



National Emergency Declaration Act 2020

No. 128, 2020

**An Act to provide for the declaration of national
emergencies, and for related purposes**

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**An Act to provide for the declaration of national
emergencies, and for related purposes**

[Assented to 15 December 2020]

The Parliament of Australia enacts:

Part 1—Introduction

Division 1—Preliminary

1 Short title

This Act is the *National Emergency Declaration Act 2020*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after this Act receives the Royal Assent.	16 December 2020

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Object of this Act

- (1) The object of this Act is to recognise and enhance the role of the Commonwealth in preparing for, responding to and recovering from emergencies that cause, or are likely to cause, nationally significant harm.
- (2) This object is achieved by providing for the making of national emergency declarations, which will allow the Commonwealth to

mobilise resources to prepare for, respond to, and recover from such emergencies.

4 Simplified outline of this Act

The Governor-General may make a declaration, called a national emergency declaration, in certain circumstances, including if the Prime Minister is satisfied that an emergency (whether occurring in or outside Australia) is causing harm that is nationally significant in Australia or in an Australian offshore area.

If a national emergency declaration is in force, a Minister may determine that certain provisions of Commonwealth laws are modified in specified ways if certain conditions are satisfied.

Provisions that may be modified include those requiring a person to provide a signature or to report matters to a Commonwealth agency.

If a national emergency declaration is in force, the Prime Minister may require Secretaries of Commonwealth Departments and others to provide information to assist in preparing for, responding to or recovering from the emergency.

A national emergency declaration also has effect for the purposes of other Commonwealth laws (called national emergency laws). Such laws provide that, if a national emergency declaration is in force, certain powers can be exercised or functions can be performed. If those powers are exercised or functions are performed, the Minister responsible for administering the relevant national emergency law must prepare a report about that and give it to the Minister administering this Act for tabling in Parliament.

A Senate Committee must begin a review of the operation of this Act immediately after the Act commences, and begin a further review of the operation of the Act within 5 years after that. A Senate Committee must also begin a review of each national emergency declaration by the first anniversary of the day on which the declaration is made.

5 Act binds the Crown

This Act binds the Crown in each of its capacities.

6 Extension to external Territories

This Act extends to the external Territories.

7 Extension to Australian offshore areas

This Act extends to Australian offshore areas.

8 Executive power of the Commonwealth

This Act does not, by implication, limit the executive power of the Commonwealth.

9 Concurrent operation of State and Territory laws

This Act does not exclude or limit the operation of a law of a State or Territory that is capable of operating concurrently with this Act.

Division 2—Definitions

10 Definitions

In this Act:

Australia, when used in a geographical sense, includes the external Territories.

Australian offshore area means:

- (a) any waters on the landward side of the territorial sea of Australia that are not within the limits of a State; or
 - (b) the territorial sea of Australia; or
 - (c) the exclusive economic zone of Australia; or
 - (d) the sea above the continental shelf of Australia;
- and includes the airspace over an area covered by paragraph (a), (b), (c) or (d).

emergency management means any of the following engaged in before, during or in the immediate aftermath of an emergency:

- (a) emergency risk reduction;
- (b) emergency preparedness;
- (c) emergency response;
- (d) emergency recovery.

law of the Commonwealth includes a law in force in an external Territory or the Jervis Bay Territory, so far as the law is so in force because of an Act providing for the acceptance, administration or government of that Territory.

national emergency declaration: see subsection 11(1).

national emergency law means the following:

- (a) section 15 or 16 of this Act;
- (b) section 16 of the *Adelaide Airport Curfew Act 2000*;
- (c) section 14 of the *Air Navigation (Essendon Fields Airport) Regulations 2018*;

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- (d) section 17 of the *Air Navigation (Gold Coast Airport Curfew) Regulations 2018*;
- (e) section 250 of the *Airports Act 1996*;
- (f) section 20 of the *Air Services Regulations 2019*;
- (g) Division 7 of Part 4 of the *Aviation Transport Security Act 2004*;
- (h) section 16A or 17 of the *Christmas Island Emergency Management Ordinance 2012*;
- (i) regulation 11.185 of the *Civil Aviation Safety Regulations 1998*;
- (j) section 16A or 17 of the *Cocos (Keeling) Islands Emergency Management Ordinance 2012*;
- (k) section 88 or 90 of the *Competition and Consumer Act 2010*;
- (l) section 23YUF of the *Crimes Act 1914*;
- (m) section 96A of the *Designs Act 2003*;
- (n) section 9 of the *Disaster and Emergency Management Act 2001* (Norfolk Island);
- (o) section 28 or 158 of the *Environment Protection and Biodiversity Conservation Act 1999*;
- (p) section 19 of the *Environment Protection (Sea Dumping) Act 1981*;
- (q) section 30-45A of the *Income Tax Assessment Act 1997*;
- (r) section 67 of the *Industrial Chemicals Act 2019*;
- (s) section 15 of the *Jervis Bay Territory Emergency Management Ordinance 2015*;
- (t) section 16 of the *Liquid Fuel Emergency Act 1984*;
- (u) section 33 of the *Maritime Transport and Offshore Facilities Security Act 2003*;
- (v) section 86E of the *National Health Act 1953*;
- (w) Part 2 and section 60A of the *National Health Security Act 2007*;
- (x) clause 2A of Schedule 2A of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*;
- (y) section 163A of the *Patents Act 1990*;
- (z) section 80J of the *Privacy Act 1988*;

- (za) section 49, 172, 196, 219 or 220 of the *Radiocommunications Act 1992*;
- (zb) section 36 or 36A of the *Social Security Act 1991*;
- (zc) section 124PJ of the *Social Security (Administration) Act 1999*;
- (zd) section 18 of the *Sydney Airport Curfew Act 1995*;
- (ze) section 313 of the *Telecommunications Act 1997*;
- (zf) section 18A, 32CB or 41GS of the *Therapeutic Goods Act 1989*.

nationally significant harm means harm that:

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

Part 2—National emergency declarations

11 Governor-General may make a national emergency declaration

Conditions for making a national emergency declaration

- (1) The Governor-General may make a declaration (a ***national emergency declaration***) if the Prime Minister is satisfied that:
 - (a) an emergency has recently occurred, is occurring or is likely to occur (whether in or outside Australia); and
 - (b) the emergency has caused, is causing or is likely to cause nationally significant harm in Australia or in an Australian offshore area; and
 - (c) any of the following subparagraphs apply:
 - (i) the governments of each State and Territory in which the emergency has caused, is causing or is likely to cause nationally significant harm have requested, in writing, the making of the declaration;
 - (ii) because of the emergency, it is not practicable for a request to be made under subparagraph (i);
 - (iii) the emergency has affected, is affecting or is likely to affect Commonwealth interests;
 - (iv) the making of the declaration is appropriate, having regard to the nature of the emergency and the nature and severity of the nationally significant harm; and
 - (d) for reasons relating to emergency management, it is desirable for the declaration to be made for the purposes of one or more national emergency laws.
 - (2) Before the Governor-General makes a national emergency declaration in relation to an emergency, the Prime Minister must consult with the government of each State or Territory (if any) in which the Prime Minister is satisfied the emergency has caused, is causing or is likely to cause nationally significant harm.
 - (3) Subsection (2) does not require the Prime Minister to consult with the government of a State or Territory if:
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- (a) the government of the State or Territory requested the making of the national emergency declaration under subparagraph (1)(c)(i); or
- (b) the Prime Minister is satisfied that it is not practicable to do so.

Requirements for a national emergency declaration

- (4) A national emergency declaration must:
 - (a) be in writing; and
 - (b) specify:
 - (i) the emergency to which the declaration relates; and
 - (ii) the nature of the emergency and the circumstances that gave rise to it; and
 - (iii) the period for which the declaration is in force.

Note: The declaration may be varied under sections 12 and 13.

Period for which a national emergency declaration is in force

- (5) The period specified for the purposes of subparagraph (4)(b)(iii):
 - (a) must not be longer than the period that the Prime Minister considers necessary for the purposes of emergency management; and
 - (b) in any case, must not be longer than 3 months.

Note: The period may be extended under section 12 and the declaration may be revoked under section 14.

National emergency declaration is not subject to disallowance

- (6) A national emergency declaration is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the declaration.

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12 Governor-General may extend period for which a national emergency declaration is in force

Conditions for extending a national emergency declaration

- (1) The Governor-General may, in writing, vary a national emergency declaration that relates to an emergency to extend the period for which it is in force (for a further period of up to 3 months) if the Prime Minister is satisfied that:
 - (a) the emergency has recently occurred or is occurring (whether in or outside Australia); and
 - (b) the emergency has caused, is causing or is likely to cause nationally significant harm in Australia or in an Australian offshore area; and
 - (c) any of the following subparagraphs apply:
 - (i) the governments of each State and Territory in which the emergency has caused, is causing or is likely to cause nationally significant harm have requested, in writing, the extension;
 - (ii) because of the emergency, it is not practicable for a request to be made under subparagraph (i);
 - (iii) the emergency has affected, is affecting or is likely to affect Commonwealth interests;
 - (iv) extending the period is appropriate, having regard to the nature of the national emergency and the nature and severity of the nationally significant harm; and
 - (d) for reasons relating to emergency management, it is desirable for the declaration to be in force for a longer period for the purposes of one or more national emergency laws.
 - (2) Before the Governor-General varies a national emergency declaration to extend the period for which it is in force, the Prime Minister must consult with:
 - (a) if a request to make the national emergency declaration was made under subparagraph 11(1)(c)(i)—the governments of each State and Territory that made the request; and
 - (b) the governments of each State and Territory that were consulted under subsection 11(2); and
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- (c) the governments of each State and Territory (if any) in which the Prime Minister is satisfied the emergency has caused, is causing or is likely to cause nationally significant harm.
- (3) Subsection (2) does not require the Prime Minister to consult with the government of a State or Territory if the Prime Minister is satisfied that it is not practicable to do so.

Period may be extended more than once

- (4) The Governor-General may, under subsection (1), vary a national emergency declaration to extend the period for which it is in force more than once. However, each period of extension must not exceed 3 months.

Variation is not subject to disallowance

- (5) A variation made under subsection (1) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the variation.

13 Governor-General may vary any other aspect of a national emergency declaration

(1) The Governor-General may, in writing, vary any other aspect of a national emergency declaration that relates to an emergency if the Prime Minister is satisfied that:

- (a) the emergency has recently occurred or is occurring (whether in or outside Australia); and
- (b) the emergency has caused, is causing or is likely to cause nationally significant harm in Australia or in an Australian offshore area; and
- (c) any of the following subparagraphs apply:
 - (i) the governments of each State and Territory in which the emergency has caused, is causing or is likely to cause nationally significant harm have requested, in writing, the variation;
 - (ii) because of the emergency, it is not practicable for a request to be made under subparagraph (i);

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- (iii) the emergency has affected, is affecting or is likely to affect Commonwealth interests;
 - (iv) varying the declaration is appropriate, having regard to the nature of the national emergency and the nature and severity of the nationally significant harm; and
 - (d) for reasons relating to emergency management, it is desirable to vary the declaration for the purposes of one or more national emergency laws.
- (1A) Before the Governor General varies a national emergency declaration under subsection (1), the Prime Minister must consult with:
- (a) if a request to make the national emergency declaration was made under subparagraph 11(1)(c)(i)—the governments of each State and Territory that made the request; and
 - (b) the governments of each State and Territory that were consulted under subsection 11(2); and
 - (c) the governments of each State and Territory (if any) in which the Prime Minister is satisfied the emergency has caused, is causing or is likely to cause nationally significant harm.
- (1B) Subsection (1A) does not require the Prime Minister to consult with the government of a State or Territory if the Prime Minister is satisfied that it is not practicable to do so.
- (2) The Governor-General may, under subsection (1), vary a national emergency declaration more than once.
 - (3) A variation made under subsection (1) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the variation.

14 Governor-General may revoke a national emergency declaration

- (1) The Governor-General may, in writing, revoke a national emergency declaration if the Prime Minister is satisfied that, in all the circumstances, it is appropriate to do so.

- (2) A revocation made under subsection (1) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the revocation.

14A Review of national emergency declaration

The Senate Standing Committee on Legal and Constitutional Affairs, or such other committee constituted under a resolution of the Senate, must:

- (a) begin a review of each national emergency declaration made under section 11 by the first anniversary of the day the declaration is made; and
- (b) report the Committee's findings to the Senate as soon as practicable after completing the review.

Part 3—Modification of administrative requirements during a national emergency

15 Ministers may modify administrative requirements during a national emergency

Power to modify affected provisions in relation to relevant matters

- (1) This section applies in relation to a provision (an ***affected provision***) of a law of the Commonwealth that requires or permits any of the following matters (a ***relevant matter***):
- (a) the giving of information in writing;
 - (b) the signature of a person;
 - (c) the production of a document by a person;
 - (d) the recording of information;
 - (e) the retention of documents or information;
 - (f) the witnessing of signatures;
 - (g) the certification of matters by witnesses;
 - (h) the verification of the identity of a person;
 - (i) the attestation of documents;
 - (j) the reporting or notification of a matter to a Department, agency or authority of the Commonwealth.

Note: This section does not apply to some affected provisions (see subsection (8)).

- (2) If a national emergency declaration is in force, a responsible Minister for an affected provision may, by legislative instrument, determine that, to the extent that the affected provision relates to a relevant matter:
- (a) the affected provision is varied as specified in the determination in relation to a period specified in the determination; or
 - (b) the affected provision does not apply in relation to a period specified in the determination; or

- (c) the affected provision does not apply, and that another provision specified in the determination applies instead, in relation to a period specified in the determination.
- (3) A determination under subsection (2) has effect accordingly.

Requirements relating to making determinations

- (4) A responsible Minister for an affected provision must not make a determination under subsection (2) in relation to the affected provision unless the responsible Minister is satisfied that:
 - (a) the determination is in response to circumstances relating to the emergency to which the national emergency declaration relates; and
 - (b) making the determination will be of benefit to the public, or a section of the public.
- (5) The determination must specify the national emergency declaration to which it relates.

Variation and revocation of determinations

- (6) If a responsible Minister makes a determination under subsection (2), the responsible Minister may, by legislative instrument, vary or revoke the determination.

Period for which determinations are in force

- (7) A determination under subsection (2) is in force for the period:
 - (a) starting on the day specified in the determination (which may be earlier than the day the determination is made); and
 - (b) ending at the earliest of the following:
 - (i) if the determination specifies a day on which it ceases to be in force—the start of that day;
 - (ii) if the determination is revoked—the end of the day the revocation takes effect;
 - (iii) the start of the day on which the national emergency declaration to which the determination relates ceases to be in force.

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This section does not apply to certain laws

- (8) This section does not apply to:
- (a) Part IAA, IAAA, IAB, IAC, IC or ID of the *Crimes Act 1914*; or
 - (b) the *Australian Crime Commission Act 2002*; or
 - (c) the *Australian Federal Police Act 1979*; or
 - (d) the *Australian Security Intelligence Organisation Act 1979*; or
 - (e) the *Intelligence Services Act 2001*; or
 - (f) the *Surveillance Devices Act 2004*; or
 - (g) the *Telecommunications (Interception and Access) Act 1979*; or
 - (ga) the *Auditor-General Act 1997*; or
 - (gb) Part 14 of the *Australian Securities and Investments Commission Act 2001*; or
 - (gc) the *Human Rights (Parliamentary Scrutiny) Act 2011*; or
 - (gd) the *Inspector-General of Intelligence and Security Act 1986*; or
 - (ge) the *Law Enforcement Integrity Commissioner Act 2006*; or
 - (gf) the *Ombudsman Act 1976*; or
 - (gg) the *Parliamentary Joint Committee on Law Enforcement Act 2010*; or
 - (gh) the *Parliamentary Proceedings Broadcasting Act 1946*; or
 - (gi) the *Public Accounts and Audit Committee Act 1951*; or
 - (gj) the *Public Works Committee Act 1969*; or
 - (h) a law, or a provision of a law, of the Commonwealth prescribed by regulations for the purposes of this paragraph.

Meaning of responsible Minister

- (9) For the purposes of this section, a **responsible Minister** for an affected provision is:
- (a) if the affected provision is a provision of an Act—any Minister who administers that Act; or
 - (b) if the affected provision is a provision of an instrument made under an Act—any Minister who administers the enabling

legislation (within the meaning of the *Legislation Act 2003*)
under which the instrument is made.

Part 4—Other matters

16 Provision of emergency management information

- (1) This section applies if a national emergency declaration is in force.
- (2) The Prime Minister may, by written notice, require an accountable authority of a Commonwealth entity to provide specified information to the Prime Minister for the purposes of preparing for, responding to or recovering from an emergency to which the national emergency declaration relates.
- (3) Without limiting subsection (2), information may relate to:
 - (a) stockpiles of medical or other supplies held by or available to the Commonwealth entity; or
 - (b) assets or other resources held by or available to the Commonwealth entity; or
 - (c) options or recommendations relating to actions that may be taken by the Commonwealth.
- (4) A notice under subsection (2) must specify the period within which the information must be provided.
- (5) This section has effect despite any other law of the Commonwealth.
- (6) In this section:

accountable authority has the meaning given by the *Public Governance, Performance and Accountability Act 2013*.

Commonwealth entity has the meaning given by the *Public Governance, Performance and Accountability Act 2013*.

17 Reporting on the exercise of powers etc. under national emergency laws

- (1) This section applies if:
 - (a) a national emergency declaration is made; and

- (b) powers are exercised or functions are performed under a national emergency law for the purposes of the declaration.
- (2) The Minister responsible for administering the national emergency law must prepare and give to the Minister administering this Act a report on the exercise of the powers or the performance of the functions.
 - (3) The report must include details of the following:
 - (a) the national emergency declaration to which the report relates;
 - (b) the national emergency law to which the report relates;
 - (c) the powers that have been exercised or the functions that have been performed under the national emergency law;
 - (d) any other matter prescribed by the regulations for the purposes of this paragraph.
 - (4) The report must be given:
 - (a) unless paragraph (b) applies—as soon as practicable after the national emergency declaration ceases to be in force;
 - (b) if the national emergency declaration is extended, or further extended, under section 12:
 - (i) within 3 months after the declaration came into force; and
 - (ii) every subsequent period of 3 months (or part thereof) that the declaration remains in force.
 - (5) The Minister administering this Act must cause a copy of the report to be tabled in each House of the Parliament as soon as practicable after the Minister receives it.
 - (6) Despite subsection (3), the report must not include information that the Minister is satisfied:
 - (a) is commercially sensitive; or
 - (b) affects national security; or
 - (c) is a kind of information prescribed by the regulations for the purposes of this paragraph.

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18 Review of operation of this Act

The Senate Standing Committee on Legal and Constitutional Affairs, or such other committee constituted under a resolution of the Senate, must:

- (a) begin a review of the operation of this Act immediately after this Act commences and report the Committee's findings to the Senate by 30 June 2021; and
- (b) begin a review of the operation of this Act by the fifth anniversary of the day this Act commences and report the Committee's findings to the Senate as soon as practicable after completing the review.

19 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

*[Minister's second reading speech made in—
House of Representatives on 3 December 2020
Senate on 10 December 2020]*

(169/20)
