



Cabinet Legislation Committee

Minute of Decision

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COVID-19 Response (Further Management Measures) Legislation Bill (No 2): Approval for Introduction

Portfolio **Leader of the House**

On 28 July 2020, the Cabinet Legislation Committee:

- 1 **noted** that on:
 - 1.1 11 May 2020, Cabinet approved initiatives for Vote Revenue for inclusion in the COVID-19 Response and Recovery Fund foundation package [CAB-20-MIN-0219.23];
 - 1.2 18 June 2020, the Cabinet Government Administration and Expenditure Review Committee agreed to amend statutory reporting and auditing timeframes that apply to public sector agencies, to reflect the impact of COVID-19 on these timeframes [GOV-20-MIN-0016];
 - 1.3 1 July 2020, the Cabinet Economic Development Committee agreed to amendments to the Accident Compensation Act 2001, via the upcoming COVID-19 Omnibus Bill, to apply the Accident Compensation (Experience Rating) Regulations 2019 to the 2021/22 levy years, without needing to comply with the consultation requirements in the Accident Compensation Act 2001 [DEV-20-MIN-0118];
- 2 **noted** the COVID-19 Response (Further Management Measures) Legislation Bill (No 2) contains further urgent legislative changes that are non-contentious but need to be made before the election to address COVID-19 related issues with reporting and other processes, and timeframes that are difficult, impracticable, or impossible to comply with due to the impact of COVID-19;
- 3 **noted** that there may be minor proof-reading changes to the Bill before introduction;
- 4 **agreed** that the COVID-19 Response (Further Management Measures) Legislation Bill (No 2) [PCO 23038/4.0] be introduced to the House on 3 August 2020, subject to the approval of the government caucuses and sufficient support in the House of Representatives;

5 **agreed** that the government propose that the Bill be enacted by 6 August 2020.

Gerrard Carter
Committee Secretary

Present:

Rt Hon Winston Peters
Hon Chris Hipkins (Chair)
Hon Andrew Little
Hon David Parker
Hon Stuart Nash
Hon Damien O'Connor
Hon Ron Mark
Hon Tracey Martin
Hon Poto Williams
Hon James Shaw
Hon Julie Ann Genter
Hon Eugenie Sage
Michael Wood MP (Senior Government Whip)

Officials present from:

Office of the Prime Minister
Officials Committee for LEG

In Confidence

Office of the Leader of the House

Chair, Cabinet Legislation Committee

COVID-19 Response (Further Management Measures) Legislation Bill (No 2): Approval for Introduction

Proposal

- 1 This paper seeks agreement to introduce the COVID-19 Response (Further Management Measures) Legislation Bill (No 2).

Policy

- 2 On 25 March 2020, the COVID-19 Response (Urgent Management Measures) Legislation Bill was passed. It put in place the first tranche of legislation changes considered necessary to respond effectively to COVID-19. On 15 May 2020, the COVID-19 Response (Further Management Measures) Legislation Bill was passed, enacting further urgent amendments to respond to COVID-19.
- 3 Government agencies have continued to identify a range of issues requiring urgent legislative changes before the election that are clearly related to COVID-19. These changes are needed to deal with the impact of COVID-19 on statutory timeframes and processes. Making the changes by way of Immediate Modification Orders under the Epidemic Preparedness Act 2006 would not be feasible.
- 4 On 18 June 2020 the Cabinet Government Administration and Expenditure Review Committee agreed to progress a further COVID-19 Bill to implement certain amendments to statutory timeframes in the Public Finance Act 1989 and the Crown Entities Act 2004. Cabinet authorised the Minister of Finance and the Parliamentary Counsel Office to make additional minor amendments to implement decisions that may arise during drafting (GOV-20-MIN-0016).
- 5 Cabinet also authorised Ministers responsible for legislation to approve policy requests for including in the Bill extensions to statutory timeframes for entities within the public sector for reporting covering the 2019/2020 financial year (GOV-20-MIN-0016).
- 6 This Bill is required to give effect to the proposed legislative changes. The Bill contains non-contentious amendments that are likely to get cross-party support.

Policy items with Cabinet approval

In-work tax credit grace periods [CAB-20-MIN-0219.23]

- 7 The Bill proposes changes to the Income Tax Act 2007 to allow families to continue to receive the in-work tax credit for a period of 2 weeks as earners transition between jobs, are unpaid for a period, or leave their employment. Currently earners may lose their entitlement to in-work tax credits over small unpaid periods even though the earner returns to paid work.

2020/21 ACC experience rating system to apply to 2021/22 [DEV-20-MIN-0118]

- 8 The current Accident Compensation (Motor Vehicle) Regulations 2019, Accident Compensation (Earners' Levy) Regulations 2019, and the Accident Compensation (Work Account Levy) Regulations 2019 contain the ability to continue the existing levy rates so that they apply for subsequent years. This means that new regulations are not required to give effect to the proposed rates. Given COVID-19 and pressures on both levy payers and the Scheme, 2020/21 rates for these Levy Accounts will continue to apply in the 2021/22 levy year.
- 9 The one exception to this is the Accident Compensation (Experience Rating) Regulations 2019 (the ACER regulations). These regulations specifically apply to the 2020/21 tax year only, so cannot automatically continue into the 2021/22 tax year. Cabinet approved the continuation of the Experience Rating System in the 2021/22 tax year, and the Bill proposes to amend the ACER Regulations directly so that they apply to the 2021/22 tax year. This change expedites an outcome that provides certainty for businesses at this time. Other minor and technical changes identified during drafting were also approved.

Extending reporting deadlines for public entities [GOV-20-MIN-0016]

- 10 Changes to the Public Finance Act 1989 and the Crown Entities Act 2004 will provide extended reporting deadlines by amending:
 - 10.1 section 26N of the Public Finance Act 1989 to extend, from November 2020 to no later than September 2021, the timeframe within which the Treasury must prepare, and the Minister of Finance must present to the House of Representatives, the statement on the long-term fiscal position as the current deadline is no longer achievable;
 - 10.2 the Public Finance Act 1989 and the Crown Entities Act 2004 to extend by up to 2 months the timeframes in which reports and statements must be produced and in which auditors must audit those reports and statements for the 2019/20 financial year for:
 - 10.2.1 departments;

10.2.2 organisations listed in Schedule 4 of the Public Finance Act 1989;

10.2.3 companies listed in Schedule 4A of the Public Finance Act 1989; and

10.2.4 Crown entities.

Items approved by Ministers with appropriate delegations

Extending deadlines for provision of end of year performance information [GOV-20-MIN-0016]

- 11 The Bill proposes changes to section 19B of the Public Finance Act 1989 to extend by up to 2 months the timeframe by which an appropriation Minister must prepare, and ensure presentation and publication of, end-of-year performance information on an appropriation. This will align the deadlines with those that will be extended by the amendments to the Public Finance Act 1989 described in paragraph 10.2.

Extending reporting deadlines for State-Owned Enterprises [GOV-20-MIN-0016]

- 12 The Bill proposes changes to section 15 of the State-Owned Enterprises Act 1986 to extend by up to 2 months the timeframe within which the board of a State enterprise must deliver reports and financial statements to shareholding Ministers for the 2019/2020 financial year.

Extending annual report timeframes for local authorities and council-controlled organisations [GOV-20-MIN-0016]

- 13 The Bill proposes changes to sections 67 and 98 of the Local Government Act 2002 to extend by 2 months the timeframes that apply to local authorities and council-controlled organisations as they prepare their annual report under those sections. The Office of the Auditor-General expressed concern that Covid-19 had created the risk of auditors being unable to provide robust audit assurance within the current timeframes. While there was initial consideration of using alternative mechanisms to extend these deadlines, the proposed changes in the Bill ensure consistency of reporting deadlines across public sector agencies to alleviate the pressures on the system.

Extending deadlines for Crown Research Institute reports [GOV-20-MIN-0016]

- 14 The Bill proposes changes to the Crown Research Institutes Act 1992 to extend, by 2 months, certain statutory deadlines that relate to financial and operational reporting by Crown Research Institutes for the 2019/2020 financial year. The deadlines are likely to be problematic because of the impacts of COVID-19.

Commissioner of Inland Revenue COVID-19 administrative flexibility power

- 15 The Bill proposes remedial amendments to the Tax Administration Act 1994 to amend the Commissioner of Inland Revenue's temporary discretionary power to extend due dates, timeframes, time periods, deadlines, or administrative requirements (to provide flexibility for taxpayers affected by COVID-19). The amendments will enable the Commissioner to shorten a time period or timeframe or otherwise modify a due date, deadline, time period, or timeframe where such a variation would provide an advantage to taxpayers. The Minister of Revenue has approved the inclusion of this measure in the Bill.

Tax amendments to support the R&D loan scheme [DEV-20-MIN-0095]

- 16 The Bill proposes amendments to the Tax Administration Act 1994 and the Income Tax Act 2007 to support the implementation of the Research and Development (R&D) loan scheme that is intended to incentivise businesses to continue R&D programmes that may be at risk due to COVID-19. These amendments ensure expenditure funded by the loan scheme is subject to the normal income tax deductibility rules and that the loan does not affect a person's entitlement to the R&D Tax Incentive. The Bill would also extend existing information sharing provisions between Inland Revenue, the Ministry of Business, Innovation and Employment (MBIE) and Callaghan Innovation to include the loan scheme and include Callaghan Innovation within the list of government agencies with whom Inland Revenue can share COVID-19 related information.
- 17 Cabinet has delegated authority to the Minister of Research, Science and Innovation to make minor policy and operational decisions related to the loan scheme, consistent with the policy agreed by Cabinet (DEV- 20- MIN- 0095). Together with the Minister of Revenue, the Minister of Research, Science and Innovation has approved these tax amendments.

Provisional tax and remission of use of money interest

- 18 The Bill proposes amendments to the Tax Administration Act 1994 on the remission of use of money interest (UOMI). A previously enacted COVID-19 response measure gave the Commissioner of Inland Revenue the ability to remit UOMI for taxpayers that have their ability to pay tax on time significantly adversely affected by COVID-19. This remedial measure would ensure the Commissioner can remit UOMI when taxpayers have underpaid their provisional tax due to the difficulty in forecasting income because of COVID-19. The Minister of Revenue has approved the inclusion of this measure in the Bill.

Impact analysis

- 19 The Treasury has determined that the proposals (in paragraphs 7 to 14) are a direct COVID-19 response and has suspended the RIA requirements in accordance with Cabinet's decision (CAB-20-MIN-0138).

The proposals in paragraphs 15 to 18 are remedial and do not require Cabinet approval.

Compliance

- 20 The Bill complies with each of the following:
 - 20.1 the principles of the Treaty of Waitangi;
 - 20.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 20.3 the disclosure statement requirements (a disclosure statement is attached to the paper);
 - 20.4 the principles and guidelines set out in the Privacy Act 1993;
 - 20.5 relevant international standards and obligations;
 - 20.6 the [Legislation Guidelines](#) (2018 edition), which are maintained by the Legislation Design and Advisory Committee.
- 21 Officials have not been able to consult with the Legislation Design and Advisory Committee on the Bill in the time available.

Consultation

- 22 Inland Revenue's proposal (paragraph 7): Inland Revenue consulted the Treasury, the Ministry of Social Development, and the Department of the Prime Minister and Cabinet.
- 23 MBIE's proposal (paragraphs 8 and 9): MBIE consulted the Treasury and ACC and informed the Department of the Prime Minister and Cabinet. MBIE has also informed Inland Revenue, Ministry of Health, Ministry of Social Development, Ministry of Women's Affairs, New Zealand Customs, Ministry of Transport, New Zealand Transport Agency, and Te Puni Kōkiri.
- 24 Treasury's proposal (paragraphs 10 to 12): Treasury consulted MBIE, the Department of Internal Affairs, the Ministry of Transport, the Parliamentary Counsel Office, and the Clerk of the House of Representatives. The Office of the Auditor-General has also been consulted.
- 25 DIA's proposal (paragraph 13): DIA consulted Local Government New Zealand (LGNZ), the New Zealand Society of Local Government (SOLGM), the Office of the Auditor-General, and the Treasury.
- 26 MBIE's proposal (paragraph 14): MBIE consulted the Office of the Auditor-General and the Treasury.
- 27 Inland Revenue's proposals (paragraphs 15 and 18): Inland Revenue consulted the Treasury.

- 28 Inland Revenue and MBIE's proposal (paragraphs 16 and 17): Inland Revenue and MBIE consulted the Treasury, Callaghan Innovation, and the Office of the Privacy Commissioner.
- 29 The Government caucus and other parties have been consulted on the paper.

Binding on the Crown

- 30 There is no need to include a provision to bind the Crown for the provisions in the Bill that amend existing Acts. Those Acts bind the Crown.

Creating new agencies or amending law relating to existing agencies

- 31 The Bill amends the law relating to existing public sector agencies by extending certain statutory deadlines and timeframes that apply to those agencies for the 2019/20 financial year to deal with the impact of COVID- 19.

Allocation of decision-making powers

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

Associated regulations

- 33 No regulations will be needed to bring the Bill into operation.

Other instruments

- 34 The Bill does not include any provisions empowering the making of other instruments that are deemed to be legislative instruments or disallowable instruments (or both).

Definition of Minister/department

- 35 The Bill does not define any Minister or Department.

Commencement of legislation

- 36 The Bill will come into force on the day after Royal assent.

Parliamentary stages

- 37 The intention is for the Bill to be introduced to Parliament on 3 August 2020 and to pass through all stages by 6 August 2020.

Proactive Release

- 38 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) Legislation Bill (No 2) authorised by the Cabinet Government Administration and Expenditure Review Committee [GOV-20-MIN-0016];
- 2 **note** the Bill contains further urgent legislative changes that are non-contentious but need to be made before the election to address COVID-19 related issues with reporting and other processes, and timeframes that are difficult, impracticable, or impossible to comply with due to the impact of COVID-19 [GOV-20-MIN-0016; DEV-20-MIN-0118; CAB-20-MIN-0219.23];
- 3 **note** that there may be minor proof-reading changes to the Bill prior to introduction;
- 4 **agree** that the attached COVID-19 Response (Further Management Measures) Legislation Bill (No 2) be introduced to the House on 3 August 2020;
- 5 **agree** that the Government propose that the Bill be enacted by 6 August 2020.

Authorised for lodgement

Hon Chris Hipkins
Leader of the House