

*UNNATURAL DISASTERS:
EMERGENCY MANAGEMENT IN A TIME OF ZOMBIES*

ROB MACLEAN*

ABSTRACT

At least in its initial stages the zombie apocalypse will involve co-ordinated emergency management actions from the three spheres of Australian government. As the zombies become more widespread across Australia, it is likely that both the rule of law and effective communication networks will break down. Consequently, it will be significantly harder for the Commonwealth government to project its power and effective zombie resistance will depend on effective use of people and resources at State, and then potentially regional or local government levels. In the worst-case scenario, all the current recognised forms of government may fail and survival will depend on new polities created out of desperate need.

This paper explores the hypothetical stages of Australian zombie apocalypse and discusses the range and legitimacy of effective emergency management plans and legislation (at least until cohesive emergency management passes from the hands of the government to individuals.)

* Rob MacLean is a sessional academic with the University of Canberra. By day, he is an executive with the Digital Transformation Agency, where his work has nothing to do with transferring human consciousness to the internet ... honest.

I THE ZOMBIE APOCALYPSE TIMELINE

The editors of the *Canberra Law Review* have proposed a notional timeline from an initial outbreak of zombies in an unspecified overseas location, through their arrival in Australia and the subsequent breakdown of the rule of law in Australia¹. This paper uses the early stages of this notional timeline as chapters, with each chapter discussing the scope for emergency management and identifying potential shortfalls in current emergency management approaches.²

II FIRST MOVEMENT ‘TARDO’³

‘ISOLATED ZOMBIE OUTBREAKS OUTSIDE OF AUSTRALIA’

In the first stage, the impact of the zombie apocalypse is felt exclusively outside of Australia. Australian domestic actions primarily involve the planning and preparation in case the zombie apocalypse should reach Australian shores.

A Emergency Planning

At a federal level, emergency management planning for the zombie apocalypse would primarily be the responsibility of the Attorney-General's Department. The two key emergency management organizational divisions of the Attorney General's Department are:

- 1) The Emergency Management Australia (EMA) division, which is responsible for preparing for emergencies and disasters through the development and maintenance of national plans and coordination of Australian Government crisis response and recovery efforts; and
- 2) The National Security Resilience Policy (NSRP) division, which would provide policy advice on emergency management and critical infrastructure protection.

Within the EMA Division is the Australian Government Crisis Coordination Centre (AGCC), which is responsible for a whole-of-government situational awareness service. This includes the coordination of physical assistance as well as briefing and support to executive decision-

¹ *Canberra Law Review* 2016 14(1) 4.

² Acknowledgement needs to be made up front to the research material published by Michael Eburn. While the author has developed disaster recovery plans for several Canberra institutions (including Australian Parliament House), he continually finds himself referring to Michael Eburn, *Emergency Law* (Federation Press 4th ed, 2013).

³ A musical instruction to play slowly.

makers in the Australian Government, the State and Territory governments and non-government agencies. The AGCC:

- centralises and coordinates information across the Australian Government, states and territories during a crisis in Australia;
- supports the Department of Foreign Affairs and Trade during major emergencies and events overseas;
- coordinates Australian Government physical and financial assistance for disaster relief; and
- maintains Australian Government response plans and arrangements for responding to domestic and international incidents.⁴

The key response plans and arrangements maintained by the EMA, the NSRP and the AGCC are:

- The Commonwealth Disaster Plan (COMDISPLAN);
- The National Catastrophic Disaster Plan (NATCATPLAN); and
- The National Strategy for Disaster Resilience.

When the ‘total resources (government, community and commercial) of an affected jurisdiction cannot reasonably cope with the needs of the situation the nominated official can seek non-financial assistance from the Australian Government under COMDISPLAN’.⁵ The current version of the COMDISPLAN confirms that the ‘COMDISPLAN can be activated for any disaster or emergency regardless of the cause’.⁶

The COMDISPLAN can serve as legitimate vehicle for the use of executive power to prepare for the zombie apocalypse. Potential forms of aid and the agency that can provide that assistance are identified at Annex 1 to the COMDISPLAN. Table A of this paper summarises avenues of assistance in relation to the zombie apocalypse.

⁴ <https://www.ag.gov.au/EmergencyManagement/About-us-emergency-management/Australian-Government-Crisis-Coordination-Centre/Pages/default.aspx>

⁵ Section 1.3.1 of COMDISPLAN 2014,

⁶ <https://www.ag.gov.au/EmergencyManagement/Respond-and-recover/Documents/COMDISPLAN2014-australian-government-disaster-response-plan.docx>. Section 1.4.2 at page 5.

Table A: Key Capabilities of Australian Government agencies in relation the Zombie Apocalypse⁷

| Agency | Resource |
|---|--|
| Airservices | <ul style="list-style-type: none"> • extensive national footprint and communications network including both terrestrial resources and digital radio communications. |
| Attorney-General's Department Emergency Management Australia (EMA) | <ul style="list-style-type: none"> • Advice on legislation, interpretation and other legal aspects. • Centralised coordination of the provision of Australian Government non-financial assistance within Australian jurisdictions. • All hazards crisis management. • 24/7 monitoring of all hazards and the first point of contact for security and emergency management events. |
| Australian Customs and Border Protection Service | <ul style="list-style-type: none"> • Provide maritime and aviation search and surveillance support to Australian Maritime Safety Authority (AMSA), if requested and within Border Protection Command operational capabilities; and • Operation of secure detention centres |
| Australian Federal Police (AFP) | <ul style="list-style-type: none"> • Access to national Police communications networks for transmission of urgent traffic when other communications are restricted or unavailable. |
| Australian Maritime Safety Authority (AMSA) | <ul style="list-style-type: none"> • Marine and aviation search and rescue planning and response. • Maritime ship casualty response. |
| Department of Agriculture | <ul style="list-style-type: none"> • Advice and expertise on biosecurity, animal health and welfare, epidemiology, aquatic animal health, plant pests and diseases, introduced marine pests, food residues, pesticide use and response, and native and pest animal issues. |
| Department of Communications | <ul style="list-style-type: none"> • Emergency broadcasting arrangements. |
| Department of Defence | <ul style="list-style-type: none"> • Capabilities include: airlift (fixed and rotary wing aircraft); engineering support, search and support teams, temporary accommodation and general support; health and psychological support; aviation refuelling, and communications. |
| Department of Health | <ul style="list-style-type: none"> • Preparation of national health plans including: environmental health, communicable disease, mass casualty and CBRN guidelines. • Epidemiologists and communicable disease experts to assist with epidemic prevention, response and recovery. • Provide information flow with state and territory emergency operations centres and links with State/territory health departments, • Long term mental health responses. |
| Department of Human Services | <ul style="list-style-type: none"> • National Emergency Call Centre Surge Capability • Allied health professionals, field staff and approximately 650 social work staff resources. |
| Department of Infrastructure and Regional Development | <ul style="list-style-type: none"> • Provide advice on transport security matters • Assistance in facilitating additional commercial airline resources or access to airport. |

⁷ As modified from Annex 1 to COMDISPLAN

Under Section 1.4.6 of the COMDISPLAN, before a request is made under COMDISPLAN a jurisdiction must have exhausted all government, community and commercial options to provide that effect. It would seem likely that in the event of a zombie apocalypse, particularly in the early stages, federal support would be made available before all available resources had been overwhelmed. It is worth noting that the COMDISPLAN has no authority to compel an agency to provide the requested resources. The decision to commit resources would likely be made at cabinet level or at least Federal Minister level in the early stages of the apocalypse. How such decisions can be made after the disintegration of the Federal Government is addressed in the discussion of later stages

The COMDISPLAN vests authority to request Federal assistance in one nominated official for each jurisdiction. In that person's absence, the officer performing their role holds this delegation. The current jurisdictions and the nominated official is shown in Table B.

Table B: COMDISPLAN NOMINATED OFFICIALS⁸

| STATE/TERRITORY | NOMINATED OFFICIAL |
|--------------------------------|---|
| New South Wales | State Emergency Operations Controller |
| Victoria | State Emergency Response Coordinator (Chief Commissioner of Police) |
| Queensland | Executive Officer State Disaster Management Group |
| South Australia | State Coordinator |
| Western Australia | Chair of the State Emergency Coordination Group |
| Tasmania | Executive Officer, State Emergency Management Committee and Executive |
| Northern Territory | Executive Officer, Northern Territory Counter-Disaster Council |
| Australian Capital Territory | Chair of the Security and Emergency Management Senior Officials Group |
| Norfolk Island | Chair of the Norfolk Island Emergency Management Committee |
| Cocos (Keeling) Islands | The Territory Controller, Cocos (Keeling) Islands |
| Christmas Island | The Territory Controller, Christmas Island |
| Jervis Bay | The Territory Controller, Jervis Bay |
| Australian Antarctic Territory | Department of Regional Australia, Local Government, Arts and Sport |

⁸ Section 2.1 of COMDISPLAN

The officials identified in Table B generally have the corresponding emergency management-planning role at the State or Territory level. Legislation in each State and Territory provides for emergency planning at the State or Territory, a district or regional level and at a local government level⁹. Due to their comparatively small areas, Norfolk Island and the Australian Capital Territory plan only at the Territory level.

At the State and Territory level, emergency management planning authority vests in a range of entities, Comprehensive details of the administrative arrangements for all States and Territories are beyond the scope of this paper¹⁰. As a general principle, a ‘Security and Emergency Committee’ is present at a cabinet level, composed of the relevant State or Territory Ministers and the heads of the relevant police, health and emergency services organisations.

A key element of these committees is the integration of the high-level management of the police, ambulance, urban fire, bush fire and emergency rescue services.

III SECOND MOVEMENT ‘AFFRETTANDO’¹¹

‘ISOLATED INSTANCES OF ZOMBIES IN AUSTRALIA, WHICH ARE INITIALLY CONTAINED BY POLICE’

At the second stage, the impact of the zombie apocalypse is beginning to be felt within Australia. Outside of Australia, the zombie apocalypse has resulted in the collapse of major cities and the full scope of the apocalypse is apparent and undeniable. Refugees begin to migrate to places of hoped for safety¹² and the Australian Border Force interdiction capabilities are called into play. Within Australia isolated and small-scale instances of zombies occur. Initially these incidents are handled by local police but as the stage progresses, civil panic within Australia increases and co-ordinated military and police responses are called for.¹³

A Initial Responses

At the Federal level actions move beyond the planning level. The Federal actions detailed in Table A began to be implemented by the respective departments and agencies. Dr Bede Harris has addressed the constitutional legitimacy of federal executive action in his paper.

⁹ *State Emergency and Rescue Management Act 1989* (NSW); *Disaster Management Act 2003* (Qld); *Emergency Management Act 2004* (SA); *Emergency Management Act 2006* (Tas); *Emergency Management Act 1986* (Vic); *Emergency Management Act 2005* (WA); *Emergencies Act 2004* (ACT); *Emergency Management Act 2013* (NT); *Disasters and Emergency Management Act 2001* (NI).

¹⁰ But are detailed in Chapter 5 of Michael Eburn, *Emergency Law* (Federation Press 4th ed 2013)

¹¹ A musical instruction to play ‘hurrying’.

¹² Isabella Heilikmann, ‘Escaping the Sea of Zombies: Lessons learned from Climate Change Refugees’ (2016) 14 (1) *Canberra Law Review*.

¹³ At the *Affrettando* stage circumstances have not moved to the level of desperation attributed to an unnamed U.S. officer by AP correspondent Peter Arnett in his writing about B n Tre city on 7 February 1968: ‘It became necessary to destroy the town to save it’.

‘Constitutional Implications of Zombies’.¹⁴ In summation, existing executive powers under s61 of the Constitution and legislative powers, such as under s 51(vi) defence power, will encompass many possible actions and use of the ‘implied nationhood powers’ will provide a legitimacy for actions which fall outside the scope of current executive or legislative authority.

B Police Powers

In the *Affrettando* stage the range of zombie incidents can be quite wide but are characterized by any one incident being of a small or localized scale. Such incidents are more likely to be dealt with by local area resources, most likely those of the impacted State or Territory. Single zombie incidents would likely trigger emergency calls, which would be responded to by local police. It seems likely that given the ineffective nature of regular police weapons (pistols, batons and tasers), police call out vehicles would quickly be supplemented by fire brigade resources. The use of high pressure water cannons and fire axes would seem to offer better effectiveness at breaking up zombie groups and then dispatching individual zombies.

More serious incidents (but still localized ones) could center on the arrival of multiple infected zombies at one location, potentially as part of cruise ship load of zombies beaching on the Australian coastline or due to a crashed passenger aircraft. Assuming Federal border surveillance resources are functioning, these should be able to identify the location and initial scale of the zombie penetration. State or Federal resources could then be vectored to the penetration. These could be composed of Australian Defence Force (ADF) units or Special Weapons¹⁵ and Tactics (SWAT) units from State and Territory police forces. These serious incidents might involve the establishment of a perimeter by urban and bush fire services with an emergency evacuation corridor (and potentially subsequent containment area) coordinated by State and Territory health services. ADF and SWAT units would then actively patrol the contained area, hunting down zombies and directing uninfected citizens to secure evacuation sites.

Where such a serious incident to happen within New South Wales, as was potentially envisaged in the *Affrettando* flashpoint, the response would fall under The *State Emergency and Rescue Management Act 1989* (NSW). The Commissioner of Police (or another senior executive of the NSW Police Force) would operate as State Emergency Operations Controller (SEOCN) and would appoint regional and local area operation coordinators, required by statute to be police officers.¹⁶

¹⁴ Canberra Law Review 2016 14(1), 15.

¹⁵ The definition of ‘Special Weapons’ may undergo some evolution. Interested students are directed to Roger Ma, *The Zombie Combat Manual: A Guide to Fighting the Living Dead* (Penguin, 2010), particularly with reference to hand to hand weapons.

¹⁶ The *State Emergency and Rescue Management Act 1989* (NSW), s24 and 30.

Under The *State Emergency and Rescue Management Act*, those police officers have the statutory authority to make safe an ‘area in which an emergency is causing or threatening to cause injury or death’¹⁷ (danger area).

The scope of the police officer’s authority encompasses:

- a) ordering people to remain or to evacuate a danger area;
- b) the closure to traffic of any street, road, lane thoroughfare or footpath or place open to or used by the public, in the danger area or any part of the danger area;
- c) the removal of vehicles in the danger areas or any part of the danger area;
- d) the closure of any other public or private place in the danger areas or any part of the danger area;
- e) the pulling down, destruction or shoring up of any wall or premises that have been damaged or rendered insecure in the danger areas or any part of the danger area;
- f) the shutting off or disconnecting of the supply of power and water, gas, liquid, solid, grain, powder or other substance in or from any main, pipeline, container or storage facility in the danger areas or any part of the danger area;
- g) the taking possession of, and removal or destruction of any material or thing in the danger areas or any part of the danger area that may be dangerous to life of property or that may interfere with the response of emergency services to the emergency;
- h) the protection or isolation of any material or thing in the danger area, by preventing a person from removing or otherwise interfering with the material or thing.¹⁸

The above powers authorise the physical quarantining a zombie infected area (sections b, c & d) and the ‘destruction’ of things that may be ‘dangerous to life and property’ (section g), which I suspect is broad enough to encompass a marauding zombie horde.

The powers extend to the entry of premises using reasonable force and potentially without providing notice, but only to the extent required by the danger.

Were the NSW Premier to declare the ‘danger area’ the subject of a ‘state of emergency’¹⁹ then functionally equivalent powers would extend to those authorised by the Minister for Police and Emergency Services. Most notably, in addition and within the area covered by a state of emergency:

- a) the minister may take possession and use any property belonging to any person. The owner of the possession or property may then seek compensation from the minister.²⁰

¹⁷ Ibid s60I.

¹⁸ Ibid s61.

¹⁹ Ibid s33.

²⁰ Ibid s37.

- b) members of the emergency services are authorised to do anything that is reasonably necessary, including using force, to ensure compliance with a direction to leave or not to enter the area covered by the state of emergency.²¹

At least at the *Affrettando* stage command and control systems, as well as transportation infrastructure, are not sufficiently compromised that Federal, State and Territory assets cannot be effectively deployed to negate individual zombie incidents. However as those who have watched zombie movies know, somebody always leaves the morgue door unlocked, desperate (and unknowingly infected) parents manage to avoid police roadblocks to evacuate their children from the danger areas and greedy bio-pharmaceutical companies stop the zombie menace from being eradicated, which inevitably leads us to the *Mosso* stage.

IV THIRD MOVEMENT ‘MOSSO’²²

‘ZOMBIES ARE NOW PRESENT ON THE STREETS OF ALL AUSTRALIAN CITIES AND MAJOR TOWNS – THE FEDERAL GOVERNMENT FAILS’

At this third stage, the challenge becomes to effectively utilize the tremendous resources of the Federal Government at a time when the normal operation of the executive is curtailed. This section of the paper will examine three possible challenges that may confront federal executive government.

A The loss of Executive Power

The timeline presumes that at some stage the Governor General becomes a zombie and this triggers a depletion of the ranks of cabinet as senior members of the executive are either killed or zombified. Bruce Arnold and Erina Fletcher have considered whether zombies are still human²³ but for the moment let us assume that being turned into a zombie is treated as ‘death’ and precludes you from holding public office.

The death of the Governor - General does not result in the position becoming vacant. Section 4 of the Constitution permits the Queen to appoint an administrator to carry out the role of Governor-General when there is a vacancy, however it seems likely that her Majesty may be focussing on zombie matters closer to home. By convention, the longest-serving state governor holds a dormant commission as ‘Administrator of the Commonwealth’, allowing an assumption of office in the event of a death, resignation or absence from Australia. In 1961,

²¹ Ibid s60L.

²² A musical instruction to play ‘with motion or animation’.

²³ Bruce Baer Arnold, ‘Is the Zombie my Neighbour? The Zombie Apocalypse as a Lens for Understanding Legal Personhood’ (2016) 14(1) *Canberra Law Review*; and ‘Erina Fletcher, ‘To What Extent Should We Extend Human Rights to Zombies’ (2016) 14(1) *Canberra Law Review*.

the then Governor- General. Viscount Dunrossil died in office²⁴ and General Sir Reginald Alexander Dallas Brooks, KCB, KCMG, KCVO, DSO was appointed as Administrator.

The role of the Governor - General, as derived from executive power through the United Kingdom monarchy, is steeped in the tradition of the transfer of power enshrined in the phrase ‘the king is dead, long live the king’. Even where a series of Administrators of the Commonwealth to suffer unfortunate zombification, a succession of state governors and lieutenant governors stand ready to fill the role.

The situation is not so clear with replacement for a zombified cabinet. On the death of a Prime Minister, the Deputy Prime Minister can be sworn in as Prime Minister by the Governor General. On the death of Harold Holt in 1967, the then Governor-General, Lord Casey, swore in the leader of the Australian Country Party, John McEwen, as Prime Minister, on the understanding that McEwen’s commission would continue only so long as it took for the Australian Liberal Party to elect a new leader.

Assuming the death of an entire cabinet, or even a significant part of the cabinet, questions of Prime Ministerial and Ministerial succession become significantly less clear.

The Prime Minister is the head of the Government and achieves this position by being the elected leader of the party in government (in the case of a coalition Government, the major party). The Cabinet consists of senior Ministers presided over by the Prime Minister and would serve as the key executive decision-making body during the zombie apocalypse (at least as long as the cabinet lasts). The Prime Minister selects Ministers for Cabinet positions. Ministers outside of the Cabinet are also selected by the Prime Minister.²⁵

Ministers outside of Cabinet do not have an innate line of succession and the appointment of a new Prime Minister would require at least a party meeting to determine the new Prime Minister. The new Prime Minister could then appoint ministers from the remaining members of the Senate and from the House of Representatives.

It is worth noting that a newly appointed Prime Minister is not required to:

- a) wait until vacant parliamentary positions are occupied to establish a cabinet; and
- b) vest the decision-making powers to a full cabinet.

In 1972, Gough Whitlam defied parliamentary convention and did not wait until the final election results were released, before having a cabinet sworn in by the Governor - General. An interim two-man cabinet, composed of the incoming Prime Minister and the governing party’s Deputy Leader, was sworn in and operated until the election results were finalized.

²⁴ From natural causes.

²⁵ http://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/00_-_Infosheets/Infosheet_20_-_The_Australian_system_of_government

In 1939, Sir Robert Menzies formed a War Cabinet, which originally consisted of six Ministers where:

... full Cabinet remained responsible for general policy and the function of War Cabinet was detail and execution; however, in practice War Cabinet tended to become the first formulator of general policies having a relation to the war, which came to mean most issues of political significance.²⁶

It is also worth noting that during World War II, an Advisory War Council that operated in Australia consisted of senior ministers and senior opposition members.

It would seem that the mass death of cabinet can be accommodated within existing Constitutional and parliamentary frameworks, due in part to the undefined nature of parliamentary conventions. That said, a mechanism for expediting the replacement of Members of the House of Representatives in emergencies, like that currently in place for the Senate, in promoting the previous House of Representative member's party next pre-selected candidate of the impacted electoral area could shore up the chains of both executive and parliamentary power.²⁷

B Loss of Parliamentary Power

It is well known that Australia's written Constitution is silent on many important aspects of government. It says nothing about the Prime Minister, the Cabinet, responsible government, ministerial responsibility, electing a government, dismissing a government, parliamentary control, what is to be done if the Senate refuses to pass an appropriation Bill (or a supply Bill), and so on. In reality this void is filled-in by well established practice, methods, habits, maxims, usages, many of them of long-standing, which were inherited from colonial Parliaments, which in turn inherited them from Westminster. It is these practices, methods and usages which tend to be referred to, albeit vaguely, as 'conventions of the Constitution'.²⁸

Where a member of the Senate dies in office, a new Senator can be appointed without a new electoral process. Where a member of the House of Representatives dies in office, convention is that the replacement parliamentarian can only be appointed by a by-election. The death and the subsequent delays in the appointment of replacement Senators and Member of the House of Representatives may cause issues with current parliamentary conventions. Given the current era of small majorities in the House of Representatives and no clear majority in the Senate, it seems likely that the death of twenty or more Senators and Member of the House of Representatives from the ruling party would change the balance of power in Parliament.

²⁶ Geoffrey Sawyer, *Australian federal politics and law 1929–1949* (Melbourne University Press, 1963) 103.

²⁷ This would require the Australian Electoral Office to be notified of the ranking of pre-selection candidates.

²⁸ G.S. Reid, 'The double dissolutions and joint sitting commentaries', in Gareth Evans (ed.), *Labor and the Constitution 1972–1975* (Heinemann, 1977) 244

Cabinet is collectively responsible to the people, through the Parliament, for determining and implementing policies for national government. This is referred to as the ‘Collective Cabinet Responsibility’ convention.²⁹ This convention has been considered as requiring that the loss of a vote on a no-confidence motion in the House of Representatives or on a major issue to lead to the resignation of the whole Government (including Ministers not in the Cabinet) or, alternatively, the Prime Minister is expected to recommend to the Governor-General that the House be dissolved for an election. In contemporary practice, it is generally considered that the should a Government lose a vote on a major issue, it would be entitled to propose a motion of confidence to test or confirm its position, before resigning or recommending an election,

While party discipline usually prevents the loss of such motions, the death of an entire cabinet has the potential to mean that votes of no-confidence could be lost solely on party grounds. The question becomes whether a government is bound by conventions, or has a discretion to set a convention aside (particularly in an unprecedented national emergency).

In his consideration of constitutional conventions, A.V Dicey determined that:

conventions of the constitution are (in the main) rules for determining the exercise of the prerogative, we may carry our analysis of their character a step farther. They have all one ultimate object. Their end is to secure that Parliament, or the Cabinet which is indirectly appointed by Parliament, shall in the long run give effect to the will of that power which in modern England is the true political sovereign of the State — the majority of the electors or (to use popular though not quite accurate language) the nation.³⁰

Restating Dicey, where a conventional constitution does not give effect to the will of the majority of the electors, then that convention does not meet the test of parliamentary legitimacy and can be set aside. Similarly, Chapter 2 of *House of Representatives Practice* states that ‘Conventions are subject to change by way of (political) interpretation or (political) circumstances and may in some instances be broken’.³¹

It seems likely that an incumbent government in a time of national emergency would seek to set aside the Collective Cabinet Responsibility convention and it is also unlikely that the Australian electorate would view favourably a rotating succession of elections, as parliamentarians fall prey to the zombie hordes.

The author’s contention is that further constitutional conventions would be set aside and a ‘National Government’ would likely be formed. Normal political imperatives would be set aside in the interest of national survival and ministerial appointments would be made from a range of political parties, primarily based on a parliamentarian’s experience in the portfolio. This would be consistent with Winston Churchill’s World War II all party coalition government, as shown in the cabinet papers of the time where:

²⁹ I.C. Harris ed, *House of Representatives Practice* (Canprint Communications 5th ed 2005) Chapter 2.

³⁰ Albert Venn Dicey, *Introduction to the Study of the Law of the Constitution* (Macmillan and Company, 1889)

³¹ *Ibid*

[T]wo out of five members of Churchill's 1940 War Cabinet were Labour politicians, one was National and two were Conservatives. Domestic political fighting was put on hold and all three parties worked together with the common aim of defeating Nazi Germany.³²

B Loss of Judicial Power

The Australian Constitution vests judicial power in the High Court and by extension the justices of the High Court. Section 71 of the Constitution empowers the High Court to interpret and apply the law of Australia; to decide cases of special federal significance including challenges to the constitutional validity of laws; and to hear appeals, by special leave, from Federal, State and Territory court.

In a time of national crisis, it is also likely that irregular parliamentary procedural matters would be referred to the High Court for urgent consideration. Much as there is a risk of the crown's ministers falling foul of the zombie hordes, the same risk applies to High Court justices and hence it is necessary to consider the existing succession rules.

Under section 72 of the Constitution, Justices of the High Court:

- are appointed by the Governor-General in Council;
- cannot be removed except by the Governor-General in Council on an address from both Houses of Parliament in the same session, justifying removal on the grounds of proved misbehaviour or incapacity;
- must retire on attaining the age of 70 years.

Appointment by the Governor-General in Council means that the Governor-General makes the appointment, acting on the advice of the Prime Minister and Cabinet. As established above, this could create a delay where the positions of Prime Minister and Cabinet Ministers are vacant.

Section 72 also addresses the legitimacy of undead High Court judges, providing a mechanism for their removal from office on the grounds of 'incapacity', as well as 'misbehavior' if they eat the brains of their supplicants.

Reinstatement of age retired High Court judges is precluded by the mandatory age exclusion in the Constitution. To ensure a full bench, it is suggested that in the event of an 'emergency', where the Governor-General in Council is not able to immediately appoint a replacement, a reserve commission is activated for the longest serving State or Territory Chief Justice. The termination of this commission would not require the operation of s72 of the Constitution and would be triggered by the normal appointment of a successor to the High Court.

³² <<http://www.nationalarchives.gov.uk/cabinetpapers/cabinet-gov/winston-churchill-1940.htm>>

V THIRD MOVEMENT ‘MOSSO’³³

‘STATE AND LOCAL GOVERNMENT ACTORS BECOMING THE PRIMARY AGENTS FOR ANTI-ZOMBIE ACTION’

It would be nice to think that the final act of the Federal Parliament would be to declare a state of national emergency, as the Serjeant at arms and Black Rod use their ceremonial weapons in a desperate last stand before the doors of a joint sitting of parliament. Sadly, that is currently not possible. There is no current Commonwealth counter disaster or emergency legislation and hence no appropriate legislative power.³⁴

The ‘last, best hope’ for Federal assistance seems to lie in an extrapolation of the National Catastrophic Disaster Plan (NATCATDISPLAN). Under the NATCATDISPLAN, the Prime Minister is able to appoint someone to act as the Administrator of the affected State or Territory, to coordinate between the affected state and the Commonwealth to ensure the delivery of the required assistance.

The NATCATDISPLAN is predicated on two assumptions:

- a) that it is the State or Territory government that fails and that the Federal Government is still in existence; and
- b) that the disaster ‘affects one or more communities, resulting in widespread, devastating economic, social and environmental consequences, and that exceeds the capability of the existing State or Commonwealth government emergency and disaster management arrangements.

In the event of a zombie apocalypse wiping out the Federal Parliament, it would seem we need to expand the scope of the NATCATDISPLAN to become an Unnatural National Catastrophic Disaster Plan (UNNATCATDISPLAN).

The UNNATCATDISPLAN could be activated if the Federal government fails and State and Territory governments are still in existence. The UNNATCATDISPLAN would allow the Federal Government to appoint state or regional coordinators, whose role is to co-ordinate the use of Federal assets (such as those shown within Table A: Key Capabilities of Australian Government agencies in relation the Zombie Apocalypse) within the revised State or Territory Emergency Management Plan.

Under current Defence policy guidance, local military commanders may authorise the deployment of ADF personnel and resources ‘in localised emergency situations when immediate action is necessary to save human life, alleviate suffering, prevent extensive loss of

³³ A musical instruction to play ‘with motion or animation’.

³⁴ Michael Eburn, *Responding to Catastrophic Natural Disasters and the Need for Commonwealth Legislation* 2011 10(3) Canberra Law Review.

animal life or prevent wide spread loss / damage to property'³⁵. This guidance is intended to cover a short-term emergency, where delays in communicating through the chain of command may result in a greater harm. This discretion is not meant to cover a protracted disaster, where the chain of command may have become extinct. The implementation of an UNNATCATDISPLAN would extend local military officers discretion to use ADF personnel and resources to apply to the ongoing struggle, which is the zombie apocalypse.

The Federal Government appointed state or regional coordinators could then become members of the State or Territory 'Security and Emergency Committee', in a similar manner to the representatives of the Police and Emergency Services. Where the command and control infrastructure subsequently breaks down to a regional or local level, it is possible that the local military commander would be granted emergency police powers and become the local area operational coordinator.³⁶

VI CONCLUSION (BUT NOT THE END OF HUMANITY)

If we believe mass media, the American cultural vision of the zombie apocalypse is based in the individual survivor, armed with a firearm, headed out into a lawless wasteland. Similarly, if we believe Simon Pegg, the English cultural vision of the zombie apocalypse involves you and your chums, wielding cricket bats (utilising both front foot and back foot offensive shots) in defence of your local pub.³⁷

The Australian version of the zombie apocalypse is significantly different. A culture of responding to 'natural disasters' will likely see greater reliance on local groups conducting co-operative efforts. In regional areas, there is significant evidence of community alignment behind emergency services and that has been repeated in urban areas.³⁸

The Australian cultural vision of the zombie apocalypse is potentially based on being a member of your local bush fire brigade, parents and teachers' association or community club, with lines of volunteers systematically moving forward, chain saws and hedge trimmers in hand.

The role of the Federal and State Governments will be to provide logistical support and overall leadership for locally co-ordinated activities. To that end the emergency planning and the supporting legislation needs to provide clear lines of authority to commit resources and specialise skills in support.

In practice, current parliamentary procedures are flexible enough to support a range of executive and parliamentary responses to zombies, based upon historical evidence that

³⁵ Defence Instructions (General) OPS 05-1 '*Defence Assistance to the Civil Community – policy and procedures*' 13.

³⁶ The author is specifically thinking of regional centers, such as Nowra and Townsville, with significant military resources.

³⁷ Simon Pegg, Kate Ashfield, Lucy Davis, Nick Frost, Dylan Moran, Bill Nighy, Penelope Wilton, Jessica Hynes, Nira Park, and Edgar Wright. *Shaun of the Dead*. (Universal City, CA: Universal, 2004).

³⁸ Specifically, the public response to the 2011 Brisbane floods.

contemporary parliamentary conventions can be legitimately suspended in times of national emergency,

However, no system is perfect and consideration should be given to Federal Emergency Management legislation, which would provide succession rules in the event of truly national disasters or where federal leadership is effectively targeted and decapitated.

