

Departmental Disclosure Statement

COVID-19 Response (Taxation and Other Regulatory Urgent Measures) Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Inland Revenue Department, the Treasury, the Ministry of Business, Innovation and Employment and the Ministry for Primary Industries.

The Inland Revenue Department, the Treasury, the Ministry of Business, Innovation and Employment, and the Ministry for Primary Industries certifies that, to the best of their knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

29 April 2020

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Part One: General Policy Statement

This omnibus Bill introduces amendments to the following legislation:

- Income Tax Act 2007
- Tax Administration Act 1994
- Child Support Act 1991
- Animal Welfare Amendment (No 2) Act 2015
- Credit Contracts Legislation Amendment Act 2019
- Credit Contracts and Consumer Finance Act 2003
- Public Finance Act 1989
- Crown Entities Act 2004
- State-Owned Enterprises Act 1986

The proposals in this Bill are all aimed at assisting the Government's response to impacts of the COVID-19 outbreak. Broadly, the policy proposals in this Bill fall into 2 categories. The first of these categories is targeted measures aimed at providing relief to those that have been economically affected by the COVID-19 outbreak. The second category is measures to address regulatory compliance issues that have arisen as a result of the COVID-19 outbreak. These include the bringing forward or deferral of commencement dates of new legislation, and the extension of timeframes for meeting regulatory deadlines.

Owing to the short timeframe available for developing a policy response to COVID-19, general public consultation has not been undertaken on the proposals in the Bill. As such, the tax policy measures within this Bill have not been developed in accordance with the Generic Tax Policy Process. However, targeted consultation on detailed design of the tax policy proposals has been carried out with a small number of stakeholders.

The following is a brief summary of the measures contained in this Bill. A fuller explanation of the tax policy items is provided in a commentary on the Bill that is available at <https://taxpolicy.ird.govt.nz/publications/2020-commentary-covid-19-torum-bill/overview>.

Temporary loss carry-back regime

Part 1 of this Bill amends the Income Tax Act 2007 and the Tax Administration Act 1994 to introduce a tax loss carry-back measure. This will have the effect of allowing businesses that anticipate being in loss in either the 2019–20 or 2020–21 tax year to carry some or all of that loss to the preceding year where profits were earned.

Loss carry-forwards and carry-backs are intended to prevent systematic over-taxation over time. If taxpayers always pay tax when they earn income, but never get relief when they have a loss, they will pay more than the statutory rate of tax over time. Loss carry-backs are one way to address this.

The measure in the Bill is intended as a temporary measure to provide fast cash flow relief for businesses in loss during the period affected by COVID-19. The measure enables tax refunds with respect to profit years to be paid before the loss year has finished.

Almost all types of taxpayers—companies, trusts, and individuals—will be eligible to carry back losses. The majority of individuals who are taxed through the PAYE system do not have losses and so will be unaffected by this measure but those that operate businesses through partnerships, limited partnerships, and look-through companies will be able to benefit.

Administrative flexibility

Part 1 introduces a temporary discretionary power for the Commissioner of Inland Revenue to respond swiftly to practical concerns in the current environment and where appropriate to modify due dates, timeframes, or procedural requirements for taxpayers who are impacted by COVID-19. This is intended to be applied for requirements that are specified under the Inland Revenue Acts, or provisions of the Unclaimed Money Act 1971.

The Inland Revenue Acts include various requirements which must be met within certain timeframes or procedural and administrative requirements. This provision would allow the Commissioner, at her discretion, to extend dates or time periods and to vary procedural or administrative requirements which must be met.

This discretionary power is an additional and more timely method in a suite of tools which the Commissioner may use to respond to practical concerns around compliance with tax requirements due to COVID-19. Existing tools include the ability to remit use of money interest and the Commissioner's discretion under the care and management provision.

Tax and social policy treatment of pension and benefit equivalent payments

On 17 April 2020, the Minister for Social Development approved and established the COVID-19 New Zealanders Stranded Overseas Support (NZSOS) Programme under section 101 of the Social Security Act 2018. The COVID-19 NZSOS Programme enables payments to be made from 20 April 2020 to New Zealand beneficiaries and pensioners who are stranded overseas as a result of COVID-19, as these individuals would otherwise lose entitlement to their normal payments.

Part 1 of this Bill amends the Income Tax Act 2007 and the Tax Administration Act 1994 to ensure that payments made under the COVID-19 NZSOS Programme are subject to the same tax treatment as their standard counterparts. COVID-19 NZSOS payments in lieu of a main benefit, New Zealand superannuation, or a veteran's pension would be subject to tax and PAYE. COVID-19 NZSOS payments in lieu of other monetary benefits paid under the Social Security Act 2018 (for example, orphan's benefit and unsupported child's benefit) would be exempt from tax, consistent with the tax treatment of their standard counterparts.

These proposed changes also ensure there is no change in student loan obligations and entitlement to Working for Families tax credits. It would ensure that the Ministry for Social Development can continue to pay the family tax credit and Best Start credit where the individual would otherwise be eligible.

Part 1 of the Bill also amends the Child Support Act 1991 to ensure that any COVID-19 NZSOS payments are appropriately considered for child support purposes and the proposed definitional changes largely mirror the changes proposed in the other Inland Revenue Acts.

Deferral of commencement date of new surgical procedures regime

Part 2 amends section 2 of the Animal Welfare Amendment (No 2) Act 2015 to delay the commencement of sections 5(1) and (6), 9, 11(2), 13(1), 14 to 19, 29(1), and 68(2) of that Act. Those provisions amend the Animal Welfare Act 1999 to remove existing rules about who may carry out different types of surgical procedures on animals and replace them with new criteria for determining whether a procedure on an animal is a significant surgical procedure, and to restrict the performance of such procedures to veterinarians, veterinary students under supervision, or persons specified in regulations. Those provisions are due to come into force on 9 May 2020. The policy objective of this amendment is to delay the changes to the Animal Welfare Act 1999 and therefore the need for regulations in the immediate future. If regulations are not in place by 9 May 2020 to align with the changes to the Act, some routine procedures will only be able to be performed legally by veterinarians or veterinary students under supervision.

The Ministry for Primary Industries (MPI) does not consider it is feasible to introduce new regulations while an epidemic notice is in place. This is because communication with stakeholders through the normal channels to support implementation is not possible. Normal channels of communication would include targeted face-to-face meetings, development and production of physical material, and distribution of information through online media that is now focused on responding to COVID-19.

Further, MPI considers that delaying the introduction of the regulations in the short term will not significantly impact animal welfare outcomes. The regulations are generally intended to clarify who can perform specific procedures and under what circumstances, rather than being a significant change from current requirements or current practice.

Bringing forward commencement of the Credit Contracts Legislation Amendment Act 2019

Part 2 amends the Credit Contracts Legislation Amendment Act 2019 (CCLAA) to address concerns arising from the economic effects of COVID-19:

- to better protect consumers during the disruption and financial uncertainty caused by COVID-19, the Bill will amend the CCLAA to bring forward the commencement date of certain protections relating to high-cost consumer credit contracts from 1 June 2020 to the day after this Bill receives the Royal assent. This change will bring forward the limit on the accumulation of interest and fees (capped at 100% of the loan principal), as well as a prohibition on compound interest, and a cap on default fees:
- the Bill will also amend the CCLAA to enable a delay to the commencement dates of the broader reforms in the amendment Act of at least 6 months. These reforms were to come into force on 1 April 2021. The CCLAA introduces a range of new measures to protect consumers and will require lenders to implement significant system changes, requiring a lead time of at least 9 months. Lenders are likely to have reduced capacity to prepare for these changes during the COVID-19 response and recovery for an as yet unknown length of time. Delay is required to give sufficient time to prepare for the implementation of the broader system changes. The Bill shifts the backstop commencement date to April 2023, and provides for the reforms to be brought into force prior by Order in Council:
- for efficiency, the Bill also provides for the coming into force of a range of technical and other provisions of the CCLAA on the day after the Royal assent, and on 1 June 2020, which would otherwise have been brought into force by Order in

Council. These are necessary for the effective and efficient operation of the Credit Contracts and Consumer Finance Act 2003 and enforcement of the protections around high-cost credit contracts.

Extension of timeframe for certain entities to provide draft planning documents to responsible or shareholding Ministers

The State-Owned Enterprises Act 1986, Public Finance Act 1989, and Crown Entities Act 2004, contain requirements for various entities to provide draft planning documents to their responsible or shareholding Ministers, and to then finalise these documents. It is anticipated that, because of the effects of COVID-19, some of these entities will be unable to, or will face significant difficulties if required to, provide and finalise the documents within the timeframes provided for in those statutes. The amendments in Part 2 of this Bill provide for powers for responsible or shareholding Ministers.

Departmental disclosure statement

The Inland Revenue Department, the Treasury, the Ministry of Business, Innovation and Employment, and the Ministry for Primary Industries are required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://disclosure.legislation.govt.nz/bill/government/2020/>.

Regulatory impact assessment

No regulatory impact assessments have been produced for this Bill as all the proposals are emergency regulatory proposals relating directly to COVID-19 for which regulatory impact assessment requirements have been suspended.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
A commentary on the tax policy items in the Bill is available at https://taxpolicy.ird.govt.nz/publications/2020-commentary-covid-19-torum-bill/overview	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	N/A

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	NO
Regulatory Impact Analyses did not apply because the policy proposals are directly related to the COVID-19 response for which regulatory impact analysis requirements are suspended.	
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2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	N/A
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2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	N/A

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
No significant further impact analysis has become available for any aspects of the policies in the Bill. However, the commentary on the Bill, available at https://taxpolicy.ird.govt.nz/publications/2020-commentary-covid-19-torum-bill/overview contains analysis of the tax policy proposals included in the Bill.	

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	NO
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
<p>Because of the very short timeframe available for developing a response to COVID-19 there is no publicly available analysis on the potential costs and benefits or potential for any group of persons to suffer a substantial unavoidable loss of income or wealth. It is expected the Cabinet papers containing these proposals will be proactively released. These Cabinet papers would contain analysis on the policy to be given effect by the Bill. Where appropriate, key advice papers will also be published.</p> <p>This omnibus Bill contains amendments to the tax legislation which, by its nature and to varying degrees, will have an impact on resident and non-resident individuals, businesses and organisations. However, the proposals in this Bill are taxpayer favourable and are therefore not expected to cause a substantial unavoidable loss of income or wealth for any group of persons.</p> <p>The delay in the introduction to the new regime for significant surgical procedures on animals is not expected to have a substantial impact on owners and people in charge on animals, or the animals themselves.</p>	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
<p>The effectiveness of taxation legislation is, by its nature, reliant on effective and voluntary compliance. The level of effective compliance or non-compliance with specific applicable obligations or standards, and the nature of regulator effort, may have an impact on the potential costs or benefits for some policy items to be given effect by the Bill.</p> <p>The temporary Commissioner's discretionary power relates to compliance with existing tax requirements, and is intended to assist compliance through the ability of the Commissioner to extend timeframes or provide more options to meet procedural requirements where appropriate.</p>	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
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There have been no formal steps to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

No formal steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi.
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Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	TBC
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Advice provided to the Attorney-General by the Ministry of Justice, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be available on the Ministry's website at https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/ .
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Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
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(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	NO
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Note that while the Bill does not create new penalties, it does set the commencement dates of provisions which are subject to civil pecuniary penalties if they are breached (these are the provisions in the new subpart 6A of the Credit Contracts and Consumer Finance Act 2003, inserted by section 25 of the Credit Contracts Legislation Amendment Act 2019).

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
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Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO
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3.5.1. Was the Privacy Commissioner consulted about these provisions?	N/A
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External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	NO
<p>Because of the short timeframes available for developing a policy response to the COVID-19 outbreak, there has only been targeted external stakeholder consultation on the design of the temporary loss carry-back and increased administrative flexibility proposals to be given effect by this Bill.</p> <p>The need for the provisions extending the timeframe for certain entities to provide draft planning documents to responsible or shareholding Ministers was tested with affected entities.</p> <p>This Bill does not seek to amend the policy introduced by the Credit Contracts Legislation Amendment Act 2019, only to move the commencement dates of some provisions. Comprehensive consultation was carried out on the original policy decisions with lenders, dispute resolution services and consumer advocates.</p> <p>The amendments to delay the commencement dates of some aspects of the Credit Contracts Legislation Amendment Act 2019 were proposed after multiple requests from several different groups from the financial services sector. This delay complements other regulatory relief for the financial services sector provided by the Reserve Bank. The Treasury and Reserve Bank of New Zealand were informed of these proposals.</p> <p>The COVID-19 New Zealanders Stranded Overseas Support Programme is administered by the Ministry of Social Development and they were consulted on the proposed amendments. They are using existing systems to process the COVID-19 New Zealanders Stranded Overseas Support payments, so ensuring the same tax treatment was an important policy objective for them.</p> <p>No external consultation was carried out on the deferral of commencement of the new surgical procedures on animals regime.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
<p>The tax policy proposals in the Bill have been reviewed by internal operational subject matter experts under Inland Revenue's standard process for assessing the administrative impacts of any new policy initiatives and ensuring they are workable and complete. This involves assessing whether systems need to be changed and, if so, whether formal testing needs to be carried out.</p> <p>Changes to the extension of timeframe for certain entities to provide draft planning documents to responsible or shareholding Ministers have been reviewed by Treasury's internal subject matter experts.</p> <p>The amendments to bring forward the commencement of some protections relating to high-cost lending were consulted on with Commerce Commission staff. They indicated that the Commission's outreach, investigation and enforcement duties would be manageable under the new dates.</p> <p>The protections being brought forward are considered to have minor system change implications for high-cost lenders. Amendments known to require system change will not be brought forward, and will come into force on 1 June 2020 as set out in the Credit Contracts Legislation Amendment Act 2019. Lenders were not consulted on these proposed amendments, however high-cost lenders have been informed.</p>	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
Given this Bill is amending tax legislation, it does contain provisions that create or amend a power to impose a charge that is a tax. However, for the purposes of this statement, the answer is “No” as per the scope of this question explained in pages 53 and 54 of the Disclosure Statements for Government Legislation: Technical Guide for Departments (June 2013).	

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	YES
<p>The temporary tax loss carry-back regime will have effect from 15 April 2020, being the date of Government announcement. This retrospectivity has no practical effect for taxpayers.</p> <p>The temporary Commissioner discretionary power may be exercised in relation to requirements arising in Inland Revenue Acts (or Unclaimed Money Act 1971) from 17 March 2020. All variations under this power are taxpayer friendly, and will extend timeframes, or provide additional options for taxpayers to comply. In addition, taxpayers are not required to comply with a variation issued by the Commissioner if they choose not to.</p> <p>Payments under the COVID-19 New Zealanders Stranded Overseas Support Programme began on 20 April 2020 and the related proposals in this Bill to tax main benefit equivalent assistance, New Zealand equivalent assistance and veteran's pension would have effect from that date. As the COVID-19 NZSOS payments are simply made in lieu of the payment an individual would normally be entitled to and the Ministry of Social Development is using their existing systems to process the payments, the retrospective effect would effectively maintain the status quo. From the client's perspective, there is no visible difference in the payment they receive, it is just the legislative authority that is different. Based on current estimates for the Bill, the retrospective effect would only be for around one week.</p>	

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO
The Bill does not itself reverse or modify the usual burden of proof for a civil pecuniary penalty proceeding. However, it does move forward the commencement date of new section 45J of the Credit Contracts and Consumer Finance Act 2003, inserted by section 25 of the Credit Contracts Legislation Amendment Act 2019. This section inserts a presumption that default fees higher than \$30 under a high-cost credit contract are unreasonable. The creditor has the burden of rebutting the presumption by proving, on the balance of probabilities, that the fee is reasonable.	

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	YES
<p>The temporary Commissioner discretionary power allows the Commissioner discretion to issue a variation to extend a due date, time period or timeframe or to modify a procedural or administrative requirement to offer an additional way for taxpayers who are affected by COVID-19 to comply with the legislation. This could impact a taxpayer's rights, obligations or interests insofar as they choose to comply in the way specified in the variation.</p> <p>Taxpayers have the choice to choose to comply with requirements as set out in legislation rather than as specified in a variation.</p>	

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	YES
As above, this could apply to a class of taxpayers.	

4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO
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Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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