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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**National Emergency Declaration
(Consequential Amendments) Bill 2020**

No. , 2020

(Attorney-General)

**A Bill for an Act to deal with consequential matters
arising from the enactment of the *National
Emergency Declaration Act 2020*, and for related
purposes**

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A Bill for an Act to deal with consequential matters arising from the enactment of the *National Emergency Declaration Act 2020*, and for related purposes

The Parliament of Australia enacts:

1 Short title

This Act is the *National Emergency Declaration (Consequential Amendments) Act 2020*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with

column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1	The later of: (a) the day after this Act receives the Royal Assent; and (b) immediately after the commencement of the <i>National Emergency Declaration Act 2020</i> . However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	
3. Schedule 2	The later of: (a) immediately after the commencement of the <i>National Emergency Declaration Act 2020</i> ; and (b) the commencement of Part 1 of Schedule 6 to the <i>Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020</i> . However, the provisions do not commence at all unless both of the events mentioned in paragraphs (a) and (b) occur.	

Note: This table relates only to the provisions of this Act as originally enacted.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

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

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Note: The provisions of a legislative instrument amended or inserted by this Act, and any other provisions 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

1 After paragraph 16(c)

Insert:

; or (d) if a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) is in force—the aircraft is being used for or in connection with the emergency to which the declaration relates.

Administrative Decisions (Judicial Review) Act 1977

2 After paragraph (zf) of Schedule 1

Insert:

(zfa) decisions under Part 2 of the *National Emergency Declaration Act 2020* in relation to a declaration made under subsection 11(1) of that Act;

Air Navigation (Essendon Fields Airport) Regulations 2018

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

Add:

(v) if a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) is in force—an emergency to which the declaration relates;
or

Air Navigation (Gold Coast Airport Curfew) Regulations 2018

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

Add:

- (v) if a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) is in force—an emergency to which the declaration relates; or

Airports Act 1996

5 Paragraph 250(8)(d)

After “(whether natural or otherwise),”, insert “including the management of an emergency to which a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) relates”.

6 Subsection 251(3)

After “(whether natural or otherwise),”, insert “including the management of an emergency to which a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) relates”.

Air Services Regulations 2019

7 Subsection 20(1)

Repeal the subsection (not including the notes), substitute:

- (1) AA has the function of providing services and facilities to assist in:
 - (a) if a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) is in force—an emergency to which the declaration relates; or
 - (b) an incident or circumstance that causes, or threatens to cause, any of the following:
 - (i) death or injury to persons;
 - (ii) damage to property;
 - (iii) harm to the environment;
 - (iv) disruption to essential services.

Aviation Transport Security Act 2004

8 After paragraph 67(1)(b)

Insert:

; or (c) both of the following apply:

- (i) a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) is in force;
- (ii) the Secretary is satisfied that additional security measures are appropriate to support the national emergency declaration;

9 Paragraphs 70(3)(a) and (b)

Repeal the paragraphs, substitute:

- (a) in relation to a special security direction made under subsection 67(1):
 - (i) the special security direction is revoked in writing by the Secretary; or
 - (ii) the special security direction ceases to have effect under subsection (6) of this section or subsection 71(2); or
- (b) for a special security direction made under paragraph 67(1)(c)—the national emergency declaration ceases to have effect under the *National Emergency Declaration Act 2020*.

Christmas Island Emergency Management Ordinance 2012

10 After subsection 16A(1)

Insert:

- (1A) The Territory Controller may declare that an emergency situation exists in the Territory or part of the Territory if:
 - (a) a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) is in force; and
 - (b) the Territory Controller is satisfied that:
 - (i) the emergency to which the national emergency declaration relates is affecting, or is likely to affect, the Territory; and
-

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

11 After subsection 17(1)

Insert:

- (1A) The Administrator may declare that a state of emergency exists in the Territory or part of the Territory if:
 - (a) a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) is in force; and
 - (b) the Administrator is satisfied that:
 - (i) the emergency to which the national emergency declaration relates is affecting, or is likely to affect, the Territory; and
 - (ii) extraordinary measures are required to prevent or minimise the effect, or likely effect, of that emergency on the Territory.

Civil Aviation Safety Regulations 1998

12 Subsection 11.185(2)

Omit “or some other large-scale emergency”, substitute “some other large-scale emergency, or an emergency to which a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) relates”.

Cocos (Keeling) Islands Emergency Management Ordinance 2012

13 After subsection 16A(1)

Insert:

- (1A) The Territory Controller may declare that an emergency situation exists in the Territory or part of the Territory if:
 - (a) a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) is in force; and
 - (b) the Territory Controller is satisfied that:

- (i) the emergency to which the national emergency declaration relates is affecting, or is likely to affect, the Territory; and
- (ii) extraordinary measures are required to prevent or minimise the effect, or likely effect, of that emergency on the Territory.

14 After subsection 17(1)

Insert:

- (1A) The Administrator may declare that a state of emergency exists in the Territory or part of the Territory if:
- (a) a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) is in force; and
 - (b) the Administrator is satisfied that:
 - (i) the emergency to which the national emergency declaration relates is affecting, or is likely to affect, the Territory; and
 - (ii) extraordinary measures are required to prevent or minimise the effect, or likely effect, of that emergency on the Territory.

Competition and Consumer Act 2010

15 Subsection 90(7)

Omit “the Commission is satisfied in all the circumstances”.

16 Paragraphs 90(7)(a) and (b)

Before “that”, insert “the Commission is satisfied in all the circumstances”.

17 At the end of subsection 90(7)

Add:

; or (c) all of the following apply:

- (i) a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) is in force;

- (ii) 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
- (iii) 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.

18 Subsection 90(9A)

After “paragraph (7)(b)”, insert “and subparagraph (7)(c)(iii)”.

Crimes Act 1914

19 Paragraph 23YUF(2A)(c)

After “emergency”, insert “, including an emergency to which a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) relates”.

Designs Act 2003

20 Paragraph 96A(3)(a)

After “emergency”, insert “, including an emergency to which a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) relates”.

Environment Protection and Biodiversity Conservation Act 1999

21 Paragraph 28(3)(b)

After “national emergency”, insert “, including an emergency to which a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) relates”.

22 Subsection 158(5)

After “national emergency”, insert “, including an emergency to which a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) relates”.

Environment Protection (Sea Dumping) Act 1981

23 After subsection 19(7)

Insert:

- (7A) For the purposes of subsection (7), an emergency includes an emergency to which a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) relates.

Income Tax Assessment Act 1997

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

Repeal the paragraphs, substitute:

- (a) the event developed rapidly and resulted in:
- (i) the death, serious injury or other physical suffering of a large number of people; or
 - (ii) widespread damage to property or the natural environment; or
- (b) if a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) is in force—the event is the subject of the national emergency declaration.

Industrial Chemicals Act 2019

25 Paragraph 67(2)(b)

Repeal the paragraph, substitute:

- (b) be satisfied that the introduction of the industrial chemical is in the public interest to address:
- (i) significant risks to human health or the environment; or
 - (ii) if a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) is in force—an emergency to which the declaration relates.

***Jervis Bay Territory Emergency Management Ordinance
2015***

26 After subsection 15(1)

Insert:

- (1A) 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) a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) is in force; and
 - (b) the Minister is satisfied that the emergency to which the national emergency declaration relates is affecting, or is likely to affect, the Territory.

Liquid Fuel Emergency Act 1984

27 Paragraph 16(2)(b)

Repeal the paragraph, substitute:

- (b) either:
- (i) a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) is in force; or
 - (ii) 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, of liquid fuel.

***Maritime Transport and Offshore Facilities Security Act
2003***

28 Subsection 33(3)

Repeal the subsection, substitute:

- (3) The Secretary must not give a security direction unless:
-

- (a) it is appropriate to do so because an unlawful interference with maritime transport or offshore facilities is probable or imminent; or
- (b) if a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) is in force—the Secretary is satisfied that the security direction is appropriate to support the national emergency declaration.

29 Subsection 37(3)

Repeal the subsection, substitute:

- (3) A security direction remains in force until the earliest of the following occurs:
 - (a) the direction is revoked in writing by the Secretary;
 - (b) the direction has been in force for a continuous period of 3 months;
 - (c) if the direction was made for the purposes of paragraph 33(3)(b)—the national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) ceases to be in force.

National Health Act 1953

30 Paragraph 86E(2)(b)

After “emergency”, insert “, including an emergency to which a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) relates”.

National Health Security Act 2007

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

Insert:

- (ca) if a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) is in force—an emergency to which the declaration relates, if the emergency relates to public health;

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

Omit “or (c)”, substitute “, (c) or (ca)”.

33 After subsection 60A(2)

Insert:

- (2A) Without limiting paragraph (2)(a), the Minister may be satisfied that there is a threat involving the agent to one or more matters mentioned in that paragraph if a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) is in force.

Norfolk Island Continued Laws Ordinance 2015

34 After item 64 of Schedule 1

Insert:

64A After subsection 9(1)

Insert:

- (1A) For the purposes of subsection (1), an emergency includes an emergency to which a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) relates.

Offshore Petroleum and Greenhouse Gas Storage Act 2006

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

After “emergency”, insert “, including an emergency to which a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) relates,”.

Patents Act 1990

36 Paragraph 163A(3)(a)

After “emergency”, insert “, including an emergency to which a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) relates”.

Privacy Act 1988

37 Subsection 6(1)

Insert:

national emergency declaration has the same meaning as in the *National Emergency Declaration Act 2020*.

38 Section 80J

Before “The Prime Minister”, insert “(1)”.

39 Section 80J (note)

Omit “section”, substitute “subsection”.

40 At the end of section 80J

Add:

- (2) The Prime Minister or the Minister may also make a declaration under this section if:
- (a) a national emergency declaration is in force; and
 - (b) the Prime Minister or the 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 this Part to apply.

Radiocommunications Act 1992

41 Section 5

Insert:

national emergency declaration has the same meaning as in the *National Emergency Declaration Act 2020*.

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

Add:

Note: 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).

43 After paragraph 49(1)(d)

Insert:

; or (e) if a national emergency declaration is in force—dealing with the emergency to which the declaration relates.

44 After paragraph 172(d)

Insert:

; or (e) if a national emergency declaration is in force—dealing with the emergency to which the declaration relates.

45 After paragraph 196(1)(d)

Insert:

; or (e) if a national emergency declaration is in force—dealing with the emergency to which the national emergency declaration relates.

46 At the end of Division 1 of Part 4.4

Add:

221A Effect of a national emergency declaration

If a national emergency declaration is in force:

- (a) the declaration is taken to be a Proclamation under section 219 for the purposes of this Act; and
- (b) the declaration is taken to have been published in the Gazette on the day on which the declaration commenced; and
- (c) the period of emergency is the period specified in the declaration for the purposes of subparagraph 11(4)(b)(iii) of the *National Emergency Declaration Act 2020* or that period as extended or further extended under section 12 of that Act; and
- (d) subsection 219(3) does not apply to the declaration; and
- (e) the period of emergency is terminated on the day the declaration ceases to be in force.

Social Security Act 1991

47 Subsection 36(1)

Repeal the subsection (not including the note), substitute:

- (1) The Minister may determine in writing that an event is a major disaster if:
 - (a) the Minister is satisfied that the event is a disaster that has such a significant impact on individuals that a government response is required; or
 - (b) if a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) is in force—the event is an emergency to which the declaration relates.

48 Saving of existing declarations

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.

49 After subsection 36(1)

Insert:

- (1A) In deciding whether to make a determination under paragraph (1)(b), the Minister may have regard to the matter in paragraph (1)(a).

50 Paragraph 36A(1)(b)

Repeal the paragraph, substitute:

- (b) either:
 - (i) the event is of national significance; or
 - (ii) if a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) is in force—the event is an emergency to which the declaration relates.

51 After subsection 36A(1)

Insert:

- (1A) In deciding whether to make a determination under subparagraph (1)(b)(ii), the Minister may have regard to the matters in paragraph (1)(a) and subparagraph (1)(b)(i).

52 Paragraph 36A(2)(a)

Before “the extent”, insert “unless subparagraph (1)(b)(ii) applies—”.

Social Security (Administration) Act 1999

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

Insert:

- ; or (iii) if a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) is in force—an emergency to which the declaration relates.

Sydney Airport Curfew Act 1995

54 After paragraph 18(b)

Insert:

- ; or (c) if a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) is in force—the aircraft is being used for or in connection with the emergency to which the declaration relates.

Telecommunications Act 1997

55 After subsection 313(4)

Insert:

- (4A) A carrier or carriage service provider must, in connection with:
- (a) the operation by the carrier or provider of telecommunications networks or facilities; or
 - (b) the supply by the carrier or provider of carriage services;

give officers and authorities of the Commonwealth and of the States and Territories such help as is reasonably necessary for the following purposes:

- (c) if a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) is in force—preparing for, responding to or recovering from an emergency to which the declaration relates;
- (d) preparing for, responding to or recovering from a disaster or emergency that has been declared to be a disaster or a state of emergency (as the case may be) by or with the approval of a Minister of a State or Territory under the law of the State or Territory;
- (e) if a declaration made for the purpose of subsection (4D) is in force—preparing for, responding to or recovering from an emergency to which the declaration relates.

Note: Section 314 deals with the terms and conditions on which such help is to be provided.

(4B) A carriage service intermediary who arranges for the supply by a carriage service provider of carriage services must, in connection with:

- (a) the operation by the provider of telecommunications networks or facilities; or
- (b) the supply by the provider of carriage services;

give officers and authorities of the Commonwealth and of the States and Territories such help as is reasonably necessary for the following purposes:

- (c) if a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) is in force—preparing for, responding to or recovering from an emergency to which the declaration relates;
 - (d) preparing for, responding to or recovering from a disaster or emergency that has been declared to be a disaster or a state of emergency (as the case may be) by or with the approval of a Minister of a State or Territory under the law of the State or Territory;
 - (e) if a declaration made for the purpose of subsection (4D) is in force—preparing for, responding to or recovering from an emergency to which the declaration relates.
-

Note: Section 314 deals with the terms and conditions on which such help is to be provided.

- (4C) Subsections (4A) and (4B) do not limit subsection (3) or (4).
- (4D) The Minister may, in writing, declare that an emergency exists for the purposes of this subsection.
- (4E) The Minister must publish, by electronic or other means, a copy of the declaration made under subsection (4D) as soon as practicable after making the declaration.
- (4F) A declaration made under subsection (4D) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the declaration.
- (4G) In requiring help for the purposes of subsection (4A) or (4B), the officer or authority of the Commonwealth, State or Territory making the requirement must have regard to any guidelines in force under subsection (4H).
- (4H) The Minister may, by legislative instrument, formulate guidelines for the purposes of subsection (4G).

56 Subsection 314(1)

Omit “or (4)”, substitute “, (4), (4A) or (4B)”.

Therapeutic Goods Act 1989

57 Subsection 3(1)

Insert:

national emergency declaration has the same meaning as in the *National Emergency Declaration Act 2020*.

58 After subsection 18A(1)

Insert:

- (1A) The Minister may exempt goods under subsection (1) only if the Minister is satisfied of the matter in subsection (2) or (2A).

59 Subsection 18A(2)

Omit “The Minister may exempt goods under subsection (1) only if the Minister is satisfied that,”, substitute “The matter in this subsection is that”.

60 After subsection 18A(2)

Insert:

(2A) The matter in this subsection is that:

- (a) a national emergency declaration is in force; and
- (b) either of the following apply:
 - (i) 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;
 - (ii) 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; and
- (c) the Minister is satisfied that the exemption is in the national interest.

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

After “(2)(b)”, insert “or subparagraph (2A)(b)(ii)”.

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

After “(2)(b)”, insert “or subparagraph (2A)(b)(ii)”.

63 After subsection 32CB(1)

Insert:

(1A) The Minister may make an exemption under subsection (1) only if the Minister is satisfied of the matter in subsection (2) or (2A).

64 Subsection 32CB(2)

Omit “The Minister may make an exemption under subsection (1) only if the Minister is satisfied that,”, substitute “The matter in this subsection is that”.

65 After subsection 32CB(2)

Insert:

(2A) The matter in this subsection is that:

- (a) a national emergency declaration is in force; and
- (b) either of the following apply:
 - (i) 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;
 - (ii) 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
- (c) the Minister is satisfied that the exemption is in the national interest.

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

After “(2)(b)”, insert “or subparagraph (2A)(b)(ii)”.

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

After “(2)(b)”, insert “or subparagraph (2A)(b)(ii)”.

68 After subsection 41GS(1)

Insert:

(1A) The Minister may exempt devices under subsection (1) only if the Minister is satisfied of the matter in subsection (2) or (2A).

69 Subsection 41GS(2)

Omit “The Minister may make an exemption under subsection (1) only if the Minister is satisfied that,”, substitute “The matter in this subsection is that”.

70 After subsection 41GS(2)

Insert:

(2A) The matter in this subsection is that:

(a) a national emergency declaration is in force; and

(b) either of the following apply:

(i) 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;

(ii) 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

(c) the Minister is satisfied that the exemption is in the national interest.

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

After “(2)(b)”, insert “or subparagraph (2A)(b)(ii)”.

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

After “(2)(b)”, insert “or subparagraph (2A)(b)(ii)”.

73 Application of amendments

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

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

Omit “172, 196, 219 or 220”, substitute “196, 219, 220 or 269”.

Radiocommunications Act 1992

2 At the end of section 269

Add:

- (7) Without limiting subsection (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.