



Proactive Release

The following items have been proactively released by the Rt Hon Jacinda Ardern, Prime Minister:

Paper: COVID-19 Response (Further Management Measures) Bill – Approval for Introduction

**Minute of Decision: COVID-19 Response (Further Management Measures)
Legislation Bill: Approval for Introduction**

Some parts of this information release would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the Act). Where this is the case, the relevant section of the Act that would apply has been identified. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Key to redaction code:

- 9(2)(f)(iv), to maintain the confidentiality of advice tendered by or to Ministers and officials
- 9(2)(h), to maintain legal professional privilege

Office of the Leader of the House

Cabinet

COVID-19 Response (Further Management Measures) Bill – Approval for Introduction

Proposal


- 1 This paper seeks agreement to introduce the COVID-19 Response (Further Management Measures) Bill to the House of Representatives.
- 2 I propose the Bill be referred to the Epidemic Response Committee for consideration and enacted by Friday 15 May 2020. Noting that only six days have been provided for the Epidemic Response Committee's consideration of the Bill, I propose that Cabinet authorise the Leader of House, in consultation with portfolio Ministers, to approve any minor amendments to the Bill arising from the select committee process.

Policy

- 3 On 25 March 2020, the COVID-19 Response (Urgent Management Measures) Legislation Bill received Royal Assent, putting into place the first tranche of legislation changes considered necessary to effectively respond to COVID-19.
- 4 In the weeks that have followed, government agencies have continued to identify a range issues requiring urgent legislative changes that are not feasible to progress as Immediate Modification Orders under the Epidemic Preparedness Act 2006. Having regard to this, Cabinet Business Committee (CBC) agreed on 15 April 2020 to progress a further COVID-19 Omnibus Bill as soon as practical after the House resumes sitting [CBC-20-MIN-0038].
- 5 CBC agreed to a two-tiered approval process for the policy initiatives to be given effect by the Omnibus Bill. First, the more significant matters would be agreed by Cabinet, or the Group of Ministers with Power to Act on COVID-19 matters. Over the past three weeks, the following proposals have been approved in that context:
 - 5.1 Changes to insolvency and corporate law to increase the prospects of businesses surviving the COVID-19 response. These amendments include the addition of a 'Business Debt Hibernation' regime to allow companies and other entities to enter into agreements with their creditors in relation to existing debt, adding a safe harbour for insolvency related directors' duties, extending statutory deadlines, the ability for Registrars to issue exemption notices in relation to compliance with statutory obligations, and relief for entities that cannot comply with rules in their constitutions because of COVID-19. Acting under authority delegated by the Group of Ministers with Power to Act on COVID-19 matters on 3 April 2020, the Ministers of Finance and Commerce and Consumer affairs subsequently agreed to the additional technical changes outlined in Appendix one arising throughout the drafting process.

5.2

s9(2)(f)(iv)



5.3 Changes to the parental leave scheme to allow COVID-19 response workers (which means that due to circumstances related to COVID-19, this worker's role cannot reasonably be filled by another person, or there is higher than unusual demand for workers in their role) to return temporarily to work without being disadvantaged by losing entitlements to certain leave and payments.

5.4 Managing local government by-election timing by making immediate changes to key timeframes for current local government by-elections, establishing an Order-in-Council mechanism for making further changes to by-election timing and enabling local authority chief executives to postpone any further by-elections. This will ensure that qualified persons have a reasonable and equal opportunity to stand as a candidate, nominate a candidate, or vote, in local by-elections. As drafted, the Bill only includes direct changes to the current by-election for the Otorohanga District Council, as this is the only by-election underway which is expected to still be in progress at the time of the Bill's enactment. In the unlikely event that additional by-elections commence ahead of the Bill's enactment, I propose that Cabinet authorise the Leader of the House and the Minister for Local Government, jointly, to approve a Supplementary Order Paper to extend the Bill's coverage to those by-elections in accordance with the policy parameters previously agreed by the Covid-19 Ministerial Group.

5.5 Changes to the Gambling Act 2003, to allow, for a period of 18 months, the Heart Foundation, Coastguard and Countdown Kids Charitable Trust to send and receive forms and take payments for their lotteries online or by phone. This provides these organisations the ability to operate their lotteries despite the social restrictions and continuing impact COVID-19 is likely to have on face-to-face sales.

5.6 Changes to the Commerce Act 1986 to allow the Commerce Commission to authorise conduct that may technically breach the restrictions on cartel conduct, but would be of such a benefit to the public that it should be permitted.

- 6 Second, it was agreed that responsible Ministers would be delegated the power to approved additional minor matters for inclusion in the Omnibus Bill that came within the following policy parameters:
- 6.1 Deferring the commencement of new regulatory requirements
 - 6.2 Deferring critical deadlines or providing exemptions where compliance is not possible or is burdensome
 - 6.3 Enabling fast-tracking of legislative powers to mitigate impracticality issues, and
 - 6.4 Mitigating problems with legislative compliance due to technological reasons.
- 7 On 23 April 2020 Cabinet Business Committee noted the following 23 minor amendments had been approved for inclusion in the Bill [CBC-20-MIN-0050]:

Amendment	Portfolio
1. Deferring the commencement of new regulatory requirements	
1.1. Consumers' Right to Know (Country of Origin of Food) Act 2018. Deferring the date by which the Minister must recommend making regulations to prescribe a 'consumer information standard'.	Commerce and Consumer Affairs
1.2. Financial Benchmarks (Derivatives Margin and Benchmarking) Reform Amendment Act 2019. Deferring the commencement date for Part 2.	Commerce and Consumer Affairs
1.3. Financial Services Legislation Amendment Act 2019 Commencement Order 2019. Deferring the commencement date.	Commerce and Consumer Affairs
2. Deferring critical deadlines	
2.1. Local Government Act 2002. Amend to provide more flexibility in the special consultative procedure process. Amend to streamline the process for amending long-term plans. Suspend mandatory revocation of bylaws.	Local Government
2.2. Arms Act 1983. Amend to extend the duration of firearms licences and dealers' licences that have expired, provided the holders have applied for a new licence.	Police
2.3. Food Act 2014. Amend to allow for registrations of food control plans, national programmes and importers to be renewed if they expire during or shortly after a lockdown period.	Food Safety

Amendment	Portfolio
2.4. Epidemic Preparedness Act 2006. Amend to enable the courts and tribunals to modify a wide-range of statutory timeframes to address the current and downstream implications of the epidemic for compliance with those timeframes.	Justice
3. Enabling fast-tracking of current legislative powers to mitigate practicality issues	
3.1. Commerce Act 1986. Amend to enable fast-tracking of authorisations of restrictive trade practices and discretion to waive fees.	Commerce and Consumer Affairs
3.2. Credit Contracts and Consumer Finance Act 2003. Amend so changes to the Responsible Lending Code can come into effect sooner than 28 days after notification in the Gazette.	Commerce and Consumer Affairs
3.3. Mental Health (Compulsory Assessment and Treatment) Act 1992. Amend to enable the initial assessment process to be done by a wider range of mental health practitioners.	Health
3.4. Coroners Act 2002. Amend to allow the preliminary inspection of deceased (where they are suspected to have had COVID-19) to also include taking and testing of swabs.	Justice
3.5. Customs and Excise Act 2018. Amend to suspend the expiry of Orders in Council related to goods being prohibited from import or export.	Customs
3.6. Fisheries Act 1996. Amend so that fishing permits that would be automatically suspended for commercial fishers who have not paid deemed value amounts that fall due during the period from 20 April 2020 until 30 September 2021 may be reinstated where the fisher enters into a repayment agreement with the Director-General.	Fisheries
3.7. Fire and Emergency New Zealand Act 2017. Amend to allow Fire and Emergency New Zealand to impose restrictions over an area while the Epidemic (COVID-19) Notice is in force.	Internal Affairs
4. Mitigating problems with legislative compliance due to technological reasons	
<p>4.1. Mental Health (Compulsory Assessment and Treatment) Act 1992.</p> <p>Amend to allow district inspectors and official visitors to conduct 'virtual inspections' while the epidemic notice is in force.</p> <p>Amend to allow clinical examinations, assessments and reviews to be conducted through audio-visual technology when in-person is not practicable.</p> <p>Amend to allow judicial and tribunal examinations and mental health review tribunal reviews to be done through audio-visual technology when in-person is not practicable.</p>	Health

Amendment	Portfolio
4.2. National Animal Identification and Tracing Act 2012. Amend to allow infringement notices to be served by email.	Biosecurity
4.3. Biosecurity Act 1993. Amend to allow declarations of restricted place to be served by means other than personal delivery, such as post, fax and email.	Biosecurity
4.4. Local Government Act 2002 (and cuts across other Acts). Amend the mode by which local authorities must deliver public notices.	Local government
4.5. Corrections Act 2004. Amend to allow visiting Justices and other interested persons to attend hearings by audio-link.	Corrections
4.6. Courts (Remote Participation) Act 2010. Amend to permit the use of audio-only links in civil proceedings and criminal procedural matters.	Justice
4.7. Resource Management Act 1991. Amend to allow local authority and consent authority hearings to be conducted using audio-visual technology. Amend to enable certain documents to be made available on an internet site.	Environment
4.8. Unit Titles Act 2010. Amend to allow people to attend body corporate meetings via an audio-visual link.	Housing

Impact Analysis

Regulatory Impact Statement

8 The Treasury has determined that this is a direct Covid-19 response and has suspended the Regulatory Impact Assessment requirements (in accordance with CAB-20-MIN-0138).

Compliance

9 This Bill complies with:

- 9.1 the principles of the Treaty of Waitangi;
- 9.2 the rights and freedoms contained in the Human Rights Act 1993 and the New Zealand Bill of Rights Act, to the extent that any amendments that limit those human rights are justified in the circumstances;
- 9.3 the disclosure statement requirements;
- 9.4 the principles and guidelines set out in the Privacy Act 1993; and
- 9.5 relevant international standards and obligations;

- 10 The Attorney-General will consider advice from the Ministry of Justice and the Crown Law Office about the consistency of the Bill with the New Zealand Bill of Rights Act 1990.
- 11 The Bill includes provisions which raise issues under the Legislation Guidelines (2018 edition). In some cases the provisions are drafted to have retrospective effect. The guidelines set out a starting point that legislation should not have retrospective effect but provide limited exceptions when retrospective legislation might be appropriate (for example where retrospectivity is entirely to the benefit of those affected or validates matters generally understood and intended to be lawful).
- 12 Aspects of the insolvency and corporate governance amendments also raise issues relating to delegated legislation and property rights. These issues are set out in the attached disclosure statement.
- 13 Officials have not been able to consult with the Legislation Design and Advisory Committee on the Bill in the time available.

Consultation

- 14 The following government departments and agencies have been consulted on the proposed amendments in the Bill: the Ministries of Education, Health, Primary Industries, Justice, Housing and Urban Development, Business, Innovation and Employment, the Ministry for Women, the National Emergency Management Agency, the Department of Internal Affairs, the New Zealand Customs Service, the Department of the Prime Minister and Cabinet, the Inland Revenue Department, the State Services Commission and the Parliamentary Counsel Office.
- 15 The Crown Law Office has been consulted s9(2)(h) [REDACTED]

Binding on the Crown

- 16 There is no need to include a provision in connection with binding the Crown in relation to the provisions in the Bill that amend existing Acts. However, there is a need for such a provision in relation to the part of the Bill that provides for:
- 16.1 registrars and other decision making authorities to make temporary exemption orders providing relief from statutory deadlines (e.g. filing annual returns) and other obligations that cannot be reasonably complied with in the current circumstances, and
- 16.2 entities to make temporary exceptions to their own rules for the same or similar reasons, and to permit electronic communications and meetings to take place even if their constitutions do not provide for this.
- 17 The approach being taken in relation to these 'exemption and exception' provisions is to modify the application of the relevant Acts, rather than amending them. There will, therefore, be a new stand-alone Act as a result of the Bill being passed.

- 18 I am recommending the inclusion of a provision in that new Act stating that the Act binds the Crown. It is essential to do so because most of the exemption orders will be issued by persons holding statutory positions, such as registrars appointed under the State Sector Act 1988.

Allocation of decision-making powers

- 19 The Bill does not affect the allocation of decision-making powers between the executive, the courts, and tribunals.

Associated regulations

- 20 Changes to the Local Electoral Act enable Orders in Council to be made while an Epidemic Notice is in force to adjourn certain electoral processes.
- 21 The changes to the Companies Act 1993 provide for the making of regulations to extend or reactivate the safe harbour provisions and to confine the scope of the business debt hibernation scheme.

Other Instruments

- 22 The Bill states that the exemptions outlined at paragraphs 16.1 and 16.2 above will be legislative instruments for the purposes of the Legislation Act 2012 (and must be drafted by the Parliamentary Counsel Office) only if, before the exemption is issued, the responsible Registrar or Minister notifies the Chief Parliamentary Counsel in writing that the exemption will be a legislative instrument. Other exemptions will not be legislative instruments
- 23 All exemptions will be disallowable instruments and must be presented to the House.

Definition of Minister/department

- 24 The Bill does not define any Ministry or Department.

Commencement of legislation

- 25 The Bill will come into force the day after Royal Assent. The following modifications have retrospective application:

25.1 s9(2)(f)(iv)

25.2 Provisions relating insolvency and corporate governance law;

25.3 The modification to the Resource Management Act to provide for hearings that have been conducted using AVL since 25 March 2020, the date when the COVID-19 physical distancing restrictions came into effect;

25.4 The modification to the Parental Leave and Employment Protection Act 1987;

- 25.5 The new principal Act that provides for exemptions from some requirements for entities of various types of entities within the Commerce and Consumer Affairs Portfolio; and
- 25.6 The amendment to the Food Act 2014 to allow for the renewal of registrations of food control plans, national programmes and importers after they have expired.

Parliamentary Stages


- 26 The Bill should be introduced to Parliament on 5 May 2020 and considered by the Epidemic Response Committee between 6 and 12 May 2020 before being enacted on 15 May 2020.

Proactive release

- 27 I will release this paper proactively, subject to redactions as appropriate under the Official Information Act 1982.

Recommendations

The Leader of the House recommends that the Committee:

- 1 **Note** the attached COVID-19 Response (Further Management Measures) Bill authorised by the Cabinet Business Committee with Power to Act [CBC-20-MIN-0038];
- 2 **Note** that there may be minor proof reading changes to the Bill prior to introduction;
- 3 s9(2)(f)(iv) 
- 4 **Agree** that the attached COVID-19 Response (Further Management Measures) Bill is introduced to the House on 5 May 2020;
- 5 **Note** my intention to refer the Bill to the Epidemic Response Committee for consideration between 6 and 12 May 2020 in view of enacting the Bill by 15 May 2020;
- 6 **Note** that Part 2 of the Bill proposes the enactment of new stand-alone legislation to be called the COVID-19 Response (Requirements for Entities – Modifications and Exemptions) Act;
- 7 **Agree** to include a provision binding the Crown in the COVID-19 Response (Requirements for Entities – Modifications and Exemptions) Act;
- 8 **Authorise** the Leader of House and the Minister of Local Government jointly, to approve, if required, a Supplementary Order Paper making further adjustments to key dates for any additional by-elections in progress at the time of the Bill's enactment;

- 9 **Authorise** the Leader of House, in consultation with portfolio Ministers, to approve any minor amendments to the COVID-19 Response (Further Management Measures) Bill arising from the select committee process.

Authorised for lodgement

Hon Chris Hipkins
Leader of the House

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Appendix: further decisions relating to insolvency and corporate governance changes in the Omnibus Bill

On 21 April and 27 April the Minister of Finance and Minister of Commerce and Consumer Affairs agreed to the following policy changes in respect of the insolvency and corporate governance changes, acting under authority delegated by the CVD group of Ministers (on 3 April 2020).

- Agreed to the more detailed specification of BDH set out below.
- Agreed to the offence provisions found in clauses 7, 26, 27, 34 and 71 of new Schedule 13 of the Companies Act 1993, to be inserted the draft Bill.
- Agreed to allow the safe harbour to be reactivated, by Order in Council, if Alert Level 3 or 4 is re-entered.
- Agreed to make the following additions in relation to entities under non-MBIE legislation:
 - i. Extend the entity constitution relief provisions to Post-settlement Governance Entities recognised under Te Tiriti o Waitangi settlement legislation
 - ii. Extend both powers to:
 - A. Māori land trusts, Māori incorporations, Māori reservations and assembled owners constituted under Te Ture Whenua Māori Act 1993
 - B. Māori Trust Boards established under the Māori Trust Boards Act 1955
 - C. Māori Associations established under the Māori Community Development Act 1962
 - D. Mandated Iwi Organisations recognised under the Māori Fisheries Act 2004
- Noted that CVD agreed to temporary amendments to relax deadlines for Registrars under various Acts to carry out certain functions, but that after further work, officials have not identified any deadlines that need to be relaxed and that the legislation will not contain provisions to this effect.

Detailed specification of BDH agreed to under paragraph (a) above.

Stage 1: Directors determine if they meet the threshold for BDH

- 1 A minimum of 80% of the directors of the company must agree that:
 - a. in their good faith opinion the company is facing or is likely to face significant liquidity problems in the next 6 months as a result of the impact of the COVID-19 pandemic on them or their creditors;
 - b. the company was able to pay its debts as they fell due on 31 December 2019; and
 - c. the directors consider in good faith that it is more likely than not that the company will be able to pay its debts as they fall due within 18 months either as a result of trading conditions improving or being able to reach an accommodation with their creditors.
- 2 Each of those directors must make a statutory declaration that the criteria have been met and send a copy to each creditor and the Registrar of Companies, along with an overview of a proposal for BDH.

IN CONFIDENCE

- 3 A one month moratorium on the enforcement of debts against the company starts from the date the statutory declaration is sent.

Stage 2: During the one month moratorium

- 4 The directors must send a final version of the proposal no later than 5 days before the month ends. Directors will have 3 weeks to provide a proposal for their creditors to vote on. The proposal will be required to contain:
 - a. any conditions proposed by the company on allowing it to go into BDH – for example that it will pay each of its existing creditors a certain number of cents in the dollar
 - b. an estimate of the total amount of debt owed by the business
 - c. the number of creditors
 - d. An estimate of the debt owing to that particular creditor.
- 5 This information will be able to be provided individually and is intended to allow creditors to challenge the weighting of their vote.
- 6 The directors will also be able to provide any other information that they think will be helpful to creditors in deciding whether or not a business should be allowed to enter BDH for a period of 6 months.
- 7 Directors will have the discretion to call a meeting (audio-visual). It is unlikely that a meeting will be needed for many small businesses.
- 8 A vote will take place (electronic or postal). The vote will be successful if:
 - a. it is supported by a simple majority of creditors participating in the vote; and
 - b. those creditors supporting the proposal account for more than half of the company's total debt.
- 9 There will be no classes of creditors for the purpose of the vote.
- 10 The default position is that related party creditors will not participate in the vote, because their voting could be unreasonably prejudicial to other creditors. However a related party creditor will be able to apply to the High Court to reverse the default position (in a manner which will not delay the vote).

Stage 3(a): If the vote passes

- 11 The directors notify every known creditor and Registrar that the vote has been successful and of the agreed terms of the BDH.
- 12 The six month BDH process starts from date of vote, with:
 - a. a moratorium applying to all creditors on the enforcement of existing debts; and

- b. it being a condition of the moratorium that the company comply with the terms of the proposal.

Stage 3(b): If the vote doesn't pass

- 13 If creditors do not accept the proposal, the directors will decide whether:
 - a. the company will continue trading
 - b. to seek to enter a formal compromise agreement under Part 14
 - c. enter voluntary administration under Part 15A; or
 - d. appoint a liquidator under Part 16.

Other key features

Scope of moratorium protection

- 14 The moratorium put in place by the BDH regime will only apply to pre-existing debts. This restriction is intended to ensure that once a business has entered into BDH other businesses are not incentivised to stop trading with it.

Protection for creditors

- 15 Creditors will be able to apply to the Court to not be bound by the moratorium where this is unfair to them or if there has been material noncompliance with the requirements around a business's entry into BDH. The drafting is intended to make the threshold for such an application high, to discourage applications except where there is the potential for significant unfairness.
- 16 Creditors with security over substantially all of the assets of a business will still be able to take enforcement action during BDH in some cases. This is intended to prevent those creditors taking enforcement action before a business is able to enter BDH.

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Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

COVID-19 Response (Further Management Measures) Legislation Bill: Approval for Introduction

Portfolio **Leader of the House**

On 4 May 2020, Cabinet:

- 1 **noted** that on 15 April 2020, the Cabinet Business Committee agreed:
 - 1.1 to progress a COVID-19 Omnibus Bill as soon as practicable after the House resumes sitting;
 - 1.2 that the Omnibus Bill will include urgent COVID-19 management measures approved by Cabinet or by the group of Ministers with Power to Act on COVID-19 matters;

[CBC-20-MIN-0038]
- 2 **noted** that the COVID-19 Response (Further Management Measures) Legislation Bill gives effect to the above decisions;
- 3 **noted** that there may be minor proof reading changes to the Bill prior to introduction;
- 4 s9(2)(f)(iv)
- 5 **approved** for introduction the COVID-19 Response (Further Management Measures) Legislation Bill [PCO 22874/5.0], subject to the approval of the government caucuses and sufficient support in the House of Representatives;
- 6 **agreed** that the Bill be:
 - 6.1 introduced to the House on 5 May 2020;
 - 6.2 referred to the Epidemic Response Committee for consideration between 6 and 12 May 2020;
 - 6.3 enacted by 15 May 2020;
- 7 **noted** that Part 2 of the Bill proposes the enactment of new stand-alone legislation to be called the COVID-19 Response (Requirements for Entities – Modifications and Exemptions) Act;

- 8 **agreed** to include a provision binding the Crown in the COVID-19 Response (Requirements for Entities – Modifications and Exemptions) Act;
- 9 **authorised** the Leader of House and the Minister of Local Government jointly, to approve, if required, a Supplementary Order Paper making further adjustments to key dates for any additional by-elections in progress at the time of the Bill's enactment;
- 10 **authorised** the Leader of House, in consultation with portfolio Ministers, to approve any minor amendments to the Bill arising from the select committee process.

Michael Webster
Secretary of the Cabinet

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