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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**NATIONAL EMERGENCY DECLARATION (CONSEQUENTIAL AMENDMENTS)
BILL 2020**

EXPLANATORY MEMORANDUM

(Circulated by authority of the
Attorney-General, the Honourable Christian Porter MP)

NATIONAL EMERGENCY DECLARATION (CONSEQUENTIAL AMENDMENTS) BILL 2020

GENERAL OUTLINE

1. The National Emergency Declaration (Consequential Amendments) Bill 2020 (the Bill) operates in conjunction with the National Emergency Declaration Bill 2020 to implement Recommendation 5.1 of the Royal Commission into National Natural Disaster Arrangements (RCNDA) by establishing a legislative framework for declaring national emergencies.

2. The Bill amends Acts and Regulations that contain powers that are used by the Commonwealth when responding to, or supporting the recovery from, emergencies to enable the use of alternative or simplified statutory tests to streamline the exercise of those powers where a national emergency has been declared. The Bill amends the:

- *Adelaide Airport Curfew Act 2000* to enable aircraft to take off from, or land at, Adelaide Airport during a curfew period where the aircraft is being used for, or in connection with, a declared national emergency
- *Air Navigation (Essendon Fields Airport) Regulations 2018* to enable aircraft with a maximum take-off weight of no more than 50,000kg to take off from, or land at, Essendon Fields Airport despite certain curfew restrictions and weight limits where the aircraft is being used for, or in connection with, a declared national emergency
- *Air Navigation (Gold Coast Airport Curfew) Regulations 2018* to enable aircraft to take off from, or land at, Gold Coast Airport during a curfew despite restrictions if the aircraft is being used for, or in connection with, a declared national emergency
- *Airports Act 1996* to enable a notice to be given to an airport operator to give access, or priority access, to airport services for the purpose of managing a declared national emergency
- *Air Services Regulations 2019* to explicitly enable Airservices Australia to provide services and facilities to assist in a declared national emergency
- *Aviation Transport Security Act 2004* to enable the Secretary of the Department of Home Affairs to issue a special security direction requiring additional security measures where those measures are appropriate to support a national emergency declaration
- *Christmas Island Emergency Management Ordinance 2012* to enable the declaration of an emergency situation or state of emergency in Christmas Island where the Governor-General has made a national emergency declaration with respect to an emergency which is affecting the Territory
- *Civil Aviation Safety Regulations 1998* to simplify the ability for the Civil Aviation Safety Authority to grant exemptions from compliance with certain requirements in the regulations or a Civil Aviation Order, where the Governor-General has made national emergency declaration

- *Cocos (Keeling) Islands Emergency Management Ordinance 2012* to enable the declaration of an emergency situation or state of emergency in the Cocos (Keeling) Islands where the Governor-General has made a national emergency declaration with respect to an emergency which is affecting the Territory
- *Competition and Consumer Act 2010* to allow the Australian Competition and Consumer Commission to authorise a person to engage in anti-competitive conduct where that conduct would assist in the response to or recovery from a declared national emergency
- *Crimes Act 1914* to simplify the statutory test for the making of a determination that permits access to and the disclosure of information stored on DNA databases, and that permits DNA matching and disclosure of deceased person's DNA to family members, to support victim identification, where the Governor-General has made a national emergency declaration
- *Designs Act 2003* to simplify the statutory test for the Crown use of a registered design in an emergency, where the Governor-General has made a national emergency declaration
- *Environment Protection and Biodiversity Conservation Act 1999* to:
 - simplify the requirement to establish an emergency in the test to allow Commonwealth actions that have, will have, or are likely to have, a significant impact on the environment where the actions are necessary in the interests of preventing, mitigating or dealing with a national emergency, where the Governor-General has made a national emergency declaration,, and
 - clarify that 'national emergency' includes a declared national emergency in the test to exempt a person proposing to take a controlled action from a specified provision of Part 3 or Chapter 4 (which relate to requirements for environmental approvals)
- *Environment Protection (Sea Dumping) Act 1981* to simplify the requirement to establish an emergency in the test to grant a permit for dumping, incineration at sea or loading for dumping or incineration at sea, of any controlled material where there is an emergency, where the Governor-General has made a national emergency declaration
- *Income Tax Assessment Act 1997* to create an alternative test for declaring an event to be a disaster for the purpose of deducting a gift made to a disaster relief fund, where the Governor-General has declared the event is a national emergency
- *Industrial Chemicals Act 2019* to create an alternative test for issuing an exceptional circumstances authorisation for the introduction of an industrial chemical where a national emergency declaration has been made
- *Jervis Bay Territory Emergency Management Ordinance 2015* to enable the declaration of a state of emergency in Jervis Bay where the Governor-General has

made a national emergency declaration with respect to an emergency which is affecting the Territory

- *Liquid Fuel Emergency Act 1984* to create an alternative test for declaring a liquid fuel emergency where the Governor-General has made a national emergency declaration and it is necessary in the public interest to do so because there is, or is likely to be, a shortage of liquid fuel of such magnitude as to require the making of directions under sections 17-24 (for example, a direction requiring fuel industry corporations to take necessary measures to make liquid fuel available for purchase)
- *Maritime Transport and Offshore Facilities Security Act 2003* to enable the Secretary of the Department of Home Affairs to issue a security direction requiring additional security measures where those measures are appropriate to support a national emergency declaration
- *National Health Act 1953* to simplify the requirement to establish an emergency in the test to determine the classes of persons in respect of whom an entitlement to pharmaceutical benefits can be evidenced otherwise than by provision of a Medicare number, where the Governor-General has declared a national emergency
- *National Health Security Act 2007* to:
 - enliven the framework in Part 2 for public health surveillance and information sharing, where the Governor-General has declared a national emergency relating to public health, and
 - simplify the requirement to establish that there is a threat involving a security-sensitive biological agent in the test to suspend the operation of certain requirements relating to testing, handling and disposal of agents, where the Governor-General has declared a national emergency.
- *Norfolk Island Continued Laws Ordinance 2015* to provide that where the Governor-General has made a national emergency declaration that affects the Territory that this is an emergency for the purposes of declaring a state of disaster or emergency in Norfolk Island
- *Offshore Petroleum and Greenhouse Gas Storage Act 2006* to simplify the requirement to establish an emergency in the test to declare an oil pollution emergency, where the Governor-General has declared a national emergency
- *Patents Act 1990* to simplify the requirement to establish an emergency in the test to allow the exploitation of an invention that would otherwise infringe a patent, where the Governor-General has declared a national emergency,
- *Privacy Act 1988* to remove elements of the statutory test to make an emergency declaration (which enables collection, use or disclosure of personal information in certain circumstances where an emergency exists) that overlap with the test for making a national emergency declaration, where the Governor-General has made a national emergency declaration

- *Radiocommunications Act 1992* to:
 - provide that a national emergency declaration is to be taken to be a period of emergency during which the Infrastructure Minister may make a restrictive order prohibiting or regulating the use of radiocommunication transmitters, or the operation of transmitters if such use is likely to interfere with radiocommunications, and
 - extend the exceptions in sections 49, 172 and 196 (for offences related to unlicensed operation and unlawful possession of radiocommunication devices, radio transmission by non-standard transmitters, possession of non-standard devices, and offences related to radio emission) to a person doing anything the person reasonably believes is necessary for the purpose of responding to or recovering from a declared national emergency
- *Social Security Act 1991* to:
 - allow the Home Affairs Minister to determine an event is a major disaster, for the purpose of disaster recovery payments under section 1061K, if the Governor-General has declared the event is a national emergency, and
 - allow the Minister to determine an event is a Part 2.23B major disaster, for the purpose of disaster recovery allowance under section 1061KA, if the Governor-General has declared the event is a national emergency and it has had a significant impact on one or more industries and/or one or more areas that a government response in the form of income support is required
- *Social Security (Administration) Act 1999* to enable the Secretary of the Department of Social Services to make a determination reducing the restricted portion of a restrictable payment under cashless welfare arrangements if a person is unable to use their debit card that is attached to their welfare restricted bank account, or is unable to access that account, as a direct result of a declared national emergency
- *Sydney Airport Curfew Act 1995* to enable aircraft to take off from, or land at, Sydney Airport during a curfew period where the aircraft is being used for, or in connection with, a declared national emergency
- *Telecommunications Act 1997* to:
 - introduce an obligation on telecommunications providers to give such help as is reasonably necessary during certain types of emergencies, for example in sending emergency messages, and providing for immunities and cost-recovery where providers give such help, and
 - allow the Minister to make guidelines in relation to the obligation to give help in relation to such emergencies, and
- *Therapeutic Goods Act 1989* to enable therapeutic goods, including biologicals and medical devices, to be exempted from certain requirements (such as registration and listing) as part of the response to or recovery from the declared national emergency, where the Governor-General has declared a national emergency.

3. The Bill also amends the *Administrative Decisions (Judicial Review) Act 1977* to exempt from judicial review under that Act, decisions made under Part 2 of the *National Emergency Declaration Act 2020* (NED Act) in relation to the making, extension, variation or revocation of a declaration made under sections 11, 12, 13 and 14 of the NED Act.

4. The Bill further makes amendments contingent on the passage and commencement of the *Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020* to:

- amend the *Radiocommunications Act 1992* to simplify the requirement to establish an emergency in the test to exempt a person from liability for civil penalties, in circumstances of sudden and extraordinary emergency, where the Governor-General has declared a national emergency, and
- amend the *National Emergency Declaration Act 2020* to include the abovementioned powers in the definition of national emergency laws.

FINANCIAL IMPACT

5. The amendments in the Bill have no financial impact.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

National Emergency Declaration (Consequential Amendments) Bill 2020

1. This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Bill

2. The Bill operates in conjunction with the National Emergency Declaration Bill 2020 to implement Recommendation 5.1 of the RCNNDA by establishing a legislative framework for declaring national emergencies. The RCNNDA summarised the rationale for its recommendation in the following terms:

5.1 Australia's disaster outlook is alarming. States and territories alone may not be able to respond effectively to, or provide immediate relief or recovery from, extreme to catastrophic disasters.

5.2 State and territory governments are primarily responsible for responding to and recovering from natural disasters. The role of the Australian Government is largely to support states' and territories' responsibilities. However, the Australian Government has unique capabilities, and is able to take a broader view of the national consequences of extreme to catastrophic disasters.

5.3 To better assist states and territories in responding to and recovering from such disasters, the Australian Government should create a legislative mechanism for the making of a declaration of a state of national emergency.

5.4 A declaration would signal to communities the severity of a disaster early, act as a marshalling call for the early provision of Australian Government assistance when requested, facilitate coordination with state and territory emergency management frameworks, and, in very limited circumstances, allow the Australian Government to act without a request from a state or territory.

3. The purpose of the National Emergency declaration Bill is to:

- provide a legislated framework for the Commonwealth to declare a national emergency, in circumstances where an emergency has caused, is causing or is likely to cause nationally significant harm, and
- create a clearer framework for the exercise of Commonwealth national emergency powers to better position the Commonwealth to lead a cohesive and effective coordination strategy.

4. This Bill complements that framework by amending the legislation listed in that Schedule to streamline the exercise of the powers where a national emergency has been declared. It does so in the following ways::

- where the powers currently contain an 'emergency' test – removing the legal requirement for each decision-maker to separately consider whether there is an 'emergency' in circumstances where a national emergency has been declared

- in the case of powers that are often exercised in an emergency, but that do not currently contain an emergency test – allowing decision-makers to exercise each power if they are satisfied that it is necessary to respond to, or support the recovery from, the declared national emergency, and
- where the tests for those emergency powers contain elements that overlap with the test for making a national emergency declaration – creating an alternative simplified test where a national emergency has been declared that does not contain the overlapping elements.

5. The declaration of a national emergency would enliven this streamlined framework for the exercise of the emergency powers to support the response to, and immediate recovery from, the emergency, and would enable the Commonwealth to act more quickly. The framework would not:

- duplicate existing powers
- affect the availability of the powers outside of a national emergency
- preclude decision-makers from relying on pre-existing tests for the exercise of a power during a national emergency if it would be more convenient or appropriate to do so, or
- alter which Minister or official is responsible for exercising each power.

6. The purpose of the Bill, in conjunction with the National Emergency Declaration Bill, is to create a simplified legislative framework for the exercise of the Commonwealth's national emergency powers.

Human rights implications

7. This Bill engages the following rights:

- the right to life in Article 6 of the *International Covenant on Civil and Political Rights* (ICCPR)
- the right to freedom from arbitrary or unlawful interference with privacy in Article 17 of the ICCPR
- the right to social security in Article 9 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR)
- the right to an adequate standard of living in Article 11 of the ICESCR, and
- the right to health under Article 12 of the ICESCR.

The right to life in Article 6 of the ICCPR

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

9. A key objective of the Bill is to promote the right to life. The Bill promotes the right to life by seeking to prevent and mitigate harm caused by national emergencies. The Bill establishes a framework to strengthen and expedite the Commonwealth Government's ability to respond to and recover from emergencies that have caused, are causing, or are likely to cause, nationally significant harm. Nationally significant harm includes, among other things, harm to the life of an individual or group of individuals.

10. In its final report, the RCNNDAs noted that a national emergency declaration would put the Australian Government on the front foot before a disaster occurs, or before an existing disaster becomes more severe. A framework that streamlines and expedites the immediate response to and recovery from an emergency causing, or likely to cause, nationally significant harm promotes the preservation of life by:

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

11. Streamlining the statutory tests for the exercise of Commonwealth emergency powers where the Governor-General has made a national emergency declaration will ensure the Commonwealth can act rapidly in exercising emergency powers to support an efficient and effective emergency response that could save lives.

12. For example, simplifying the requirement to establish a major natural disaster or large-scale emergency, where a national emergency declaration has been made, in the test to grant exemptions from compliance with the *Civil Aviation Safety Regulations 1998* would allow the Commonwealth to more quickly grant exemptions that might save lives. Following the devastation of Darwin by Cyclone Tracey, for example, an exemption was granted permitting airliners to operate when overloaded to allow the evacuation of the city as quickly as possible.

The right to freedom from arbitrary or unlawful interference with privacy in Article 17 of the ICCPR

13. Article 17 of the ICCPR prohibits arbitrary or unlawful interference with an individual's privacy, family, home or correspondence. This right may be subject to permissible limitations where those limitations are provided by law and are not arbitrary. In order for limitations not to be arbitrary, they must be aimed at a legitimate objective and be reasonable, necessary and proportionate to that objective.

Amendments to the *Privacy Act 1988*

14. The Bill will amend the *Privacy Act 1988* (Privacy Act) to simplify the statutory test to make an emergency declaration where the Governor-General has made a national emergency declaration under the *National Emergency Declaration Act 2020* (NED Act). When an emergency declaration is in force under the Privacy Act, a person, agency or organisation (an entity) may collect use or disclose an individual's personal information for purposes related to the emergency in ways that would otherwise not be permitted (such as where obtaining consent would be impracticable or unreasonable).

15. To justify a limitation of human rights, a legitimate objective must address a pressing or substantial concern and not simply seek an outcome that is desirable or convenient. Australia experiences recurring natural disasters, including bushfires, cyclones and floods, which are likely to become more frequent and intense over the coming decades as a result of changes in the climate. Disasters caused by humans, such as major chemical or radiological incidents, large-scale acts of terrorism, or the failure of critical infrastructure have the potential to cause significant loss of life and other harms. COVID-19 continues to illustrate the medium- and long-term harms that pandemic can cause. The amendments to the Privacy Act are intended to assist the Commonwealth in responding to and recovering from a national emergency, and to prevent or mitigate the harms that are likely to impact the Australian community.

16. The amendments to the Privacy Act are proportionate to achieving that objective. The amendments remove elements of the statutory test to make an emergency declaration that overlap with the test for making a national emergency declaration where a declaration is already in force. The Privacy Act also contains safeguards limiting the authorised collection, use and disclosure of personal information when an emergency declaration is in force by only enabling an entity to collect use or disclose the individual's person information if:

- the entity reasonably believes the individual is or may be involved in an emergency or disaster, and
- the collection, use or disclosure is for a permitted purpose that directly relates to the Commonwealth's response to the emergency or disaster.

17. Some examples of the types of purposes that the collection, use and disclosure of personal information is intended to be used for include:

- identifying individuals who are, or may be, injured, missing or dead as a result of the emergency or disaster, and
- assisting individuals involved in the emergency or disaster to obtain services (such as repatriation, medical, financial or other humanitarian assistance).

18. These limitations on the collection, use or disclosure of personal information when an emergency declaration is in force ensures that any engagement of the right to privacy is consistent with Article 17 of the ICCPR.

Amendments to the *Crimes Act 1914*

19. The Bill will amend the *Crimes Act 1914* to simplify the requirement to establish a national emergency, where the Governor-General has made a national emergency declaration, in the test to make a determination relating to an incident that permits access to, and disclosure of, information stored on DNA databases and that permits DNA matching for certain purposes.

20. To justify a limitation of human rights, a legitimate objective must address a pressing or substantial concern and not simply seek an outcome that is desirable or convenient. This pursues the legitimate objective of streamlining the test to access, use and disclose information on DNA databases during a national emergency for the purpose of identifying

an unidentified person who died in or as a result of an incident, or the purpose of conducting a criminal investigation in relation to such an incident.

21. The amendments are proportionate to achieving that objective as they only remove elements of the statutory test to make an emergency declaration that overlap with the test for making a national emergency declaration where a declaration is already in force.

The right to social security in Article 9 of the ICESCR

22. Article 9 of the ICESCR relates to the right of everyone to social security, including social insurance. This requires governments to, within their maximum available resources, ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education.

23. The Bill engages the right to social security as it provides for assistance to be given to people affected by natural disasters and emergencies. The Bill promotes this right by streamlining the statutory tests for accessing existing benefits where the Governor-General has declared a national emergency. For example, the Bill amends the:

- *National Health Act 1953* to simplify the requirement to establishment an emergency in the test to determine the classes of persons in respect of whom an entitlement to pharmaceutical benefits can be evidenced otherwise than by provision of a Medicare number
- *Social Security Act 1991* to:
 - allow the Home Affairs Minister to determine an event is a major disaster, for the purpose of disaster recovery payments, if the Governor-General has declared the event is a national emergency, and
 - allow the Minister to determine an event is a Part 2.23B major disaster, for the purpose of disaster recovery allowance, if the Governor-General has declared the event is a national emergency and it has had a significant impact on one or more industries and/or one or more areas that a government response in the form of income support is required, and
- *Social Security (Administration) Act 1999* to enable the Secretary of the Department of Social Services to make a determination varying the restrictable payment portions for cashless welfare arrangements if a person is unable to use their debit card that is attached to their welfare restricted bank account, or is unable to access that account, as a direct result of a declared national emergency.

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

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

25. A key objective of the Bill is to promote the right to an adequate standard of living. The Bill promotes this right by seeking to prevent and mitigate harm caused by national emergencies. The Bill establishes a framework to strengthen and expedite the Commonwealth Government's ability to respond to and recover from emergencies that have caused, are causing, or are likely to cause, nationally significant harm. Nationally significant harm is harm that has a nationally significant impact because of its scale or consequences, and that is any of the following:

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

26. These types of harm are likely to impact on the right to an adequate standard of living. For example, nationally significant harm to plants, animals and the environment, such as by the introduction of a pathogen to Australia, could impact on Australia's food production systems, food security and water supply. Widespread damage to property could impact access to, and supply of, housing. Extensive damage to infrastructure or an essential service could impact access to medical services, sanitation and basic goods.

27. A framework that streamlines and expedites the immediate response to and recovery from an emergency causing, or likely to cause, nationally significant harm promotes the right to an adequate standard of living by:

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

The right to health in Article 12 of the ICESCR

28. Article 12 of the ICESCR provides that all people have the right to the highest attainable standard of physical and mental health. It provides that basic steps to be taken by governments to achieve the full realisation of the right to health shall include, among other things, those necessary for:

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

29. A key objective of the Bill is to promote the right to health. The Bill promotes the right to health by seeking to prevent and mitigate harm caused by national emergencies. The Bill establishes a framework to strengthen and expedite the Commonwealth Government's ability to respond to and recover from emergencies that have caused, are causing, or are likely to cause, nationally significant harm. Nationally significant harm includes any of the following:

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

30. These types of harm are likely to impact on the Australian community's right to health. For example, nationally significant harm caused to plants or animals, such as the introduction of a pathogen to Australia, could impact on Australia's food production systems, food security and water supply. Widespread damage to property or could impact access to basic shelter and housing. Extensive damage to infrastructure or an essential service could impact access to medical services and sanitation.

31. A framework that streamlines and expedites the immediate response to and recovery from an emergency causing, or likely to cause, nationally significant harm promotes the right to health by:

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

32. For example, enabling therapeutic goods, including biologicals and medical devices to be exempted from certain requirements (such as registration and listing) as part of the response to or recovery from the declared national emergency would allow the Commonwealth to act more quickly to ensure that these items may be stockpiled or can be made urgently available to deal with threats to public health.

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

Limitations

34. The right to health may be subject to permissible limitations where those limitations are provided by law and are non-arbitrary. In order for limitations not to be arbitrary, they

must be aimed at a legitimate objective and be reasonable, necessary and proportionate to that objective.

35. The Bill amends the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) to:

- simplify the requirement to establish an emergency, where the Governor-General has made a national emergency declaration, in the test to allow Commonwealth actions that have, will have, or are likely to have, a significant impact on the environment where the actions are necessary in the interests of preventing, mitigating or dealing with a national emergency, and
- clarify that ‘national emergency’ includes a declared national emergency in the test to exempt a person proposing to take a controlled action from a specified provision of Part 3 or Chapter 4 (which relates to requirements for environmental approvals).

36. The Bill also amends the *Environment Protection (Sea Dumping) Act 1981* (EP Act) to simplify the requirement to establish an emergency, where the Governor-General has made a national emergency declaration, in the test to grant a permit for dumping, incineration at sea or loading for dumping or incineration at sea, of any controlled material where there is an emergency.

37. To justify a limitation of human rights, a legitimate objective must address a pressing or substantial concern and not simply seek an outcome that is desirable or convenient. Australia frequently suffers from natural disasters, including bushfires, cyclones and floods, which are likely to become more frequent and intense over the coming decades as a result of changes in the climate. Man-made disasters, such as major chemical or radiological incidents, large-scale acts of terrorism, or the failure of critical infrastructure have the potential to cause significant loss of life and other harms. The amendments to the EPBC Act and the EP Act could result in actions that are harmful to the environment which could then engage the right to health. However, the amendments pursue the legitimate objective of taking those actions only in a national emergency for the purpose of responding to or recovering from the emergency.

38. The amendments are proportionate to achieving that objective as they retain a high threshold to enable those actions to be taken, and only remove elements of the statutory test that are already required to be established in order to declare a national emergency.

Conclusion

39. While the Bill engages a range of human rights, it is compatible with human rights in that it promotes some rights and to the extent that it limits some rights, the limitations are reasonable, necessary and proportionate in achieving a legitimate objective.

NOTES ON CLAUSES

Item 1 – Short title

1. This item provides for the short title of the Act to be the *National Emergency Declaration (Consequential Amendments) Act 2020*.

Item 2 – Commencement

2. This item provides for the commencement of each provision in the Bill, as set out in the table. Item 1 of the table provides that sections one to three, and anything in the Act not elsewhere covered by the table, will commence the day this Act receives the Royal Assent.

3. Item 2 of the table provides that Schedule 1 commences the later of (a) the day after the Bill receives the Royal Assent, and (b) immediately after the commencement of the NED Act. However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.

4. Item 3 of the table provides that Schedule 2 commences the later of (a) immediately after the commencement of the NED Act, and (b) immediately after the commencement of Part 1 of Schedule 6 to the *Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020*. However, the provisions do not commence at all unless both of the events mentioned in paragraphs (a) and (b) occur.

5. A note follows the table clarifying that the table relates only to the provisions of the Act as originally enacted. It will not be amended to deal with any later amendments of the Act.

6. Subitem 2(2) specifies that any information in column three of the table is not part of the Act, and information may be inserted into this column, or information in it may be edited, in any published version of the Act.

Item 3 – Schedules

7. This item provides that legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms. A note follows this item providing that the provisions of a legislative instrument amended or inserted by this Act, and any other provision of the legislative instrument, may be amended or repealed by another instrument made under the enabling provision for the legislative instrument (see subsection 13(5) of the *Legislation Act 2003*).

Schedule 1—Amendments consequential on the enactment of the National Emergency Declaration Act 2020

Adelaide Airport Curfew Act 2000

Item 1 – After paragraph 16(c)

8. This item inserts a new paragraph in section 16 of the *Adelaide Airport Curfew Act 2000*. Section 16 provides that an aircraft may take off from, or land at, Adelaide Airport during a curfew period if:

- the aircraft is involved in an emergency described in section 17 (paragraph 16(a))
- the aircraft is taking off from Adelaide Airport in order to resume the flight interrupted by such an emergency (paragraph 16(b)), or
- a dispensation granted by the Minister under section 18 authorises the take-off or landing, and the take-off or landing is in accordance with any conditions of the dispensation (paragraph 16(c)).

9. This item inserts paragraph 16(d) enabling an aircraft to take off from, or land at, Adelaide Airport during a curfew period if a national emergency declaration (within the meaning of the NED Act) is in force and the aircraft is being used for or in connection with the emergency to which the declaration relates.

Administrative Decisions (Judicial Review) Act 1977

Item 2 – After paragraph (zf) of Schedule 1

10. This item inserts a new paragraph in Schedule 1 of the *Administrative Decisions (Judicial Review) Act 1977* (ADJR Act). Schedule 1 exempts certain decisions from judicial review under the ADJR Act, but does not affect the availability of judicial review under section 39B of the *Judiciary Act 1903* or paragraph 75(v) of the Constitution.

11. This item inserts paragraph (zfa) to exempt decisions under Part 2 of the NED Act in relation to a declaration made under subsection 11(1) of the NED Act from judicial review under the ADJR Act.

12. Decisions of the Governor-General are not subject to review under the ADJR Act, pursuant to paragraph (d) of the definition of ***decision to which this Act applies*** in section 3 of that Act. As such, a decision of the Governor-General to declare a national emergency under section 11 of the NED Act or to extend, vary or revoke such a declaration under sections 12, 13 or 14 of that Act, would not be subject to review of the ADJR Act. The purpose of this item is to place beyond doubt that, if the Prime Minister's advice to the Governor-General in relation to a decision under Part 2 of the NED Act was considered to constitute a 'decision' for the purposes of the ADJR Act, that such a decision would not be subject to review under the ADJR Act, to ensure that the non-application of the ADJR Act to decisions of the Governor-General is not undermined by the character of the decisions that relate to the making of a declaration. The proposed exemption is consistent with the approach taken to declarations made by the Governor-General under the *Biosecurity Act 2015* (as per

paragraphs 6(1)(g) and (i) of the *Administrative Decisions (Judicial Review) Regulations 2017*).

Air Navigation (Essendon Fields Airport) Regulations 2018

Item 3 – At the end of paragraph 14(4)(a)

13. This item inserts a new subparagraph in section 14 of the *Air Navigation (Essendon Fields Airport) Regulations 2018*. Subsection 14(2) provides that an aircraft that has a maximum take-off weight of no more than 50,000kg may take off from, or land at, Essendon Fields Airport despite certain curfew restrictions and weight limits if the aircraft is involved in an emergency. Subsection 14(4) sets out when an aircraft is involved in an emergency.

14. This item inserts a new subparagraph 14(4)(a)(v) providing that an aircraft is involved in an emergency if the aircraft is being used for or in connection with an emergency to which a national emergency declaration relates.

Air Navigation (Gold Coast Airport Curfew) Regulations 2018

Item 4 – At the end of paragraph 17(2)(a)

15. This item inserts a new subparagraph in section 17 of the *Air Navigation (Gold Coast Airport Curfew) Regulations 2018*. Subsection 17(2) provides that an aircraft may take off from, or land at, Gold Coast Airport, despite curfew restrictions in section 8, if the aircraft is involved in an emergency. Subsection 17(2) sets out when an aircraft is involved in an emergency.

16. This item inserts a new paragraph 17(2)(v) that provides that an aircraft is involved in an emergency if the aircraft is being used for or in connection with an emergency to which a national emergency declaration relates.

Airports Act 1996

Item 5 – Paragraph 250(8)(d)

17. Subsection 250(1) of the *Airports Act 1996* provides that the Minister may give written notice to an airport-operator for an airport requiring that access, or priority of access, be given to specified kinds of airport services for specified kinds of defence-related purposes.

18. Paragraph 250(8)(d) provides that one of the meanings of ***defence-related purposes*** is a purpose related to the management of an emergency or a disaster (whether natural or otherwise) where that management involves the Australian Defence Force. This item clarifies that the management of an emergency or disaster includes the management of emergency to which a national emergency declaration (within the meaning of the NED Act) relates.

Item 6 – Subsection 251(3)

19. This item amends subsection 251(3) to clarify that if a notice under subsection 250(1) relates to the management of an emergency or a disaster, including an emergency to which a national emergency (within the meaning of the NED Act) relates, the notice may specify the Department of Defence, or any other Commonwealth agency that is involved in the management of the emergency or disaster, as the designated agency in relation to the notice.

Air Services Regulations 2019

Item 7 – Subsection 20(1)

20. Subsection 20(1) of the *Air Services Regulations 2019* provides that Airservices Australia has the function of providing services and facilities to assist in an incident or circumstances that causes, or threatens to cause death or injury to persons, damage to property, harm to the environment, or disruption to essential services.

21. In most cases, it is likely that a declared national emergency under the NED Act would be captured by subsection 20(1). However, the NED Act will permit the Governor-General to declare a national emergency in relation to an emergency that has caused, is causing or is likely to cause harm that has a nationally significant impact because of its scale or consequences to the health of individuals, animals or plants, which are not expressly covered by the subsection 20(1). This item repeals the subsection (not including the notes following it) and substitutes a new subsection providing that Airservices Australia has the function of providing services and facilities to assist in:

- if a national emergency declaration is in force, an emergency to which the declaration relates, or
- an incident or circumstance that causes, or threatens to cause death or injury to persons, damage to property, harm to the environment or disruption to essential services.

22. This amendment ensures that providing services and facilities to assist in a national emergency falls within the function of Airservices Australia.

Aviation Transport Security Act 2004

Item 8 – After paragraph 67(1)(b)

23. Section 67 of the *Aviation Transport Security Act 2004* enables the Secretary to direct that additional security measures be taken or complied with (special security direction) if:

- a specific threat of unlawful interference with aviation is made or exists (paragraph 67(1)(a)), or
- there is a change in the nature of an existing general threat of unlawful interference with aviation (paragraph 67(1)(b)).

24. This item inserts an alternative test in new paragraph 67(1)(c) enabling the Secretary to give a special security direction if a national emergency declaration (within the meaning of the NED Act) is in force, and the Secretary is satisfied that additional security measures are appropriate to support the national emergency declaration.

Item 9 – Paragraphs 70(3)(a) and (b)

25. Subsection 70(3) sets out when a special security direction remains in force until. This item repeals the subsection and substitutes a new subsection reflecting the inclusion of the new test in paragraph 67(1)(c) to give a special security direction.

26. New subsection 70(3) provides that a special security direction remains in force until:
- in relation to a special security direction made under subsection 67(1):
 - the special security direction is revoked in writing by the Secretary, or
 - the special security direction ceases to have effect under subsection (6) of this section or subsection 71(2), or
 - for a special security direction made under paragraph 67(1)(c) – the national emergency declaration ceases to have effect under the NED Act.

Christmas Island Emergency Management Ordinance 2012

Item 10 – After subsection 16A(1)

27. This item inserts a new test for the Territory Controller to declare an emergency situation under the *Christmas Island Emergency Management Ordinance 2012*. Subsection 16A(1) enables the Territory Controller to declare an emergency situation exists in the whole or part of the Territory if he or she is satisfied that:

- an emergency has occurred, is occurring or is imminent, and
- extraordinary measures are required to prevent or minimise any of the following:
 - loss of life of humans or animals
 - illness of, or injury to, humans or animals
 - property loss or damage, or
 - damage to the environment.

28. Where a national emergency declaration has been made under the NED Act and it is desirable declare an emergency situation under the *Christmas Island Emergency Management Ordinance 2012*, new subsection 16A(1A) sets out a separate test to do so which removes the elements of the test in subsection 16A(1) that overlap with the test to make a national emergency declaration under the NED Act. The purpose of this amendment is to support the expedited declaration an emergency situation under the Ordinance, where a national emergency has been declared and the national emergency is affecting, or is likely to affect, the Territory.

29. New subsection 16A(1A) provides that the Territory Controller may declare that an emergency situation exists in the Territory or part of the Territory if:

- a national emergency declaration (within the meaning of the NED Act) is in force, and
- the Territory Controller is satisfied that:
 - the emergency to which the national emergency declaration relates is affecting, or is likely to affect, the Territory, and

- extraordinary measures are required to prevent or minimise the effect, or likely effect, of that emergency on the Territory.

Item 11 – After subsection 17(1)

30. This item inserts a new test for the Administrator to declare a state of emergency under the *Christmas Island Emergency Management Ordinance 2012*. Subsection 17(1) enables the Administrator to declare a state of emergency exists in the whole or part of the Territory if he or she is satisfied that:

- an emergency has occurred, is occurring or is imminent, and
- extraordinary measures are required to prevent or minimise any of the following:
 - loss of life of humans or animals
 - illness of, or injury to, humans or animals
 - property loss or damage, or
 - damage to the environment.

31. Where a national emergency declaration has been made under the NED Act and it is desirable to declare a state of emergency under the *Christmas Island Emergency Management Ordinance 2012*, new subsection 17(1A) sets out a separate test to do so which removes the elements of the test in subsection 17(1) that overlap with the test to make a national emergency declaration under the NED Act. The purpose of this amendment is to support the expedited declaration of a state of emergency under the Ordinance, where a national emergency has been declared and the national emergency is affecting, or is likely to affect, the Territory.

32. New subsection 17(1A) provides that the Administrator may declare that a state of emergency exists in the Territory or part of the Territory if:

- a national emergency declaration (within the meaning of the NED Act) is in force, and
- the Administrator is satisfied that:
 - the emergency to which the national emergency declaration relates is affecting, or is likely to affect, the Territory, and
 - extraordinary measures are required to prevent or minimise the effect, or likely effect, of that emergency on the Territory.

Civil Aviation Safety Regulations 1998

Item 12 – Subsection 11.185(2)

33. Subsection 11.185(1) enables the Civil Aviation Safety Authority (CASA) to grant exemptions from compliance with a provision of the *Civil Aviation Safety Regulations 1998* or a Civil Aviation Order in exceptional circumstances. Subsection 11.185(2) provides that in

subsection 11.185(1), exceptional circumstances means the circumstances of a major natural disaster, or some other large-scale emergency, that requires the use of air transport, or some other aviation activity, in a way that is not reasonably possible in compliance with the Regulations.

34. This item amends subsection 11.185(2) to clarify that exceptional circumstances also includes an emergency to which a national emergency declaration (within the meaning of the NED Act) relates. The purpose of this amendment is to support the expedited granting of exemptions, where appropriate, during a national emergency by effectively deeming that exceptional circumstances exist, if a national emergency has been declared.

Cocos (Keeling) Islands Emergency Management Ordinance 2012

Item 13 – After subsection 16A(1)

35. This item inserts a new test for the Territory Controller to declare an emergency situation under the *Cocos (Keeling) Islands Emergency Management Ordinance 2012*. Subsection 16A(1) enables the Territory Controller to declare an emergency situation exists in the whole or part of the Territory if he or she is satisfied that:

- an emergency has occurred, is occurring or is imminent, and
- extraordinary measures are required to prevent or minimise any of the following:
 - loss of life of humans or animals
 - illness of, or injury to, humans or animals
 - property loss or damage, or
 - damage to the environment.

36. Where a national emergency declaration has been made under the NED Act and it is desirable to declare an emergency situation under the *Cocos (Keeling) Islands Emergency Management Ordinance 2012*, subsection 16A(1A) sets out a separate test to do so which removes the elements of the test in subsection 16A(1) that overlap with the test to make a national emergency declaration under the NED Act. The purpose of this amendment is to support the expedited declaration of an emergency situation under the Ordinance, where a national emergency has been declared and the national emergency is affecting, or is likely to affect, the Territory.

37. New subsection 16A(1A) provides that the Territory Controller may declare that an emergency situation exists in the Territory or part of the Territory if:

- a national emergency declaration (within the meaning of the NED Act) is in force, and
- the Territory Controller is satisfied that:
 - the emergency to which the national emergency declaration relates is affecting, or is likely to affect, the Territory, and

- extraordinary measures are required to prevent or minimise the effect, or likely effect, of that emergency on the Territory.

Item 14 – After subsection 17(1)

38. This item inserts a new test for the Administrator to declare a state of emergency exists under the *Cocos (Keeling) Islands Emergency Management Ordinance 2012*. Subsection 17(1) enables the Administrator to declare a state of emergency exists in the whole or part of the Territory if he or she is satisfied that:

- an emergency has occurred, is occurring or is imminent, and
- extraordinary measures are required to prevent or minimise any of the following:
 - loss of life of humans or animals
 - illness of, or injury to, humans or animals
 - property loss or damage, or
 - damage to the environment.

39. Where a national emergency declaration has been made under the NED Act and it is desirable to declare a state of emergency under the *Cocos (Keeling) Islands Emergency Management Ordinance 2012*, subsection 17(1A) sets out a separate test to do so which removes the elements of the test in subsection 17(1) that overlap with the test to make a national emergency declaration under the NED Act. The purpose of this amendment is to support the expedited declaration of a state of emergency under the Ordinance, where a national emergency has been declared and the national emergency is affecting, or is likely to affect, the Territory.

40. New subsection 17(1A) provides that the Administrator may declare that a state of emergency exists in the Territory or part of the Territory if:

- a national emergency declaration (within the meaning of the NED Act) is in force, and
- the Administrator is satisfied that:
 - the emergency to which the national emergency declaration relates is affecting, or is likely to affect, the Territory, and
 - extraordinary measures are required to prevent or minimise the effect, or likely effect, of that emergency on the Territory.

Competition and Consumer Act 2010

Item 15 – Subsection 90(7)

41. Section 88 of the *Competition and Consumer Act 2010* enables the Commission to grant an authorisation to a person engaged in conduct to which one or more provisions of Part IV, which relates to restrictive trade practices, specified in the authorisation would or

might apply. Subsection 90(7) provides that the Commission must not make a determination for granting an authorisation under section 88 unless the Commission is satisfied in all the circumstances that:

- the conduct would not have the effect, or would not be likely to have the effect, of substantially lessening competition, or
- that:
 - the conduct would result, or be likely to result, in a benefit to the public, and
 - the benefit would outweigh the detriment to the public that would result, or be likely to result, from the conduct.

42. This item omits “the Commission is satisfied in all the circumstances” from subsection 90(7) to reflect the addition of another test in the new paragraph 90(7)(c), enabling the Commission to grant an authorisation under section 88.

Item 16 – Paragraphs 90(7)(a) and (b)

43. This item inserts “the Commission is satisfied in all the circumstances” before “that” in paragraphs 90(7)(a) and (b), to reflect the addition of another test in new paragraph 90(7)(c), enabling the Commission to grant an authorisation under section 88. This item restructures, but does not change, the existing test under subsection 90(7) for the granting of an authorisation, which requires the Commission be satisfied that either the conduct would not have the effect, or would not be likely to have the effect, of substantially lessening competition, or that the conduct would result, or be likely to result, in a benefit to the public and that benefit would outweigh the detriment to the public that would result, or be likely to result, from the conduct.

Item 17 – At the end of subsection 90(7)

44. This item inserts a new test, enabling the Commission to grant an authorisation under section 88 where a national emergency declaration has been made. New paragraph 90(7)(c) provides that the Commission may make a determination granting an authorisation under section 88 in relation to conduct if:

- a national emergency declaration (within the meaning of the NED Act) is in force, and
- the Commission is satisfied in all the circumstances that the conduct would assist, or would be likely to assist, in the response to or recovery from the emergency to which the national emergency declaration relates, and
- the Commission is satisfied in all the circumstances that the benefit to the public resulting from the assistance, or likely assistance, together with any other public benefit resulting from the conduct, would outweigh the detriment to the public that would result, or be likely to result, from the conduct.

45. The purpose of the amendment is to introduce a test that focuses more directly on how an authorisation would assist, or would be likely to assist, in the response to or recovery from a declared national emergency.

Item 18 – Subsection 90(9A)

46. This item inserts “and subparagraph (7)(c)(ii)” after “paragraph (7)(b)” in subsection 90(9A), to reflect the addition of another test in new paragraph 90(7)(c) enabling the Commission to grant an authorisation under section 88. This item ensures that subsection 90(9A), which sets out the matters that the Commission must consider in determining what amounts to a benefit to the public, applies to the public benefit test in new subparagraph 90(7)(c)(ii).

Crimes Act 1914

Item 19 – Paragraph 23YUF(2A)(c)

47. Part ID of the *Crimes Act 1914* regulates the use, storage, disclosure and removal of information held on a Commonwealth DNA database system (including the National Criminal Investigation DNA Database), including arrangements for the integration of Commonwealth and State and Territory DNA databases.

48. Division 11A of Part ID of the *Crimes Act 1914* was introduced following the Bali Bombings, and permits access to and the disclosure of information stored on DNA databases, and permits DNA matching and disclosure of deceased persons’ DNA to family members, in relation to incidents the Minister has determined to be an incident to which Division 11A applies. Those actions must be undertaken for certain purposes, including:

- the purpose of identifying an unidentified person who died in or as a result of an incident in relation to which this Division applies, and
- the purpose of conducting a criminal investigation in relation to such an incident.

49. Paragraph 23YUF(1)(b) provides that Division 11A applies in relation to any incident that the Minister, by legislative instrument, determines to be an incident in relation to which this Division applies. Subsection 23YUF(2A) provides that the Minister must not make a determination under paragraph 23YUF(1)(b) relating to an incident occurring wholly within Australia or Norfolk Island unless one of paragraphs 23YUF(2A)(a)-(c) apply. Paragraph 23YUF(2A)(c) requires the Minister to be satisfied that the incident is or has created a national emergency.

50. This item amends paragraph 23YUF(2A)(c) to clarify that a national emergency includes an emergency to which a national emergency declaration (within the meaning of the NED Act) relates. The purpose of this amendment is to simplify the test for the Minister to make a determination in reliance on paragraph 23YUF(2A)(c) during a national emergency, by effectively deeming that a national emergency exists for the purposes of the paragraph, where a national emergency has been declared under the NED Act.

Designs Act 2003

Item 20 – Paragraph 96A(3)(a)

51. Section 96A of the *Designs Act 2003* provides for Crown use of designs in emergencies. Subsection 96(3) provides for the circumstances in which Crown use of a design is not an infringement of a registered design, including a requirement that the relevant Minister considers that the use of the design is required because of an emergency (paragraph 96A(3)(a)).

52. This item inserts “, including an emergency to which a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) relates” after “emergency” in paragraph 96A(3)(a). The purpose of this item is to simplify the requirement to establish an emergency in paragraph 96A(3)(a), while a national emergency declaration made under the NED Act is in force, by providing that an emergency includes a declared national emergency.

Environment Protection and Biodiversity Conservation Act 1999

Item 21 – Paragraph 28(3)(b)

53. Section 28 of the *Environment Protection and Biodiversity Conservation Act 1999* provides that the Commonwealth or a Commonwealth agency must not take an action that has, will have, or is likely to have a significant impact on the environment inside or outside the jurisdiction. Subsection 28(3) provides that the Minister may make a written declaration that section 28 does not apply to certain actions, but only if satisfied that it is necessary in the interests of Australia’s defence or security, or preventing, mitigating or dealing with a national emergency.

54. This item inserts “, including an emergency to which a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) relates” after “national emergency” in paragraph 28(3)(b). The purpose of this item is to simplify the requirement to establish a national emergency in paragraph 28(3)(b) while a national emergency declaration made under the NED Act is in force, by providing that an emergency includes a declared national emergency.

Item 22 – Subsection 158(5)

55. Section 158 provides that the Minister may exempt a person that is proposing to take a controlled action from the application of a specified provision of Part 3 or Chapter 4 (which relate to requirements for environmental approvals) in relation to a specified action, if satisfied it is in the national interest that the provision not apply in relation to the person or the action. Subsection 158(5) provides that the Minister may consider a national emergency in determining the national interest.

56. This item inserts “, including an emergency to which a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) relates” after “national emergency” in subsection 158(5). The purpose of this item is to simplify the Minister’s consideration of the public interest while a national emergency declaration made under the NED Act is in force, by providing that a national emergency in subsection 158(5) includes a declared national emergency.

Environment Protection (Sea Dumping) Act 1981

Item 23 – After subsection 19(7)

57. Subsection 19(7) of the *Environment Protection (Sea Dumping) Act 1981* enables the Minister to grant a permit for dumping, incineration at sea or loading for dumping or incineration at sea, of any controlled material if, in the Minister's opinion, there is an emergency that poses an unacceptable risk to human health, safety or the marine environment, and that admits of no other feasible solution.

58. This item inserts a new subsection 19(7A) following subsection 19(7). New subsection 19(7A) provides that, for the purposes of subsection 19(7), an emergency includes an emergency to which a national emergency declaration (within the meaning of the NED Act) relates. The purpose of this item is to simplify the requirement to establish an emergency in subsection 19(7) while a national emergency declaration made under the NED Act is in force, by providing that an emergency includes an emergency to which a national emergency declaration (within the meaning of the NED Act) relates.

59. The Minister must continue to be of the opinion that the emergency poses an unacceptable risk to human health, safety, or the marine environment, and admits of no other feasible solution.

Income Tax Assessment Act 1997

Item 24 – Paragraphs 30-45A(1)(a) and (b)

60. Division 30 of the *Income Tax Assessment Act 1997* sets out the rules for working out deductions for certain gifts or contributions. Section 30-45 sets out general categories of welfare and rights recipients, in relation to whom gifts or contributions may be deductible. Item 4.1.5 of the table in section 30-45 provides that a public fund (including a public fund established and maintained by a public benevolent institution) that is established and maintained solely for providing money for the relief (including relief by way of assistance to re-establish a community) of people in Australia in distress as a result of a disaster to which subsection 30-45A(1) or 30-46(1) applies, may be a recipient in certain circumstances.

61. Subsection 30-45A(1) allows the Minister to declare an event to be a disaster to which that section applies, if the Minister is satisfied that the event (a) developed rapidly and (b) resulted in the death, serious injury or other physical suffering of a large number of people, or in widespread damage to property or the natural environment.

62. This item repeals paragraphs 30-45A(1)(a) and (b) and substitutes them with new paragraphs containing two tests for the Minister to declare an event to be a disaster for the purpose of deducting a gift made to a disaster relief fund.

63. New paragraph 30-45A(1)(a) contains the existing test, namely that the Minister may declare an event to be a disaster to which this subsection applies if the Minister is satisfied that it developed rapidly and it resulted in the death, serious injury or other physical suffering of a large number of people, or in widespread damage to property or the natural environment.

64. New paragraph 30-45A(1)(b) introduces a new test, which will allow the Minister to declare an event to be a disaster to which the subsection applies if a national emergency

declaration (within the meaning of the NED Act) is in force, and the Minister is satisfied that the event is the subject of the national emergency declaration. The purpose of this amendment is to simplify the process for a declaration under subsection 30-45A(1), where a national emergency has been declared, in recognition of the fact that a national emergency may only be declared where the Prime Minister is satisfied that the emergency has caused, is causing or is likely to cause nationally significant harm.

Industrial Chemicals Act 2019

Item 25 – Paragraph 67(2)(b)

65. The *Industrial Chemicals Act 2019* establishes the Australian Industrial Chemicals Introduction Scheme, to regulate the introduction (manufacture or import) of industrial chemicals. Part 3 of the Act provides for the categorisation and assessment of industrial chemicals, including the categories of introduction and the requirements that must be met for each category. Division 5 of Part 3 provides for the Minister to issue an exceptional circumstances authorisation for the introduction of an industrial chemical. Subsection 67(2) provides that, before deciding to issue such an authorisation, the Minister must (a) consult with the Executive Director of the Australian Industrial Chemicals Introduction Scheme, and (b) be satisfied that the introduction of the industrial chemical is in the public interest to address significant risks to human health or the environment.

66. This item repeals paragraph 67(2)(b) and substitutes two alternative limbs in the test for the Minister to issue an exceptional circumstances authorisation for the introduction (including import or manufacture in Australia) of an industrial chemical. New subparagraph 67(2)(b)(i) maintains the existing test for issuing an exceptional circumstances authorisation.

67. New subparagraph 67(2)(b)(ii) introduces an alternative test that is enlivened while a national emergency declaration (within the meaning of the NED Act) is in force, which provides that before deciding to issue an exceptional circumstances authorisation the Minister must (a) consult with the Executive Director and (b)(ii) be satisfied that the introduction of the industrial chemical is in the public interest to address an emergency to which the declaration relates.

68. The purpose of this amendment is to enable the Minister to make an exceptional circumstances authorisation for the expedited introduction of an industrial chemical, if it is in the public interest to address a national emergency.

Jervis Bay Territory Emergency Management Ordinance 2015

Item 26 – After subsection 15(1)

69. Subsection 15(1) of the *Jervis Bay Territory Emergency Management Ordinance 2015* enables the Minister to declare that a state of emergency exists in the whole or part of the Territory if the Minister is satisfied that an emergency is:

- endangering, or threatening to endanger, the safety or health of persons or animals in the Territory to a significant and widespread extent, or
- destroying or damaging, or threatening to destroy or damage, property in the Territory to a significant and widespread extent, or

- is causing a failure of, or a disruption to, an essential service or infrastructure to a significant and widespread extent.

70. This item inserts a new subsection 15(1A), which provides that the Minister may, by written instrument, declare that a state of emergency exists in the whole of the Territory or the part of the Territory specified in the instrument if a national emergency declaration (within the meaning of the NED Act) is in force, and the Minister is satisfied that the emergency to which the national emergency declaration relates is affecting, or is likely to affect, the Territory.

71. The purpose of this amendment is to support the expedited declaration of an emergency situation under the Ordinance, where a national emergency has been declared and the national emergency is affecting, or is likely to affect, the Territory, by introducing a streamlined test that omits elements of the test in subsection 15(1) that overlap with the test to make a national emergency declaration under the NED Act.

Liquid Fuel Emergency Act 1984

Item 27 – Paragraph 16(2)(b)

72. Subsection 16(1) of the *Liquid Fuel Emergency Act 1984* provides that, subject to the section, the Governor-General may, by Proclamation, declare that a national liquid fuel emergency will exist during a period specified in the Proclamation. Subsection 16(2) provides that the Governor-General shall not make a Proclamation under subsection 16(1) unless:

- the Minister is satisfied that it is necessary in the public interest to do so by reason that there is a shortage, or the likelihood of a shortage, of liquid fuel, being a shortage of such magnitude as to require the making of directions under all or any of the following provisions, namely sections 17-24 (paragraph 16(2)(a)), and
- the Minister is satisfied that he or she has afforded the Energy Minister for each State, the Energy Minister for the Australian Capital Territory and the Energy Minister for the Northern Territory a reasonable opportunity to consult with the Minister concerning the shortage, or likelihood of a shortage, as the case may be (paragraph 16(2)(b)).

73. This item repeals paragraph 16(2)(b) and substitutes two alternative limbs in the test to declare a national liquid fuel emergency, one of which is a simplified limb specific to national emergency declarations. New paragraph 16(2)(b) requires either:

- a national emergency declaration (within the meaning of the NED Act) to be in force (subparagraph (b)(i)), or
- the Minister to be satisfied that he or she has afforded the Energy Minister for the Australian Capital Territory and the Energy Minister for the Northern Territory a reasonable opportunity to consult with the Minister concerning the shortage, or likelihood of a shortage, of liquid fuel (subparagraph (b)(ii)).

74. The purpose of this item is to simplify the process for the declaration of a liquid fuel emergency, while a national emergency declaration is in force, by removing the requirement

for consultation with the States and Territories. Instead, the Prime Minister will be required to consult, or to have received a request from, each jurisdiction in which nationally significant harm has occurred, is occurring or is likely to occur before the Governor-General may declare a national emergency under the NED Act, except where the Prime Minister is satisfied that it is not practicable to consult a jurisdiction. The Minister would still be required to be satisfied that it is necessary in the public interest for a Proclamation of a national liquid fuel emergency to be made, before the Governor-General may make such a Proclamation while a national emergency declaration is in force.

Maritime Transport and Offshore Facilities Security Act 2003

Item 28 – Subsection 33(3)

75. Subsection 33(1) of the *Maritime Transport and Offshore Facilities Security Act 2003* provides that the Secretary may direct that additional security measures be implemented or complied with (known as a security direction). Subsection 35(1) of the Act sets out to whom the Secretary may give security directions, including maritime industry participants, passengers, and persons (other than maritime industry participants and passengers) who are within the boundary of a security regulated port or a security regulated offshore facility.

76. Subsection 33(3) provides that the Secretary must not give a security direction unless it is appropriate to do so because an unlawful interference with maritime transport or offshore facilities is probable or imminent.

77. This item repeals subsection 33(3) and substitutes two tests for the Secretary to give a security direction, one of which is specific to national emergency declarations. New subsection 33(3) provides that the Secretary must not give a security direction unless:

- it is appropriate to do so because an unlawful interference with maritime transport or offshore facilities is probable or imminent (paragraph 33(3)(a)), or
- if a national emergency declaration (within the meaning of the NED Act) is in force – the Secretary is satisfied that the security direction is appropriate to support the national emergency declaration (paragraph 33(3)(b)).

78. The purpose of this item is to enable the Secretary to give a security direction where he or she is satisfied it is appropriate to support the national emergency declaration. This may include where, for example, a facility is to be used to support the response to or recovery from a national emergency in a manner that is likely to materially alter the security risk at the facility, and it is appropriate to give a security direction to assist to manage or mitigate that altered risk.

Item 29 – Subsection 37(3)

79. Subsection 37(3) provides that a security direction remains in force until either the direction is revoked in writing by the Secretary, or the direction has been in force for a continuous period of three months. This item repeals subsection 37(3) and substitutes a new subsection that provides that a security direction remains in force until the earliest of the following occurs:

- the direction is revoked in writing by the Secretary

- the direction has been in force for a continuous period of three months, or
- if the direction was made for the purposes of paragraph 33(3)(b) (to support a national emergency declaration) – the national emergency declaration (within the meaning of the NED Act) ceases to be in force.

80. The purpose of this item is to ensure that a security direction made in relation to a national emergency declaration cannot remain in force once the national emergency declaration ceases to be in force. If there is an ongoing need for a security direction to be made following the cessation of the national emergency declaration, it would be a matter for the Secretary to consider giving that direction under the ordinary framework in section 33.

National Health Act 1953

Item 30 – Paragraph 86E(2)(b)

81. Section 86E of the *National Health Act 1953* provides that the Minister may determine that certain classes of persons are classes of persons in respect of whom an entitlement to pharmaceutical benefits can be evidenced otherwise than by provision of a Medicare number. Paragraph 86E(2)(b) provides that those classes may include persons requiring drugs or medicinal preparations in an emergency.

82. This item inserts “, including an emergency to which a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) relates” after “emergency” in paragraph 86E(2)(b).

83. The purpose of this item is to make clear that the Minister may make a determination in respect of persons requiring drugs or medicinal preparations in relation to a national emergency that has been declared under the NED Act.

National Health Security Act 2007

Item 31 – Subsection 3(1) (after paragraph (c) of the definition of *public health event of national significance*)

84. Part 2 of the *National Health Security Act 2007* establishes a framework for public health surveillance and information sharing to identify, and respond to, ***public health events of national significance***. Under this framework, information can be shared for permissible purposes. Paragraph 8(a) provides that preventing, protecting against, controlling or responding to a public health event of national significance (other than an overseas mass casualty) is a permissible purpose.

85. This item inserts a new paragraph (ca) in the definition of ***public health event of national significance***. New paragraph (ca) provides that, where a national emergency declaration (within the meaning of the NED Act) is in force, an emergency to which the declaration relates is a public health event of national significance, if the emergency relates to public health.

86. The purpose of this item is to ensure that the public health surveillance and information sharing frameworks under Part 2 will apply to a declared national emergency that

relates to public health, for the purposes of preventing, protecting against, controlling or responding to that emergency.

Item 32 – Subsection 3(1) (paragraph (d) of the definition of public health event of national significance)

87. This item omits “or (c)” and substitutes “, (c) or (ca)” in paragraph (d) of the definition of ‘public health event of national significance’. This reflects the addition of paragraph (ca) in the definition of *public health event of national significance* and clarifies that paragraph (d) of the definition captures public health risks other than an event covered by paragraphs (a), (b), (c) or (ca).

Item 33 – After subsection 60A(2)

88. Part 3 of the Act provides for the regulation of certain security-sensitive biological agents that could be used as weapons. Section 60A provides that the Minister may make a legislative instrument suspending Divisions 4A, 5 or 5AA of the Act. Division 4A imposes requirements relating to suspected but not confirmed security-sensitive biological agents detected by laboratories. Division 5 imposes requirements relating to the handling of security-sensitive biological agents at facilities. Division 5AA deals with the temporary handling of security-sensitive biological agents by entities that are not registered or exempt under the Act. Subsection 60A(2) provides that the Minister may make such a legislative instrument only if:

- the Minister is satisfied, after considering advice from the Commonwealth Chief Medical Officer, Commonwealth Chief Veterinary Officer or another person who the Minister believes has scientific or technical knowledges in relation to security-sensitive biological agents, that there is a threat involving the agent to one or more of the health or safety of people, the economy, and the environment (paragraph 60A(2)(a)), and
- the Minister is satisfied, after considering advice from the Secretary, that the making of the legislative instrument would help reduce the threat and maintain adequate controls for the security of all security-sensitive biological agents (paragraph 60A(2)(b)).

89. This item inserts subsection 60A(2A) after subsection 60A(2).

90. New paragraph 60A(2A) simplifies the requirement to establish a threat in paragraph 60A(2)(a) by providing that, without limiting paragraph 60A(2)(a), the Minister may be satisfied that there is a threat involving the agent to one or more matters mentioned in paragraph 60A(2)(a) if a national emergency declaration (within the meaning of the NED Act) is in force. New paragraph 60(2A) does not alter the requirements for the Minister to receive and consider advice, or to be satisfied that the making of the legislative instrument would help reduce the threat and maintain adequate controls for the security of all security-sensitive biological agencies.

91. The purpose of the item is to simplify the process for the Minister to make a legislative instrument under section 60A, where a national emergency has been declared in relation to a security-sensitive biological agent.

Norfolk Island Continued Laws Ordinance 2015

Item 34 – After item 64 of Schedule 1

92. This item inserts a new item 64A in Schedule 1 of the *Norfolk Island Continued Laws Ordinance 2015*. The new item 64A inserts a new subsection 9(1A) in the *Disaster and Emergency Management Act 2001 (Norfolk Island)*. If it appears that a disaster or emergency has occurred, is occurring or is about to occur, section 9 of that Act enables the Minister, on the advice of the Controller or another member of the committee in the absence of the Controller, to declare a state of disaster or emergency exists in respect of so much of the Territory of Norfolk Island as is affected or likely to be affected by the disaster or emergency.

93. To simplify the requirement to establish an emergency where a national emergency declaration has been made, new subsection 9(1A) clarifies that, for the purposes of subsection 9(1), an emergency includes an emergency to which a national emergency declaration (within the meaning of the NED Act) relates.

Offshore Petroleum and Greenhouse Gas Storage Act 2006

Item 35 – Paragraph 2A(1)(a) of Schedule 2A

94. Section 2A of Schedule 2A of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* provides that the Chief Executive Officer (the CEO) of the National Offshore Petroleum Safety and Environmental Management Authority may declare an oil pollution emergency. Subsection 2A(1) provides that the CEO may make such a declaration if he or she is satisfied that:

- there is an emergency that has resulted in, or may result in, oil pollution (paragraph 2A(1)(a))
- the emergency is attributable to one or more petroleum activities of a petroleum titleholder (paragraph 2A(1)(b)), and
- either there is a single environment plan that is, or may be, relevant to the emergency or there are two or more environment plans that are, or may be, relevant to the emergency (paragraph 2A(1)(c)).

95. This item amends paragraph 2A(1)(a) to insert “, including an emergency to which a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) relates” after “emergency”.

96. The purpose of this item is to simplify the requirement to establish an emergency for the purposes of paragraph 2A(1)(a) where a national emergency declaration made under the NED Act is in force, by clarifying that an emergency includes a declared national emergency.

Patents Act 1990

Item 36 – Paragraph 163A(3)(a)

97. Section 163A of the *Patents Act 1990* provides for Crown exploitation of inventions in emergencies. Subsection 163A(3) provides for the circumstances in which Crown

exploitation of inventions is not an infringement of a patent application or a patent, including a requirement that the relevant Minister considers that the exploitation is required because of an emergency (paragraph 163A(3)(a)).

98. This item amends paragraph 163A(3)(a) to insert “, including an emergency to which a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) relates” after “emergency”.

99. The purpose of this item is to simplify the requirement to establish an emergency in paragraph 163A(3)(a) where a national emergency declaration made under the NED Act is in force, by providing that an emergency includes a declared national emergency.

Privacy Act 1988

Item 37 – Subsection 6(1)

100. This item inserts a definition of *national emergency declaration*. It provides that national emergency declaration has the same meaning as in the NED Act.

Item 38 – Section 80J

101. This item inserts “(1)” before “The Prime Minister” in section 80J to reflect the addition of a new subsection 80J(2).

Item 39 – Section 80J (note)

102. This item omits “section” and substitutes “subsection” in the note in section 80J to reflect the addition of a new subsection.

Item 40 – At the end of section 80J

103. Part VIA of the *Privacy Act 1988* provides a modified framework for the collection, use and disclosure of personal information in emergencies and disasters. Section 80J provides that the Prime Minister or the Minister may make a declaration (known as an emergency declaration) if he or she is satisfied that:

- an emergency or disaster has occurred (paragraph 80J(1)(a))
- the emergency or disaster is of such a kind that it is appropriate in the circumstances for Part VIA to apply in relation to the emergency or disaster (paragraph 80J(1)(b))
- the emergency or disaster is of national significance (whether because of the nature and extent of the emergency or disaster, the direct or indirect effect of the emergency or disaster, or for any other reason) (paragraph 80J(1)(c)), and
- the emergency or disaster has affected one or more Australian citizens or permanent residents (whether within Australia or overseas) (paragraph 80J(1)(d)).

104. The existing note at the end of section 80J will only apply to new subsection 80J(1).

105. This item adds a new subsection 80J(2) in section 80J, providing that the Prime Minister or Minister may also make a declaration if:

- a national emergency is in force (paragraph 80J(2)(a)), and

- the Prime Minister or Minister (as the case may be) is satisfied that the emergency to which the national emergency declaration relates is of such a kind that it is appropriate in the circumstances for Part VIA to apply (paragraph 80J(2)(b)).

106. The purpose of this item is to simplify the process for the making of an emergency declaration under Part VIA of the Privacy Act where a national emergency declaration is in force, by omitting criteria in the statutory test for the making of an emergency declaration that overlap with the criteria for the making of a national emergency declaration.

Radiocommunications Act 1992

Item 41 – Section 5

107. This item inserts a definition of ***national emergency declaration***. It provides that national emergency declaration has the same meaning as provided in the NED Act.

Item 42 – Section 5 (at the end of the definition of *period of emergency*)

108. This item adds a legislative note at the end of the definition of period of emergency in section 5. The note provides that if a national emergency declaration is in force, the period for which the declaration is in force is taken to be a period of emergency for the purposes of this Act (see section 221A).

Item 43 – After paragraph 49(1)(d)

109. Section 46 of the *Radiocommunications Act 1992* provides that, subject to section 49, a person must not operate a radiocommunications device otherwise than as authorised by a spectrum licence, an apparatus licence, or a class licence. Section 47 provides that, subject to section 49, a person must not have a radiocommunications device in his or her possession for the purpose of operating the device otherwise than as authorised by a spectrum licence, an apparatus licence or a class licence.

110. Subsection 49(1) provides that a person does not contravene section 46 or 47 by operating a radiocommunications device, or having a radiocommunications device in his or her possession, in the reasonable belief that the operation or possession was necessary for the purposes listed in paragraphs 49(1)(a)-(d).

111. This item inserts a new paragraph in subsection 49(1) to provide an additional exception to the offences in section 46 and 47. This item adds a new paragraph 49(1)(e) providing a new purpose, namely if a national emergency declaration is in force – dealing with the emergency to which the declaration relates.

112. Given the potential for significant risk to life and economic harm from interference with radiocommunications, it is intended that the exception in new paragraph 49(1)(e) be interpreted narrowly so as to apply only where the operation or possession was immediately necessary to deal with the national emergency, and where there is not another suitable action to respond to or recover from the emergency that does not involve contravening section 46 or 47.

Item 44 – After paragraph 172(d)

113. Section 157 provides that, subject to Divisions 4 and 5, a person must not cause a radio emission to be made by a transmitter that the person knows is a non-standard transmitter. Section 158 provides that, subject to Divisions 4 and 5, a person must not have in his or her possession for the purpose of operation a device that the person knows is a non-standard device.

114. Section 172 provides that a person does not contravene section 157 or 158 by causing a radio transmission to be made by a non-standard transmitter, or having a non-standard device in his or her possession, in the reasonable belief that the emission or possession was necessary for the purposes listed in paragraphs 172(a)-(d).

115. This item inserts a new paragraph in section 172 to provide an additional exception to the offences in section 157 and 158. This item adds a new paragraph 172(e) providing a new purpose, namely if a national emergency declaration is in force – dealing with the emergency to which the declaration relates.

116. Given the potential for significant risk to life and economic harm from interference with radiocommunications, it is intended that the exception in new paragraph 172(e) be interpreted narrowly so as to apply only where the emission or possession was immediately necessary to deal with the national emergency, and where there is not another suitable action to respond to or recover from the emergency that does not involve contravening section 157 or 158.

Item 45 – After paragraph 196(1)(d)

117. Section 192 provides that, subject to section 196, a person must not use a transmitter in a way likely to interfere with radiocommunications if the person knows that such interference is likely to prejudice the safe operation of a vessel, aircraft or space object. Section 193 provides that, subject to section 196, a person must not, without the ACMA's written permission, use a transmitter in a way that the person knows is likely to interfere substantially with radiocommunications carried on by or on behalf of an organisation specified in the regulations, the Royal Flying Doctor Service, or the Australian Federal Police or the police force of a State or Territory. Section 194 provides that, subject to section 196, a person must not do any act or thing that the person knows is likely to interfere substantially with radiocommunications, or otherwise substantially disrupt or disturb radiocommunications, if the interference, disruption or disturbance is likely to endanger the safety of another person or to cause another person to suffer or incur substantial loss or damage. Section 195 provides that, subject to section 196 and subsection 195(2), a person must not, outside Australia and without the ACMA's written permission, use a transmitter that is on board a foreign vessel, foreign aircraft or foreign space object, for the purposes of transmitting to the general public in Australia radio programs or television programs, or in a manner that the person knows is likely to interfere substantially with radiocommunications within Australia or between a place in Australia and a place outside Australia.

118. Section 196 provides that a person does not contravene sections 192, 193, 194 or 195 by doing anything that the person reasonably believes was necessary for the purposes listed in paragraphs 196(1)(a)-(d).

119. This item inserts a new paragraph in subsection 196(1) to provide another exception to the offences in section 192, 193, 194 and 195. This item adds a new paragraph 196(1)(e) providing a new purpose, namely if a national emergency declaration is in force – dealing with the emergency to which the declaration relates.

120. Given the potential for significant risk to life and economic harm from interference with radiocommunications, it is intended that the exception in new paragraph 196(1)(e) be interpreted narrowly so as to only apply where the action was immediately necessary to deal with the national emergency, and where there is not another suitable action to respond to or recover from the emergency that does not involve contravening sections 192, 193, 194 or 195.

Item 46 – At the end of Division 1 of Part 4.4

121. Section 219 of the *Radiocommunications Act 1992* provides that the Governor-General may, by Proclamation, declare that a period specified in the Proclamation will be a period of emergency. During a period of emergency, the Minister may make a restrictive order that prohibits or regulates the use of radiocommunications transmitters, or the operation of transmitters if such use is likely to interfere with radiocommunications.

122. This item inserts a new section 221A at the end of Division 1 of Part 4.4 which provides that if a national emergency declaration is in force:

- the declaration is taken to be a Proclamation under section 219 for the purposes of this Act, and
- the declaration is taken to have been published in the Gazette on the day on which the declaration commenced, and
- the period of emergency is the period specified in the declaration for the purposes of subparagraph 11(4)(b)(iii) of the NED Act or that period as extended or further extended under section 12 of that Act, and
- subsection 219(3) (which provides that the period of emergency may not exceed three months) does not apply to the declaration, as a declaration under the NED Act may be extended under section 12 of that Act, and
- the period of emergency is terminated on the day the declaration ceases to be in force.

123. The purpose of this amendment is to simplify the process for the making of a restrictive order under the Radiocommunications Act where a national emergency declaration under the NED Act is in force, by removing the requirement for the Governor-General to separately proclaim a period of emergency.

Social Security Act 1991

Item 47 – Subsection 36(1)

124. Subsection 36(1) of the *Social Security Act 1991* provides that the Minister may determine that an event is a major disaster if the Minister is satisfied that the event is a

disaster that has such a significant impact on individuals that a government response is required. Section 1061K then provides that a person is qualified for Australian Government disaster recovery payment under Part 2.24 of the Act if the person is receiving a social security payment and the person is adversely affected by the major disaster.

125. This item repeals subsection 36(1) and substitutes two alternative limbs in the test to determine that an event is a major disaster, one of which is specific to emergencies that have been declared a national emergency under the NED Act. New subsection 36(1) provides that the Minister may determine in writing that an event is a major disaster if:

- the Minister is satisfied that the event is a disaster that has such a significant impact on individuals that a government response is required (paragraph 36(1)(a)), or
- if a national emergency declaration (within the meaning of the NED Act) is in force – the event is an emergency to which the declaration relates (paragraph 36(1)(b)).

126. The purpose of this item is to simplify the process for the Minister to trigger the Australian Government disaster recovery payment where a national emergency declaration under the NED Act is in force. The test in paragraph 36(1)(b) does not require the Minister to separately consider the impact of the disaster and whether a government response is required, as those considerations are built into the elements of the test to declare a national emergency declaration.

Item 48 – Saving of existing declarations

127. This item provides that, despite the repeal and substitution of subsection 36(1) of the *Social Security Act 1991* by this Schedule, any declaration that was in force immediately before the commencement of this Schedule continues in force on and after commencement as if it were a declaration made under subsection 36(1) of that Act as in force after that commencement.

Item 49 – After subsection 36(1)

128. This item inserts a new subsection 36(1A) which provides that, in deciding whether to make a determination under paragraph 36(1)(b) that an event is a major disaster, the Minister may have regard to the matter in paragraph 36(1)(a). Paragraph 36(1)(a) provides that the Minister is satisfied that an event is a disaster that has such a significant impact on individuals that a government response is required. This item clarifies that the fact that a national emergency declaration is in force does not prevent the Minister from considering the matter in paragraph 36(1)(a).

Item 50 – Paragraph 36A(1)(b)

129. Subsection 36A(1) provides that the Minister may determine in writing that an event is a Part 2.23B major disaster if the Minister is satisfied that:

- the event is a disaster that has such a significant impact on one or more industries and/or one or more areas that a government response in the form of income support is required (paragraph 36A(1)(a)), and
- the event is of national significance (paragraph 36A(1)(b)).

130. Section 1061KA then provides that a person is qualified for disaster recovery allowance if, among other things, the Minister determines that an event is a Part 2.23B major disaster.

131. This item repeals paragraph 36A(1)(b) and substitutes two alternative limbs in the test to determine that an event is a Part 2.23B major disaster, one of which is specific to emergencies that have been declared a national emergency under the NED Act. New paragraph 36A(1)(b) is that the Minister is satisfied that either:

- the event is of national significance (subparagraph 36A(1)(b)(i)), or
- if a national emergency declaration (within the meaning of the NED Act) is in force – the event is an emergency to which the declaration relates (subparagraph 36A(1)(b)(ii)).

132. The purpose of this item is to simplify the process for the Minister to trigger the disaster recovery allowance where a national emergency declaration under the NED Act is in force. The test in subparagraph 36A(1)(b)(ii) does not require the Minister to separately consider whether the event is of national significance, as that consideration is built into the elements of the test to declare a national emergency declaration.

Item 51 – After subsection 36A(1)

133. This item inserts a new subsection 36A(1A) which provides that, in deciding whether to make a determination under subparagraph 36A(1)(b)(ii) that an event is a Part 2.23B major disaster, the Minister may have regard to the matters in paragraph 36A(1)(a) and subparagraph 36A(1)(b)(i). This item clarifies that the fact that a national emergency declaration is in force does not prevent the Minister from considering the matters in paragraph 36A(1)(a) and subparagraph 36A(1)(b)(i).

Item 52 – Paragraph 36A(2)(a)

134. Subsection 36A(2) provides that, without limiting the matters to which the Minister may have regard for the purposes of subsection 36A(1), the Minister must have regard to:

- the extent to which the nature or extent of the disaster is unusual (paragraph 36A(2)(a)), and
- the number of workplaces that are disrupted (paragraph 36A(2)(b)).

135. This item amends paragraph 36A(2)(a) to clarify that, where the new test under subparagraph 36A(1)(b)(ii) is being relied upon, the Minister is not required to have regard to the extent to which the nature or extent of the disaster is unusual. This consideration is not required given the high threshold required to make a national emergency declaration under the NED Act.

Social Security (Administration) Act 1999

Item 53 – After subparagraph 124PJ(4)(a)(ii)

136. Subsection 124PJ(3) of the *Social Security (Administration) Act 1999* provides that the Secretary may make a determination varying the percentages of restricted and unrestricted portions of restrictable payments made to participants in cashless welfare arrangements. The Secretary may make such a determination only if paragraph 124PJ(4)(a) or (b) applies. Paragraph 124PJ(4)(a) provides that the Secretary may make a determination if the Secretary is satisfied that the person is unable to use the debit card, that was issued to the person and is attached to their welfare restricted bank account, or is unable to access that account, as a direct result of:

- a technological fault or malfunction with that card or account (subparagraph 124PJ(4)(a)(i)), or
- a natural disaster (subparagraph 124PJ(4)(a)(ii)).

137. This item inserts subparagraph 124PJ(4)(a)(iii) after subparagraph 124PJ(4)(a)(ii), to provide an alternative limb in the test for the Secretary to make a determination under subsection 124PJ(3).

138. This item includes a third alternative limb in this test to provide that, if a national emergency declaration (within the meaning of the NED Act) is in force, the Secretary may make a determination in circumstances where a person was unable to use their debit card, or access that account, as a direct result of an emergency to which the declaration relates. As the NED Act takes an ‘all hazards’ approach, this item would expand the circumstances in which the Secretary could make a determination to declared national emergencies that are not natural disasters and that do not result in a technological fault or malfunction with a person’s cashless welfare card or account.

139. New subparagraph 124PJ(4)(a)(iii) does not affect the interpretation or operation of existing paragraph 124PJ(4)(a), beyond establishing an additional circumstance in which the Secretary may make a determination, being in the event of a declared national emergency. The Secretary may continue to make a determination under subparagraphs 124PJ(4)(a)(i) or (ii) in relation to a technological fault or malfunction with a card or account, or a natural disaster, respectively.

Sydney Airport Curfew Act 1995

Item 54 – After paragraph 18(b)

140. Section 18 of the *Sydney Airport Curfew Act 1995* provides that an aircraft may take off from, or land at, Sydney Airport in circumstances that would otherwise contravene curfew restrictions in sections 7, 10 or 11 if.

- the aircraft is involved in an emergency as described in section 19 (paragraph 18(a)), or
- a dispensation granted by the Minister under section 20 authorises the take- off or landing, and the take- off or landing is in accordance with any conditions of the dispensation (paragraph 18(b)).

141. This item inserts a new paragraph (c) in section 18, permitting an aircraft to take off from, or land at, Sydney Airport despite curfew restrictions, if a national emergency declaration (within the meaning of the NED Act) is in force, and the aircraft is being used for or in connection with the emergency to which the declaration relates.

Telecommunications Act 1997

Item 55 – After subsection 313(4)

142. Among other things, section 313 of the *Telecommunications Act 1997* requires carriers, carriage service providers and carriage service intermediaries to provide authorities and officers of the Commonwealth, states and territories such help as is reasonably necessary for specified purposes, set out in subsections 313(3) and (4). Subsection 313(5) provides that a carrier or carriage service provider is not liable to an action or other proceeding for damages for or in relation to an act done or omitted in good faith, among other things, in performance of the duty imposed by subsection 313(3) or (4).

143. Having regard to the objectives of the Act, the broad scope of the duty and public interests underpinning the duty to give such help as is reasonably necessary in good faith, it is intended that the immunities in subsection 313(5) of the *Telecommunications Act* extend to a broad range of civil actions where relief is not limited to damages. This would include, for example, civil action by a regulator enforcing a breach of a statutory obligation (for example, a carrier licence condition), or a civil action by a private person who has standing to seek enforcement of statutory requirement (for example, enforcing an access undertaking under subsection 152CD(2) of the *Competition and Consumer Act 2020*).

144. Section 314 sets out the terms and conditions on which help is to be given under subsections 313(3) or (4).

145. Some of the purposes listed in subsections 313(3) and (4) will be relevant where Commonwealth, state and territory authorities are seeking to manage an emergency—for example, some emergency management activities may be done for the purpose, or for purposes that include the purpose, of safeguarding national security. However, to ensure there is a clear basis for requiring assistance for emergency-related purposes, this item extends the obligation for industry participants to give such help as is reasonably necessary, and the associated immunities, to apply in relation to declared national emergencies, state and territory declared emergencies and emergencies specified under new subsection (4D).

146. This item inserts new subsections 313(4A) to (4H) after subsection 313(4). These subsections require telecommunications industry participants to give such help as is reasonably necessary to officers and authorities of the Commonwealth and the States and Territories, for the purposes of preparing for, responding to and recovering from emergencies.

147. New subsection 313(4A) provides that a carrier or carriage service provider must, in connection with the operation by the carrier or provider of telecommunications networks or facilities, or the supply by the carrier or provider of carriage services, give Commonwealth, state and territory officers and authorities such help as is reasonably necessary for the following purposes:

- if a national emergency declaration (within the meaning of the NED Act) is in force—preparing for, responding to or recovering from an emergency to which the declaration relates
- preparing for, responding to or recovering from a disaster or emergency that has been declared to be a disaster or a state of emergency by, or with the approval of, a Minister of a State or Territory under the law of the State or Territory
- if a declaration made for the purpose of subsection 313(4D) (which permits the Minister to declare that an emergency exists) is in force—preparing for, responding to or recovering from an emergency to which the declaration relates.

148. The legislative note to subsection 313(4A) clarifies that section 314 deals with the terms and conditions on which help under subsection 313(4A) is to be provided.

149. New subsection 313(4B) extends an equivalent obligation to carriage service intermediaries. Subsection 313(4B) provides that a carriage service intermediary who arranges for the supply of carriage services by a carriage service provider must, in connection with the operation by the provider of telecommunications networks or facilities or the supply by the provider of carriage services, give Commonwealth, state and territory officers and authorities such help as is reasonably necessary for the following purposes:

- if a national emergency declaration (within the meaning of the NED Act) is in force—preparing for, responding to or recovering from an emergency to which the declaration relates (paragraph 313(4B)(c))
- preparing for, responding to or recovering from a disaster or emergency that has been declared to be a disaster or a state of emergency by, or with the approval of, a Minister of a State or Territory under the law of the State or Territory (paragraph 313(4B)(d))
- if a declaration made for the purpose of subsection 313(4D) (which permits the Minister to declare that an emergency exists) is in force—preparing for, responding to or recovering from an emergency to which the declaration relates (paragraph 313(4B)(e))

150. The legislative note to subsection 313(4B) clarifies that section 314 deals with the terms and conditions on which help under subsection 313(4B) is to be provided.

151. New subsection 313(4C) clarifies that subsections 313(4A) and (4B) do not limit subsection 313(3) or (4). The purpose of this amendment is to place beyond doubt that Commonwealth, state and territory authorities may continue to seek help from industry participants under subsections 313(3) and (4), where relevant, even if new subsections 313(4A) or (4B) would also apply. For example, if a large-scale terrorist attack was the subject of a national emergency declaration, it is intended law enforcement and intelligence agencies could continue to seek help under subsection 313(3) or (4) for the purposes of enforcing the criminal law and safeguarding national security.

152. New subsection 313(4D) provides that the Minister may, in writing, declare that an emergency exists for the purposes of that subsection. A bare declaration-making power has been included to balance two competing interests:

- It is desirable that there be a clear duty for telecommunications industry participants to give such help as is reasonably necessary to Commonwealth, state and territory authorities for the purpose of preparing for, responding to or recovering from

emergencies that do not rise to a level that would justify the declaration of a national, state or territory emergency. It is also appropriate for industry participants to benefit from clear legal immunities when giving such help.

- However, it is also desirable that the Act not require telecommunications industry participants to give such help in relation to emergencies (defined by the Macquarie Dictionary as unforeseen occurrences; sudden and urgent occasions for action) that pose a more limited risk of harm, including to the wider community. The imposition of a duty in those circumstances could create an undue burden on the industry. It is relevant that section 287 of the Act already provides immunity from the offences in Division 2 of Part 13 of the Act to telecommunications providers in relation to voluntary acts of assistance that involve the disclosure or use of information and documents that relate to the affairs or personal particulars of another person where the provider believes on reasonable grounds that the disclosure or use is reasonably necessary to prevent or lessen a serious and imminent risk to life or health.

153. The ability for the Minister to declare that an emergency exists for the purposes of subsection 313(4D) is intended to allow the Minister to declare emergencies where, in all of the circumstances, it is appropriate that industry participants be subject to a duty to give such help as is reasonably necessary for the purposes of preparing for, responding to or recovering from the emergency, without extending the scope of that duty to include minor or low-level emergencies where it may not be appropriate for such a legal duty to apply. In issuing a written declaration, the Minister will be able to act rapidly to, in effect, provide immunities and invoke cost recovery to carriers who provide assistance in certain unforeseen emergencies that while serious, are not subject to a national declaration or state or territory emergency or disaster declaration.

154. New subsection 313(4E) provides that the Minister must publish, by electronic or other means, a copy of the declaration made under subsection 313(4D) as soon as practicable after making the declaration. This will provide transparency in relation to the use of this power.

155. New subsection 313(4F) provides that a declaration made under subsection 313(4D) is a legislative instrument, but that section 42 of the *Legislation Act 2003* (disallowance) does not apply to the declaration. This aligns with the status of a national emergency declaration under the NED Act. A declaration made under subsection 313(4D) can be made independently of a declaration being made under the NED Act. A key objective of the declaration is to provide clarity and certainty about the status of an emergency event, whether impending or currently existing. Certainty will be critical to ensure that participants are sufficiently prepared and can readily divert resources to assist in the response and recovery effort. The prospect of a declaration being disallowed would undermine a key objective of the making of such a declaration, and may disrupt the underlying framework that would support further action being taken. This provision provides telecommunications companies with certainty that once the Minister declares that an emergency exists, there is no risk that immunities would fall away in the event of Parliamentary disallowance

156. Subsection 12(1) of the *Legislation Act 2003* provides that a legislative instrument commences:

- at the start of the day after the day the instrument is registered, or
- so far as the instrument provides otherwise—in accordance with such provision.

157. New subsection 313(4G) provides that, in requiring help for the purposes of subsection 313(4A) or (4B), the Commonwealth, state or territory official or authority making the requirement must have regard to any guidelines in force under subsection 313(4H).

158. New subsection 313(4H) provides that the Minister may, by legislative instrument, formulate guidelines for the purposes of subsection 313(4G), which requires Commonwealth, state and territory officials and authorities seeking assistance from industry participants under new subsections 313(4A) and (4B), to comply with any guidelines in force. This guideline-making power is intended to safeguard against any inappropriate or unnecessary requests for assistance in relation to emergencies. For example, guidelines could detail standard processes that would apply in relation to the exercise of the duty, and relevant considerations that might inform assessments as to whether assistance is reasonably necessary in all the circumstances.

Item 56 – Subsection 314(1)

159. Section 314 sets out the terms and conditions on which industry participants must provide help to Commonwealth, state or territory officers or authorities, including cost-recovery arrangements. At present, subsection 314(1) provides that section 314 applies if a person is required to give help to an officer or authority of the Commonwealth, a State or a Territory as mentioned in subsection 313(3) or (4).

160. This item omits “or (4)” and substitutes “, (4), (4A) or (4B)” in subsection 314(1). This item reflects the introduction of new subsections 313(4A) and (4B) and ensures that the terms and conditions in section 314 extend to assistance provided for emergency-related purposes under these new subsections.

Therapeutic Goods Act 1989

Item 57 – Subsection 3(1)

161. This item inserts a definition of ***national emergency declaration*** in subsection 3(1) of the *Therapeutic Goods Act 1989*. It provides that national emergency declaration has the same meaning as in the NED Act. The definition of national emergency declaration in section 10 of the NED Act refers to subsection 11(1) of that Act which enables the Governor-General to make a national emergency declaration.

Item 58 – After subsection 18A(1)

162. Division 2 of Part 3-2 provides requirements for registering or listing therapeutic goods in the Australian Register of Therapeutic Goods. Subsection 18A(1) enables the Minister to exempt certain therapeutic goods from the operation of the Division. Subsection 18A(2) sets out the matters the Minister must be satisfied of before the Minister may exempt goods under subsection 18A(1).

163. This item inserts a new subsection 18A(1A) after subsection 18A(1). New subsection 18A(1A) provides that the Minister may exempt goods under subsection 18A(1) only if the Minister is satisfied of the matter in subsection 18A(2) or (2A). This is to reflect the introduction of an alternative basis to exempt therapeutic goods under subsection 18A(1).

Item 59 – Subsection 18A(2)

164. Item 3 omits the “The Minister may exempt goods under subsection (1) only if the Minister is satisfied that,” in subsection 18A(2) and substitutes “The matter in this subsection is that”, to reflect the inclusion of another basis to exempt therapeutic goods under subsection 18A(1).

Item 60 – After subsection 18A(2)

165. Item 4 inserts a new subsection 18A(2A) following 18A(2), containing an alternative basis for the exemption of therapeutic goods from the registration and listing requirements in Division 2 of Part 3-2 while a national emergency declaration is in force.

166. Subsection 18A(2A) provides that the matter in this subsection is that:

- a national emergency declaration is in force (paragraph 18A(2A)(a)), and
- either of the following apply:
 - the exemption should be made so that the goods may be stockpiled to deal with a potential threat to public health that may be caused by the emergency to which the national emergency declaration relates (paragraph 18A(2A)(b)(i))
 - the exemption should be made so that the goods can be made available urgently in Australia in order to deal with an actual threat to public health caused by the emergency to which the national emergency declaration relates (paragraph 18A(2A)(b)(ii)), and
- the Minister is satisfied that the exemption is in the national interest (paragraph 18A(2A)(c)).

167. The purpose of this item is to specifically provide that an exemption of therapeutic goods from the registration and listing requirements, may be made while a national emergency declaration under the NED Act is in force.

Item 61 – Paragraphs 18A(10)(a) and (b)

168. Subsection 18A(10) requires the Secretary to cause a document setting out particulars of an exemption, and a revocation or variation of an exemption, covered by paragraph 18A(2)(b), to be published in the *Gazette* within five working days after the day on which the Minister makes the exemption, revocation or variation.

169. This item inserts “or subparagraph (2A)(b)(ii)” after “(2)(b)” in paragraphs 18A(10)(a) and (b). This item extends this notification requirement to apply to exemptions covered by subparagraph 18A(2A)(b)(ii). Exemptions covered by subparagraph 18A(2A)(b)(i) are not captured by the notification requirement as they relate to a potential threat to public health, not an actual threat. This is consistent with the current notification requirements not applying to the similar existing exemption in paragraph 18A(2)(a).

Item 62 – Paragraphs 18A(11)(a) and (b)

170. Subsection 18A(11) requires the Minister to cause a document setting out the particulars of an exemption, and a revocation or variation of an exemption, covered by paragraph 18A(2)(b) to be tabled before each House of Parliament within 5 sitting days of that House after the day on which the Minister makes the exemption, revocation or variation.

171. This item inserts “or subparagraph (2A)(b)(ii)” after “(2)(b)” in paragraphs 18A(11)(a) and (b). This item extends this tabling requirement to apply to exemptions covered by subparagraph 18A(2A)(b)(ii). Exemptions covered by subparagraph 18A(2A)(b)(i) are not captured by the tabling requirement as they relate to a potential threat to public health, not an actual threat. This is consistent with the current tabling requirements not applying to the similar existing exemption in paragraph 18A(2)(a).

Item 63 – After subsection 32CB(1)

172. Division 4 of Part 3-2A provides requirements for the inclusion of biologicals (being things comprised, containing or derived from human cells or tissues, or otherwise specified, that are represented in any way to be, or are likely to be taken to be, for any of the purposes outlined in section 32A(1)(b)) in the Australian Register of Therapeutic Goods. Subsection 32CB(1) enables the Minister to exempt specified biologicals from the operation of Division 4. Subsection 32CB(2) sets out the basis to exempt biologicals under subsection 32CB(1).

173. This item inserts a new subsection 32CB(1A) after subsection 32CB(1). The new subsection 32CB(1A) provides that the Minister may exempt biologicals under subsection 32CB(1) only if the Minister is satisfied of the matter in subsection 32CB(2) or (2A). This is to reflect the introduction of another basis to exempt biologicals under subsection 32CB(1).

Item 64 – Subsection 32CB(2)

174. This item omits the “The Minister may make an exemption under subsection (1) only if the Minister is satisfied that,” in subsection 32CB(2) and substitutes “The matter in this subsection is that” to reflect the inclusion of another basis to exempt biologicals under subsection 32CB(1).

Item 65 – After subsection 32CB(2)

175. This item inserts a new subsection 32CB(2A) following 32CB(2) containing an alternative basis for the exemption of biologicals from the operation of Division 4 while a national emergency declaration is in force.

176. New subsection 32CB(2A) provides that the matter in this subsection is that:

- a national emergency declaration is in force, and
- either of the following apply:
 - the exemption should be made so that the biologicals may be stockpiled to deal with a potential threat to public health that may be caused by the emergency to which the national emergency declaration relates

- the exemption should be made so that the biologicals can be made available urgently in Australia in order to deal with an actual threat to public health caused by the emergency to which the national emergency declaration relates, and
- the Minister is satisfied that the exemption is in the national interest.

Item 66 – Paragraphs 32CF(1)(a) and (b)

177. Subsection 32CF(1) requires the Secretary to cause a notice to be published in the *Gazette* within seven days after the day on which the exemption, variation or revocation is made, setting out particulars of the following:

- an exemption made under section 32CB because of paragraph 32CB(2)(b)
- a variation or revocation under section 32CD, to the extent that the variation or revocation relates to an exemption made under section 32CB because of paragraph 32CB(2)(b).

178. This item inserts “or subparagraph (2A)(b)(ii)” after “(2)(b)” in paragraphs 32CF(1)(a) and (b). The purpose of this item is to extend the notice requirement in subsection 32CF(1) to apply to exemptions made under subparagraph 32CB(2A)(b)(ii). Exemptions covered by subparagraph 32CB(2A)(b)(i) are not captured by the notification requirement as they relate to a potential threat to public health not an actual threat. This is consistent with the current notification requirements not applying to the similar existing exemption in paragraph 32CB(2)(a).

Item 67 – Paragraphs 32CF(2)(a) and (b)

179. Subsection 32CF(2) requires the Minister to cause a document to be tabled before each House of Parliament within five sitting days of that House after the day on which the Minister makes the exemption, revocation or variation, setting out particulars of the following:

- an exemption made under section 32CB because of paragraph 32CB(2)(b)
- variation or revocation under section 32CD, to the extent that the variation or revocation relates to an exemption made under section 32CB because of paragraph 32CB(2)(b).

180. This item inserts “or subparagraph (2A)(b)(ii)” after “(2)(b)” in paragraphs 32CF(2)(a) and (b). This item extends this tabling requirement to apply to exemptions covered by subparagraph 32CB(2A)(b)(ii). Exemptions covered by subparagraph 32CB(2A)(b)(i) are not captured by the tabling requirement as they relate to a potential threat to public health, not an actual threat. This is consistent with the current tabling requirements not applying to the similar existing exemption in paragraph 32CB(2)(a).

Item 68 – After subsection 41GS(1)

181. Chapter 4 of the Act regulates medical devices. Division 1 of Part 4-2 sets out essential principles relating to the safety and performance characteristics of medical devices.

Division 1 of Part 4-3 sets out conformity assessment procedures, containing requirements relating to the application of quality management systems for medical devices, and other requirements imposed on manufacturers. Part 4-4 enables the Secretary of the department administering the Act to issue conformity assessment certificates. Part 4-5 sets out a framework for the inclusion of medical devices in the Australian Register of Therapeutic Goods. Subsection 41GS(1) enables the Minister to exempt specified kinds of medical devices from the operation of the abovementioned Divisions and Parts. Subsection 41GS(2) sets out the basis to exempt specified kinds of medical devices under subsection 41GS(1).

182. This item inserts a new subsection 41GS(1A) after subsection 41GS(1). The new subsection 41GS(1A) provides that the Minister may exempt specified kinds of medical devices under subsection (1) only if the Minister is satisfied of the matter in subsection 41GS(2) or (2A). This is to reflect the introduction of another basis to exempt specified kinds of medical devices under subsection 41GS(1).

Item 69 – Subsection 41GS(2)

183. This item omits the “The Minister may make an exemption under subsection (1) only if the Minister is satisfied that,” in subsection 41GS(2) and substitutes “The matter in this subsection is that” to reflect the inclusion of another basis to exempt specified kinds of medical devices under subsection 41GS(1).

Item 70 – After subsection 41GS(2)

184. This item inserts a new subsection 41GS(2A) following subsection 41GS(2) containing an alternative basis for the making of an exemption for medical devices while a national emergency declaration is in force.

185. Subsection 41GS(2A) provides that the matter in this subsection is that:

- a national emergency declaration is in force, and
- either of the following apply:
 - the exemption should be made so that the devices may be stockpiled to deal with a potential threat to public health that may be caused by the emergency to which the national emergency declaration relates
 - the exemption should be made so that the devices can be made available urgently in Australia in order to deal with an actual threat to public health caused by the emergency to which the national emergency declaration relates, and
- the Minister is satisfied that the exemption is in the national interest.

Item 71 – Paragraphs 41GW(1)(a) and (b)

186. Subsection 41GW(1) requires the Secretary to cause a notice to be published in the *Gazette* within five working days after the day on which the exemption, variation or revocation is made, setting out particulars of the following:

- an exemption made under section 41GS because of paragraph 41GS(2)(b)
- a variation or revocation under section 41GU, to the extent that the variation or revocation relates to an exemption made under section 41GS because of paragraph 41GS (2)(b).

187. This item inserts “or subparagraph (2A)(b)(ii)” after “(2)(b)” in paragraphs 41GW(1)(a) and (b). This purpose of this item is to extend the notice requirement to apply to exemptions made under subparagraph 41GS(2A)(b)(ii). Exemptions covered by subparagraph 41GS(2A)(b)(i) are not captured by the notification requirement as they relate to a potential threat to public health, not an actual threat. This is consistent with the current notification requirements not applying to the similar existing exemption in paragraph 41GS(2)(a).

Item 72 – Paragraphs 41GW(2)(a) and (b)

188. Subsection 41GW(2) requires the Minister to cause a document to be tabled before each House of Parliament within five sitting days of that House after the day on which the Minister makes the exemption, revocation or variation, setting out particulars of the following:

- an exemption made under section 41GS because of paragraph 41GS(2)(b)
- a revocation or variation of an exemption, and a variation or revocation under section 41GU, to the extent that the variation or revocation relates to an exemption made under section 41GS because of paragraph 41GS(2)(b).

189. This item inserts “or subparagraph (2A)(b)(ii)” after “(2)(b)” in paragraphs 41GW(2)(a) and (b). This item extends this tabling requirement to apply to exemptions covered by subparagraph 41GS(2A)(b)(ii). Exemptions covered by subparagraph 41GS(2A)(b)(i) are not captured by the tabling requirement as they relate to a potential threat to public health, not an actual threat. This is consistent with the current tabling requirement not applying to the similar existing exemption in paragraph 41GS(2)(a).

Item 73 – Application of amendments

190. This item provides that the amendments of the *Therapeutic Goods Act 1989* made by this Schedule apply in relation to exemptions made after the commencement of this Schedule.

Schedule 2—Contingent amendments

National Emergency Declaration Act 2020

Item 1 – Section 10 (after paragraph (za) of the definition of *national emergency law*)

191. This item amends the provisions of the *Radiocommunications Act 1992* that are listed as national emergency laws in the NED Act. The item replaces section 172 with section 269, as the *Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020* will repeal section 172 and introduce a new section 269 which is a national emergency law.

Radiocommunications Act 1992

Item 2 – At the end of section 269

192. Subsection 269(6) provides that a person is not liable under Part 4 of the Regulatory Powers Act to have a civil penalty order made against the person for a contravention of a civil penalty provisions of this Act if:

- the person carries out the conduct constituting the contravention in response to circumstances of sudden or extraordinary emergency, and
- the person believes on reasonable grounds that:
 - circumstances of sudden or extraordinary emergency exist, and
 - contravening the provision is the only reasonable way to deal with the emergency, and
 - the conduct is a reasonable response to the emergency.

193. This item inserts a new subsection 269(7) to simplify the requirement to establish an emergency in the test contained in subsection 269(6). New subsection 269(7) provides that, without limiting subsection 269(6), if a national emergency declaration was in force at the time the person carried out the conduct, the emergency to which the declaration relates is taken, for the purposes of that subsection, to be a circumstance of sudden or extraordinary emergency.