subject to further democratic oversight.
3. *Instruments which require the assent of Parliament to come into force:* These instruments are made accountable to Parliament through the alternative mechanism of an allowance process, and as such there is appropriate democratic oversight and accountability.

Part 3: Current exemptions and exemptions process

The law and processes that currently apply to exemptions from disallowance do not follow these general principles. Section 44 of the *Legislation Act 2003* (Cth) provides that the disallowance process set out in s 42 of that Act does not apply to instruments or provisions thereof in three circumstances:

(1) The primary legislation 'facilitates the establishment or operation of an intergovernmental body or scheme' and 'authorises the instrument to be made by the body for the purposes of the body or scheme', unless the enabling legislation otherwise provides, or the instrument is a regulation (s 44(1)).

(2) The primary legislation provides that the instrument is not subject to disallowance (s 44(2)(a)).

(3) Regulations prescribe that the instrument is not subject to disallowance (s 44(2)(b)).

The *Legislation (Exemptions and Other Matters) Regulation 2015* has been made under s 44(2)(b). Part 4 sets out classes of instruments and specific instruments which are not subject to disallowance. The classes of instruments not subject to disallowance are:

- Instruments which require the assent of Parliament to come into force;
- Ministerial directions;
- Instruments relating to superannuation; and
- Instruments made under an annual Appropriation Act.

The specific instruments excluded from disallowance under this Regulation, or under primary legislation, are numerous. Some, we submit, are not justifiable, and illustrate a potentially unconstitutional abdication of responsibility by the Parliament for supervision of delegations,

many of which have the capacity to affect adversely the rights of individuals. We draw the Committee's attention to three concerning examples of these:

(a) Biosecurity Determinations and Directions: Part two, division two of the *Biosecurity Act 2015* (ss 474-479) enables the declaration of a human biosecurity emergency by the Governor General (the declaration which itself is exempt from disallowance). The federal Health Minister can then make any determination or any direction needed to deal with the biosecurity problem for a period of up to 3 months. These can go so far as to override any other law. They are not subject to disallowance by Parliament. Non-compliance with a determination or direction can lead to up to 5 years imprisonment.

(b) Migration Act: Under s 195A of the *Migration Act 1958*, the Minister has a personal power to grant a visa to a person who is in detention, where this is determined to be in the 'public interest'. Part 4, Schedule 4 of the *Migration Regulations 1994* sets out a number of public interest criteria, one of which is that the visa applicant has signed a code of behaviour that has been approved by the Minister (criterion 4022). Clause 4.1 of Part 4, Schedule 4 requires the Minister to approve any code of behaviour used for this purpose, and specify which visa classes it applies to. Codes of behaviour are exempt from disallowance under s 44 of the *Legislative Instruments Act 2003*.

One code of behaviour has been made under the Regulations. The code applies to non-citizens living within Australia on a Bridging E visa. It sets out six expectations that signatories agree to abide by, and states that breach of these could lead to a reduction in income support or cancellation of the visa (which in turn leads to immigration detention). How the code operates in practice is not made clear: no process for how breach and consequences will be determined is set out, and some of the expectations are unclear in scope.[8]

It is entirely appropriate for criteria to be set out determining the circumstances in which a discretionary visa grant will be in the public interest. It is also be appropriate for bridging visas to be granted subject to conditions. However, where the conditions involve broad executive discretions that have onerous consequences for individuals on public interest grounds, it is beneficial that parliamentary scrutiny, in the form of disallowance, be maintained.[9]

(c) Advance to the Finance Minister – The 'Advance to the Finance Minister' in the *Appropriation Act [No 1]* allows the Finance Minister to decide, by Determination, to allocate appropriated funds where the Minister is satisfied there is an urgent and unforeseen need for that expenditure. This power was relied on by government in 2017 to fund the marriage equality plebiscite / survey under the *Census and Statistics*

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8 For example, the code obliges signatories to refrain from participation or involvement in criminal activity, but does not make clear whether a conviction is required before a person can be determined ot have breached this. It also states that signatories must not 'engage in any anti-social or disruptive activities that are inconsiderate, disrespectful or threaten the peaceful enjoyment of other members of the community'. This is a very broad requirement that leaves considerable scope for discretion and that, arguably, infringes the constitutionally protected implied freedom of political communication.

9 See also Elyse Methven and Anthea Vogl, 'We will decide who comes to this country, and how they behave: A critical reading of the asylum seeker code of behaviour' (2015) 40(3) *Alternative Law Journal* 175.

Act 1905 (Cth). It was unsuccessfully challenged in *Wilkie v Commonwealth*.[10] The government had relied on this power despite the Senate having explicitly rejected a legislative attempt to authorise a plebiscite on same-sex marriage. A Determination under the Advance to the Finance Minister is not subject to disallowance, and was able to be relied on in the face of explicit parliamentary opposition.

While some of the exemptions from disallowance may be justified, there does not appear to be any clear rationale for the specific instruments excluded by the Regulation. The list of exclusions appears to be somewhat ad hoc.

Our impression that the existing exclusions are ad hoc is supported by the fact that there is no policy guidance on this issue in the Office of Parliamentary Counsel's Drafting Guidelines,[11] Drafting Directions,[12] of Instruments Handbook.[13] The Directions and Handbook outline the approval process for exempting instruments from disallowance, and note that policy approval is required by the Attorney-General's Department.[14] However, there is no detail on when exemption will be justified, or the factors that the Attorney-General's Department should consider in giving policy approval for an exemption. The circumstances in which exemptions are justified should be clear and transparent.

Part 4: Recommendations

To give effect to the two key principles we have set out in Part 2 above, and in light of contemporary practice, we submit the following recommendations for the Committee's consideration:

1. All exemptions to disallowance should be in primary legislation and s 44(2)(b) of the *Legislation Act 2003* should be amended to reflect this. We endorse the Committee's position in Recommendation 15 of the 2019 Report on Parliamentary Scrutiny of Delegated Legislation.
2. An agreed list of circumstances in which exemption from disallowance is justified be developed (see our recommended list in Part 2). This list should be included in the Office of Parliamentary Counsel's Drafting Guidelines and Drafting Directions, so that every proposed exemption is able to be clearly justified and subject to internal scrutiny prior to its introduction.
3. This list of circumstances in which exemption from disallowance is justified should be used to inform the work of the Senate's Scrutiny of Bills Committee and the Scrutiny of Delegated Legislation Committee.
4. Current exemptions in the *Legislation (Exemptions and Other Matters) Regulation 2015* should be individually reviewed against this list, and, if deemed justifiable, moved into primary legislation.

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10 (2017) 91 ALJR 1035.

11 https://www.opc.gov.au/sites/default/files/s13ag320.v49.pdf

12 https://www.opc.gov.au/sites/default/files/dd3.8_0.pdf p 16

13 https://www.opc.gov.au/sites/default/files/m17jf142.v24.pdf p 67.

14 https://www.opc.gov.au/sites/default/files/dd3.8_0.pdf p 16; https://www.opc.gov.au/sites/default/files/m17jf142.v24.pdf p 67.

5. The exemption of instruments made by a body or scheme established pursuant to intergovernmental agreements in s 44(1)(a) of the *Legislation Act* 2003 should be removed. It might be that the exemption of such legislative instruments is justifiable in some circumstances, but exclusion of such instruments from legislative oversight should be considered on a case by case basis, and if they are exempt, alternative means of democratic accountability should be considered. In most cases, disallowance by the federal parliament, representative of the whole Australian constituency, would be the most appropriate form of democratic oversight.

Yours sincerely

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28 June 2020

Senator the Hon Concetta Fierravanti-Wells
Chair
Senate Standing Committee for the Scrutiny of Delegated Legislation
Parliament House
Canberra, ACT, 2600

Dear Senator,

Submission – Inquiry into exemption of delegated legislation from parliamentary oversight

Please accept this submission to the Committee's inquiry. My apologies for its lateness – it overlapped with exam marking, which had to take priority.

As per my previous submissions to this Committee, I remain concerned about what appears to be increased usage of exemptions of delegated legislation from parliamentary oversight through the exclusion of legislative instruments from potential disallowance.

From a constitutional point of view, legislative power is conferred on Parliament by s 1 of the Constitution. It is not conferred upon the executive. It has long been recognised by the courts, however, that Parliament may delegate its legislative powers to the executive to deal with the vast amount of administrative detail that needs to be the subject of legislative provision, and it would be impractical for Parliament to have to enact all such provisions itself. Nonetheless, Parliament may only delegate this power – it may not abdicate it. This is because legislative power is conferred upon Parliament by the Constitution and to abdicate that power would be to breach that constitutional conferral of power on Parliament. Accordingly, Parliament must retain control over its delegated legislative power and be in a position to supervise the exercise of delegated legislative powers in order to be effective in exercising that control.

This control and supervision is primarily fulfilled by the process for the tabling and disallowance of legislative instruments in each House. It gives the Houses the opportunity to scrutinise legislative instruments and take action if it would not have agreed to pass such provisions in a bill brought before it. The scrutiny largely occurs through the consideration of parliamentary committees, such as the Senate Standing Committee on the Scrutiny of Delegated Legislation. Its scrutiny, therefore, fulfils a constitutional function.

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If legislative instruments are not subject to disallowance, and by virtue of this fact, are not subject to scrutiny by this Committee, then Parliament's control over the exercise of its delegated legislative power is seriously diminished. The only method remaining to Parliament to exercise control over such legislative instruments would be to repeal or amend the Act that authorises the relevant delegation of power. It is difficult to do this if Parliament is not made aware of problems or concerns about particular legislative instruments.

Hence, as a minimum, the Senate Standing Committee for the Scrutiny of Delegated Legislation should be given the power and responsibility to scrutinise non-disallowable legislative instruments, so that Parliament can be made aware if there are matters within those instruments that raise issues to which it may wish to respond.

In addition, the Commonwealth Government should set out publicly its criteria for classifying legislative instruments as non-disallowable and provide a reasonable justification for each such classification. This would allow the Committee to raise concerns if legislative instruments are made non-disallowable even though they do not reasonably fall within such classifications or do not meet the relevant justification for doing so.

It must be accepted that there may be good reasons why certain legislative instruments are non-disallowable. For example, it is reasonable for the Government to argue that certain types of measures taken under the *Biosecurity Act 2015* (Cth) during a pandemic should not be subject to disallowance, because such measures need to be taken on the basis of scientific and medical evidence, and making them disallowable would add inappropriate political considerations to the decision-making process. A further consideration is that such measures only apply for a limited time (3 months) during a declared emergency, so a disallowance procedure is therefore unnecessary.

However, it is also the fact that such measures may have very serious impacts upon the liberty and rights of individuals. Indeed, directions and determinations by the Health Minister under ss 477-478 of the *Biosecurity Act 2015* apply 'despite any provisions of any other Australian law', allowing them to override statute (i.e. a Henry VIII clause). Further, the period of an emergency may be extended, again and again, so that the measures apply for a long period. In addition, it is well known that in a significant number of other countries, emergency measures have been abused to oppress the public and continued for years.

Even though such actions are most unlikely to occur in Australia, because of our strong respect for rights and the rule of law, it is always wise to ensure that robust measures are in place to maintain and require scrutiny and democratic remedies against potential future abuses of power. Accordingly, even in relation to actions and directions during an emergency, there should be permanent measures in place to ensure scrutiny. While the establishment of a Senate Select Committee on COVID-19 was a welcome development, it was *ad hoc*. All legislative instruments made under the *Biosecurity Act* should be the subject of scrutiny, even if they are not disallowable.

Further, if an emergency is continued for a significant period of time (eg 6 months or longer) then consideration should be given to an automatic transformation of such legislative instruments into disallowable instruments after that time. By then, there would have been

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sufficient time to assess the effectiveness and justification of emergency measures, so that an informed vote could be given on disallowance. Such a measure would discourage the use of emergency legislative instruments in the future for abusive purposes.

Disallowance, of course, is not an effective measure if Parliament is not sitting. This is a significant problem if the nature of the emergency is such as to prevent Parliament from meeting and fulfilling its supervisory and scrutiny responsibilities. In this regard, the Parliament should investigate further the possibility of meeting virtually by electronic means. Parliamentary committees can already do so (see House of Representatives Standing Order 235(b) and Senate Standing Order 30). This ensures that committee scrutiny is still feasible. But for disallowance to operate, the Houses need to sit. Even though the Houses have managed to sit for more limited periods during this pandemic, preparations should be made for future emergencies when the physical sitting of the Houses in Canberra may not be practicable.

While in the past some concerns have been raised as to whether or not the virtual sitting of Parliament by electronic means would be constitutionally valid, I do not take the view that there is a constitutional impediment to it. Indeed, if it occurred during a period of emergency, it would enhance, rather than impede, responsible and representative government. I refer the Committee to my discussion of the constitutional issues in: A Twomey, 'A virtual Australian parliament is possible – and may be needed – during the coronavirus pandemic', *The Conversation,* 25 March 2020: https://theconversation.com/a-virtual-australian-parliament-is-possible-and-may-be-needed-during-the-coronavirus-pandemic-134540.

As there has now been some experience of virtual Parliaments in a number of countries, this would be a subject worth inquiring into in greater depth, drawing on overseas experience. For example, Lord Norton of Louth gave some interesting observations about electronic voting in the House of Lords: https://nortonview.wordpress.com/2020/06/16/voting-electronically-is-easy-but-should-it-be/.

Yours sincerely,

[redacted]

Anne Twomey
Professor of Constitutional Law

THE LAW SOCIETY OF NEW SOUTH WALES
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Submission to the Inquiry into exemption of delegated legislation from parliamentary oversight

9 July 2020

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THE LAW SOCIETY OF NEW SOUTH WALES
young LAWYERS

The NSW Young Lawyers Public Law and Government Committee (the **Committee**) makes the following submission in response to the Inquiry into exemption of delegated legislation from parliamentary oversight (the **Inquiry**).

NSW Young Lawyers

NSW Young Lawyers is a division of The Law Society of New South Wales. NSW Young Lawyers supports practitioners in their professional and career development in numerous ways, including by encouraging active participation in its 16 separate committees, each dedicated to particular areas of practice. Membership is automatic for all NSW lawyers (solicitors and barristers) under 36 years and/or in their first five years of practice, as well as law students. NSW Young Lawyers currently has over 15,000 members.

The NSW Young Lawyers Public Law and Government Committee comprises over 1,000 members who include a range of practicing lawyers from the public and private sectors, barristers and law students. The Public Law and Government Committee aims to educate members of the legal profession, and the wider community, about developments in public law and to provide a social environment for young lawyers to develop their skills. The Public Law and Government Committee's areas of interest include, but are not limited to, administrative and constitutional law and the work of government lawyers.

Summary of Recommendations

This submission draws on the *Biosecurity Act 2015* (Cth) to respond principally to point a) iv) of the Terms of Reference of the Inquiry. The Committee recommends the following:

1. Absent the most extreme of justifications, delegated legislation should not be excluded from disallowance.
2. The Senate should give greater scrutiny to bills with clauses that exempt legislative instruments from disallowance. In particular, the Senate's attention should be drawn to the scope and effect of the particular enabling provisions, including 'Henry VIII' clauses, broad discretions, potential interference with personal rights, and potential criminal sanctions.
3. Senate Standing Order 23 should be amended to give power to the Standing Committee for the Scrutiny of Delegated Legislation to review legislative instruments even where they are not subject to disallowance.

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YOUNG LAWYERS

Principles underpinning delegated legislation

1. The separation of powers doctrine guards against arbitrary rule by separating legislative, executive, and judicial functions. In line with this general principle, the power to enact laws is rightly the primary power of Parliament. Parliament, as an assembly of democratically elected representatives, is particularly suited to the function of law-making because it operates as a forum for 'vigorous and open debate in public between those speaking for the full spectrum of rival interests and different views'.[1]

2. However, Parliament frequently delegates its law-making function to the Executive to permit the making of legislative instruments (or delegated legislation). As a matter of practical reality, the Executive is accorded the ability to address administrative detail, or accommodate rapidly changing or uncertain situations through delegated legislation.[2]

3. The making of legislative instruments by the executive government without parliamentary enactment arguably violates the spirit of the separation of powers and the principle of law-making by only elected representatives, though on a basis able to be justified so long as it is 'founded on the ability of either House of the Parliament to disallow… such laws made by executive office-holders.'[3] One purpose of the requirements under ss 38 and 42 of the *Legislation Act 2003* (Cth) is 'to facilitate the scrutiny by the Parliament of registered legislative instruments.'[4]

4. The Committee agrees with the view that the referring of all disallowable legislative instruments to the Standing Committee for the Scrutiny of Delegated legislation under Senate Standing Order 23(2) is an important mechanism for promoting 'compliance with statutory requirements, the protection of individual rights and liberties, and principles of parliamentary oversight.'[5] That is not an oversight that should be lightly foregone.

5. Given the importance of the disallowance process to maintaining the proper roles of Parliament and Executive, the Committee submits that any exemptions from the disallowance process set out in s

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[1] Denise Meyerson, 'Rethinking the constitutionality of delegated legislation' (2003) 11 *Australian Journal of Administrative Law* 45, 53.
[2] Harry Evans and Rosemary Laing (eds), *Odgers' Australian Senate Practice* (Department of the Senate, 14th ed, 30 June 2019) ch 15 <https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Odgers_Australian_Senate_Practice/Chapter_15>.
[3] Harry Evans and Rosemary Laing (eds), *Odgers' Australian Senate Practice* (Department of the Senate, 14th ed, 30 June 2019) ch 15 <https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Odgers_Australian_Senate_Practice/Chapter_15>.
[4] *Legislation Act 2003* (Cth) s 37. See also *Dignan v Australian Steamships Pty Ltd* (1931) 45 CLR 188, 202.
[5] Harry Evans and Rosemary Laing (eds), *Odgers' Australian Senate Practice* (Department of the Senate, 14th ed, 30 June 2019) ch 15

42 of the *Legislation Act 2003* (Cth) must be based on robust justification. In this respect, the Committee submits that the Standing Committee for the Scrutiny of Delegated Legislation has an important role to play in assessing any such exemption provisions, by reference to:

a. the scope of the power to create delegated legislation;

b. the purpose for, and the circumstances in which, the delegated legislation is to be made;

c. the adequacy of the justification advanced for exemption; and

d. the impact on Parliament's ability to scrutinise the delegated legislation.

6. The mere fact that delegated legislation may be used to respond to an emergency is not, by itself, sufficient to justify making that legislation exempt from disallowance. That is because:

a. While there are compelling reasons to give the Executive flexibility to respond to emergencies, the mere possibility of future disallowance does not remove such flexibility; and

b. It can be assumed that Parliament would have due regard to any public emergency in considering whether to exercise its power to disallow.

7. That is especially so where the enabling provision in question permits the making of delegated legislation with a broad scope, permits the overriding of other laws, or permits substantial criminal consequences or intrusions upon civil liberties.

Delegated Legislation under the *Biosecurity Act 2015* (Cth)

8. By way of example, the Committee is concerned about the wide powers that the Health Minister has once the Governor-General declares that a human biosecurity emergency exists under s 475(1) of the *Biosecurity Act 2015* (Cth). Such determinations and directions may be given despite any provision of any other Australian law.[6]

9. Like many other instruments that can be made under the *Biosecurity Act 2015* (Cth),[7] a determination by the Health Minister under s 477(1) is a legislative instrument, but is not subject to s

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<https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Odgers_Australian_Senate_Practice/Chapter_15>.

[6] *Biosecurity Act 2015* (Cth) s 477(5), 478(4).

[7] See, eg, *Biosecurity Act 2015* (Cth) ss 42(3), 44(3), 45(3), 50(2), 110(3), 112(3), 113(7).

42 of the *Legislation Act 2003* (Cth).[8] This was justified on the basis that the Government may need to take 'fast and urgent action necessary to manage a threat or harm to Australia's human health.' [9]

10. The Standing Committee for the Scrutiny of Bills noted that these exemptions may be considered to delegate legislative powers inappropriately and considered the justification advanced for this in the Explanatory Memorandum.[10] However, the Senate should also have had regard to the following concerning aspects of the power to make a non-disallowable instrument under s 477(1):

    a. **A 'Henry VIII' Clause**: A requirement determined under s 477(1) 'applies despite any provision of any other Australian law'.[11] This 'Henry VIII' clause allows delegated legislation to modify the operation of statute, which inverts the appropriate relationship between Parliament and the Executive discussed above.

    b. **Creation of offences with substantial penalties**: Non-compliance with a determination made under s 477(1) may lead to up to 5 years imprisonment and/or 300 penalty units.[12]

    c. **Broad discretion**: The power of the Minister to determine requirements is enlivened by a declaration of a human biosecurity emergency under s 476. This declaration is based on the Minister's own satisfaction of matters in s 476(1) and is not disallowable. Although the specific criteria in s 476(1) does not readily permit the Executive to 'recite itself into power',[13] Parliament may still value the disallowance process as an accountability mechanism. The power to determine requirements under s 477(1) is also broad. Determinations could affect numerous areas, provided that they are directed at disease prevention and control. Section 477(4) also expresses the relevant limits of the power in purposive terms—for example, the precondition that the Minister be satisfied 'that requirement is likely to be effective in, or to contribute to, achieving the purpose for which it is to be determined'.[14] Parliamentary scrutiny could ensure that the requirement is effective,[15] appropriate and adapted to its purpose,[16] and proportionate.[17]

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[8] *Biosecurity Act 2015* (Cth) s 476(2).
[9] Explanatory Memorandum, Biosecurity Bill 2014 (Cth) 297.
[10] Senate Standing Committee for the Scrutiny of Bills, Parliament of Australia, *Alert Digest No 2 of 2015* (4 March 2015) 12.
[11] *Biosecurity Act 2015* (Cth) s 477(5).
[12] *Biosecurity Act 2015* (Cth) s 479(3).
[13] *Australian Communist Party v Commonwealth* (1951) 83 CLR 1, 263.
[14] *Biosecurity Act 2015* (Cth) s 477(4)(a).
[15] *Biosecurity Act 2015* (Cth) s 477(4)(a).
[16] *Biosecurity Act 2015* (Cth) s 477(4)(b).
[17] See *Biosecurity Act 2015* (Cth) ss 477(4)(c)–(e).

11. While acknowledging that the Select Committee's role is not to focus upon the *Biosecurity Act 2015* (Cth) or any other particular piece of enabling legislation, the Committee submits that the above are factors that should be of serious concern to Parliament in authorising the making of non-disallowable delegated legislation. Absent the most extreme of justifications, delegated legislation with such a character should not be excluded from disallowance.

Recommendation 1

Absent the most extreme of justifications, delegated legislation should not be excluded from disallowance.

Recommendation 2

The Senate should give greater scrutiny to bills with clauses that exempt legislative instruments from disallowance. In particular, the Senate's attention should be drawn to the scope and effect of the particular enabling provisions, including 'Henry VIII' clauses, broad discretions, potential interference with personal rights, and potential criminal sanctions.

Scrutiny of non-disallowable delegated legislation

12. As a further matter, Senate Standing Order 23(2), which allows instruments to be referred to the Senate Standing Committee for the Scrutiny of Delegated Legislation, presently only extends to legislative instruments that are subject to disallowance. As such, the Senate Standing Committee is unable to review or report on s 477(1) determinations or other non-disallowable instruments.[18]

13. The Committee recommends that the Standing Committee for the Scrutiny of Delegated Legislation should be able to review legislative instruments, even where these are not subject to disallowance. This is particularly the case where, like the instruments recently made under the *Biosecurity Act 2015* (Cth), these have the potential to affect personal rights and liberties. Even in the absence of disallowance procedures, the Standing Committee may have an advisory function through:

    a. reviewing draft legislative instruments, for example, under Standing Order 23(5);

    b. formally and informally liaising with the relevant executive decision-maker and department to resolve issues with draft delegated legislation before tabling;

[18] Andrew Edgar, 'Law-making in a crisis: Commonwealth and NSW coronavirus regulations' (Blog post, 30 March 2020) <https://auspublaw.org/2020/03/law-making-in-a-crisis:-commonwealth-and-nsw-coronavirus-regulations/>.

c. promoting accountability by making the Senate and the public aware of legislative instruments that are not consistent with the Scrutiny Principles;

d. reviewing non-disallowable instruments to contribute to developing best practice; and

e. in an appropriate case, proposing legislative action that might effectively override the delegated legislation.

14. We note, for example, that the Parliamentary Joint Committee on Human Rights is not restricted to examining instruments that are subject to disallowance.[19]

15. Concerned as it is with the technical aspects of legislative instruments,[20] review by the Standing Committee is not open to the criticism that it interferes with the capacity of the executive to respond appropriately to emergencies and that it presents the risk that 'political considerations will play a role in what should be a technical and scientific decision making process'.[21]

Recommendation 3

Amend Senate Standing Order 23 to give power to the Standing Committee for the Scrutiny of Delegated Legislation to review legislative instruments that are not subject to disallowance.

[19] *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth) s 7.
[20] Standing Committee for the Scrutiny of Delegated Legislation, *Guidelines*, (1st ed, 2020) 5.
[21] Explanatory Memorandum, Biosecurity Bill 2014 (Cth) 17.

THE LAW SOCIETY OF NEW SOUTH WALES
young LAWYERS

Concluding Comments

NSW Young Lawyers and the Committee thank you for the opportunity to make this submission. If you have any queries or require further submissions please contact the undersigned at your convenience.

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CAPaD - Awakening Democracy

The Canberra Alliance for Participatory Democracy

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Dear Secretary

We are writing in response to the opportunity provided by the Senate Standing Committee for the Scrutiny of Delegated Legislation to make submissions to its inquiry into the **exemption of delegated legislation from parliamentary oversight**. This submission is made by the Canberra Alliance for Participatory Democracy, a civil society organisation which focuses on the quality and accountability of the relationship between the people and their elected representatives. Detailed information about our goals and activities is available on our website: https://canberra-alliance.org.au/. In line with our organisational focus, our comments are provided from a governance policy perspective.

We are deeply concerned that trust in government is at historically low levels, with increasing scepticism that our political institutions are working in the interests of the people. The expectation that they should do so sits at the heart of the compact on which representative government is based. We, the people, choose our representatives on the understanding that our government will promote the public interest and be responsive to the people, and that the machinery of government will facilitate the expression of the wishes of those represented.[1]

Pitkin, a leading theorist on representative government, observed that "Representative government is not defined by particular actions at a particular moment, but by long-term systemic arrangements – by institutions and the way in which they function."[2] This reflection has a direct bearing on the Committee's inquiry into the exemption of delegated legislation from parliamentary oversight, in that the systemic arrangements governing disallowance directly affect the capacity of community members to engage through their elected representatives in the shaping of legislation that affects their interests.

Section 1 of the Australian Constitution vests legislative power in the parliament. Removing the parliament's power to scrutinise and disallow legislative instruments compromises that provision. This in turn undermines the relationship between the people and the representatives they elect to make the laws that govern them and supervise their execution. Where lawmaking is removed from the purview of the parliament, elected representatives

[1] Pitkin, Hanna 1967, *The Concept of Representation*, p.232 sets out these attributes of representative government.
[2] ibid p.234

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are unable to advance the interests of their constituents in relation to that legislation. In a practical sense, a pluralist parliament offers a mechanism to consider and respond to a spectrum of community views in a way that a majoritarian executive does not.

For these reasons, we were deeply concerned to read in the Committee's media release that in 2019 some 20 percent of all delegated legislation was exempted from disallowance, and that this figure is expected to rise in 2020 with the provisions of COVID related laws. A subsequent report in *The Saturday Paper* of 16 May indicated that 32 of the at least 137 regulations made as part of the government's Covid-19 response were not subject to disallowance.

We have looked at only a small section of the legislation made to enable aspects of the government's response to Covid-19. We would note in this regard that Part 3 of each of *Appropriation (Coronavirus Economic Response Package) Act (No. 1) 2019-2020* and *Appropriation (Coronavirus Economic Response Package) Act (No. 2) 2019-2020* provides for an Advance to the Finance Minister to a maximum permissible value of $800M and $1200M respectively. S10(2) of the first act and s12(2) of the second act provide for the Finance Minister to make determinations regarding the provision of expenditure. In each case, the Act specifies that

> A determination made under subsection (2) is a legislative instrument, but neither section 42 (disallowance) nor Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* applies to the determination.

Expenditure of this order must be assumed to be based on significant policy framings which Parliament could be expected to need to consider.

The Committee's June 2019 report *Parliamentary Scrutiny of Delegated Legislation,* in particular the discussion of the exemption of delegated legislation from parliamentary scrutiny, documents a number of major flaws in the current system of exemption of legislative instruments from disallowance, and makes several important recommendations. Our comments look at the Committee's findings through the lens of ensuring robust representative government.

Accountability

Parliament, as the branch of government empowered by the constitution to make laws and the body that directly represents the people of Australia, needs to be fully accountable to the people for the substance of all legislation made.

The Committee, in its June 2019 report (paragraph 8.37), noted that "a vast range of exemptions from disallowance are set out in delegated legislation (namely the Legislation (Exemptions and Other Matters) Regulation 2015". Seemingly, in this way, parliament has delegated to the executive a considerable share of the power to make the groundrules as to what legislative instruments do not need to be brought back to the parliament. We strongly endorse the Committee's Recommendation 15 to review existing provisions exempting legislative instruments from disallowance and to amend the *Legislation Act 2003* to ensure that all such exemptions are contained in primary legislation. We also strongly endorse the Committee's view, at paragraph 8.35, that "the circumstances in which instruments are exempted from disallowance should be strictly limited, with a justification for any exemption clearly articulated in explanatory materials".

The Committee canvasses a number of measures to make clear the justification for proposing an exemption from disallowance and a more robust process for testing these

justifications. Building on this discussion, we would urge: the development and publication of criteria for the exemption of legislative instruments from disallowance; a requirement to include in explanatory memoranda a justification for any provision exempting a legislative instrument from disallowance, based on the published criteria; and assigning to either this Committee or the Committee for the Scrutiny of Bills an express function to scrutinise all provisions in primary legislation providing for the exemption of a legislative instrument from disallowance to verify compliance with the published criteria.

Transparency

The public should be able to establish with ease what legislation governs them, including exempted legislative instruments that have been made without any parliamentary consideration. The Committee's 2019 report makes clear that this is not currently the case. We understand that there is no discrete listing of legislative instruments which have been exempted from disallowance. We would support the creation of a cumulative published index of exempted legislative instruments, with instruments listed at the time that they are registered. At minimum, exempted instruments should be tagged and searchable as such in the Federal Register of Legislation, as proposed by the Committee in paragraph 8.39 of its 2019 report. We would also urge that no exempted legislative instrument come into force until 28 days after registration, as recommended by the Committee in its 2019 report for all delegated legislation. This provision is particularly important for exempted legislative instruments since they are more likely to fly under the radar, being excluded from parliamentary review.

Responsiveness

There is currently no mechanism of which we are aware for parliament to modify or disallow exempted legislative instruments: they exist by executive fiat. Even should the Committee persuade parliament to tighten the future regime, there will remain a considerable volume of extant legislative instruments on the books. We would strongly recommend a power for parliament to consider and modify or repeal controversial instruments. This would provide a vehicle for parliament to respond to any significant public concerns, in the same way as it can review controversial laws should the numbers so permit.

Yours Sincerely

Peter Tait
Secretary
Canberra Alliance for Participatory Democracy

THE UNIVERSITY OF MELBOURNE

June 25, 2020

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Re: *SUBMISSION TO THE SENATE SCRUTINY OF DELEGATED LEGISLATION COMMITTEE INQUIRY INTO THE EXEMPTION OF DELEGATED LEGISLATION FROM PARLIAMENTARY OVERSIGHT*

Dear Secretary,

Thank you for the opportunity to make a submission to this Committee.

We make this submission in our capacity as members of the Centre for Comparative Constitutional Studies ('CCCS') and the Laureate Program in Comparative Constitutional Law at the Melbourne Law School, University of Melbourne. We are solely responsible for its content.

This submission has been prepared on behalf of CCCS by Professor Kristen Rundle, Professor Michael Crommelin AO, Professor Cheryl Saunders AO, Professor Adrienne Stone, and Ms Selena Bateman. We acknowledge the support of the Australian Research Council through Professor Stone's Laureate Fellowship FL 160100136.

If you have any questions relating to the submission, or if we can be of any further assistance, please do not hesitate to contact us.

Yours sincerely,

[redacted]

Professor Adrienne Stone
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CENTRE FOR COMPARATIVE CONSTITUTIONAL STUDIES

Submission to the Senate Standing Committee for the Scrutiny of Delegated Legislation
Inquiry into the exemption of delegated legislation from parliamentary oversight

25 June 2020

Introduction

The Centre for Comparative Constitutional Studies ('CCCS') is a research centre of Melbourne Law School at the University of Melbourne. CCCS undertakes research, teaching and engagement in relation to the Australian constitutional system as well as comparative constitutional law. The Laureate Program in Comparative Constitutional Law (LPCCL) at Melbourne Law School is funded by the Australian Research Council to pursue research relating to constitutionalism in liberal democracies.

We welcome the opportunity to make this submission to the Senate Standing Committee for the Scrutiny of Delegated Legislation ('the Committee') Inquiry into exemption of delegated legislation from parliamentary oversight ('the Inquiry').

We applaud the Committee's decision to convene this Inquiry at this time. In doing so the Committee seeks to engage with bedrock constitutional concerns about the conduct of lawmaking in our system of government. We note that the Committee's decision to convene this inquiry has been influenced by the current COVID-19 public health crisis and the extensive role being played by delegated legislation in the Government's response to it. However, we equally note that the Committee has been voicing concerns, for some time, about the increasing number of legislative instruments that are designated as not subject to 'disallowance' procedures and thus effectively exempt from parliamentary oversight.[1] We accordingly offer this submission to assist the Committee to develop principles to inform the proper use of non-disallowance mechanisms in times of 'emergency' and 'normality' alike.

To address the questions and issues raised in the Committee's Terms of Reference, we have organised our submission as follows:

1. Background: exemption from disallowance in the context of the Committee's role and our constitutional system
2. The current framework for exempting delegated legislation from parliamentary scrutiny
   (a) The legislative framework for exempting delegated legislation from disallowance

[1] We describe the character of these procedures in section 2.

(b) The institutional framework for exempting delegated legislation from disallowance
(c) The current grounds for exempting delegated legislation from parliamentary oversight
(d) The significance of what counts as a 'legislative instrument'

3. Principles that should govern the exemption of delegated legislation from parliamentary scrutiny
4. Exemption of delegated legislation from parliamentary oversight in times of emergency
5. The constitutionality of delegated legislation
6. Recommendations

1. Background: exemption from disallowance in the context of the Committee's role and our constitutional system

Throughout its history the Committee and its predecessors have understood the very important role it plays within our system constitutional of government. The Committee's function of subjecting legislative instruments to scrutiny and, where appropriate, to procedures for their disallowance, is designed to ensure that exercises of power of this kind do not exceed the limits of their statutory authorisation. In doing so the Committee makes a crucial contribution to ensuring that Parliament remains the primary lawmaking institution in our constitutional order.

The Committee's operating structure has recently been subject to a suite of important reforms that reflect the recommendations of the report published in June 2019 by the Committee's predecessor, the Senate Standing Committee for Regulations and Ordinances, ('the June 2019 Report'). These reforms reflect a desire on the Committee's part to modernise its role and functions to better meet the demands of its task in conditions of contemporary government. Relevantly, those conditions include the increasing prevalence of delegated legislation and other 'legislative instruments' as the source of legal authority for a wide range of government action.[2] By way of illustration, in 2018-2019 there were 1,127 legislative instruments subject to disallowance. This figure was consistent with the previous 5 years, in which 1,000-2,000 disallowable instruments were made each year.[3]

[2] We return to the question of what is a 'legislative instrument' in section 2(d), below.
[3] *Odgers Australian Senate Practice* Ch 15 'Delegated Legislation, Scrutiny and Disallowance' (https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Odgers_Australian_Senate_Practice/Chapter_15).

About half of the law of the Commonwealth by volume consists of delegated legislation rather than primary legislation.[4]

The June 2019 Report makes clear that the sheer scale and variety of legislative instruments theoretically amenable to the Committee's scrutiny significantly hinder its capacity to perform its function to the level required by our constitutional system. The parallel development of the increasing number of legislative instruments that are designated as *exempt* from disallowance procedures was emphasised as a matter of serious concern to the Committee. The **Committee's comments** on this issue include the following:

> The committee considers that exempting instruments from disallowance raises significant scrutiny concerns. This is because such exemptions effectively remove Parliament's control of delegated legislation, leaving it to the executive to determine (albeit within the confines of the enabling legislation and the Constitution) the content of the law. The committee acknowledges there may be circumstances in which it is appropriate to exempt delegated legislation from disallowance – for example, where it is clear that the instrument relates solely to the internal affairs of government. However, the committee considers that the circumstances in which instruments are exempted from disallowance should be strictly limited, with a justification for any exemption clearly articulated in the explanatory materials.[5]

We note that the Committee's concerns in this vein were reflected in **Recommendation 15** of the June 2019 report, which was ultimately not accepted by the Government. Recommendation 15 requested that the Government:

(a) review existing provisions exempting legislative instruments from disallowance, to determine whether such exemptions remain appropriate, and amend the *Legislation Act 2003* to ensure all such exemptions are contained in primary legislation; and
(b) publish guidance as to the limited circumstances in which it may be appropriate to exempt instruments from disallowance.

The remainder of this submission accordingly proceeds on the basis that the constitutional context of the Committee's important role needs no further explanation, and that the Committee's concerns about the increasing number of legislative instruments designated as not subject to disallowance procedures and exempt from its scrutiny have been made clear.

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[4] *Odgers Australian Senate Practice,* Ch 15 'Delegated Legislation, Scrutiny and Disallowance' (https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Odgers_Australian_Senate_Practice/Chapter_15).
[5] June 2019 Report at para 8.35.

2. The current framework for exempting delegated legislation from parliamentary scrutiny

Paragraph (a) of the Inquiry's Terms of Reference seeks guidance on 'the appropriateness and adequacy of the **existing framework** for exempting delegated legislation from parliamentary oversight'. We understand that 'existing framework' to be comprised of multiple elements, which we will address in turn.

(a) The legislative framework for exempting delegated legislation from disallowance

Section 42 of the *Legislation Act 2003* outlines the procedure for the disallowance of legislative instruments, which is triggered by a notice of motion to disallow an instrument being given in a House of Parliament and sets up a timeline (15 sitting days) for its resolution. The provision clearly establishes **a presumption in favour of disallowance**. For example, subsection (2) provides that an instrument is taken to have been disallowed and is repealed if the notice of motion has not been withdrawn or otherwise disposed of within the prescribed timeframe.

Section 44 of the *Legislation Act 2003* is titled 'Legislative instruments that are **not subject to disallowance**'. Most relevantly for present purposes, subsection (2)(a) provides that the disallowance procedure outlined in section 42 does not apply if '**an Act declares**, or has the effect, that section 42 does not apply in relation to the instrument or provision', or (b) 'the legislative instrument **is prescribed by regulation**' for the purposes of that paragraph.

The designation of individual legislative instruments as not subject to disallowance is therefore done in **two ways**. The first is by recording the exemption in a provision of the **primary legislation** that authorises the making of the relevant legislative instrument. An example of how this is done is contained in s 477(2) of the *Biosecurity Act 2015* (Cth), which provides that the power of the Health Minister to determine an emergency health requirement during a human biosecurity emergency is a legislative instrument, but that 'section 42 (disallowance) of the Legislation Act 2003 does not apply to the determination'. Another recent example is s 41(7) of the *Future Drought Fund Act 2019* (Cth), which provides that the direction made by the responsible Minister to the Future Drought Fund Investment Board to mandate the Board's functions is a legislative instrument, but that neither s 42 of the Legislation Act nor the sunsetting provisions apply to the directions.

The second way of designating a legislative instrument as not subject to disallowance is through **delegated rather than primary legislation**. This involves making amendments to the regulations that exempt particular kinds of instruments from disallowance under the **Legislation (Exemptions and Other Matters) Regulation 2015**.

The June 2019 Report records the **Committee's concerns with respect to this second practice**. The Report notes how 'a vast range of exemptions from disallowance are set out in delegated legislation (namely the Legislation (Exemptions and Other Matters) Regulation 2015)', and states that 'decisions as to whether certain classes of delegated legislation or

particular instruments should be exempted from any form of parliamentary control should be contained in primary legislation rather than delegated to the executive'.[6] The Committee's views on this issue are also reflected in the terms of **Recommendation 15**, reproduced above. **We agree entirely with the Committee's assessment** of this matter. Our suggestions for reform of this practice are outlined in **section 3**, and our concerns about its constitutional basis are explained in **section 5**.

(b) The institutional framework for exempting delegated legislation from disallowance

In practice the disallowance procedure outlined in section 42 of the *Legislation Act 2003* is initiated by the Chair of the Committee giving notice of a motion to disallow the instrument in the Senate. This step is taken when the Committee, with the assistance of its legal advisor, identifies an instrument which may offend against the Committee's **'scrutiny principles'**. These are the principles against which a legislative instrument subject to disallowance, disapproval, or affirmative resolution of the Senate is examined by the Committee for whether:

> (a) it is in accordance with its enabling Act and otherwise complies with all legislative requirements;
> (b) it appears to be supported by a constitutional head of legislative power and is otherwise constitutionally valid;
> (c) it makes rights, liberties, obligations or interests unduly dependent on insufficiently defined administrative powers;
> (d) those likely to be affected by the instrument were adequately consulted in relation to it;
> (e) its drafting is defective or unclear;
> (f) it, and any document it incorporates, may be freely accessed and used;
> (g) the accompanying explanatory material provides sufficient information to gain a clear understanding of the instrument;
> (h) it trespasses unduly on personal rights and liberties;
> (i) it unduly excludes, limits or fails to provide for independent review of decisions affecting rights, liberties, obligations or interests;
> (j) it contains matters more appropriate for parliamentary enactment; and
> (k) it complies with any other ground relating to the technical scrutiny of delegated legislation that the committee considers appropriate.

The June 2019 Report makes the important point that while in practice the Committee 'has only sparingly moved the disallowance of an instrument', it considers that 'the potential for it to do so encourages the executive to seek to address the committee's concerns'.[7] The point for present purposes is that designating a legislative instrument as not subject to disallowance **removes the possibility that the kinds of concerns reflected in the scrutiny**

[6] June 2019 Report at para 8.37.
[7] June 2019 Report at para 8.33.

principles can even be raised. The consequence for the Committee is therefore clear: it is no longer able to perform its function as a parliamentary actor, and specifically as an actor of the Senate, in 'preserving the principle of the separation of powers by ensuring that there is appropriate control over the executive branch of government' with respect to that instrument.[8]

It is precisely this removal of the Committee's scrutiny function that makes the role of other parliamentary actors central, especially the Committee's 'sister' committee, the **Senate Standing Committee for the Scrutiny of Bills** ('the Scrutiny of Bills Committee'). The present Committee's recent change of name to the Senate Standing Committee for the Scrutiny of Delegated Legislation was done to indicate the alignment between its functions and those of the Scrutiny of Bills Committee.

With respect to the immediate concerns of this Inquiry, the relationship between the two committees is especially crucial. In short, the prospect of the present Committee being able to scrutinise the treatment of legislative instruments in primary legislation *before* it is enacted is largely dependent on the Scrutiny of Bills Committee raising concerns about proposed 'non-disallowance' designations at the stage when Bills are being considered.[9] The Scrutiny of Bills Committee might raise these concerns directly with the Committee with a view to reporting shared concerns.[10] It is through the work of the Scrutiny of Bills Committee in reporting such concerns to the Senate that they are brought to the attention of the Senate for the purpose of informing their deliberations with respect to the Bill in question.[11]

The June 2019 Report suggests that efforts made by the Scrutiny of Bills Committee to draw its concerns about the proposed designation of certain legislative instruments as exempt from disallowance to the Parliament's attention **have not been met with sufficient consideration on the part of the Parliament**. Exemptions subsequently enacted have in turn not been supported by adequate **justification** for doing so. The Report describes the situation as follows:

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[8] June 2019 Report at para 8.30.

[9] Noting that Standing Order 24(1)(b) allows the Committee to scrutinise exposure drafts of legislation before it is formally introduced.

[10] *Odgers Australian Senate Practice* (14th ed, 2016), 324 (also accessible https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Odgers_Australian_Senate_Practice/Chapter_12).

[11] This function is discharged in accordance with 'scrutiny principles' devised specifically for the Scrutiny of Bills Committee. These are as follows:

- whether the bill unduly trespasses on personal rights and liberties;
- whether administrative powers are defined with sufficient precision;
- whether appropriate review of decisions is available;
- whether any delegation of legislative powers is appropriate; and
- whether the exercise of legislative powers is subject to sufficient parliamentary scrutiny.

For present purposes it is notable that these 'scrutiny principles' address a narrower range of concerns than those that inform the present Committee's scrutiny functions.

> The committee is also concerned that bills frequently seek to exempt instruments made under them from disallowance without giving adequate justification for doing so. In this respect, the committee notes that while the Scrutiny of Bills committee routinely raises concerns about proposed exemptions from disallowance, the exemptions are nevertheless enacted. Consequently, instruments are made that are exempt from disallowance and thereby not subject to sufficient parliamentary control or oversight.[12]

The Committee's concerns on this matter appear to us to be valid.[13] From a review of relevant Scrutiny Digests, it appears that the ordinary practice is that the Scrutiny of Bills Committee raises various concerns about disallowance exemptions in draft legislation and requests further information from the responsible Minister. However, in many instances the Bill is passed without any amendments to the relevant provisions. A review of the Senate **Hansard** record in relation to the **two examples noted above** is also illustrative of this issue. While in both cases the Scrutiny of Bills Committee raised the issue of the exemptions with the Senate,[14] **in neither case did this result in amendments**, nor any debate of this issue.

We submit that this record of **insufficient parliamentary engagement with concerns repeatedly raised** about the designation of legislative instruments as not subject to disallowance is deeply worrying. In our view it indicates a significant failure on the part of Parliament to both perform its constitutional function of calling the executive to account, and to ensure that it remains the primary lawmaking institution within our constitutional system. It arguably also lies at the root of the problem of the increasing number of legislative instruments so designated. The practice accordingly highlights the need for the issue we address next, namely, greater clarity about the bases or 'grounds' on which the exemption of delegated legislation from disallowance and thus from parliamentary scrutiny might be inappropriate.

(c) The current grounds for exempting delegated legislation from parliamentary oversight

The Terms of Reference for this Inquiry seek submissions on the grounds upon which delegated legislation is currently exempted from parliamentary oversight. Our assessment is that current processes and practices provide **little guidance** on what these 'grounds' are or should be.[15]

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[12] June 2019 Report at para 8.36.

[13] Some recent examples include, Senate Standing Committee for the Scrutiny of Bills, Scrutiny Digest No 1 of 2020, 25-26 and Scrutiny Digest No 3 of 2020, 37-38 in relation to the National Vocational Education and Training Regulator Amendment Bill 2019; Scrutiny Digest No 7 of 2019, 66-67 and No 6 of 2019 in relation to the Emergency Response Fund Bill, 8-10; Scrutiny Digest 7 of 2017, 37-38; Scrutiny Digest 8 of 2017, 142-147, in relation to the Regional Investment Corporation Bill 2017; Scrutiny Digest 15 of 2018, 14-16; Scrutiny Digest 1 of 2019, 42-45, in relation to the Future Drought Fund Bill 2018.

[14] Senate Standing Committee for the Scrutiny of Bills, Alert Digest No 2 of 2015, 11-12; Scrutiny Digest 15 of 2018, 14-16; Scrutiny Digest 1 of 2019, 42-45.

[15] See the treatment of this point at para 8.38 of the June 2019 report.

In so far that there are any established 'grounds' for exempting delegated legislation from parliamentary oversight, these are (at best) to be **extrapolated** from the two main methods through which exemption from disallowance presently occurs. The first is the exemption of particular classes of legislative instruments, and the exemption of specific legislative instruments, through the operation of the Legislation (Exemptions and Other Matters) Regulation 2015.[16] The second is the ad hoc approach in which exemptions from disallowance are contained in the individual statutes through which the power to make relevant legislative instrument is delegated.

A climate of **opacity** has developed around the issue of exempting delegated legislation from disallowance generally. On this matter we note the Committee's observation in its June 2019 Report that it can be very difficult to find out **which legislative instruments are designated as exempt** from disallowance procedures, and the **number of such instruments currently in force**.[17] The statistics noted in section 1 to indicate the scale of recent use of delegated legislation as the basis for authorising government action – approximately half of Commonwealth lawmaking by volume – did *not* include instruments that were exempt from disallowance. It is because 'non-disallowable' instruments are treated differently under the existing regime and are not able to be scrutinised by the Committee that it is much harder to access data about the scale of this class of instruments, and the policy contexts in which they might typically appear. In our view this opacity is itself instructive. It suggests that an attitude has developed toward the practice and prevalence of exemption from disallowance which sees both as matters of insufficient concern to warrant transparency as to the circumstances and scale of their occurrence.

(d) The significance of what counts as a 'legislative instrument'

A further important aspect of the issues to which this Inquiry is directed is the question of what counts as a 'legislative instrument' in the first place. We note that the definition of 'legislative instrument' for the purpose of the regulatory framework established through the *Legislation Act 2003* has been amended on multiple occasions since this comprehensive regime for dealing with legislative instruments was enacted. In its current form, the definition of **'legislative instrument'** includes:[18]

(a) Instruments made under a primary law that gives a power to do something by legislative instrument;
(b) Instruments made under a power delegated by the Parliament and registered on the Federal Register of Legislation;
(c) Instruments that determine or alter the content of the law, rather than determining how the existing law applies to particular cases; and

[16] Legislation (Exemption and other Matters) Regulation 2015 (Cth), reg 9.
[17] June 2019 Report at para 8.13.
[18] *Legislation Act 2003* (Cth), s 8(1).

(d) Instruments declared to be legislative instruments under certain provisions of the Legislation Act (and/or in the primary legislation)

The current definition was inserted in an attempt to clarify apparent ambiguities and circulatory in the previous statutory definition.[19] That earlier definition hinged on whether an instrument was 'of a legislative character', and therefore raised difficult questions in some cases between drawing the line between 'legislative' and 'administrative' action. Still, even if defining what is a 'legislative instrument' or an act of a 'legislative character' can at times be complex, the point is that any such definition should not obscure what ought to be the **essential element of a legislative instrument**: namely, that it involves an exercise of *legislative* power that has been *delegated* by the Parliament to the executive.

The distinction between exercises of 'legislative' as opposed to 'administrative' power is of constitutional importance because it carries **different implications for the responsibilities of Parliament**. It is generally accepted as a matter of principle that when legislative power has been delegated by the Parliament to the executive, any such power should remain capable of scrutiny and control by the Parliament. This is because, being legislative in character, **the power belongs to the Parliament**. The fact of its delegation to the executive does not change the ultimate authority and responsibility of the Parliament for exercises of its legislative power.

We are therefore concerned that the amendments that have been made to the definition of a 'legislative instrument' have arguably operated **to obscure the ultimate inquiry** which, on existing constitutional principles, should be to work out whether the executive is exercising administrative or legislative power delegated to it by the Parliament. **If it is legislative power**, then **Parliament should retain oversight** of that exercise of power. Relevantly to the present Inquiry, our constitutional order has long recognised that the primary way that Parliaments retain and exercise that capacity for oversight is through the disallowance mechanism. We accordingly submit that the expansive definition currently given to what counts as a 'legislative instrument' is an important aspect of and indeed contributes to larger concerns about the increasing number of such instruments designated as exempt from disallowance procedures.

We turn now to outline the principles that we think should guide the question of when it might be inappropriate to designate a legislative instrument as 'non-disallowable' and thus exempt from parliamentary scrutiny.

[19] See the 2008 Review of the Legislative Instruments Act (2009), 3[5]; Explanatory Memorandum, 2015 Instruments Amendment Act, 26.

3. Principles that should govern exemption of delegated legislation from parliamentary scrutiny

Paragraph (b) of the Inquiry's Terms of Reference asks whether the existing framework for exempting delegated legislation from parliamentary oversight **should be amended**, and if so, how. As already noted, the Terms of Reference also seek guidance on the 'grounds' upon which it might be appropriate to exempt delegated legislation from parliamentary oversight.

We submit that changes to current processes governing the exemption of delegated legislation from parliamentary oversight are **essential**, and that a **set of principles must be developed** to address the circumstances in which such exemption might be considered appropriate or inappropriate.

Our **first submission** is that the development of these principles must be informed by the commitment of our constitutional system to the supremacy of Parliament as the primary lawmaking institution and the limits on delegation of legislative power that this necessarily entails. We accordingly submit that the first step in reforming current practice should be to ensure that the **principle of disallowance**, mandated by both the constitutional convention of 'responsible government' and section 42 of the *Legislation Act 2003*, is **(re)asserted and sustained** at every level. No legislative instrument should be exempt from disallowance without justification, for the reason that disallowance is a key mechanism of parliamentary control.

Our **second submission** is that **exceptions** to this general principle should be determined by a **combination of two mechanisms**. The first mechanism would be to create **limited *classes* of *legislated* exceptions** to the general principle. This mechanism could operate in a similar manner to how classes of exempted instruments are currently listed in the Legislation (Exemptions and Other Matters) Regulation 2015. But the **crucial difference** would be that these classes of exempted instrument will have been determined by Parliament in primary legislation.[20] This change to current practice would operate to reassert the authority of Parliament as the primary lawmaking institution in our constitutional system.

The second mechanism for determining exceptions to the principle of disallowance, and which should be applicable to exemptions designated in the individual statutes through which the power to make the relevant legislative instrument has been delegated, is to **assess the proposed exemption against principles similar in substance to the 'scrutiny principles'** which currently inform the Committee's oversight functions. Our reason for

[20] An example of a class of legislative instrument that is currently expressly exempt from disallowance procedures by operation of section 44(1)(a) of the Legislation Act is those which concern an intergovernmental body or scheme involving the Commonwealth and one or more States or Territories. We note however that the relevant legislation and extrinsic materials relating to this example are opaque as to the rationale behind this exempted class. This absence of adequate explanation or justification for exemption is precisely why we are urging that Parliament take direct responsibility for determining which legislative instruments should be exempt from disallowance, and why.

suggesting that the scrutiny principles could be **'repurposed'** for this task is because these principles fundamentally speak to the centrality of Parliament as the primary lawmaking institution in our constitutional system, and to **matters that ought properly to concern a parliament** within such a liberal democratic constitutional order.

Here we particularly emphasise those principles that **explicitly highlight the constitutional context of the Committee's scrutiny role**. For example, scrutiny principles (c) (h) and (i) enable the Committee to call the Parliament's attention to legislative instruments which, in the Committee's view

- have left effects on peoples' rights, liberties, obligations or interests insufficiently defined, or
- unduly trespass on personal rights and interests, or
- exclude, limit or fail to provide adequate avenues for independent review of decisions made in accordance with the instrument.

The message of these kinds of scrutiny principles is accordingly that such matters ought to be of concern to Parliament within a liberal democratic constitutional system committed to the rule of law. They are thus in need of parliamentary oversight through the Committee's functions as a parliamentary actor. The same is evident in scrutiny principle (j), which enables the Committee to declare that a particular legislative instrument contains matters 'more appropriate for parliamentary enactment'.

The Committee's current scrutiny principles therefore provide an instructive indication of the limits that should apply to the making and content of delegated legislation in our constitutional system. They are accordingly **also instructive for the question of when exceptions to the general principle of disallowance would not be acceptable**. If a legislative instrument bears upon the kinds of matters indicated in the scrutiny principles, it should be in-principle subject to disallowance procedures. Any departure from that principle would need to be **carefully justified** by the Government, which when doing so should be obligated to explain how and why the instrument in question **does *not* raise these concerns** such as to make it an appropriate candidate for exemption from parliamentary scrutiny.

Consistent with our view that any 'classes' of exempt instruments should be determined by primary legislation, it is in our view equally essential that the criteria relevant to consideration of proposed exceptions to the foundational principle of disallowance should be settled through a **legislated framework**. The **executive should not be permitted to determine** the kinds of circumstances that might ground exceptions to the general principle of disallowance.

To effect this change in practice we suggest that the ***Legislation Act 2003* could be amended** to state the operative principles either as part of the current provision governing exemption from disallowance (section 44), or in a new section. We note that **there is currently no guidance in that Act** as to why certain kinds of instruments are eligible for

exemption from disallowance. This seems to be in direct tension with the primary object of the *Legislation Act* to provide a comprehensive regime from the management of Acts and instruments, including by establishing 'improved mechanisms for Parliamentary scrutiny of legislative instruments'.[21]

In addition, or as an alternative to legislative amendment, we recommend that these principles should be recorded in a **publicly available guidance** on circumstances which might justify exempting instruments from the principle of disallowance. We envisage that this guidance would provide the reference point for what must be addressed in any **mandatory statement of justification** for the proposed exemption designation at the **Bill stage**. We equally envisage that the guidance would **inform the task of the Scrutiny of Bills Committee** when seeking to draw the attention of Parliament to its concerns about a proposal to exempt delegated legislation from parliamentary scrutiny. We further envisage that the guidance would provide the reference point the mandatory statement of justification should form part of the **explanatory materials** accompanying any **legislation** in which an exemption from disallowance is ultimately enacted.

4. Exemption of delegated legislation from parliamentary oversight in times of emergency

Paragraph (a)(iv) of the Terms of Reference seeks guidance on the principles that might inform the appropriateness of exempting legislative instruments from parliamentary scrutiny in **times of emergency**. In raising this question the Committee is reacting specifically to the Government's response to the current COVID-19 public health crisis. The great majority of legal instruments authorising relevant government action over the course of this response so far have been sourced in delegated rather than primary legislation. A large proportion of those delegated instruments have in turn been **exempted from disallowance** procedures. According to the *Scrutiny News* publication of 18 June 2020, as at 16 June 2020 the relevant proportion was **19.1% of the total number of legislative instruments** brought into force to that date.[22]

We commend the Committee's own-motion decision to **continue its general scrutiny functions** during this 'emergency' period and the absence of standard timetabled parliamentary sittings that has accompanied it. We equally commend the Committee's action in publishing a regularly **updated list** of the legislative instruments that have been brought into force in association with the Government's COVID-19 response, and which includes information about the status of the Committee's scrutiny functions with respect to those instruments. Obviously, these functions have been and presently can only be

[21] *Legislation Act 2003* (Cth), s 3(e).
[22] See https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Bills/Scrutiny_News for access to the 18 June 2020 newsletter.

performed in relation to instruments that have not been designated as exempt from disallowance procedures. We make two observations in association with these points.

On the **absence of standard timetabled parliamentary sittings**, our **submission to the Senate Select Committee Inquiry into COVID-19** dated 28 May 2020 made clear that we consider this to be an entirely unacceptable feature of the Government's response to the current public health crisis.[23] In our view this response to COVID-19 has demonstrated that **a more structured approach to Parliament in times of crisis** is needed. Parliamentary sittings are presently ad hoc and their timetable set by the Government. This situation is clearly unsatisfactory. We therefore restate these objections in the present context, and specifically with a view to emphasising the **impact on the Committee** as a key parliamentary actor whose role and functions depend upon the wider environment of a properly functioning Parliament.

On the matter of the **large proportion of legislative instruments designated as exempt from parliamentary oversight** during the COVID-19 response, we offer the following observations. As stated in our submission to the Senate Select Committee on COVID-19, we accept that a system of constitutional government can accommodate 'emergency' measures in specific circumstances.[24] We also accept that delegated legislation may and frequently does play a prevalent role in such circumstances due to the speed and flexibility of this mode of lawmaking. However, it is equally our view that both the scale of delegated legislation in the Government's response to COVID-19, and the prevalence of 'non-disallowable' instruments among that body of delegated legislation, has been aided by the **ad hoc nature of current parliamentary activities**.

It is accordingly our view that 'emergency' conditions **highlight the need for the active and effective participation of Parliament generally**, as well as important parliamentary actors like **the Committee specifically**. This view informs our further submission that the Committee **ought not to seek a separate set of principles** or 'grounds' upon which to determine the appropriateness of exempting delegated legislation from parliamentary scrutiny **during times of emergency**. It is our view that the principles that ought to apply in determining which legislative instruments should be exempt from parliamentary scrutiny hold in 'normal' and 'emergency' conditions alike. Our reason for taking this stance is because emergency measures have the greatest tendency to operate in a coercive manner, in particular by introducing serious curtailments on liberty. These consequences run against

[23] Michael Crommelin, Kristen Rundle, Cheryl Saunders and Adrienne Stone on behalf of the Centre for Comparative Constitutional Studies, 'Submission to the Senate Select Committee Inquiry on COVID-19', 28 May 2020. As at the date of the present submission, this earlier submission is still awaiting publication on the Senate COVID-19 Inquiry website. Should this Committee wish to view the submission before its publication on the Senate COVID-19 Inquiry website, please so advise and we will arrange for it to be sent directly to the Committee's Secretariat.
[24] See especially pp 1-4.

the foundational commitments of our constitutional order as a liberal parliamentary democracy. They accordingly demand more rather than less parliamentary oversight.

5. The constitutionality of delegated legislation

We note that as a result of the June 2019 report, the Committee's scrutiny principles now expressly include an assessment of each instrument to determine whether it appears to be supported by a constitutional head of legislative power and is otherwise constitutionally valid.[25] We support these changes to the Committee's remit, noting especially their relevance to the practice of the Commonwealth government following the *Williams* decisions to place a large amount of public expenditure in delegated legislation which is otherwise subject to very little parliamentary scrutiny. We therefore consider that the Committee plays a vital role in scrutinising the constitutionality of these instruments.

There are however other constitutional questions relevant to the Committee's role, and specifically in relation to the concerns of the present Inquiry. In our view there is a plausible argument that the current practice of exempting legislative instruments from disallowance **through delegated rather than primary legislation** could be **unconstitutional**. The basis for this argument is that by exempting legislative instruments from disallowance through delegated rather than primary legislation, Parliament is no longer 'making' legislation, by delegation or otherwise. Rather, Parliament has effectively **abdicated** rather than **exercised** its legislative power.[26]

6. Recommendations

In accordance with the above submissions, we make the following recommendations:

1. The principle of disallowance mandated by both the constitutional convention of 'responsible government' and section 42 of the *Legislation Act 2003* should be reasserted and sustained at every level of parliamentary activity relevant to the making of legislative instruments.

2. Any exceptions to this general principle should be determined by reference to either:
   (a) A legislated list of limited classes of exemptions from disallowance (eg through amendment to the *Legislation Act 2003*); and/or
   (b) Assessing proposed individual exemptions against legislated principles similar in substance to the Committee's 'scrutiny principles' (eg through amendment to the *Legislation Act 2003*).

[25] Senate Standing Order 23 (3)(b).
[26] This issue has received little judicial attention to date. We note however that the submission made to this Inquiry by our colleagues at UNSW suggests that authority for an argument in similar terms to those just stated could be supported by *Dignan's* case (1931) 46 CLR 73. In any event, we submit that an argument along the lines just stated could be made on first principles.

3. All departures from the principle of disallowance should be carefully justified by the Government.

4. A publicly available guidance should explain the circumstances which might justify exempting instruments from the principle of disallowance, and should be used to inform:

a. the mandatory statement of justification for the proposed exemption designation that should accompany the presentation of the relevant Bill to the Parliament;
b. the task of the Scrutiny of Bills Committee when seeking to draw the attention of Parliament to a proposal to exempt delegated legislation from disallowance; and
c. the mandatory statement of justification that should form part of the explanatory materials accompanying legislation in which an exemption from disallowance has been enacted.

5. The principles upon which to determine the appropriateness of exempting delegated legislation from parliamentary scrutiny should be the same in circumstances of emergency as at any other time.

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BILLS DIGEST

BILLS DIGEST NO. 15, 2020–21 6 OCTOBER 2020

Defence Legislation Amendment (Enhancement of Defence Force Response to Emergencies) Bill 2020

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Law and Bills Digest Section
David Watt
Foreign Affairs, Defence and Security Section

Contents

Date introduced: 3 September 2020

House: House of Representatives

Portfolio: Defence

Commencement: The day after the Act receives Royal Assent.

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill's home page, or through the Australian Parliament website.

When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the Federal Register of Legislation website.

All hyperlinks in this Bills Digest are correct as at October 2020.

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Glossary

Abbreviation	Definition
ADF	Australian Defence Force
ADF Cover Act	*Australian Defence Force Cover Act 2015*
ADF Super Act	*Australian Defence Force Superannuation Act 2015*
CDF	Chief of the Australian Defence Force
CFTS	Continuous full time service
DACC	Defence Assistance to the Civil Community
DACC Manual	The Department of Defence internal administrative rules that govern provision of DACC: *Defence Assistance to the Civil Community Manual*, 16 November 2017
DFACA	Defence Force Aid to the Civil Authority—a military operation to supress domestic violence which might involve a use of force by the ADF. It is regulated by Part IIIAAA of the *Defence Act* and a formal Defence Instruction: *DI(G) OPS 01–1—Defence Force Aid to the Civil Authority*.
DoD	Department of Defence
DRSP Act	*Defence Reserve Service (Protection) Act 2001*
MACP	Military Aid to the Civil Power—a term equivalent in meaning to DFACA.
MRCA	*Military Rehabilitation and Compensation Act 2004*
MSB Act	*Military Superannuation and Benefits Act 1991*
Part IIIAAA Call Out	'Call out' is used in several distinct contexts in the *Defence Act 1903*. Part IIIAAA Call Out is used in this digest to refer specifically to an order by the Governor-General made under subsection 33(3) of the *Defence Act* calling out the ADF.
Reserve Call Out	'Call out' is used in several distinct contexts in the *Defence Act 1903*. To avoid confusion, Reserve Call Out is used in this digest to refer specifically to an order by the Governor-General made under subsection 28(1) of the *Defence Act* calling out a specified part of the ADF Reserves.
Royal Commission	Royal Commission into National Natural Disaster Arrangements
VCDF	Vice Chief of the Australian Defence Force

The Bills Digest at a glance

Purpose and structure of the Bill

The measures in this Bill are intended to enhance the government's ability to provide Defence Assistance to the Civil Community in relation to natural disasters and other emergencies.

Schedule 1—Calling out the Reserves

Schedule 1 proposes amendments to streamline the process for calling out members of the ADF Reserves. The proposed amendments will remove the requirement that the Governor-General act on the advice of the Executive Council when calling out the ADF Reserve and instead require the Governor-General to act on the advice of the Defence Minister, who will be required to consult the Prime Minister before advising the Governor-General. A Reserve Call Out order will be a notifiable instrument.

Reserve members will not automatically render continuous full time service (CFTS) when called out. It will be for the CDF to decide when a Reserve member who has been called out is bound to render CFTS.

Schedule 2—Immunities and ministerial direction to provide assistance

Schedule 2 provides immunities to certain personnel while they are performing duties to support emergency and natural disaster preparedness, recovery and response.

The manner in which the proposed amendments are drafted raises the question whether the Bill, as well as providing certain immunities, provides the Minister with a statutory power to direct use of the ADF and other Defence resources in certain 'natural disasters and other emergencies'. The Minister already has some non-statutory executive power to direct assistance. The extent of that non-statutory power depends on the scope of the Commonwealth's 'nationhood power' which is not regarded as settled in constitutional law. It is possible that these provisions expand the existing executive power.

For the purpose of issuing a direction, the nature of 'other emergencies' is not defined. There is no requirement for the Minister to consult with any affected state or territory before issuing a direction, or for a state or territory to requisition that assistance. There is no requirement for the ministerial direction to be published. A ministerial direction is not subject to any prescribed time limit.

The removal of criminal liability for actions taken in good faith performance of duty while providing certain assistance is likely to have the practical effect of expanding the circumstances in which the ADF can use force when deployed within Australia.

Schedule 3—Superannuation and related benefits

This Schedule proposes amendments to certain legislative superannuation schemes for ADF members to ensure that Reserve members who are subject to a call out order receive the same superannuation benefits as Reserve members who provide service voluntarily.

Purpose and structure of the Bill

The purpose of the Defence Legislation Amendment (Enhancement of Defence Force Response to Emergencies) Bill 2020 (**the Bill**) is to amend the *Defence Act 1903* (***Defence Act***) and the *Defence Reserve Service (Protection) Act 2001* (***DRSP Act***) to streamline the process for calling out members of the ADF Reserves, provide the Minister with certain powers to direct use of the ADF in an emergency, and to provide immunities to certain personnel while they are performing duties to support civil emergency and disaster preparedness, recovery and response.

The Bill is divided into three schedules.

- **Schedule 1—Calling out the Reserves** proposes amendments to the process for calling out members of the ADF Reserves under sections 28 and 29 of the *Defence Act*
- **Schedule 2—Immunities** proposes amendments to:
  - provide Australian Defence Force (**ADF**) members and other Defence personnel with immunity from civil and criminal liability in certain cases while performing duties to support civil emergency and disaster preparedness, recovery and response
  - permit the CDF or the Secretary to extend that immunity to other persons, including members of foreign military forces and foreign police forces and
  - in the context of the immunity provision, provide the Minister with statutory power to direct use of the ADF and other Defence personnel to provide assistance in a natural disaster or other emergency.
- **Schedule 3—Superannuation and related benefits** proposes amendments to the *Australian Defence Force Cover Act 2015* (***ADF Cover Act***), the *Australian Defence Force Superannuation Act 2015* (***ADF Super Act***) and the *Military Superannuation and Benefits Act 1991* (***MSB Act***) to ensure that Reserve members who are subject to a call out order receive the same superannuation benefits as Reserve members who provide service voluntarily.

The measures in this Bill are intended to enhance the government's capacity to provide Defence Assistance to the Civil Community (**DACC**) in relation to natural disasters and other emergencies.[1] The key issues and provisions are discussed separately for each Schedule.

Background

Defence Assistance to the Civil Community

The ADF defines DACC as 'the provision of Defence resources, within Australia and its territories, in response to a request for assistance for the performance of support that is primarily the responsibility of the civil community or other Government/non-Government organisations'.[2] DACC is not authorised by statute, the assistance is provided by the Department of Defence through an internal administrative process, according to rules set out in the *Defence Assistance to the Civil Community Manual* (***DACC Manual***),[3] and overseen by the Defence Minister and the CDF.

1. Explanatory Memorandum, Defence Legislation Amendment (Enhancement of Defence Force Response to Emergencies) Bill 2020, [p. 1].
2. Department of Defence (DoD), *Defence Assistance to the Civil Community Manual* (*DACC Manual*), DoD, Canberra, 16 November 2017, p. 2-1.
3. The *DACC Manual*, which regulates the circumstances in which DACC will be provided, is unclassified but not currently published by the Department of Defence in a manner which allows access by the general public. It became public when tendered as an exhibit to the Royal Commission into National Natural Disaster Arrangements: EXHIBIT 30-023.006 - DEF.0001.0004.0001 - Defence Assistance to the Civil Community Manual (DACC) (updated 7 June 2019).

For DACC operations, the ADF is conceptualised as a Commonwealth workforce, equipment and logistic resource, rather than a military force. It is reasonable to characterise DACC operations, within certain limits, as non-military operations.[4]

Operation Bushfire Assist

Between September 2019 and March 2020, the ADF provided DACC through 'Operation Bushfire Assist' which saw some 8,000 defence force personnel assist with the bushfires, including more than 2,500 ADF Reserves. Approximately 500 defence personnel from countries including New Zealand, Papua New Guinea, Japan and Fiji also provided assistance.[5]

On 28 November 2019, in response to the rapidly worsening bushfire disaster, the Governor-General issued an Order to Call Out the Australian Defence Force Reserves. That order called out a large portion of the Reserves for ten days from the date of the order.[6] On 4 January 2020, the Governor-General issued a second Order to Call Out the Australian Defence Force Reserves (**January 2020 Call Out**).[7] The order applied only to 'Army Reserve members from Forces Command' who were called out for continuous full time service, as specified by the CDF, to provide civil aid, humanitarian assistance, medical or civil emergency or disaster relief. A call out of the Reserves (**Reserve Call Out**) for this purpose is authorised by paragraph 28(3)(g) of the *Defence Act*.

The Explanatory Memorandum advises that the bushfire disaster was the first time a large scale Reserve Call Out was used provide civil aid, humanitarian assistance, medical or civil emergency or disaster relief;[8] all other assistance provided by ADF members in response to natural disasters has been provided by full-time members or Reserve members who had volunteered. According to the Royal Commission into National Natural Disaster Arrangements (**Royal Commission**), the DACC contribution of the ADF in supporting state and territory governments in response and recovery efforts during the 2019–2020 bushfires was without parallel in peacetime.[9] Defence's experience during the January 2020 Call Out drew attention to ways in which the Reserve Call Out provisions could be improved.[10]

The Royal Commission examined Operation Bushfire Assist, and while it has not yet reported its findings, it has issued *Interim Observations,*[11] some of which are relevant to changes proposed in the Bill:

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4. In the carefully defined terms used by the ADF, DACC is neither a 'military operation' nor a 'civil–military operation'. In some contexts a 'civil–military operation' is referred to as 'military aid to the civil power'. Note that the *DACC Manual* states at p. 2-1 that DACC activities must not involve use of force directly by the ADF or indirectly by the ADF assisting others to use force. 'Force' is defined to include the restriction of freedom of the civil community whether or not by physical contact: *DACC Manual*, op cit., p. 2-1. It is difficult to describe ceremonial parades and displays of military skills using military equipment, such as fly-bys, demonstrations of infantry operations, and firepower displays, as non-military operations even though they do not involve any application of military force.
5. Royal Commission into National Natural Disaster Arrangements (Royal Commission), *Interim Observations*, 31 August 2020, Royal Commission, [Canberra], p. 11 [54].
6. Order to Call Out the Australian Defence Force Reserves, 28 November 2019. The order called out for continuous full time service: 'a) Army Reserve members from Forces Command; b) Air Force Reserve members from Combat Support Group; and c) Navy Reserve members from Fleet Command'.
7. Order to Call Out the Australian Defence Force Reserves, 4 January 2020.
8. Explanatory Memorandum, op. cit., [p. 2].
9. Royal Commission, *Interim Observations*, op cit., p. 11 [54].
10. Explanatory Memorandum, op. cit., [p. 2].
11. Royal Commission, *Interim Observations*, op cit., p. 11 [54].

> The involvement of the ADF in natural disasters in Australia is already contemplated in government disaster plans… some stakeholders questioned the limits of the existing authority to support DACC tasking. It has been said, in the context of the 2019-2020 bushfire season, that the limits of the existing legal framework were 'tested'. We have not yet reached a view about whether further legislative authority is required, and have sought further information on this issue.
>
> We have also heard that the ADF lacks privileges and immunities otherwise afforded to state and territory emergency responders, and that the legislative provisions for the call-out of the ADF Reserve force may not have been sufficiently flexible. We have sought further information on the nature and effect of those challenges.[12]

Counsel Assisting the Royal Commission has invited parties with leave to appear before the Royal Commission to respond to a set of *Draft Propositions*[13] which may inform the findings and recommendations of the Commission. Two propositions relate to the changes proposed in the Bill:

> C14. The legislative arrangements enabling the 'call-out' of reservists should be examined to ensure that such call-outs are more streamlined, and flexible in order to meet ADF operational requirements, including in natural disasters.
>
> C15. The Australian government should consider whether Defence (including ADF) and Defence personnel and staff (including ADF personnel) engaged in activities conducted under or pursuant to emergency DACC have the same or similar privileges and immunities as states and territories, and their personnel do, when engaged in activities in response to, and recovery from, natural disasters.[14]

The Royal Commission is due to deliver a final report by 28 October 2020.[15]

Ongoing Operation COVID-19 Assist

On 29 March 2020, the Defence Minister announced that the ADF had deployed teams across the country to:

> … work in partnership with state and territory law enforcement agencies to conduct COVID-19 quarantine compliance checks. The ADF will provide logistics support for the state and territory police as they enforce mandatory quarantine and isolation measures.
>
> The ADF response is being undertaken through the provisions of the Defence Assistance to the Civil Community (DACC) framework. **ADF members have no coercive enforcement powers.** As of today, around 350 ADF personnel are supporting state and territory authorities.[16]

DACC Operation COVID-19 ASSIST is co-ordinated through the Emergency Management Australia-led whole-of-government response, as is the standard procedure for emergency DACC operations.[17] Although Reserves have been used in the operation, as at the date of this digest, no call out orders had been issued under any statute and the operation was not authorised by specific legislation.

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12. Ibid., pp. 11–12, [56]–[59].
13. Royal Commission, *Draft Propositions: Counsel Assisting*, Royal Commission, [Canberra], 31 August 2020.
14. Ibid., pp. 16.
15. Royal Commission, 'About the Royal Commission', Royal Commission website.
16. L Reynolds (Minister for Defence), Defence support to mandatory quarantine measures commences, media release, 30 March 2020. [emphasis added]
17. DoD, 'Defence COVID-19 Taskforce', DoD website; Department of the Prime Minister and Cabinet (PMC), Australian Government crisis management framework, version 2.2, PMC, December 2017, p. 16.

Calling out the Reserves

Each arm of the ADF has a permanent force and a reserve force;[18] a key difference between the ***Permanent Forces*** and the ***Reserves*** relates to the obligation to render continuous full time service (**CFTS**).[19] Members of the Permanent Forces are bound to render CFTS by section 23 of the *Defence Act*. By contrast, under section 24, a member of the Reserves is not bound to render CFTS unless the member:

- is involved in a period of training that requires CFTS (see section 25)
- is required to render CFTS after volunteering to do so (see section 26) or
- is called out under Division 3 of Part III or—in time of war—Division 1 of Part IV.

A Reserve Call Out can rapidly increase the size of the full time force available for use by the Chief of the Defence Force (**CDF**). It is an extraordinary power, overriding the largely voluntary nature of Reserve service, and can only be used in exceptional circumstances. Subsection 28(3) of the *Defence Act* restricts the circumstances in which the Governor-General can make a Reserve Call Out order to:

- war or warlike operations
- a time of defence emergency
- defence preparation
- peacekeeping or peace enforcement
- assistance to Commonwealth, state, territory or foreign government authorities and agencies in matters involving Australia's national security or affecting Australian defence interests
- support to community activities of national or international significance or
- civil aid, humanitarian assistance, medical or civil emergency or disaster relief.[20]

This Bill does *not* amend the prescribed circumstances in subsection 28(3); it amends the process and service conditions under which Reserves can be called out under Division 3 of Part III of the *Defence Act*. The changes are discussed further under the heading **Schedule 1—Calling out the Reserves**.

Assignment to CFTS

CFTS is an important administrative concept in the Defence context and is contrasted with the administrative concept of ***Reserve service***. Section 1.3.15.1 of the Defence Determination 2016/19, Conditions of service provides that a ***Member*** of the Reserves on Reserve service is not on continuous full-time service. [21] **Schedule 1** amends call out provisions so that instead of a call out order automatically assigning Reserves to CFTS, the CDF has flexibility to determine how and when particular members or units are required to serve.

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18. The ADF has a special constitutional position and is not an ordinary Department of State; while it is recognised in the *Australian Constitution*, it is created by the *Defence Act 1903* (the *Defence Act*). Section 17 of the *Defence Act* prescribes that the ADF consists of three arms: the Royal Australian Navy; the Australian Army; and the Royal Australian Air Force. In turn, sections 18–20 of the *Defence Act* prescribes that each of those arms has a permanent force and a reserve force.
19. ***Permanent Forces*** is defined in section 4 of the *Defence Act* to mean the Permanent Navy, the Regular Army and the Permanent Air Force. ***Reserves*** is defined in section 4 of the *Defence Act* to mean the Naval Reserve, the Army Reserve and the Air Force Reserve.
20. *Defence Act 1903*, subsection 28(3).
21. ***Member*** is defined section 4 of the *Defence Act* to include any officer, sailor, soldier and airman.

Assignment to either CFTS or Reserve service has flow-on effects for the Reserve member, including to the benefits provided as conditions of service. For example, a member rendering CFTS can be required by command to perform duty at any time (regardless of their ordinary hours of work); is subject to military discipline law; and is entitled to prescribed conditions of service relating to pay, allowances, housing and superannuation.

Powers and immunities when conducting DACC

ADF members are not currently provided with any statutory powers or protections when conducting DACC; the powers and immunities of ADF members are the same as those of an ordinary citizen.[22] The use of ADF members to conduct tasks in support of disaster preparedness, response or recovery therefore presents some legal risks to those members. The issues are discussed further under the heading **Schedule 2—Immunities and ministerial direction to provide assistance.**

Committee consideration

The Bill has not been referred to a committee for inquiry and report as at the date of the Digest.

Senate Standing Committee for the Scrutiny of Bills

The Senate Standing Committee for the Scrutiny of Bills had not commented on the Bill as at the date of the Digest.

Policy position of non-government parties/independents

No non-government parties or independents appear to have commented on the Bill to date.

Position of major interest groups

Independent and Peaceful Australia Network (IPAN)

Bevan Ramsden, a member of the National Coordinating Committee of the Independent and Peaceful Australia Network (IPAN) indicated concern that 'emergencies' are undefined in the Bill and questioned whether it would permit the use of the ADF in a disruptive industrial action or disruptive mass climate change protest. Mr Ramsden also expressed concern that the Bill could provide foreign military forces and foreign police with immunity from civil and criminal prosecution when performing duties in an emergency.[23]

No other interest groups appear to have published comments to date.

Financial implications

The Explanatory Memorandum states that the Bill has no significant financial impact on Commonwealth expenditure or revenue.[24]

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22. No extra-legal emergency powers that could be exercised by the Executive have to date been recognised by Australian courts. See HP Lee, M Adams, C Campbell and P Emerton, *Emergency powers in Australia*, 2nd edn, Cambridge University Press, Cambridge, United Kingdom, 2019, pp. 80–81.
23. B Ramsden, 'A Bill to enable use of foreign troops or foreign police in Australian "emergencies"', Pearls and Irritations: public policy journal, blog, 1 October 2020.
24. Explanatory Memorandum, op. cit., [p. 3].

Statement of Compatibility with Human Rights

As required under Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth), the Government has assessed the Bill's compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bill is compatible.[25]

Parliamentary Joint Committee on Human Rights

The Committee had no comment in relation to the Bill.[26]

SCHEDULE 1—CALLING OUT THE RESERVES

The purpose of the amendments in **Schedule 1** is to streamline and enhance the provisions enabling Reserve Call Out, including where the Reserve Call Out is in response to a natural disaster or other emergency. The amendments are intended to:

a. Enhance flexibility in how called out ADF Reserve members serve by:

   i. removing references to continuous full-time service (CFTS)

   ii. enabling the Chief of the Defence Fore (CDF) to determine how and when they are required to serve.

b. Simplify the process for advising the Governor-General before making a Reserve Call Out order.

c. Provide for Reserve Call Out orders to be made by notifiable instrument.

d. Extend Parts 8, 9 and 10 of the *Defence Reserve Service (Protection) Act 2001* to any service rendered by Reserves under a Reserve Call Out order and not just CFTS.

e. Modernise the language in Part III of the Act.

f. Amend the CDF's delegation power in relation to Reserve Call Out to reflect the other changes to the Act.[27]

Key issues and provisions

Reserve Call Out process and advice to the Governor-General

The process required by the *Defence Act* for a Reserve Call Out is that the Governor-General make an order under subsection 28(1) calling out some or all of the Reserves for CFTS. Subsection 29(1) then requires the CDF to specify in writing the period for which a member of the Reserves is bound to render CFTS. Subsection 28(4) currently requires the Governor-General to act with the advice of either the Executive Council or the Minister, provided that the Minister has consulted the Prime Minister and the Minister is satisfied that the urgency of the situation requires that the Governor-General should act on the advice of the Minister alone.

Item 3 repeals subsection 28(4) and replaces it with:

- **proposed subsection 28(4)** which requires the Governor-General to act with the advice of the Minister and
- **proposed subsection 28(4A)** which requires the Minister to consult with the Prime Minister before giving advice to the Governor-General to make or revoke a Reserve Call Out order.

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25. The Statement of Compatibility with Human Rights can be found at pages 4–5 of the Explanatory Memorandum to the Bill.
26. Parliamentary Joint Committee on Human Rights, *Human rights scrutiny report*, 11, 2020, 24 September 2020, p. 81.
27. Explanatory Memorandum, op. cit., [p. 1].

The removal of the requirement to consult with the Executive Council is consistent with the prerogative of command in chief of the Defence Force being vested by section 68 of the *Constitution* in the Governor-General acting alone (as opposed to the Governor-General in Council).[28]

Removal of the automatic requirement to render CFTS

The Bill removes references to CFTS in the call out provisions; this has the effect that it will be for the CDF to decide when a called out Reserve member is bound to render CFTS. The provisions will allow the CDF more flexibility in using the available Reserve workforce.

Item 1 repeals paragraph 24(c) which currently has the effect that members subject to a Reserve Call Out are liable to render CFTS. **Proposed paragraph 24(c)** provides that a Reserve member who is subject to a Reserve Call Out is bound to render CFTS only if CDF specifies that they are to provide a period of CFTS.

Item 2 repeals subsections 28(1) and (2) and replaces subsection 28(1). **Proposed subsection 28(1)** removes the reference to CFTS so that the Governor-General may make an order '(a ***call out order***) calling out some or all of the Reserves for service'. The type of service will not be prescribed. The Bill does not propose amending the definition of ***call out order*** at section 4 of the *Defence Act*:

> ***call out order***:
>
> (a) in Division 3 of Part III—has the meaning given by subsection 28(1); and
>
> (b) in Part IIIAAA—has the meaning given by section 31.

The opportunity has not been taken to amend the confusing use of the defined term ***call out order*** to refer to two different types of order which have quite different content, purpose and effect. The term is also not used consistently throughout the *Defence Act*; it is redefined in section 31 for the purposes of Part IIIAAA. In terms of the effect of a Reserve Call Out order, it would be more accurate to refer to it as a 'Reserve call up order' or a 'compulsory activation order'.

Item 6 amends subsection 29(1) to remove the reference to the period of service during a Reserve Call Out being a period of CFTS service. **Proposed subsection 29(1)** will simply provide that a Reserve member covered by a call out order is bound to render service for the period or periods specified in writing by the CDF.

The Bill makes further minor consequential amendments to remove certain other references to CFTS in the *Defence Act*.

Notification of the Reserve Call Out order

Subsection 28(1) of the *Defence Act* currently requires that the Reserve Call Out order be published in the *Gazette*, and subsection 28(2) provides that the order is not a legislative instrument. **Proposed subsection 28(1)** will instead make the Reserve Call Out order a notifiable instrument.

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28. In fact, there is some doubt that Parliament is constitutionally competent to require the Governor-General to act on the advice of the Executive Council (effectively Cabinet) when exercising his or her prerogative as Commander in Chief. While the exercise of the command in chief can be shaped by Parliament (as section 28 of the *Defence Act* does by limiting the circumstances in which a Reserve Call Out order can be made) the prerogative is constitutionally fixed in the Governor-General acting alone. Nevertheless, the Governor-General remains bound by the fundamental principles of constitutional monarchy to act only on the advice of a Minister.

As the order will be a notifiable instrument, the Governor-General will be required to lodge the order for registration in the Federal Register of Legislation as soon as practicable.[29] Notifiable instruments are not generally subject to parliamentary scrutiny, nor are they subject to automatic repeal 10 years after registration.[30] No special provisions on these points are made in the Bill.

Item 4 repeals subsections 28(5), (6) and (7), which provide for commencement and revocation of a call out order. These provisions are no longer necessary since relevant provisions in the *Legislation Act 2003* and *Acts Interpretation Act 1901* will provide for the commencement and revocation of call out orders made by notifiable instrument.

Providing the CDF with more flexibility in employing called out Reserves

The Explanatory Memorandum advises that a number of practical problems were encountered with the operation of section 29 of the *Defence Act* during the January 2020 Reserve Call Out:

> Current subsection 29(2) provides that the period specified by the CDF in subsection 29(1) must start on the day the call out order takes effect. This requirement proved unworkable during the January 2020 Reserve Call Out – the CDF needs flexibility to specify periods that start on a later day. Further, current subsection 29(4), which provides that the specification of a period did not prevent the specification of further periods, created ambiguity as to whether periods specified by the CDF under subsection 29(1) needed to start on the day the call out order took effect, or not.

Subsections 29(2) and (4) are repealed by **item 7** of Schedule 1 and are not replaced. **Proposed subsection 29(1)** will allow the CDF to specify multiple periods of service under a call out order.[31]

Item 7 also repeals subsections 29(3) and (5), however their effect is reproduced in the proposed provisions. **Proposed subsection 29(2)** confirms that the CDF cannot specify a period of service that extends beyond the end of the call out order. **Proposed subsection 29(3)** confirms that the existence of a Reserve Call Out would not change any other obligation on an ADF member to render service:

> For example, if a Reserve member had volunteered for CFTS under section 26 of the Act, they would still be required to render this service even if a Reserve Call Out was in effect.[32]

Extending employment protection for Reserves

The *DRSP Act* currently links certain protections for called out Reserves to them rendering CFTS. Protections for education and employment in Parts 5–7 of the *DRSP Act* apply to any service by a Reserve member. However the financial and bankruptcy protections in Parts 8 and 9 of the *DRSP Act* only apply to Reserves members who are rendering CFTS either under a call out order, or as operational service. The loans and guarantees in Part 10 are only available to Reserves members rendering CFTS as a result of a call out.[33]

If the Bill is passed, called out Reserves will not necessarily be rendering CFTS. **Items 9–17** amend the *DRSP Act* to remove references to CFTS to ensure called out Reserves will receive the same protections under the Reserve Service Protection Act even when they are not rendering CFTS.

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29. *Legislation Act 2003*, subsection 15G(2).
30. See: *Legislation Act 2003*, section 7. Note also that legislative instruments are required to be tabled in Parliament, but notifiable instruments are not.
31. Explanatory Memorandum, op. cit., [p. 8].
32. Ibid.
33. Ibid.

Parts 8, 9 and 10 of the *DRSP Act* will apply to all Reserve members who render service under a call out order, regardless of whether that service is CFTS.

SCHEDULE 2—IMMUNITY AND MINISTERIAL DIRECTION TO PROVIDE ASSISTANCE

Background

Defence Assistance to the Civil Community (DACC) is not currently authorised by statute,[34] it is a non-statutory exercise of executive power.[35] **Schedule 2** proposes to:

- provide Australian Defence Force (**ADF**) members and other Defence personnel with immunity from civil and criminal liability in certain circumstances while performing duties in relation to assistance provided in civil emergency and disaster preparedness, recovery and response
- permit the CDF or the Secretary to extend that immunity to other persons including members of foreign military forces and foreign police forces and
- in the context of this grant of immunity, provide the Minister with statutory power to direct use of the ADF and other Defence personnel to provide assistance in a natural disaster or other emergency.

Justice Robert Hope in the *Protective Security Review–Hope Review* (**Hope Review**)[36]observed that it was particularly important to subject the domestic use of the military to critical review:

> Use of the military other than for external defence, is a critical and controversial issue in the political life of a country and the civil liberties of its citizens. 'An armed disciplined body is in its essence dangerous to Liberty: undisciplined, it is ruinous to Society'.[37] Given that there must be a permanent Defence Force, it is critical that it be employed only for proper purposes and that it be subject to proper control.[38]
>
> The Australian public is entitled to expect safeguards to ensure that the Defence Force is used only on appropriate occasions, that its action is limited to the task allotted to it and that in performing that task it complies with the requirements of the law.[39]
>
> Perhaps the most satisfactory safeguard is a full recognition by members of the Defence Force of the nature of the role which they perform when acting in **civilian security situations**[40] … other safeguards

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34. DACC is the provision of Defence resources, within Australia and its territories, in response to a request for assistance for the performance of support that is primarily the responsibility of the civil community or other Government or non-Government organisations. DACC is provided by the Department of Defence through an internal administrative process, according to rules set out in the *DACC Manual* and overseen by the Defence Minister and the CDF.
35. Lieutenant General Bilton (Chief of Joint Operations of the Defence Force), told the Royal Commission on Wednesday 3 June 2020: 'Our responses for aid to the civil community are conducted under the Constitution, section 61 of the Constitution, rather than a specific legislation.' Royal Commission, Transcript Hearing Block 1 - Wednesday 3 June 2020, p. 457–458. Section 61 of the *Constitution* authorises the use of executive power for 'the execution and maintenance of this Constitution, and of the laws of the Commonwealth.' Note that section 51(vi) of the *Constitution* authorises Parliament to make laws with respect to 'the control of the forces to execute and maintain the laws of the Commonwealth' and s51(xxxix) authorises Parliament to legislate with respect to the exercise of executive power.
36. R Hope, *Protective Security Review: Report* (Hope Review), Parl. Paper 397, Canberra, 1979. The Hope Review was commissioned following an emergency call out of the ADF to provide security after the Hilton Hotel bombing in February 1978.
37. Edmund Burke, *Works*, Rivington, London, 1815, vol. V, p.17.
38. Hope Review, op. cit., p. 142 [10.10].
39. Hope Review, op. cit., p. 174 [10.100].
40. Hope was not completely clear on the activities which were included within his term 'civilian security operations'. However at [10.12] he specifically included cordon, control of public movement, and picketing and guarding within the term. He also made clear that his terms of reference related to situations where the ADF rendered:

> may be found in parliamentary supervision, in the power of the courts to ensure that the law has been complied with, and in proper procedures regulating the relationship between the Defence Force and the civil authorities when it is acting in their aid. Appropriate parliamentary safeguards seem the most satisfactory safeguards that can be erected to prevent any misuse of members of the Defence Force in civilian security operations.[41]

Hope found that there were circumstances in which the use of the military was appropriate and made certain recommendations about the principles that should govern use of the ADF, including that it be a force of last resort.[42] Hope recommended that unarmed troops should be made readily available:

> There are many situations in which the assistance of unarmed members of the Defence Force might be needed, including those when logistic support is needed by armed police forces. That use is the subject of quite different considerations to the use of armed members of the Defence Force and should be made available quite readily if the circumstances justify it.[43]

On the other hand he expressed concern with the use of large numbers of armed soldiers[44] and he agreed with a previous report to Government that:

> … 'the over-riding principle governing all such activity ... that troops should never, in any circumstances, be used to confront political demonstrators or participants in industrial disputes. Whatever logistical support they render, they must be protected by police who alone must deal with any violence arising from objection to their support'.[45]

Military law academics Associate Professor David Letts and Professor Rob McLaughlin observe:

> The use of the ADF by the government in situations that do not involve those specifically envisaged by the Constitution can be a cause of tension between those who can see the logical benefit of using Commonwealth assets to their maximum advantage in adverse situations, and those who are cautious about deploying the ADF internally within Australia.
>
> There are solid arguments which support both points of view and there is also an extra dimension in terms of ensuring that there is adequate legal protection for ADF members when they are used in circumstances where an expectation might arise that they may be required to use some level of force: Moore C *The ADF and Internal Security – Some Old Issues with New Relevance* 523–537.[46]

> … aid to the Commonwealth and State governments and their civil authorities in meeting civil emergencies, especially terrorist attacks and other politically motivated violence, but also riots and the like. I am not concerned with the performance of other law enforcement tasks [for example, enforcing customs or fishing legislation], or use of the Defence Force to counter the effects of natural disasters, to maintain services during strikes, for coastal surveillance, search and rescue, to provide bands and displays, or to render harmless explosive ordnance, for example old bombs and hand grenades (other than in the context of a civil emergency). Hope Review, op. cit., pp. 141–142 [10.8].

41. Hope Review, op. cit., pp. 174–175 [10.100]–[10.102] [emphasis added].
42. Ibid., pp. 160–162 [10.63]–[10.69].
43. Ibid., p. 162 [10.69] [footnote removed].
44. Ibid., p. 162 [10.69].
45. Ibid., [10.66], citing Sir Robert Mark, *Report to the Minister for Administrative Services on the Organization of Police Resources in the Commonwealth Area and other Related Matters*, Australian Government Publishing Service, Canberra, 1978. Note that while subsection 33(4) of the *Defence Act* provides the Reserves must not be called out or utilised in connection with an industrial dispute, there is no such restriction on use of the Permanent Forces.
46. D Letts and R McLaughlin, 'Military aid to the civil power', Chapter 11 in R Creyke, D Stephens and P Sutherland, *Military Law in Australia*, The Federation Press, Sydney, 2019, p. 115–132 at p. 115, citing C Moore, '"To execute and maintain the laws of the Commonwealth" the ADF and internal security: some old issues with new relevance', *UNSW Law Journal*, 28(2), 2005, pp. 523–537.

ADF members are not currently provided with any statutory powers or protections when conducting DACC, regardless of whether they are rendering CFTS or voluntary service. As a consequence, the powers and immunities of ADF members are the same as those of an ordinary citizen.[47]

Immunity for actions and omissions by ADF members in the course of assisting in an emergency cannot be provided by an executive act;[48] legislation is required.[49] As Starke J stated in the case which established the doctrine of combat immunity, *Shaw Savill and Albion Co Ltd v Commonwealth*:[50]

> If any person commits … a wrongful act or one not justifiable, he cannot escape liability for the offence, he cannot prevent himself being sued, merely because he acted in obedience to the order of the Executive Government or any officer of State.[51]

Foreign military personnel who assist during disasters also have no special powers or immunities, though the process of dealing with any civil or criminal liability arising may be affected by the terms of any applicable Status of Forces Agreement between Australia and the country supplying the military personnel.

Assistance in an emergency that is not expected to involve the use of force by the ADF is currently provided through an internal defence administrative process, governed by the *DACC Manual* and overseen by the Defence Minister and the CDF. ADF personnel are bound by military disciplinary law to follow the formal instructions in the *DACC Manual*.[52]

Limits of a Part IIIAAA Call Out

Part IIIAAA of the *Defence Act 1903* provides a statutory footing for use of the ADF in Australia in response to ***domestic violence*** or another threat to Commonwealth interests.[53] Section 30 of the *Defence Act* provides a simplified outline of Part IIIAAA. ADF command power and freedom of operation is significantly constrained by Part IIIAAA.

In general terms, ADF members called out under Part IIIAAA are given power to:

- use necessary and reasonable force[54]
- control the movement of persons or of means of transport

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47. The existing and required powers of ADF members supporting civil authorities was considered by in the Hope Review at pp. 167–173 [10.81]–[10.97].
48. No extra-legal emergency powers that could be exercised by the Executive have to date been recognised by Australian courts. See: Lee, Adams, Campbell and Emerton, *Emergency powers in Australia*, op. cit., pp. 80–81. However, it is possible that limited powers could be recognised, or at least extra-legal action indemnified, in some circumstances in a crisis. The point is legally complex and currently uncertain. See: C Moore, *Crown and Sword: Executive power and the use of force by the Australian Defence Force*, ANU Press, Canberra, 2017, p. 18; A Twomey, *The veiled sceptre: reserve powers of heads of state in Westminster systems*, Cambridge University Press, Port Melbourne, Vic., 2018, pp. 14–15 and 84–85; M Head, *Emergency powers in theory and practice: the long shadow of Carl Schmitt*, Taylor and Francis Group , London, 2016, p. 14.
49. In *A v Hayden*, Brennan J noted that the absence of any prerogative power to dispense with the operation of general law is a principle 'fundamental to our law, though it seems sometimes to be forgotten when executive governments or their agencies are fettered or frustrated by laws which affect the fulfilment of their policies'. *A v Hayden* (1984) 156 CLR 532, [1984] HCA 67 at 580.
50. *Shaw Savill & Albion Co Ltd v Commonwealth* (1940) 66 CLR 344, [1940] HCA 40, per Starke J at 353; cited in Moore, *Crown and Sword*, op. cit., p. 5
51. Ibid.
52. *Defence Force Discipline Act 1982*: for example, section 29 Failing to comply with a general order and section 35 Negligence in performance of duty.
53. ***Domestic violence*** is a term used in the *Constitution* and the *Defence Act* to identify violence within Australia.
54. *Defence Act*, section 51N.

- search persons, locations or things for things that may be seized, or persons who may be detained, in relation to the call out order
- detain any person found in the search that the member believes on reasonable grounds is a person who may be detained[55] in relation to the call out order for the purpose of placing the person in the custody of a member of a police force at the earliest practicable time
- provide security (whether or not armed, and whether or not with a police force) including by patrolling or securing an area or conducting cordon operations
- direct a person to answer a question put by the member, or to produce to the member a particular document that is readily accessible to the person (including by requiring the person to provide identification to the member).[56]

Obvious questions arise as to the extent to which the ADF may access similar powers and protections in the absence of a Part IIIAAA Call Out. It could reasonably be argued that at least some of those powers should be available to ADF members assisting emergency services or law enforcement, at least with the agreement of the state or territory concerned.

In the context of the January 2020 Call Out, military law expert Associate Professor David Letts argued that a Part IIIAAA Call Out order should be used when the ADF is assisting state and territory authorities:

> … it is grossly unfair to place members of the ADF in a situation where they are ordered to provide assistance to state and territory authorities without ensuring that adequate legal protections for both the Australian community and the ADF are in place. Although Part IIIAAA of the *Defence Act* may not have been intended for this purpose, it seems that the use of a Call Out Order under that scheme would be one way of providing the legal certainty that should accompany the widespread use of the ADF within Australia.[57]

The absence of protections for ADF members during Operation Bushfire Assist was noted as a concern by senior ADF officers in evidence before the Royal Commission:

> One of the consequences, and this has been an area - a lesson out of this season, that is leading to us conducting a review, is that there are limitations for Defence personnel when they are providing a response under the aid to the Civil Community Framework, where the level of protection to Defence personnel is not the equivalent to other emergency service responders.[58]

The conditions to be met for issue of a Part IIIAAA Call Out order mean it will not usually be available for use in natural disasters or to respond to a pandemic. The Bill does not propose altering the conditions for a Part IIIAAA Call Out.

Immunities provided to state and territory emergency services personnel

The immunities available to state and territory emergency services personnel vary according to the type of duties they perform and the jurisdiction in which they are operating. The applicable law and the immunities available are considered in detail by Dr Michael Ebern in *Emergency law: rights, liabilities and duties of emergency workers and volunteers*.[59]

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55. Defined in section 31 of the *Defence Act 1903*.
56. *Defence Act*, section 46.
57. D Letts, 'Sending in the military? First let's get some legal questions straight', *The Canberra Times*, 8 January 2020, p. 20.
58. Royal Commission, Transcript Hearing Block 1 - Wednesday 3 June 2020, evidence of Lieutenant General Bilton, pp. 457–458.
59. M Ebern, *Emergency law: rights, liabilities and duties of emergency workers and volunteers*, Federation Press, 3rd edn, Leichhardt, NSW, 2010.

Key issues and provisions

Schedule 2 of the Bill proposes amendment of the *Defence Act* to provide immunity to a ***protected person*** from criminal or civil liability for actions done in good faith in the performance of duties which meet certain criteria. One of the criteria is that the Minister (or a delegate) has issued a written direction to provide assistance.[60]

The scheme of the provisions

Item 4 of **Schedule 2** inserts **proposed section 123AA.**

Proposed subsection 123AA(1) provides immunity to a ***protected person*** from criminal or civil liability for actions done in good faith in the performance of duties when:

- the person is providing assistance to the Commonwealth, a state or territory, or the community, on behalf of the ADF or the Department of Defence and
- the assistance is provided to:
  - prepare for an imminent natural disaster or other emergency or
  - respond to a natural disaster or other emergency that is occurring or
  - recover from a natural disaster or other emergency that occurred recently and
- the assistance is provided under a written direction of the Minister given under **proposed subsection 123AA(2).**

Proposed subsection 123AA(2) permits the Minister, if satisfied of *either* or *both* of the following:

(a) the nature or scale of the natural disaster or other emergency makes it necessary, for the benefit of the nation, for the Commonwealth, through use of the ADF's or Department's special capabilities or available resources, to provide the assistance;

(b) the assistance is necessary for the protection of Commonwealth agencies, Commonwealth personnel or Commonwealth property

to give a written direction to provide assistance in relation to a natural disaster or other emergency. **Proposed subsection 123AA(2)** does not specify who is to receive the direction or the type of assistance to be provided. **Proposed subsection 123AA(7)** specifies that the written direction is not a legislative instrument (the direction is also not a notifiable instrument). The power to issue the direction can be delegated to the CDF or the Secretary (**proposed subsection 123AA(5)**).

Protected person is defined in proposed subsection 123AA(3) as:

- a member of the ADF
- an APS employee in the Department of Defence
- another person authorised in writing by the CDF or the Secretary to render assistance in relation to a natural disaster or other emergency.

Proposed subsection 123AA(4) permits the CDF or the Secretary to authorise a person or class of persons to perform duties to provide that assistance. The persons who may be authorised are:

60. The scheme has some structural similarities to the statutory immunity provided in sections 35C and 35K of the *Australian Security Intelligence Organisation Act 1979*.

(a) an APS employee or other employee of the Commonwealth or a Commonwealth authority or agency;

(b) a member of the naval, military or air force of a foreign country, or a member of a foreign police force (however described).

A person authorised under **proposed subsection 123AA(4)** becomes a ***protected person.*** The power to authorise a person to perform duties can be delegated to an ADF member of a rank equivalent to a Commodore in the Navy (**proposed paragraph 120A(3D)(e)**) or an SES employee of the Department of Defence (**proposed paragraph 120A(3D)**).[61]

The scope and effect of a Ministerial directive to provide assistance

Schedule 2 appears, given the ordinary meaning of the words used, to empower the Minister (or delegate) to:

- identify a natural disaster or other emergency that meets certain criteria
- direct provision of assistance from the resources of the Department of Defence to prepare for, respond to, and recover from that natural disaster or other emergency and
- grant certain persons immunity while rendering assistance to prepare for, respond to, and recover from that natural disaster or other emergency, providing they are acting in good faith:
  - ADF personnel
  - APS personnel employed by the Department of Defence
  - other persons from the classes below specifically authorised by CDF or the Secretary
    - APS personnel employed by other Departments
    - other employees of the Commonwealth or a Commonwealth authority or agency
    - a member of the armed forces of a foreign country or
    - a member of the police force of a foreign country.

The written direction of the Minister in **proposed subsection 123AA(2)** does not appear on its face to be limited to the purpose of providing an immunity. The provision does not merely declare that certain personnel are carrying out duties to provide certain assistance; it appears to direct certain personnel to provide certain assistance. It is therefore possible it could have the larger effect of a statutory authorisation to deploy the ADF and other Department of Defence resources in a broad range of emergencies. If that is correct, the title of **Schedule 2—Immunity**, and **proposed section 123AA—Immunity in relation to certain assistance**, do not appear to accurately reflect the full content of the provisions since they do not refer to the apparently broad power given to the Minister to direct that assistance be provided in certain emergencies.

However, an argument can be made that the ordinary meaning of **proposed subsection 123AA(2)** is limited by the context in which it appears. This argument might conclude that instead of granting a broad power to the Minister to direct that assistance be provided in certain emergencies, the scope of that power is limited by the context so that the only purpose of a direction made under **proposed subsection 123AA(2)** is to enliven the immunity provision in **proposed subsection 123AA(1)**.

Statutory interpretation is a technical area of law and reasonable legal minds may differ on the interpretation a court is likely to apply. The High Court has been clear that the starting point for

61. See **items 2** and **3** of Schedule 2 to the Bill.

ascertaining the meaning of a statutory provision is the text of the provision considered in light of its context and purpose. In *SAS Trustee Corporation v Miles* [2018] HCA 55 Gageler J stated:

> The statutory text must be considered from the outset in context and attribution of meaning to the text in context must be guided so far as possible by statutory purpose on the understanding that a legislature ordinarily intends to pursue its purposes by coherent means.[62]

A subsection must be understood in the context of the provision as a whole and of the statute as a whole, however the clearer the natural meaning of the words used, the more difficult a court will find it to depart from that ordinary meaning in interpreting and applying the provision.

Paragraph 15AB(2)(e) of the *Acts Interpretation Act 1901* permits a court to refer to the Explanatory Memorandum when considering the meaning of a provision. In this case the general introduction to Schedule 2 in the Explanatory Memorandum mentions only the immunity and does not address the direction of the Minister:

> This Schedule inserts a new provision in the Act to give ADF members, other defence personnel and foreign armed forces immunity from civil and criminal suit in relation to actions done in good faith performance of their duties, where the duties are in relation to certain assistance provided in the context of a natural disaster or other emergency.[63]

In relation to **proposed subsection 123AA**, the Explanatory Memorandum states:

> The immunity provision is enlivened by a direction from the Minister that the ADF or the Department is to provide such assistance, and in circumstances where the relevant duties are being performed in relation to that assistance.[64]
>
> […]
>
> New subsection 123AA(2) provides for the Minister to direct, in writing, the provision of assistance in relation to a natural disaster or emergency. Without a direction under this subsection, the immunity does not apply. The Minister may make a direction in one or both of two circumstances…[65]

Both explanations make clear that the Minister's direction is an essential trigger for the operation of the immunity; however, both stop short of identifying the activation of the immunity provision as the sole purpose of **proposed subsection 123AA(2)**; they leave room for ambiguity in understanding the purpose and operation of the Minister's direction.

It is possible, perhaps even likely, that a court would 'read down' the power to give a direction under **proposed subsection 123AA(2)** so that it has effect only in terms of granting immunity, rather than authorising the provision of certain assistance. That conclusion is not, however, beyond doubt.

Where the ordinary meaning of the words in a provision may differ from its intended effect, Parliament has the opportunity to adjust the drafting so that the intended meaning is clear. There is no special legal necessity for a direction by the Minister to underpin the statutory grant of immunity in **proposed subsection 123AA(1)**. It is a drafting device chosen to assist in defining when the immunity would apply. The circumstances in which an immunity would apply could

62. *SAS Trustee Corporation v Miles* (2018) 265 CLR 137, [2018] HCA 55, per Gageler J at [41].
63. Explanatory Memorandum, op. cit., paragraph 24.
64. Explanatory Memorandum, op. cit., paragraph 8.
65. Explanatory Memorandum, op. cit., paragraph 31.

alternatively be defined directly or by a different drafting device. If adjusting the drafting is difficult, a good alternative might be to amend the Explanatory Memorandum to make the intention of Parliament clear.

Use of force domestically by the ADF

The ADF is currently prevented from using force during operations in Australia by:

- its own internal orders and rules and
- federal and state criminal law.

Use of force during a Part IIIAAA Call Out is specifically regulated in Part IIIAAA. **Proposed section 123AA(1)** will extend immunity from criminal liability to both the ADF and other protected persons. That immunity will effectively permit ADF members to use force, without criminal sanction, in the good faith execution of their duties while rendering assistance to prepare for, respond to, and recover from a natural disaster or other emergency, as directed by the Minister. The circumstances in which the immunity will operate are very broad and application of the immunity will be self-regulated by the Defence executive.

The immunity may have the unintended effect of permitting the domestic use of force by the ADF without the safeguards currently required under Part IIIAAA of the *Defence Act*. That is, on one reading (as explored above), the provisions may allow what is, in effect, a call out of the ADF on domestic operations, without a call out order being issued by the Governor-General, and without notice to the Parliament, the states and territories or the general public of that order being made.

In light of the comprehensive nature of the scheme in Part IIIAAA, the non-statutory executive power of the government to deploy the ADF inside a state or self-governing territory *to deal with domestic violence*, other than on the terms of the *Defence Act*, appears to have been displaced.[66]

While substantial executive power remains available to the Australian Government to deploy the ADF within Australia in circumstances other than domestic violence,[67] it is not clear that **proposed section 123AA** excludes the use of a Ministerial direction to provide assistance in an emergency involving domestic violence.

Existing immunity for ADF carriage and use of weapons in Australia

There is no restriction in the *Constitution* or the *Defence Act* on the ADF carrying arms within or outside defence bases. In fact, section 123 of the *Defence Act* provides that ADF members are not bound by any law of a state or territory which would require them to register, or to have

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66. If Parliament legislates on the same subject matter as a prerogative, the prerogative is constrained or even displaced, depending on the scope of the statute:

> It is uncontentious that the relationship between a statute and the prerogative is that where a statute, expressly or by necessary implication, purports to regulate wholly the area of a particular prerogative power or right, the exercise of the power or right is governed by the provisions of the statute, which are to prevail in that respect.

Ruddock v Vadarlis (*Tampa Case*) (2001) 110 FCR 491, [2001] FCA 1329, per Black CJ at 501–502 [33], citing *Attorney-General v De Keyser's Royal Hotel Ltd* [1920] AC 508.

67. See the discussion in Moore, *Crown and Sword*, op. cit., at p. 89. The control and disposition of the armed forces is, according to *Quick & Garran*, 'one of the oldest and most honoured prerogatives of the Crown'. J Quick and R Garran, *Annotated constitution of the Australian commonwealth*, 1901. The most relevant authority for the scope of the prerogative as it was received into Australia is in the judgment of Lord Reid in *Burmah Oil Co. Ltd. v Lord Advocate* [1965] A.C. 75:

> There is no doubt that control of the armed forces has been left to the prerogative … subject to the power of Parliament to withhold supply and refuse to continue legislation essential for the maintenance of a standing army…

permission to use or possess, 'a vehicle, vessel, animal, firearm or other thing belonging to the Commonwealth'.[68]

Possession and use of ADF weapons is regulated almost entirely by internal ADF orders, up to the point where such use might contravene the criminal law.[69] There are a number of disciplinary offences under the *Defence Force Discipline Act 1982* associated with negligence, use contrary to orders, and dangerous conduct associated with weapons.

Commonwealth constitutional capacity to respond to emergencies

The Commonwealth does not have a specific constitutional power to make laws with respect to emergencies. Note however that, to the extent the executive power of the Commonwealth permits the government to act in response to a natural disaster or emergency, the Parliament will also have power under section 51(xxxix) of the *Constitution* to legislate with respect to the exercise of executive power. Jacobs J in the *AAP case* explained the capacity of Parliament to legislate with respect to the exercise of executive power:

> The Parliament is sovereign over the Executive and **whatever is within the competence of the Executive under s 61**, including or as well as the exercise of the prerogative within the area of the prerogative attached to the Government of Australia, **may be the subject of legislation of the Australian Parliament.**[70]

In *Davis v. Commonwealth*,[71] the High Court confirmed that the incidental power under s 51(xxxix) of the *Constitution* could be relied on to enact legislation in aid of the exercise of the executive power. In that case, Mason CJ, Deane and Gaudron JJ remarked that, in general:

> … the existence of Commonwealth executive power in areas beyond the express grants of legislative power will ordinarily be clearest where Commonwealth executive or legislative action involves no real competition with State executive or legislative competence.[72]

The High Court has recognised that the very existence of the nation gives rise to a Commonwealth power to protect the nation. This 'nationhood power', which is a subset of executive power, has been considered several times recently by the High Court, but questions remain as to its scope.[73] The High Court has not, to date, found that this 'nationhood power' includes a general power to act with respect to national emergencies. Constitutional law expert Professor Anne Twomey noted at least one judge expressed caution on the point in *Pape v Commissioner of Taxation* [2009] HCA 23 (***Pape***):

> French CJ concluded that the executive power extends to 'short-term fiscal measures to meet adverse economic conditions affecting the nation as a whole, where such measures are on their face peculiarly within the capacity and resources of the Commonwealth Government.' His Honour was concerned to stress, however, that this 'does not equate it to a general power to manage the national economy.' Nor

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68. The scope of this provision has been subject to judicial comment in the *Commonwealth v Vance* (2005) 158 ACTR 47, [2005] ACTCA 35.
69. There are Commonwealth laws which have some effect, notably aviation and transport safety regulations.
70. *Victoria v The Commonwealth (AAP case)* (1975) 134 CLR 338, [1975] HCA 52, per Jacobs J at p. 406 [9] [emphasis added].
71. *Davis v. Commonwealth* (1988) 166 CLR 79, [1988] HCA 63.
72. Ibid., per Mason CJ, Deane and Gaudron J at [14].
73. *Pape v Commissioner of Taxation* (2009) 238 CLR 1, [2009] HCA 23; *Williams v Commonwealth* (2012) 248 CLR 156, [2012] HCA 23 ; and *Williams v Commonwealth of Australia (No. 2)* (2014) 252 CLR 416, [2014] HCA 23. The current position is discussed in D Hertzberg, 'The three forms of executive power and the consequences for administrative law review, *AIAL Forum*, 96, September 2019; and S Smith, 'The scope of a nationhood power to respond to COVID-19: unanswered questions', AusPubLaw, blog, 13 May 2020.

> did it necessarily amount to a power with respect to matters of 'national concern' or 'national emergency'. He appeared to be sensitive to the need to confine the scope of his finding.[74]

As public law academic Shreeya Smith notes:

> There is little guidance from the High Court about how to determine whether a particular measure comes within the Commonwealth's nationhood power, nor in relation to the scope of the Commonwealth's incidental power under s 51(xxxix) to enact coercive laws in aid of any such power.
>
> …whether the Commonwealth could rely on a nationhood power to undertake coercive measures without statutory authority remains contested. As to whether the existence of a national crisis or concern could be relied on to make coercive laws pursuant to the incidental power under s 51(xxxix), French CJ noted, in obiter, that reliance on a combination of s 61 and the incidental power under s 51(xxxix) to enact coercive laws was likely to be approached conservatively.[75]

As currently outlined by the High Court, the nationhood power probably allows the Commonwealth government to act without legislative authority, and Parliament to legislate, in relation to matters that are uniquely related to national government, provided:

- the action cannot be effectively carried out by the states and territories; that is, it is 'necessary' for the Commonwealth to act
- the action does not create an offence
- (probably) the action is not coercive
- proper authorisation for any spending is given by Parliament and
- the action is carried out in a manner consistent with the principles of responsible government; that is, under the authority of a Minister.[76]

Smith suggests that for an emergency to enliven the nationhood powers, as a minimum:

- there must exist a national concern and
- the necessary response is peculiarly within the capacity and resources of the Commonwealth.[77]

According to Smith, a broader characterisation of the power remains open because it was not ruled out in *Pape*, though she notes that, to the extent that a power to undertake coercive measures has been recognised, it relies on necessity. Smith also observes that the High Court has not set criteria to determine whether a particular means directed to toward the end or purpose of responding to a national crisis was within power.[78]

A national civil emergency would not change the legal limits of the nationhood power.[79] However it would likely temporarily expand the range of activities which are peculiarly national and which cannot be effectively carried out by the states and territories.

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74. Ibid. [citations removed].
75. Smith, 'The scope of a nationhood power', op. cit.
76. *Pape v Commissioner of Taxation*, op. cit.; *Williams v Commonwealth*, op. cit.; *Williams v Commonwealth of Australia (No. 2)*, op. cit. The current position is discussed in A Twomey, 'Pushing the boundaries of executive power: Pape, the prerogative and nationhood powers', *Melbourne University Law Review*, 34(1), 2010, pp. 313–343; Hertzberg, 'The three forms of executive power', op. cit.; and Smith, 'The Scope of a Nationhood Power', op. cit.
77. Smith, 'The Scope of a Nationhood Power', op. cit.
78. Ibid.
79. Note that the Royal Commission has indicated that one issue it intends to focus on is the role of a declaration of a national emergency. Royal Commission, 'Royal commission entering final hearing week', media release, 18 September 2020.

The provisions of **proposed subsection 123AA(2)** setting out the criteria for exercise of the power are clearly directed at ensuring the emergency power remains within the Commonwealth's constitutional power. The Minister may only direct the provision of assistance in relation to a natural disaster or other emergency if:

- use of the ADF's or Department's special capabilities or available resources, is necessary for the benefit of the nation due to the scale or nature of the natural disaster or emergency and/or
- the assistance is necessary for the protection of Commonwealth agencies, Commonwealth personnel or Commonwealth property.

Although neither 'natural disaster' nor 'other emergency' are defined, the scope of the power is confined to some extent by the two criteria above. The nature of an 'other emergency' is not confined in any way beyond those two criteria. The term could potentially encompass a broad range of emergency situations; for example: serious interruptions to the supply of goods and services, biosecurity emergencies, pandemic, street protests, industrial action, the aftermath of a bombing or an aircraft crash, or a cyberattack.

Potential conflict with state power to maintain public order

The maintenance of public order is a residual Crown prerogative. The continuing relevance of the prerogative as an element of executive power was recognised in the 1989 UK '*Northumbria Police Case*'.[80] Nourse LJ said:

> The wider prerogative must have extended as much to unlawful acts within the realm as to the menaces of a foreign power. There is no historical or other basis for denying to the war prerogative a sister prerogative of keeping the peace within the realm …
>
> I am of the opinion that a prerogative of keeping the peace within the realm existed in mediaeval times, probably since the Conquest and, particular statutory provision apart, that it has not been surrendered by the Crown in the process of giving its express or implied assent to the modern system of keeping the peace through the agency of independent police forces.[81]

However, under Australia's federal system of government, only those Crown prerogatives remaining at Federation and properly exercisable by the Commonwealth executive were incorporated into Chapter II of the *Constitution*. Dixon J in *R v Sharkey* affirmed that the states retained executive power in relation to the maintenance of order:

> 'The maintenance of order in a State is primarily the concern of the State, for which the police powers of the State are ordinarily adequate. But even if the State is unable to cope with domestic violence, the Federal Government has no right to intervene, for the protection of the State or its citizens, unless called upon by the State Executive.
>
> If, however, domestic violence within a State is of such a character as to interfere with the operations of the Federal Government, or with the rights and privileges of federal citizenship, the Federal Government may clearly, without a summons from the State, interfere to restore order. Thus if a riot in a State interfered with the carriage of the federal mails, or with inter-state commerce, or with the right of an elector to record his vote at federal elections, the Federal Government could use all the force at its disposal, not to protect the State, but to protect itself. Were it otherwise, the Federal Government

80. *R v Secretary of State for the Home Department, Ex parte Northumbria Police Authority* ('*Northumbria Police Case*') [1989] 1 QB 26, 58–9.
81. *Northumbria Police Case,* pp. 185–186 [citations removed].

> would be dependent on the Governments of the States for the effective exercise of its powers': *Constitution of the Australian Commonwealth* by Quick & Garran, at p. 964.[82]

Effectiveness of the proposed immunity

The effectiveness of the immunity provided in **proposed section 123AA** will depend on the Commonwealth's power to lawfully provide assistance in relation to a natural disaster or other emergency. Where the Commonwealth has constitutional capacity to offer such assistance, it will also have a sufficient power to legislate to provide effective immunity from civil and criminal liability, including from state law, to persons properly authorised to provide that assistance on behalf of the Commonwealth and who are carrying out their duties in good faith.

Public notice of direction to ADF to provide assistance

The Bill does not contain a requirement to publish a written direction given under **proposed subsection 123AA(2)**. Hope's observations about dealing with civilian security operations in a statute are relevant to whether any direction given under **proposed subsection 123AA(2)** should be published:

> It is important that the Commonwealth government, the Defence Force, and all relevant civil authorities should know where they stand and what they have to do, and what they can do, if the Defence Force is to be used in this special role. **It is also important that the general public knows the position.**[83]

No public notification is currently required when the ADF provides DACC.

Inherent dangers of emergency laws and necessary limits

The rule of law forms an assumption behind the Australian constitutional order—'the idea that all power is sourced in law, with the highest law being the *Constitution*.'[84] The executive cannot change the law to create new entitlements, create new criminal offences, or dispense with the operation of the law and seek to immunise itself from legal liability of those who act on its behalf.[85] Parliament, however, has power to do each of those things, with the result that 'The bulk of the emergency powers enjoyed by the Australian executive are those that have been conferred by statute.'[86]

It has been observed that a risk exists that the granting of statutory powers to the executive to act in an emergency can have the effect of encouraging the executive to generate 'emergencies', rather than merely reacting to them; particularly if the nature of the emergency is not tightly prescribed.[87]

The High Court has warned about the underlying danger to a constitutional democracy of the overuse of executive power. Dixon J stated in the *Communist Party Case* in 1951:

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82. *R v Sharkey* (1949) 79 CLR 121, [1949] HCA 46, per Dixon J at [8]. See further discussion in Moore, *Crown and Sword*, op. cit., p. 166.
83. Hope Review, op cit., at p. 147 [10.19] [emphasis added].
84. Lee, op cit., pp. 64–65.
85. Ibid. p. 76, citing *Davis v. The Commonwealth*, op. cit., p. 112–113; *Pape v. Federal Commissioner of Taxation*, op. cit., p. 92 [243]–[245] (Gummow, Crennan and Bell JJ).
86. Lee, op cit., pp. 80–81 [emphasis added].
87. See discussion in: E Goitein, 'What the President could do if he declares a state of emergency', Brennan Centre for Justice, blog, 12 December 2018 and C Rossiter, *Constitutional dictatorship : crisis government in the modern democracies*, Taylor & Francis Group, Oxford, 2017 (first published 1948), p. 266.

> History and not only ancient history, shows that in countries where democratic institutions have been unconstitutionally superseded, it has been done not seldom by those holding the executive power. Forms of government may need protection from dangers likely to arise from within the institutions to be protected.[88]

SCHEDULE 3—SUPERANNUATION AND RELATED BENEFITS

The Bill seeks to rectify what the Explanatory Memorandum calls a 'legislative gap' relating to superannuation access for Reservists who are rendering CFTS as a result of a Reserve Call Out.[89] The current system provides an entitlement to superannuation for Reservists rendering voluntary CFTS but not to Reservists rendering CFTS as a result of a Reserve Call Out.

The gap exists because the definition of continuous full time service contained in the *ADF Super Act* and the *ADF Cover Act* refer to subsection 26(2) of the *Defence Act* and this, in turn, refers only to voluntary service by Reserves.[90] The *MSB Act* defines, in paragraph 6(1)(b), continuous full-time service only as an undertaking and not as a call out. [91] In order to ensure that superannuation entitlements are available to Reservists rendering CFTS as a result of a Reserve Call Out these definitions are changed to remove the link to voluntariness and subsection 26(2) of the *Defence Act*.

To this end, **Schedule 3** of the Bill proposes amendments to the *ADF Super Act* and the *ADF Cover Act* which would repeal the current definition of continuous full-time Reservist contained in both of them and insert a new definition of *continuous full-time Reservist* as 'a member of the Reserves who is rendering a period of continuous full-time service'.[92] The proposed amendment to the *MSB Act* simplifies the definition of persons who are a member of the scheme at paragraph 6(1)(b) so that a Reservist rendering a period of full-time service will be a member.

Both the *ADF Cover Act* and the *ADF Super Act* refer to the *Military Rehabilitation and Compensation Act 2004* (*MRCA*) for their definition of defence service. The *MRCA* definition refers to 'warlike service, non-warlike service or peacetime service'. The current Bill seeks to repeal the definitions of defence service from the *ADF Cover Act* and the *ADF Super Act*.[93] The term 'defence service' is only used in these Acts for the purposes of the current definitions of 'continuous full-time Reservist' and will no longer be needed for the purposes of the new definitions.

The amendments will operate retrospectively applying from the date of the first Reserve Call Out on 28 November 2019.[94] This will benefit Reserve members who provided service during the bushfires of summer 2019-20.

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88. *Australian Communist Party v The Commonwealth* (*Communist Party case*) [1951] HCA 5, (1951) 83 CLR 1, per Dixon J at [25].
89. Explanatory Memorandum, [p. 2].
90. See section 4 of the *Australian Defence Force Superannuation Act 2015* and section 4 of the *Australian Defence Force Cover Act 2015*.
91. *Military Superannuation and Benefits Act 1991*
92. Schedule 3, Part 1.
93. Schedule 3, **items 2** and **4**.
94. Schedule 3, **items 8** and **9**. Explanatory Memorandum, [p. 12].

Members, Senators and Parliamentary staff can obtain further information from the Parliamentary Library on (02) 6277 2500.

we don't want to see providers unduly affected by these measures, despite the fact that we do support the basic idea of moving to a different form of payment.

We'll also be watching closely to ensure that changes from both phases—phase 1 and the next phase—do not adversely impact the outcomes for older people and their families. Of course that's absolutely critical. By changing the way that providers receive home-care subsidies, this bill will introduce accountability and transparency to home-care funding—something that's desperately needed. In exactly the same way, we need transparency and accountability improved for residential care as well. This is critical in ensuring that the aged-care system better services and supports the needs of older Australians and that Australians know how the money we are investing in home care and residential care is being spent to support older Australians.

It would be remiss of me not to point out the fact that we still need additional home-care packages. There's absolutely no doubt that the waiting list is still far too long. People have to wait far too long to get the right level of care that they need. Today I'm calling on the government to act immediately to address this issue in home care. As recommended by counsel assisting the royal commission, we need to clear the home-care package waiting list by December next year. Older Australians who need support at home should have universal access based on need, not based on capped places or funding. It is critical that we address these issues to ensure that older Australians can access the care they need when they need it, where they need it and where they want it. If they want to stay at home and receive care at home, they need to be able to access the level of care they need, not go onto a lower package and wait until they can access a higher level of care.

Having said that, the Greens do support this bill. We will, as I articulated, be watching very carefully to ensure that those providers that are financially vulnerable, particularly those in thin market areas, are not adversely affected by these changes and that, most particularly, older Australians get a better deal out of this process. They cannot be worse off. We expect to see them in a much better position. We will be supporting this bill, but we'll be watching the transition process very carefully.

Senator COLBECK (Tasmania—Minister for Aged Care and Senior Australians and Minister for Youth and Sport) (19:33): I thank colleagues for their contributions on the Aged Care Legislation Amendment (Improved Home Care Payment Administration No. 1) Bill 2020. This bill amends the way that home-care providers are paid the government subsidy, to address stakeholder concerns regarding unspent funds and to align home-care arrangements with other government programs, such as the National Disability Insurance Scheme. This bill will amend the legislation such that an approved provider of home care will not receive payment in advance but will be paid the monthly subsidy for a home-care recipient on lodgement of a claim with Services Australia after the end of each month.

The government has introduced a second bill, which will amend the legislation such that home-care providers will only be paid subsidy for services rendered to a care recipient during a month, with Services Australia retaining the unspent subsidy for which a care recipient is eligible in each month. This unspent subsidy will be available for a provider to drawdown on behalf of a care recipient as services are provided in future. Again, I thank members for their contribution to the bill. I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

Third Reading

The ACTING DEPUTY PRESIDENT (Senator Bilyk) (19:35): No amendments have been circulated. Does any senator require a committee stage? If not, I shall call the minister to move the third reading.

Senator COLBECK (Tasmania—Minister for Aged Care and Senior Australians and Minister for Youth and Sport) (19:35): I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

(Quorum formed)

Defence Legislation Amendment (Enhancement of Defence Force Response to Emergencies) Bill 2020

Second Reading

Consideration resumed of the motion:

That this bill be now read a second time.

Senator COLBECK (Tasmania—Minister for Aged Care and Senior Australians and Minister for Youth and Sport) (19:38): I table a replacement explanatory memorandum relating to the Defence Legislation Amendment (Enhancement of Defence Force Response to Emergencies) Bill 2020.

Senator WONG (South Australia—Leader of the Opposition in the Senate) (19:38): I rise to speak on the Defence Legislation Amendment (Enhancement of Defence Force Response to Emergencies) Bill 2020. It's a bill that arises out of the call-out of the 3,000 Australian Defence Force personnel during the Black Summer bushfires. The ADF reviewed the event post this call-out, sought what lessons there were to be learnt and worked out where things could have been done better. The result is this legislation. It is to the credit of Defence that it has reviewed the contribution to the 2019-20 bushfire effort in this way and has proposed these measures as a result. The bill represents a modest set of changes that improve the process of calling out the ADF Reserves, which Labor will support.

I want to add my voice to thank the ADF personnel who were engaged in the bushfires. During my visits to both the Adelaide Hills, the Cudlee Creek fire, and Kangaroo Island, people were most appreciative of their presence.

Let's be clear. Mr Morrison cannot blame the absence of this legislation for his catastrophic failure of leadership during the 2019-20 black summer bushfires, because that summer wasn't without warning. Scientists have been telling us for years that climate change increases the frequency and severity of extreme weather events and natural disasters. Unfortunately, their predictions are true. When I was minister for climate change I told this place, on 26 November 2009:

> … we are also likely to see an increase in very extreme fire weather days. That is one of the effects of climate change that was documented again by the Bushfire CRC, the Bureau of Meteorology and the CSIRO in 2007, when they said that very extreme fire weather days now occur on average once every two to 11 years at most sites, by 2020 they may occur twice as often and by 2050 they may occur four to five times as often. And this is science that is two years old.

That's what I said in 2009.

In government we funded the climate change adaptation program, a $126 million program at that point, which was designed to help Australians better understand and manage the risks as a consequence of climate change, including extreme weather events and bushfires. But the Morrison government didn't want to understand, because then it would have had to have acted. In 2019 the Bushfire and Natural Hazards Cooperative Research Centre published a 'severe' bushfire outlook for last summer, and that was ignored by the Morrison government too. Immediately after the federal election last year, in May 2019, retired fire chiefs from around Australia warned that the 2019-20 summer would be particularly dangerous. They sought to meet with the Morrison government, and the government refused. On 22 November 2019 the Leader of the Opposition wrote to the PM and asked him to convene the Council of Australian Governments in order to discuss the impending bushfire season and the severity that was being presented. The Morrison government did not listen to that request either. Nor did it act upon it.

You see, warnings could have been listened to and action could have been taken. Action could have been taken by the government in the lead up to the 2019-20 bushfire season. It had promised an emergency relief fund—$200 million every year—which was ready to provide funding that could have been used to reduce risk, but not a cent was delivered. The National Aerial Firefighting Centre was asking for more funding back in September 2019, but nothing was delivered. With this bill the Morrison government wants people to believe that the main problem with last summer's bushfires was that defence reservists couldn't be called out fast enough. But you know the much bigger problem is the refusal of Mr Morrison to listen and his refusal to act despite warning after warning after warning. His derelict response then was: 'I don't hold a hose, mate.' He cannot now point to this bill and say, 'Because I didn't have this last summer, I wasn't able to act.' Mr Morrison's failure to take responsibility and his failure to lead have nothing to do with the absence of this legislation at that time. The fact is that when Australia most needed national leadership Mr Morrison was absent. Even today, entering another summer bushfire season, Mr Morrison still hasn't delivered a cent from this $4 billion Disaster Resilience and Recovery Fund and still has not acquired a national aerial firefighting fleet. Last week, as bushfires burned, he was holed up in the Lodge with his official photographer doing daggy-dad quarantine photo ops and posing in board shorts and spinning on his new exercise bike. Mr Morrison spins while Australia burns.

For decades the ADF has supported Australians in their time of greatest need and has done so magnificently. When states and territories have asked for assistance the Australian Defence Force has been there, providing confidence and relief. In the case of the summer bushfires this assistance was being provided before 4 January 2020, when the formal call-out occurred. Instead of summoning the courage to stare down the climate change denialists in his own party to end the climate wars, to act on the climate change that Australians can see, feel and smell, Mr Morrison is trying to hide behind the courage of the ADF. You see, as valiant as they are, our defence

forces cannot solve this problem alone. Adapting to a changing climate and avoiding the worst of climate change—averting the worst of climate change—is not the Defence Force's job. It's the leader of the country's job. It's the Prime Minister's job. What Australia needs from Mr Morrison is a recognition that our climate is changing and bushfire risk is increasing. Australians need him to deliver on bushfire preparedness. They need him to deliver on resources like aerial bombers to fight fires. Australians need Mr Morrison to take action to avoid the worst impacts of unchecked climate change.

A key measure in this bill is to align the immunities that are held by the ADF with the immunities held by civil emergency response agencies in moments of crisis. When it was first introduced, concerns were raised about these provisions. Following inquiry by the Senate Foreign Affairs, Defence and Trade Legislation Committee and a request by our shadow defence minister, amendments have been made to the explanatory memorandum. As a consequence, there is now a firm statement that all references in the bill's provisions to assistance in relation to a natural disaster or other emergency relate only to Defence assistance to the civil community and thus, as a consequence, does not authorise the use force or other coercive powers. There is also a confirmation the proposed immunity provisions apply only to individual Defence members and not to the Commonwealth, so there is still an avenue for remedy should a member of the public suffer loss or damage as a result of assistance rendered by Defence. It is also explicit that immunity is not automatic for both foreign and domestic forces. Given that, we do recognise the government's efforts to address the concerns raised during the course of the examination of this bill by parliament. However, no legislation will make up for the lack of leadership from a Prime Minister who is interested only in announcements and photo ops rather than the leadership needed to deliver on bushfire preparedness for Australians.

Senator STEELE-JOHN (Western Australia) (19:46): As I commence my contribution to this discussion, I want to just briefly shout out and pay tribute to my fabulous and diligent policy adviser, Andrea Pizzie, to whom I owe a lot for a lot of the research work that went into the Greens position on this. I shall endeavour not to mangle the notes she has given me in my contribution to this bill's discussion.

The Defence Legislation Amendment (Enhancement of Defence Force Response to Emergencies) Bill 2020—very much contrary to its name—does nothing to enhance Defence's capacity to respond to natural disasters and other emergencies. Beyond the provisions around superannuation, the bill serves to reduce oversight of call-out processes and grants the ADF personnel, and indeed foreign defence forces personnel and foreign police, criminal and civil liability immunities. It is important that the ADF has the ability to provide assistance to civil emergency response capabilities in large-scale natural disaster responses. These circumstances have and will continue to occur, notwithstanding the passage of this legislation.

Defence Force assistance to the civil community, DFACC, will continue to stipulate the role of the ADF when providing assistance in domestic natural disasters. We note evidence given by the Royal Commission into National Natural Disaster Arrangements by officials of the ADF state that the DFACC arrangements were sufficiently flexible and effective during Operation Bushfire Assist and therefore question elements of this bill, which state otherwise.

The Greens express significant concern about the provisions of the bill which relate to immunities, the constitutional sources of power and the processes around calling out reserve members and, indeed, for overall human rights implications. We do not accept the characterisation made in the course of the Foreign Affairs, Defence and Trade Committee inquiry into this legislation that the concerns raised by constitutional, legal and policy experts are ephemeral to the substance of this legislation. As demonstrated by the expert evidence given to the committee, these issues are, in fact, central to this legislation.

The Greens do not support the passage of this bill. We do not believe that the bill is sufficiently justified. The risks to ADF members articulated by constitutional and civil liberties stakeholders and experts during the course of the inquiry into this legislation are significant and are unmitigated by the evidence given to the committee during the course of the inquiry. I note that the minister has circulated a replacement explanatory memorandum which attempts to address some of the issues brought up during the inquiry. However, I note, as did many others during the hearing and in their submissions, that ultimately the changes that need to be made should be made in the form of amending the legislation itself, because ultimately legal decisions made in relation to key aspects of this bill will come down to the letter of the law. We do, however, note the superannuation related benefits outlined in schedule 3, and we agree that it is necessary and important to change these sections to ensure that reservists are appropriately compensated for their service.

Let me go to the substantive issues that we have with the bill. The bill underwent a very quick inquiry process through the Senate Foreign Affairs, Defence and Trade Legislation Committee, with an extraordinarily small window of opportunity to explore the deeply complex issues that exist in this space. I would like to commend the many community members, the submitters and those who gave evidence to the inquiry for their contributions to

this conversation. I would also like to put on the record that this inquiry process left more unanswered questions in relation to the issues brought up.

Let us first go to the issue of immunities offered by the bill. Contrary to the evidence given by departmental officials during the hearing, we do not agree that the granting of both criminal and civil immunities to ADF personnel, foreign defence personnel and foreign police contained within this bill appropriately balances the rights of civilians to legal remedy for neglect and damaging behaviour. It is our position that the Department of Defence was not able to sufficiently address the concerns of the considerable number of submitters who contested the provision of broad immunities. We do not support the extension of any immunities to foreign forces and police. We note the main committee report outlines a number of submissions which recommend against including this provision, and we agree with their view. Further, there is a significant lack of clarity contained within this bill in relation to what legal remedies are available to civilians in circumstances where ADF and foreign personnel have acted inconsistently with their obligations to provide assistance. This matter requires further consideration and clarification to ensure that the right to access the justice system is well understood and reflected in the legislation.

We must also look at the constitutionality of the immunity provisions contained in this legislation. We are very concerned that the issues brought up in evidence to the committee by constitutional law expert Professor Anne Twomey linked her substantial concerns with the constitutionality of this legislation to the immunity provisions themselves. In her submission, she stated:

This anomaly will be aggravated by proposed s 123AA of the Defence Act. It will provide immunity to all members of the Defence Force, both regulars and reserves, when acting in the performance of their duties if the duties are in respect of the provision of assistance to prepare for or respond to a natural disaster or other emergency. But this raises the question of when such matters are within the member's duties, which goes back to the question of whether there is constitutional power to deal with such matters.

In her evidence to the committee Professor Twomey elaborates on this point, stating:

But the problem here is that the immunity is tied to the word 'duties' in the legislation, and these duties would not formally exist if they're not supported adequately by the constitutional powers. So I think in that respect the immunity is actually probably in many cases just not effective.

The evidence given is that the constitutional ambiguities that surround that and the source of power that Defence relies on to determine the duties of the ADF personnel are not settled constitutional matters and directly interact with the proposed provisions within this bill. We are concerned about the significant implications that this complicated legal matter would have for civilians and ADF personnel who may find themselves not protected and the subject of legal matters and actions. More broadly, we are concerned that this complicates an already messy area of the law. It makes the problem worse.

We must now turn to proportionality and the issues of good faith. We in the Greens are concerned that the granting of immunity for criminal liability unacceptably provides protections for ADF personnel and foreign personnel beyond those granted to all state and territory emergency responders. We are of the view that the ADF personnel would be undertaking fundamentally civilian tasks in the circumstances that this bill concerns itself with, and we do not think that it is necessary or appropriate to water down the rule of law. Further, we note that immunity provisions granted to state and territory emergency responders do not include immunity from civil and criminal liability in the majority of cases. Whilst we agree that the ADF personnel should be appropriately protected in order to carry out their duties, we do not see that these protections should be over and above those granted to first responders and state based emergency personnel. This was also put to us in the clearest of terms during the course of the inquiry.

In relation to the scope of 'natural disaster and other emergency' offered in the bill, I would like to take the opportunity to point out that the proposed section 123AA(2) provides that the minister may in writing direct the ADF to provide assistance in relation to 'a natural disaster or other emergency'. In our view, the term 'other emergency' is deliberately undefined and left to unacceptably broad interpretation. We note that the foreign affairs, defence and trade main committee report alludes to concerns made in a number of submissions, and we agree that there need to be a greater definition and an explanation of what circumstances 'other emergency' could be understood as.

In relation to the issue of the non-use of force, we are deeply concerned that the bill does not prescribe the non-use of force in the legislation. Despite evidence from Defence during the inquiry that indicates that this bill does not permit the use of force by Defence personnel when assisting in natural disasters and other emergencies, there are significant and justifiable concerns from other submitters to the inquiry and in the community more broadly that will remain unanswered should this legislation not explicitly rule out the use of force. As submitted by Professor Twomey, once again:

... if you wish to confine the legislation in a way that makes it clear that the type of actions and duties relating to civil aid to the community are not to involve coercive action—which indeed is clear in DACC—then you could well say so in the legislation if you so chose.

We will be giving the Senate the opportunity to so choose via one of our amendments later in the debate. Further, we are concerned by the position that Defence have taken when questioned on whether they will or will not prescribe the non-use of force, particularly in an answer given on notice, which I believe I do not have enough time to go into in detail.

Professor Twomey and other submitters made it very clear—and I think this needs to be treated with the utmost seriousness, as I would have expected it to be by those so-called conservatives in this place whose political tradition once harked back to a deep reverence for the maintenance and clarity of constitutional issues—that the head of power under which DACC activities are managed by the executive is not a settled issue in any form or sense of it—and neither, by the way, is what exactly is meant by 'good faith', which is a broader conundrum facing this legislature and which we seem unable to confront. The Commonwealth has no settled definition of what is meant by good faith and actions taken therein.

I think I will end by doing two things. I will foreshadow that we will move a number of amendments in the committee stage of the legislation that deal with the various human rights definitions and other issues outlined in the bill, as well as giving the Senate the opportunity to split the legislation so that we might consider the superannuation element separately from the other questions contained within the legislation. But I will end with the ever caustic and incredibly intellectually compelling words of Professor Anne Twomey in relation to the central contention of the bill, which is that it is needed—that the bill is needed to enable the fast call-out of reserve Defence Force personnel because of the unwieldiness of the Federal Executive Council. She said:

If the Commonwealth Government has not yet worked out a means of instantly contacting all members of the Federal Executive Council to inquire of their immediate availability for a meeting, then it is an indictment on its management. Getting a person to sit down and ring each of them in turn is, frankly, absurd. It is hardly an excuse for changing the legislation. Rather, it should be a reason for changing communication methods. In any case, to state the obvious, if the situation is so urgent that there is no time to go through the system to organise a meeting of the Federal Executive Council, the Minister could be legitimately satisfied that there are other—

(Time expired)

Senator WATT (Queensland) (20:01): I'm just going to make a short contribution on this bill because I know we have a lot of legislation to get through tonight. I indicate at the outset that Labor does support the Defence Legislation Amendment (Enhancement of Defence Force Response to Emergencies) Bill 2020. We recognise that it will improve processes that the government needs to undertake in order to call out reserves to assist in a natural disaster situation.

I want to begin by thanking the ADF personnel who assisted so greatly in the Black Summer bushfires last year and those who have done so in previous natural disasters as well. Last year during the fires I had the privilege of visiting the Richmond air base to the west of Sydney to thank Air Force personnel for the efforts that they were putting in. I was joined on that occasion by the deputy Labor leader and shadow defence minister, Richard Marles; and the local federal MP, Susan Templeman, the member for Macquarie. On the same day we also visited some Army reserves who were clearing trees that had fallen down across roadways through the Blue Mountains, so that life could in some ways get back to normal for those affected by the bushfires. We thanked the Air Force and Army personnel for their efforts. For some of those people, it was their job to do what they were doing there, but many others, especially the reserves, of course, had given up other jobs in order to come and help their fellow Australians. So all of our nation owes all of our ADF personnel a debt of gratitude for the work that they undertook as part of fighting the Black Summer bushfires.

As I said, Labor do support this legislation, but we shouldn't kid ourselves that this is going to prevent future bushfires or failures similar to those we saw from this Prime Minister and this government in last year's bushfires. It is well recognised right around the country, and, indeed, around the world, that this Prime Minister and this government comprehensively failed to prepare for last year's bushfires. They failed in their response to the bushfires and they have, in the course of this year, continued to fail in the recovery from these bushfires. So, as much as the government might like to say that improving the processes by which the reserves can be called out will make all the difference—and I have no doubt that it will assist in terms of fighting future bushfires—we shouldn't pretend that that is the only thing needed to keep Australians safe from the sorts of disasters that we saw last year.

We know very well that the Prime Minister failed to prepare. He failed to even have meetings with people who just wanted to warn him about what was coming and what should be done to avoid it, and he failed to take the various steps that were needed to make sure that Australians were kept safe—and we saw the consequences of

those failures. Tragically, we're actually seeing that from this government again. You really would think that, after what happened last year, after what Australians went through last year with those bushfires, the government would have learned its lesson and would be taking every step possible to make sure that we avoid similar disasters and the loss of life, loss of property, loss of fauna and loss of species that we saw in last year's bushfires.

We know very well, from advice that has been given to this government by the Bureau of Meteorology repeatedly this year, that we face this year another terrible disaster situation—probably not so much in the form of bushfires, although there are serious bushfire risks in some parts of the country. We know that, due to La Nina weather conditions, the north of our country, particularly North Queensland, faces more cyclones, and more intense cyclones, that it normally does. Cyclones are to some extent a way of life in summers in northern Australia, whether it be North Queensland, the Northern Territory or Western Australia. But, when you have advice consistently coming from the Bureau of Meteorology, along with other scientific and weather experts, that this year is going to be worse, you really would think that you would do everything possible to keep Australians safe and minimise the damage that is coming our way. But that is not what this government is doing. Just as they did last year, they are ignoring the warnings and failing to take the steps that are needed to keep Australians safe.

I'll just give a couple of examples. Probably the best example is this government's failure to spend a single cent from the $4 billion Emergency Response Fund that it announced in last year's budget, 18 months ago. It set aside $4 billion for a disaster response and recovery fund that could be spent on repairing damage, on paying grants to people who suffered loss and, importantly, on projects and all sorts of prevention measures that would limit the damage from future disasters. Even though this government has had the funds available now for nearly a year, it has not spent a cent. Think of the number of cyclone shelters that could have been built over the last 12 months. Think of the number of evacuation centres for bushfire regions that could have been built. Think of the improvements to communications technology that could have been achieved if the government had just been prepared to spend anything from this fund, which the opposition voted with the government to create. Instead, whether it's due to penny pinching, negligence or a lack of care, this government has not spent anything from that fund, and consequently we don't have in place the preventive measures that could have been delivered.

If we do see those cyclones hit this year or if we do see bushfires hit in places like south-western Western Australia or western New South Wales, as is forecast, we will have to ask what could have been avoided if the government had just used those funds that were available. It's not as if the government needs to go and find new money. This money is in the budget. It was announced. It was provided for. But yet again the Prime Minister doesn't actually care once the announcement is made. He's got his headlines. He's got his photos with Army reservists and with fire chiefs and fire volunteers. He doesn't care about the delivery, and, as a result, Australians are yet again being put at risk by this Prime Minister.

The other example I'll give is this government's failure to implement the recommendation of its own bushfires royal commission to create a national aerial firefighting fleet. Again, last year we saw what happened when the government didn't take steps to make sure that we had the water-bombing aircraft that we needed to put out fires and prevent new fires starting. We saw what happened when the government had to scramble around and try and bring in planes from overseas to try to put out fires and found that those planes were unavailable because they were still needed in other countries. Now we have a recommendation from the government's own bushfires royal commission saying that we should create our own national sovereign aerial firefighting fleet. What does this government do? 'Noted'. It leaves it with the states, even though the royal commission has said that is not an adequate measure to make sure that we are well prepared for firefighting.

Of course, the elephant in the room is that this government continues to do nothing about climate change. Whatever anyone thinks about climate change, it is coming. You have every possible scientific expert, including the Bureau of Meteorology—

Senator Hanson interjecting—

Senator WATT: With respect, Senator Hanson, if I'm going to listen to anyone about climate change, I think I'll listen to the Bureau of Meteorology rather than you. Stick to what you know. We should not ignore the advice of the Bureau of Meteorology and the CSIRO, who actually know a few things about this. What they tell us consistently is that climate change is real, it is happening and it is going to lead to more natural disasters in the future. Senator Hanson, if you were really a senator for Queensland, you would actually care about that. You should care about the people in our state who are going to be facing more cyclones in the future, more floods in the future and more bushfires in the future. We should all take steps to fix that.

The ACTING DEPUTY PRESIDENT (Senator Bilyk): Senator Watt, your comments need to come through the chair.

Senator WATT: Thank you, Madam Acting Deputy President. In summary, what we need from the government is more than just announcements. We need more than a headline about the creation of a new emergency response fund. We need more than a photo op for aerial firefighting. We need more than false claims that this government is taking action on climate change. We need real action on all of these things to make sure that Australians are kept safe.

We commend the government on bringing this legislation forward. We will vote for it. We have secured amendments from the government, particularly to the explanatory memorandum, to address a number of the issues that the Greens and other civil society groups have raised and to make sure that these powers can't be abused in the future. We cannot kid ourselves into thinking that this is all that needs to be done. There are practical steps that this government could be taking right now, using funds that it has made available for this express purpose, to keep Australians safe. I can tell you that, if we see these cyclones hit and if we see more bushfires hit, we're going to be reeling out every single time that we warned the government that they could have done something about this. They've really got to get moving. We're running out of time. We're already seeing bushfires around the country, and cyclones are only weeks away. Time is running out. It's time to do more than make announcements. It's time to actually deliver.

Senator HANSON (Queensland—Leader of Pauline Hanson's One Nation) (20:11): I can't let go what Senator Watt just said. He blamed the government for the bushfires that have happened in this country. They have been happening for centuries. He should really have a good look at it. State governments and councils have not allowed for clearing and haven't looked after the fuel that's lying on the floor. You couldn't do anything about it.

Senator Steele-John: Madam Acting Deputy President, I have a point of order on relevance. This is not relevant to the legislation we're discussing at all.

The ACTING DEPUTY PRESIDENT (Senator Bilyk): Senator Steele John, that's not a point of order.

Senator HANSON: I think I'm very much in order because we're talking about defence personnel coming from other countries to help us fight bushfires in this country. That's what it's all about—the problems that we have in Australia. Senator Watt stood up and made accusations about this. He blamed the government. It is not the government's fault. If you have arsonists setting bushfires and if you have local and state governments not clearing the fuel from the floor, of course we're going to have bushfires. We always have. It's not just about climate change. We know that for a fact.

What's important to this Defence Legislation Amendment (Enhancement of Defence Force Response to Emergencies) Bill 2020 is the firefighters and the people who help us. Australia is a land of extremes. It seems that we are never far from a natural emergency, like the bushfires we experienced late last year into early this year. *(Quorum formed)*

For all the people who have come in, thank you very much. The Greens intend to call these constantly to shut down time. I suggest that, instead of sitting in your chambers, you sit here, because they intend to do this constantly to shut down time in this parliament so that you cannot deal with the legislation that is here before this parliament. This is how bloody pathetic they are.

Honourable senators interjecting—

The ACTING DEPUTY PRESIDENT: Order! Senator Hanson, would you like to resume your speech?

Senator HANSON: I will, gladly. The bushfire on Fraser Island is the latest such emergency that has hit this nation. It shows how quickly an emergency can escalate. It has now destroyed approximately 82,500 hectares of the national park, and about half the island has been burned.

I think it's important that the Australian people know what this legislation is doing. Their concern is about foreign police, foreign military and everyone coming to the country and not being held accountable. That, it's not. The bill introduces some streamlining to enable the faster activation of our Army reservists in times of emergency, including civil emergencies, as well as for disaster preparedness, recovery and response. For our ADF reservists, it provides clarity in regard to their call-out responsibilities and remuneration. It also ensures immunity from civil and criminal liability for ADF personnel, reservists, authorised Commonwealth employees and military personnel and police from other nations while they participate in dealing with an emergency or a recovery. While there has been some concern raised that visiting forces should not receive immunity from both civil and criminal liability, the Centre for Military Security and Law has assured these provisions are in line with those of various state and territory jurisdictions. The Law Council of Australia also noted the safeguard that the immunity only covered acts done in good faith in accordance with specific written direction from the Minister for Defence. The Foreign Affairs, Defence and Trade Legislation Committee recently expressed the view that foreign defence personal assisting during natural disasters should not have less protection than members of the ADF if they are called upon to respond in the same way. This seems fair enough.

As everyone knows, I am a patriotic Australian. I am a very strong opponent of any measures that place Australia's sovereignty and safety at risk. Our sovereignty must not be compromised. The immunity provided in this bill is clear in that it applies only to those who, in good-faith performance of their duties, provide assistance before, during and after an emergency and only if that assistance is directed by the minister or his or her delegated authority. The bill provides no immunity for any deliberate crime or misconduct, as has been a concern of some Australians. It provides protection only for incidents that occur while performing actual tasks in good faith linked to the disaster response and emergency support initiatives. The immunity being granted to defence personnel includes that they may damage private property in order to preserve life. For example, I understand that they may commandeer a truck or back-burn land in order to protect the greater good. In such situations, accidents happen. The immunity will give our ADF personnel and visiting forces the peace of mind to carry out the work needed to address the emergency. The ADF also noted the example where the task of personnel may lawfully include transporting evacuees from a bushfire zone. The bill would operate to protect individual ADF members, not the Commonwealth, from civil liability in the event an evacuee is injured while being transported. What is also clear is that if defence personnel or foreign forces act in bad faith in any way then they would lose their immunity immediately and would be subject to prosecution under Australian law.

The value of the work done by Australian Defence personnel, along with the input of the foreign forces in these emergency situations, can't be underestimated. In the fires last year and early this year, 3,094 homes, more than 1,000 other structures and 24 million hectares of bushland were destroyed across New South Wales, Victoria, Queensland, the ACT, Western Australia and South Australia, which shows how important it is to have humans ready for action when and where needed. About 6½ thousand full-time and more than 2½ thousand part-time ADF personnel were involved in the bushfire efforts, along with 450 personnel from overseas. In Queensland, we may well be calling on the help of such personnel again sooner rather than later. I understand the time frames and I've made my point clear because people have been concerned and ringing my office about this legislation. I made it clear that immunity only goes so far. They will not be covered for everything. It's in the line of duty of helping Australia through the emergencies, so I think is very important we do protect them in certain cases.

Going back to Senator Watt's comments here in the chamber regarding the lack of action from the Prime Minister in reflection of what happened last Christmas, we saw how distressing it was for people who lost their properties across many states. The fact is that we have to accept that—I stated this before—a lot of councils and states have not allowed for back-burning to happen. They have closed up national parks and have not allowed for the proper maintenance on these properties. They have even stopped people from cutting down bushland and trees close to their homes to protect their own home sites. This has been pure negligence from our councils, saying, 'You shouldn't touch bushes and shouldn't protect your own homes.' It's no good laying blame just on one person who was the Prime Minister at the time. This has gone on for a long time. I just feel that, under this legislation, it is important that we protect people coming from other countries to help us in times of disaster because we rely on them. That's what being friends and neighbours in this global world is—we help other countries through their disasters as well.

To blame it on climate change is a load of BS. Climate change has been happening for millions of years. The fact is we are actually now recording temperature changes. You hear in this chamber all the time the term 'on record'. The record is only the last 100 years, and they change that to suit their own agenda. The fact is that climate has been changing due to natural causes, not because of human emissions—that has not been proven. So when you talk about disasters in the nation, they will go on for centuries to come. If you listen to scientists, the earth is warming; glaciers are still growing, not shrinking. People must understand that we have to stop using all this as a political football and speak the truth, because it is concerning people. I hear it all the time from the Greens, with no evidence. They won't debate Malcolm Roberts. They won't put the true science up. It's alright to scaremonger; that happens all the time. This is the house of review on legislation. This is where the truth must be exposed. It's not about scaremongering; it is about telling the truth. If you can't debate and you don't know what the hell you're talking about, don't scaremonger in this country any longer and put fear into people.

Senator WHISH-WILSON (Tasmania) (20:23): I'd like to put forward a simple proposition to Australians when they think about our armed forces. We call them defence forces, and the word 'defence' comes to mind. Would you prefer to have your serving personnel in your armed forces geared to going on foreign adventures and fighting foreign wars—as we have essentially done for the last 15 to 20 years very closely joined at the hip to the United States, our allies in the ANZUS treaty, including in the longest-running conflict in our nation's history in Afghanistan, and we've obviously seen some of the complications that have arisen from that in recent times—or would you prefer to have your personnel geared up to help fight the biggest threat to our national security?

Senator Molan: It's either/or, is it?

The ACTING DEPUTY PRESIDENT (Senator Bilyk): Senator Molan—interjections.

Senator WHISH-WILSON: I'm happy to take that interjection from Senator Molan. It's absolutely not a case of either/or; it's a case of where you prioritise the future role for the ADF. Senator Molan is a climate denier. He's of the same ilk as Senator Pauline Hanson and Senator Malcolm Roberts. He's a climate denier, yet he's in government, which, of course, makes him a lot more dangerous. I think he would dispute that proposition—

The ACTING DEPUTY PRESIDENT: Senator Whish-Wilson, resume your seat. Senator Molan?

Senator Molan: I deny what the senator said. I do not deny climate change.

The ACTING DEPUTY PRESIDENT: Are you taking a point of order, Senator Molan? Senator Roberts?

Senator Roberts: May I take a point of order?

The ACTING DEPUTY PRESIDENT: What's your point of order?

Senator Roberts: That I've been falsely labelled a climate denier; I do not deny climate.

The ACTING DEPUTY PRESIDENT: That is not a point of order, Senator Roberts. Senator Roberts?

Senator Roberts: He mislabelled me.

The ACTING DEPUTY PRESIDENT: It's still not a point of order. Senator Whish-Wilson.

Senator WHISH-WILSON: Very spurious points of orders, I may add. It was worth a try—

The ACTING DEPUTY PRESIDENT: A bit like some of the quorum calls.

Senator WHISH-WILSON: I've clearly touched a raw nerve with these senators tonight, which is always an interesting proposition. Obviously what concerns Senator Molan—through you, Acting Deputy President—is that climate change is the biggest threat to our national security. If you think about threats to livelihoods, threats to property, threats to our economy and threats to our communities—what bigger threat is there than our changing climate, our warming planet and our extreme weather events, be they the horrendous bushfires we've seen that are driven by this climate emergency, be they torrential floods, be they cyclones or be they the loss of our critical habitat, like on the Great Barrier Reef or in the giant kelp forests that the commercial fishing industry and communities in my home state of Tasmania are reliant on? That's the biggest threat to our national security. Don't just take my word for it; there are plenty of people and experts out there saying the same thing. I know you won't take my word for it, Senator Molan; I understand that. I don't think you'd take any scientists' word on climate change at its face value either, because you are a climate denier, Senator Molan, regardless of what you say. Perhaps a climate sceptic may be a more politically correct term to you.

The ACTING DEPUTY PRESIDENT: Through the chair.

Senator WHISH-WILSON: Through you, Acting Deputy President—a climate sceptic, a climate denier and a denier of science. I thought previous Liberal Prime Minister Malcolm Turnbull actually delivered a fantastic rebuttal to *The Australian* on *Q&A* a few weeks ago. He said: 'If you deny climate, it's like denying physics. Did you fly here in an aeroplane? Do you understand physics?' We're talking about the same fundamental concepts, yet these people have turned climate into a matter of identity, as Mr Turnbull so rightly pointed out. They've turned it into a matter of ideology and identity, but it's actually about physics and science. It really is appalling that in this day and age we're having these political debates when the community and the rest of the world is moving on and recognising the fact that our planet is warming and that that is having an impact on us and putting us at risk.

To get back to the debate, climate change, global warming, is the biggest threat to our national security. I personally believe that the defence forces have a huge role to play in this country and in our region, whether it's providing aid, assistance or expertise on so many different levels. Going back three or four years, I initiated a Senate inquiry. The Greens didn't chair it, but we sat in on it through Defence, Foreign Affairs and Trade, and we actually looked at this. We looked at the preparedness of the Australian Defence Force for climate change and for a climate emergency. We took evidence from experts all around the country, who talked about the threat climate change poses. At a minimum, you got out of these people—and some of these people Senator Molan would know very well—that they all recognised climate change as a threat multiplier. Some went a lot further than that and were prepared to say it actually is the biggest threat to our national security. So I support a more active use of the defence forces, and I've got to say, like a lot of Australians I felt very proud seeing our Navy evacuating Australians off beaches in January this year. While I was down the coast at Bicheno, we had ash falling on our heads as we were walking along the beach on New Year's Day. We were also worried about fires on the east coast of Tasmania, and everybody was glued to what was going on just here on the South Coast of New South Wales, and all up and down the coast in the months preceding. The fact that we had to use our armed forces to evacuate Australian civilians off beaches was quite extraordinary. I recognise the role the armed forces have played over the climate emergency we've seen this summer, and it will only get worse. It is not going to get better. If the Bureau of Meteorology is telling us that under current business-as-usual scenarios we are on a three to four degree

warming trajectory by the end of this century, we're in really serious strife. Sadly, Senator Molan, you and I probably won't be around when the worst effects of this are being felt by our children and our grandchildren, but we're going to leave them that legacy.

The Greens support a much more active role for the Australian defence forces in terms of realigning their training, their capabilities, their procurement and a whole range of things, like potentially looking at remote area firefighting like we see with the New Zealand defence forces. We want to see the Australian government, as we debated in here last week, buy our own water bomber fleet. I did dare suggest that perhaps the Air Force, seeing as we've got very good pilots, might consider flying those aircraft as well if we were going to buy them, but it could just as easily be given to state emergency services. But either way, I think this is a discussion we should be having at a national level. We call our defence forces 'defence' forces for a reason, but it seems that they are 'offence' forces. They spend all their time—and all their procurement is based around—fighting in foreign theatres of war, endless wars, for what strategic political objective I don't know, when we clearly have a clear and present danger here in Australia and in our region, and a need to employ our service personnel to protect Australians and to protect our region.

Saying that, we've got to be extremely careful that we get the balance right in how we legislate that and what kinds of powers we give the government to call out our defence forces. As has been outlined here tonight by my colleague Senator Steele-John, who's participated in this inquiry and has raised a number of significant issues that the Greens want to see amended, if we don't get that balance right then we risk unintended consequences in the future. And we certainly risk undermining public confidence in the rollout of our defence forces in the future.

I wanted to put that on the table. I think this is a really important discussion. I commend the government for their increased rollout of the defence forces over summer. I was very proud of what they achieved, Senator Reynolds. However, we don't believe you've got the balance right here. But this is a conversation we need to continue to have. We're going into committee stage, so we will talk in more detail on our amendments then.

Senator REYNOLDS (Western Australia—Minister for Defence) (20:34): I would like to very sincerely thank all senators who've contributed to the debate on this important bill, the Defence Legislation Amendment (Enhancement of Defence Force Response to Emergencies) Bill 2020, both here in the chamber this evening and during the committee phase. I commend this bill to the chamber and I seek leave to have my comments incorporated in the *Hansard*.

Leave granted.

The document read as follows—

I would like to thank all Senators who contributed to the debate on this important Bill.

Substance of Bill

This Bill makes changes to Defence legislation that will enhance the Commonwealth's ability to prepare for, and respond to, natural disasters and emergencies of national scale.

Schedule 1 amends the *Defence Act 1903* to streamline the process by which advice is provided to the Governor-General regarding a call out of the Reserves, including for the purposes of responding to natural disasters or emergencies.

Streamlining this process allows the Minister for Defence, after consultation with the Prime Minister, to advise the Governor-General on the need for a call out of the Reserves, in all circumstances and not just for reasons of urgency.

The changes provide the Chief of the Defence Force the ability to determine the nature and period of Reserve service provided under a Reserve call out order.

This will deliver the ADF the flexibility required to integrate the Reservist effort in a manner that best supports the broader Defence response and individual members' circumstances.

These changes will improve consistency in the treatment of Reserve members who are providing assistance during a disaster or emergency, regardless of whether they have volunteered their service or have been called out to serve.

The changes will also enable more flexible service options for Reservists while allowing alignment with the nature and requirements of a specific Reserve call out order.

Schedule 2 will amend the *Defence Act 1903* to provide immunities to those Defence personnel supporting disaster preparedness, recovery and response efforts.

The immunity will apply where the Minister is satisfied that:

a. the nature or scale of the natural disaster or other emergency warrants the provision of ADF capabilities and makes it necessary, for the benefit of the nation, for the Commonwealth, through use of the ADF's special capabilities or available resources, to provide the assistance; and/or

b. the assistance is necessary for the protection of Commonwealth agencies, Commonwealth personnel or Commonwealth property.

This will see our Defence personnel being provided with immunity from civil and criminal liability when they are performing their required emergency response duties in good faith, similar to immunities provided to state and territory emergency services personnel.

Schedule 3 will make amendments to the *Military Superannuation and Benefits Act 1991*, the *Australian Defence Force Superannuation Act 2015*, and the *Australian Defence Force Cover Act 2015*.

These amendments will ensure Reserve members who provide continuous full time service under a Reserve call out order will receive commensurate superannuation and related benefits to those Reservists who provide the same service on a voluntary basis.

This Bill originates from Defence's experience in providing assistance to the civil community in response to natural disasters from Operation BUSHFIRE ASSIST 2019-2020.

The Bill accords with the recommendations of the Royal Commission into National Natural Disaster Arrangements.

Operation BUSHFIRE ASSIST

The primary responsibility to respond to natural disasters and other emergencies rests with the States and Territories.

Disaster relief is not the ADF's primary role – the ADF is not an auxiliary emergency service.

However, the ADF has for many decades provided assistance to State and Territory authorities in their response to major natural disasters.

Operation BUSHFIRE ASSIST 2019-2020 was the Australian Defence Force's most significant civil assistance operation in our history.

Over 8,000 ADF personnel served on Operation BUSHFIRE ASSIST 2019-20.

At its peak, 6,500 ADF members provided support as part of emergency relief, response and recovery operations. This included 3,000 Reserve members.

In addition, eight nations provided direct assistance to the ADF.

This included members of the:

- New Zealand Defence Force,
- the Papua New Guinea Defence Force,
- Republic of Fiji Military Forces,
- Indonesian National Armed Forces,
- United States Air Force,
- Singapore Armed Forces,
- Japan Self-Defense Force, and
- The Royal Canadian Air Force.

On behalf of all Australians, I thank those friends and the military personnel who provided support in our nation's time of need.

At the conclusion of Operation BUSHFIRE ASSIST, Defence's capabilities were called on to assist the Australian community.

To date, over 9,000 personnel have been deployed on Operation COVID-19 ASSIST, with over 3,500 personnel deployed at its peak.

On behalf of the Australian people, I extend my thanks to the men and women of Defence and our friends from other nations who helped Australians in our times of need.

Lessons learned

Defence reviewed the lessons from the 2019-2020 bushfires and set about putting in place the necessary improvements.

These include:

- Rewriting the Defence Assistance to the Civil Community Manual and Policy, and
- Adjusting the ADF's command and control model.

Royal Commission Recommendations

This Bill also implements recommendation 7.3 of the Royal Commission into National Natural Disaster Arrangements.

The Royal Commission recommended that the Government afford appropriate legal protections from civil and criminal liability to ADF members when undertaking activities under an authorisation to prepare for, respond to, and recover from natural disasters.

Defence has undertaken non-legislative activities to address the remaining recommendations.

Senate Committee Inquiry

The Senate Foreign Affairs, Defence and Trade Legislation Committee has conducted an inquiry into this Bill.

The Committee recommended that the Bill be passed without delay, with amendments to the Explanatory Memorandum to clarify the intention and operation of the Bill.

These amendments:

a. Clarify that the Bill does not alter, expand or otherwise change the Government's existing legal authorities to deploy the ADF;

b. Clarify that the operative provisions of the Bill, including the proposed immunities, relate to Defence Assistance to the Civil Community tasks and do not authorise the use of force (beyond self-defence);

c. Provides examples of 'other emergencies' referred to in the immunity provision; and

d. Clarifies that the requirement for a direction from the Minister is intended to provide a check on the proposed immunity and does not grant a new authority to the Minister to direct the deployment of Defence personnel.

I thank the members of the Committee for their comprehensive and diligent work in its inquiry into the Bill.

The Government accepts the Committee's recommendation in full.

The Explanatory Memorandum has been amended to clarify the intention and operation of the Bill in line with the Committee's recommendations.

Summary

The amendments in this Bill make three important, practical and fair changes:

1. provide greater flexibility in implementing a call out of the Reserves,

2. enable greater consistency in the treatment of our Reserves

3. and ensure that our Defence personnel have appropriate legal protections when serving our nation in good faith.

I commend this Bill to the Senate.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator STEELE-JOHN (Western Australia) (20:35): I seek the guidance of the chair. I've got a number of amendments which I'm looking to move and bring to a vote. Is this the appropriate place to do so? I want to make sure that I don't miss my opportunity.

The TEMPORARY CHAIR (Senator McLachlan): It's appropriate for you to commence with your amendments at this point.

Senator STEELE-JOHN (Western Australia) (20:36): I move Greens amendment (1) on sheet 1137:

(1) Schedule 1, item 2, page 3 (line 12), omit "notifiable instrument", substitute "legislative instrument".

Let me state clearly the aim of this amendment. We agree with concerns raised by the Standing Committee on the Scrutiny of Bills and the submission made by Mr Andrew Ray and Ms Charlotte Michalowski that the deployment of armed forces should be a matter of last resort and that the decisions to call them out should be subject to stringent parliamentary oversight—not a radical contention, you would have thought. This amendment seeks to ensure a layer of parliamentary scrutiny by making call-out orders subject to disallowance. While we understand that there are concerns around the timeliness and complexity of the call-out process, we do not accept that efficiency concerns cannot be addressed in other ways. We believe that efficiency concerns can be addressed in other ways, and it is not a reason to move past legitimate scrutiny by elected representatives.

Throughout the inquiry it was made clear that the desire to streamline the call-out process removes important processes of scrutiny in a way that is not only unjustified but also unnecessary. It is our view that a decision to call out reservists is a significant decision, and it should be one that is deliberated and able to be decided on by the parliament via disallowance of an instrument. Indeed, this view and position were put to the committee by a number of experts, and we entirely agree. Therefore, I commend this amendment to the chamber.

Senator REYNOLDS (Western Australia—Minister for Defence) (20:38): The government will be opposing this amendment. The bill as introduced would amend section 28 of the Defence Act to make a reserve call-out a notifiable instrument. This has substantially the same effect as the existing provision, which requires reserve call-outs to be published in the *Gazette*. This requires publication of the instrument on the federal register, and that is publicly available. We do not believe in any way that it is appropriate for reserve call-outs to be disallowable, noting the significant level of disruption that that would cause for the ADF's operation, its planning and, indeed, for ADF members who have been called out. There are numerous other mechanisms by which any decision of the government to call out the reserves can be scrutinised by the parliament, and scrutiny of the instrument itself is not

necessary, noting that the instrument itself does not determine the law. So for these reasons the government will be opposing this amendment.

The TEMPORARY CHAIR (Senator McLachlan): The question is that the amendment on sheet 1137 be agreed to.

The committee divided. [20:43]

(The Temporary Chair—Senator McLachlan)

Ayes 9
Noes 33
Majority.....24

AYES

Faruqi, M	Hanson-Young, SC
McKim, NJ	Rice, J
Siewert, R (teller)	Steele-John, J
Thorpe, LA	Waters, LJ
Whish-Wilson, PS	

NOES

Antic, A	Askew, W
Bragg, AJ	Brockman, S
Cash, MC	Chandler, C
Colbeck, R	Davey, P
Duniam, J	Fawcett, DJ
Fierravanti-Wells, C	Griff, S
Henderson, SM	Hughes, H
Hume, J	McCarthy, M (teller)
McDonald, S	McGrath, J
McKenzie, B	McLachlan, A
McMahon, S	Molan, AJ
O'Sullivan, MA	Paterson, J
Rennick, G	Reynolds, L
Roberts, M	Scarr, P
Small, B	Smith, DA
Stoker, AJ	Van, D
Wong, P	

Question negatived.

Senator STEELE-JOHN (Western Australia) (20:46): by leave—I move Australian Greens amendments (1) to (4) on sheet 1141 together:

(1) Schedule 2, item 4, page 8 (line 14), before "emergency", insert "prescribed".

(2) Schedule 2, item 4, page 8 (line 19), before "emergency", insert "prescribed".

(3) Schedule 2, item 4, page 8 (line 21), before "emergency", insert "prescribed".

(4) Schedule 2, item 4, page 8 (after line 34), after subsection 123AA(3), insert:

(3A) The regulations may prescribe:

(a) a particular emergency event as a prescribed emergency for the purposes of this section; or

(b) a kind of emergency as a prescribed emergency for the purposes of this section.

(3B) However, regulations made for the purposes of subsection (3A):

(a) may only prescribe as an emergency or kind of emergency, an event or occurrence that does not require a protected person to use force or other coercive powers against a person; and

(b) must not prescribe protest, dissent, assembly or industrial action as an emergency or kind of emergency.

These amendments deal with one of the most serious aspects of the bill. It is our view and, indeed, that of many submitters that a lack of a definition of what could constitute an 'other emergency' leaves the door wide open for the scope of circumstances for using the powers in this bill basically to be whatever the minister would like to define. It is our intention to quarantine the provisions of this bill to the stated purpose of Defence aid to the civil community by outlining what emergencies cannot be; indeed, to make explicit what does not constitute an emergency a situation for the purposes of this bill.

Throughout the course of the inquiry it was made very clear that the lack of a definition of 'other emergency' was grossly insufficient and left the door far too open in terms of interpretation. These amendments should, I quite honestly believe, be a rather uncontroversial proposition for the chamber to consider. Anybody who takes a cursory glance at this legislation would be worried by the vagaries contained within the relevant section. These amendments tidy that up rather neatly and would make great improvements to the legislation. I therefore commend these amendments to the chamber.

Senator REYNOLDS (Western Australia—Minister for Defence) (20:49): The government does not support these amendments. Clause 123AA provides immunity from civil and criminal liabilities for protected persons who are providing relevant assistance in natural disasters and other emergencies where they are acting in good faith and in the performance of their duties. These amendments would replace the broad term 'other emergency' with 'other prescribed emergency'. This would require regulations to be made in order to rely on the immunity provision in relation to any emergency that was not a natural disaster. The term 'other emergency' used in the bill as introduced takes its ordinary meaning. It is deliberately a broad term. It enables agility to respond to unexpected events. Requiring other emergencies to be prescribed in regulations would require them to have been identified ahead of time, which is clearly impracticable. This would prevent ADF members from receiving appropriate legal protections when they are providing assistance in an emergency—again, very undesirable and not necessary. There are other safeguards already in clause 123AA. Regardless of the nature of any emergency, the immunity would only ever apply in a situation when ADF members and other personnel were acting in good faith in the performance of their duties, and they must be lawful duties. This would not include using force or coercive powers. This provision does not authorise or permit ADF members to use force or coercive powers to quell or dispel protest, dissent, assembly or industrial action. It's for those reasons that the government does not support these amendments.

The TEMPORARY CHAIR (Senator McLachlan): The question is that amendments (1) to (4) on sheet 1141 be agreed to.

The committee divided. [20:55]

(The Temporary Chair—Senator McLachlan)

Ayes 9
Noes 29
Majority.....20

AYES

Faruqi, M	Hanson-Young, SC
McKim, NJ	Rice, J
Siewert, R (teller)	Steele-John, J
Thorpe, LA	Waters, LJ
Whish-Wilson, PS	

NOES

Antic, A	Askew, W
Bragg, AJ	Brockman, S
Cash, MC	Chandler, C
Davey, P	Duniam, J
Fierravanti-Wells, C	Henderson, SM
Hughes, H	Hume, J
McCarthy, M (teller)	McDonald, S
McGrath, J	McKenzie, B
McLachlan, A	McMahon, S
Molan, AJ	O'Sullivan, MA
Paterson, J	Rennick, G
Reynolds, L	Scarr, P
Small, B	Smith, DA
Stoker, AJ	Van, D
Wong, P	

Question negatived.

Senator STEELE-JOHN (Western Australia) (20:58): by leave—I move Greens amendments on sheets 1143, 1144 and 1148 together:

Sheet 1143

(1) Schedule 2, item 4, page 8 (after line 28), after subsection 123AA(2), insert:

(2A) Before making a direction under subsection (2), the Minister must:

(a) if the assistance is proposed to be provided in relation to a State or Territory, or State or Territory authority or agency—notify the State or Territory of the proposed direction and consult with the State or Territory about:

(i) whether the State or Territory agrees to the proposed provision of assistance; and

(ii) the form and manner in which the assistance is proposed to be provided; and

(b) take into account any views of the State or Territory provided under paragraph (a).

Sheet 1144

(1) Schedule 2, item 4, page 9 (lines 3 to 8), omit all the words from and including "any of the following" to the end of subsection 123AA(4), substitute "an APS employee or other employee of the Commonwealth or a Commonwealth authority or agency".

Sheet 1148

(1) Schedule 2, item 4, page 9 (after line 21), at the end of section 123AA, add:

No use of force permitted

(9) A protected person must not use force against persons or things in relation to the provision of assistance mentioned in subsection (1).

These three amendments seek to do three crucial things: first, to ensure that there is appropriate consultation with the states and territories in relation to the call-out of reserve forces; second, to remove the immunities granted to foreign defence forces and foreign police forces in relation to civil and criminal liability; and, finally, to prescribe in the legislation that force and coercive power may not be used against civilians in the context of this legislation. We heard from Defence, the government and the ADF that personnel will not be permitted to use force under the arrangements that this legislation refers to. However, we have been told time and time again that if this is really the case then the legislation needs to explicitly say so. We do not think that it is sufficient merely to have this in the explanatory memorandum and we support the view of the submitters who stated that if it is the government's intention to ensure that use of force is not permitted then they should say so in the legislation. Once again, it's not a particularly radical contention that if the government intends force not to be used then there should be no harm in saying so in the legislation.

Finally, let me just circle back to a comment upon the granting of civil and criminal liability protection to foreign defence forces and foreign police. There have been contributions made to the discussion of this legislation which falsely lead those watching along at home to believe that the extension of civil and criminal liabilities to emergency personnel is the majority position in the states and territories. As we heard in the inquiry, this is not the case. The extension of criminal and civil liabilities is not the norm among the majority of state emergency services personnel in this country, so it is erroneous to suggest that one thing this legislation seeks to do is to offer the same protections that state emergency services personnel receive. It in fact grants protections well in excess of those granted to state emergency services personnel.

But let us leave that aside for a moment and stare blankly and clearly into the face of the reality that this legislation seeks to extend those civil and criminal liabilities to foreign police forces and foreign defence force personnel. That is a departure in extreme from any previous norm and, it must be said, will not be reciprocated, nor is it required to be reciprocated, by any foreign actor that we engage with in relation to our forces or our police forces in their jurisdiction. It exists as a totally new aberration upon the legislative field and is unacceptable in the extreme. It is a source of one of the most stringent streams of concern we have received, and that is why the Greens have put this amendment and its two partners to the chamber this evening.

Senator WONG (South Australia—Leader of the Opposition in the Senate) (21:03): I know the senator has moved a number of amendments together. I would like to make some brief comments on the opposition's position in relation to the amendment on sheet 1144, which I think, from what I can discern, was the subject of the contribution that the senator just made.

Labor opposes the amendment. We acknowledge the presence of foreign forces on Australian soil is, quite rightly, a matter which draws significant public interest and scrutiny, which was in part why Labor asked that this bill be referred to a legislative inquiry—to ensure there were no unintended consequences as a result of the bill's provisions. It's important to note that what is proposed in the bill is neither the automatic grant of immunity to foreign forces nor an automatic approval for their presence on Australian soil. I note that the amended explanatory memorandum states:

… any participation by foreign military or police forces in any domestic civil emergency would remain contingent upon the receipt and acceptance of an appropriate offer by the Commonwealth, as is normal practice. As such, the Bill in no way

provides for the automatic participation of foreign forces in domestic civil emergencies. Extension of the proposed immunities to foreign forces would likewise not be automatic and be contingent upon the issuing of a direction by the Minister.

There are important limitations with respect to the proposed immunity, including that it would only apply 'in relation to a protected person's actions (or omissions) that are done in good faith in the performance (or purported performance) of their duties'.

I also note that, during the 2019-20 bushfire season, Australia received assistance from the defence forces of New Zealand, Singapore, Japan, Papua New Guinea, Fiji, Indonesia, Canada and the United States. So, whilst international assistance should not be a substitute for appropriate domestic capabilities—and I note that I referred to this in my speech in the second reading debate—the generous offers of assistance from other countries during those bushfires were most welcome. Where Australia has accepted an offer of foreign forces to assist Australian communities in their time of need, it seems appropriate that a mechanism be available to potentially provide immunity in certain circumstances, noting again that the granting of such immunity would not be automatic—that it would be the subject of an issuing of a direction by the minister and that there are important limitations with respect to the scope of the immunity.

Senator REYNOLDS (Western Australia—Minister for Defence) (21:05): The government will not be supporting all three of these amendments. I will turn first of all to the amendment on sheet 1143. Section 123AA already provides immunity from civil and criminal liability for protected persons who are providing relevant assistance in natural disasters and other emergencies where they are acting in good faith and in performance of their duties. The provision is not the source of authority for using the ADF to provide assistance, which remains the executive power of the Commonwealth. It operates only to trigger the immunity. The effect of this particular amendment would be to insert an additional requirement to consult with states and territories before triggering the immunity provision, which is not necessary nor appropriate. This provision—and, in particular, the language for triggering the immunity through the minister's direction—has been very, very carefully drafted to ensure that it is within the constitutional authority of the parliament.

In relation to the amendment on sheet 1144, first of all, I thank the opposition very much for their support for this and I also acknowledge the opposition's thanks and acknowledgement relating to the foreign forces who came to assist us in the bushfires earlier this year. In relation to this, the immunity provision in section 123AA as introduced can be extended to members of foreign military and police forces who are providing the relevant assistance on behalf of the ADF or on behalf of Defence. Contrary to what we've heard in this chamber, there is a longstanding practice of nations providing assistance to each other in times of emergencies and disasters. During the 2019-20 bushfire disaster, eight nations provided military assistance through the ADF—New Zealand, Papua New Guinea, Fiji, Indonesia, the United States, Singapore, Japan and Canada—and, as Senator Wong has said, we are deeply grateful for that assistance. Similarly, the ADF has also provided significant disaster relief and humanitarian assistance to many other nations.

The effect of this amendment would be to remove the ability to extend immunities to foreign forces who are providing assistance to our nation. The extension of immunities to foreign military and police forces is appropriate and it is justified, given longstanding practices of nations providing this sort of assistance to one another. It recognises that they are important relationships, and, also, it provides appropriate protection in situations where they are offering assistance and putting themselves in harm's way for Australians and for people in our local communities. The immunity, however, does not apply automatically. It requires a decision by Defence. The provision does not authorise foreign military or police forces to enter Australia or to use force or coercive powers while providing assistance. It's for those reasons that the government will not be supporting these three amendments.

Senator STEELE-JOHN (Western Australia) (21:08): I will speak very briefly. Putting aside the usual theatrics that surround the contention that there's been any opposition to or scrutiny of this legislation, it was really disappointing to see so much fuss and fluff made about the creation of an inquiry into this legislation, only to see most of the recommendations made by the experts who gave their time to it thoroughly ignored by the opposition and the government. But let me just pick up this critical point around 'good faith' that has been made in the contributions by the minister and by the opposition and the fact that that offers us a protection in relation to the issues raised in this particular amendment.

I draw your attention to the evidence given by Mr Andrew Ray and Ms Charlotte Michalowski, who explored the issue of good faith further in their evidence to the committee, suggesting that perhaps a higher standard, such as proportionality, may be more appropriate. They outlined in their submission the lack of clarity around what 'good faith' can be interpreted as, stating:

… there are significant concerns regarding the use of the limitation of 'good faith' contained in the immunity provision. Good faith has been widely used in immunity provisions, however academic commentators have highlighted that the exact scope of

the term is unclear, with few cases having applied the test in relation to immunities. At its widest the immunity may protect anyone who subjectively believes they are acting in good faith. Alternatively, in some cases courts have considered competing policy considerations to weigh up whether an action should fall within a good faith exception. It is unclear which standard would be applied were the application of immunity contained in s 123AA challenged. This leads to the situation where it is unclear when an individual could rely on the immunity, a position that is at odds with the stated justification of the amendment.

So there we have it very clearly from two people who know what they're talking about and have no political vested interest in getting this bill sorted out and done. I think it's worth noting that this is a vagary which is causing the Commonwealth, broadly, many problems. As some of your own members acknowledge, there is a need to define clearly what we mean when we say 'good faith'. Just like the questions around the constitutional head of power that supports many of the activities described in this bill, it would be much better to clarify this issue before leaning on a concept of 'good faith' that is not settled and may prove to be unstable when relied upon.

The TEMPORARY CHAIR (Senator McLachlan): The question before the committee is that Greens amendments on sheets 1143, 1144 and 1148 be agreed to.

The committee divided. [21:16]

(The Temporary Chair—Senator McLachlan)

Ayes 9
Noes 31
Majority.....22

AYES

Faruqi, M	Hanson-Young, SC
McKim, NJ	Rice, J
Siewert, R (teller)	Steele-John, J
Thorpe, LA	Waters, LJ
Whish-Wilson, PS	

NOES

Antic, A	Askew, W
Bragg, AJ	Brockman, S
Cash, MC	Chandler, C
Davey, P	Duniam, J
Fawcett, DJ	Gallagher, KR
Henderson, SM	Hughes, H
Hume, J	McDonald, S
McGrath, J	McKenzie, B
McLachlan, A	McMahon, S
Molan, AJ	O'Sullivan, MA
Paterson, J	Rennick, G
Reynolds, L	Scarr, P
Seselja, Z	Small, B
Stoker, AJ	Urquhart, AE (teller)
Van, D	Watt, M
Wong, P	

Question negatived.

Senator STEELE-JOHN (Western Australia) (21:19): by leave—The Greens oppose schedules 1 and 2 in the following terms:

(1) Schedule 1, page 3 (line 1) to page 6 (line 5), **to be opposed.**

(2) Schedule 2, page 7 (line 1) to page 9 (line 21), **to be opposed.**

With the conclusion of this committee stage, we've now offered the chamber the opportunity to make clear that such call-out orders will be subject to the scrutiny of the parliament, which was voted down. We've given the chamber the opportunity to prescribe exactly what is meant by 'emergency', something which the major parties in this place have also voted against in the course of this committee stage. We've given the major parties the opportunity to ensure that actions are taken in consultation with the states and territories, and they have voted against that. We've given them the opportunity to remove the provision of immunity to foreign defence forces and to foreign police—something which they have just voted against—along with a clarification of the use of force, which has just been voted against. Every opportunity to improve this bill has been foregone by the major parties in this place. Every concern raised at the committee level has been ignored. So, finally, we give the opportunity for

these highly inappropriate sections of the legislation to be separated from the one piece of this bill which does have merit—that is, the sections in relation to superannuation. There is indeed a need to address the discrepancies identified by the legislation—something that we support—and we now seek to separate the bill to enable those two pieces to be considered independently of each other. So I commend that position to the chamber.

Senator REYNOLDS (Western Australia—Minister for Defence) (21:21): The government will not be supporting either of these amendments, because the measures in this bill will enhance the ability to provide defence assistance to the civil community by doing two things: firstly, by streamlining the process for calling out members of the ADF reserves under sections 28 and 29 of the Defence Act and, secondly, by providing ADF members, other defence personnel and members of foreign forces with similar immunities to state and territory emergency services personnel in certain cases while they are performing duties in good faith to support civil emergency and disaster preparedness, recovery and response. These amendments would take away both of these schedules in the bill. These have been designed to enhance Defence's ability to provide assistance in relation to natural disasters and other emergencies. They would also remove the opportunity to legislate some of the key lessons learned from the 2020-21 bushfires, which would be a significant missed opportunity ahead of the upcoming high-risk weather season. It's for these reasons, amongst many others that we've discussed here tonight, that the government will not be supporting these two amendments.

In closing, I thank the opposition. Senator Wong, I thank you and also Richard Marles and his office for the constructive way in which we've engaged with this to get to this very important legislation.

The TEMPORARY CHAIR (Senator McLachlan): The question is that schedules 1 and 2 stand as printed.

The committee divided. [21:27]

(The Temporary Chair—Senator McLachlan)

Ayes 32
Noes 9
Majority.....23

AYES

Antic, A	Askew, W
Bragg, AJ	Brockman, S
Cash, MC	Chandler, C
Davey, P	Fawcett, DJ
Fierravanti-Wells, C	Gallagher, KR
Henderson, SM	Hughes, H
Hume, J	Lambie, J
McDonald, S	McGrath, J (teller)
McKenzie, B	McLachlan, A
McMahon, S	Molan, AJ
O'Sullivan, MA	Paterson, J
Rennick, G	Reynolds, L
Scarr, P	Seselja, Z
Small, B	Stoker, AJ
Urquhart, AE	Van, D
Watt, M	Wong, P

NOES

Faruqi, M	Hanson-Young, SC
McKim, NJ	Rice, J
Siewert, R (teller)	Steele-John, J
Thorpe, LA	Waters, LJ
Whish-Wilson, PS	

Question agreed to.

The TEMPORARY CHAIR (Senator McLachlan) (21:30): The time allotted for debate has expired, so we will now report progress.

Bill agreed to.

Bill reported without amendments; report adopted.

Third Reading

The ACTING DEPUTY PRESIDENT (Senator McLachlan) (21:30): The question now is that the remaining stages of the bill be agreed to and the bill be now passed.

Question agreed to.

Bill read a third time.

Senator WATERS (Queensland—Leader of the Australian Greens in the Senate) (21:31): Can you record the Australian Greens' opposition to the bill?

The ACTING DEPUTY PRESIDENT: I agree to record your objection to that bill.

Excise Levies Legislation Amendment (Sheep and Lamb) Bill 2020
Customs Charges and Levies Legislation Amendment (Sheep and Lamb) Bill 2020
First Reading

Bills received from the House of Representatives.

Senator CASH (Western Australia—Minister for Employment, Skills, Small and Family Business and Deputy Leader of the Government in the Senate) (21:31): I move:

That these bills be now read a first time.

Question agreed to.

Bills read a first time.

Third Reading

The ACTING DEPUTY PRESIDENT (Senator McLachlan) (21:32): The question now is that the remaining stages of the bills be agreed to and the bills be now passed.

Question agreed to.

Bills read a third time.

Foreign Investment Reform (Protecting Australia's National Security) Bill 2020
Foreign Acquisitions and Takeovers Fees Imposition Amendment Bill 2020
First Reading

Bills received from the House of Representatives.

Senator CASH (Western Australia—Minister for Employment, Skills, Small and Family Business and Deputy Leader of the Government in the Senate) (21:33): I move:

That these bills be now read a first time.

Question agreed to.

Bills read a first time.

Second Reading

The ACTING DEPUTY PRESIDENT (Senator Stoker) (21:34): I will now deal with the second reading and other remaining stages of the bills. The question is that the second reading amendment on sheet 1163, circulated by the opposition, be agreed to.

Opposition's circulated amendment—

At the end of the motion, add:

", but the Senate notes the concerns and uncertainty around the implementation of this bill and the Coalition Government's broader failures on foreign investment."

Question negatived.

The ACTING DEPUTY PRESIDENT: The question now is that the second reading amendment on sheet 1157, circulated by the Australian Greens, be agreed to.

Greens' circulated amendment—

At the end of the motion, add ", but the Senate:

(a) notes that:

(i) the definition of a notifiable national security action in the Foreign Investment Reform (Protecting Australia's National Security) Bill 2020 includes infrastructure defined as a critical infrastructure asset under the Security of Critical Infrastructure Act 2018,

(ii) the Department of Home Affairs is undertaking consultation on the Exposure Draft of the Security Legislation Amendment (Critical Infrastructure) Bill 2020, and

(iii) in respect of critical electricity assets, the Explanatory Document to the Exposure Draft states, "It is likely that an expanded set of generator assets will be captured, building on the existing approach in the rules.",