

# Departmental Disclosure Statement

---

Remuneration Authority (COVID-19 Measures) Amendment Bill
---

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 State Services Commission.

The State Services Commission certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

1 May 2020

## Contents

Contents.....	2
Part One: General Policy Statement.....	3
Part Two: Background Material and Policy Information .....	5
Part Three: Testing of Legislative Content.....	7
Part Four: Significant Legislative Features .....	9

## Part One: General Policy Statement

The Remuneration Authority (COVID-19 Measures) Amendment Bill (the Bill) will, for a short period, permit the Remuneration Authority to reduce the remuneration for certain roles within certain limits.

### Purpose

The general purpose of the Bill is to allow leaders in the public sector to—

- show leadership in the public sector during the COVID-19 outbreak; and
- show solidarity with those in the private sector who are losing their jobs or facing significant pay reductions.

The Bill does so in such a manner as to respect the underlying policy behind the Remuneration Authority Act 1977.

### Legislative regime

The remuneration of certain individuals in senior positions in the public sector is set according to the Remuneration Authority Act 1977 and, in respect of local government members, the Local Government Act 2002. The underlying policy for the current arrangements is to de-politicise the setting of this remuneration.

Under the existing legislative regime,—

- the Remuneration Authority is not usually permitted to make a determination that reduces an individual's pay; and
- the organisations making the payments must pay according to the Remuneration Authority's determination.

The Bill overrides the current legislative regime by permitting a capped reduction of up to 20% of current remuneration for up to a 6-month period which must commence on or before 30 July 2020.

The Remuneration Authority will apply its existing criteria to determine whether a reduction is appropriate and, if so, how much it will be and for how long (up to the caps). The existing criteria include the prevailing adverse economic conditions (see section 18A of the Remuneration Authority Act 1977) and fairness to both the person whose remuneration is being determined and the taxpayer or ratepayer (see section 18 of the Remuneration Authority Act 1977 and clause 7 of Schedule 7 of the Local Government Act 2002).

The Remuneration Authority's decision will be set out in a temporary reduction determination. The Bill permits the Remuneration Authority to amend an original determination on which the temporary reduction determination is based, provided it does so in accordance with the enactment under which it was made. The temporary reduction determination can also be consequentially amended.

Remuneration for some roles, including those of the Governor-General, the judiciary, and some semi-judicial roles, is not included in the Bill because of constitutional and fairness considerations.

### Timing

These amendments are intended to have only short-term effect so as to limit the impact on individuals. The section inserted into the Remuneration Authority Act 1977 by the Bill will be repealed on 31 January 2021.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>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?</b>	<b>NO</b>

### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>

### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>NO</b>
The Treasury has determined that this proposal is a direct COVID-19 response and has suspended the Regulatory Impact Analysis requirements in accordance with Cabinet decision (CAB-20-MIN-0138).	

### Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>

<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>NO</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>YES</b>
<p>The individuals covered by the Bill may suffer a remuneration reduction of up to 20% for up to six months. This will mean their income will reduce. However:</p> <ul style="list-style-type: none"> <li>• the decrease is capped at the level of reduction already accepted by Public Service Chief Executives</li> <li>• the decrease is limited to a maximum of six months, at a time when there have been historically modest increases in the cost of living</li> <li>• these individuals are paid at the higher end of public sector roles and hold leadership positions</li> <li>• many of these individuals have committed to this remuneration reduction including: <ul style="list-style-type: none"> <li>○ Ministers and other Member of Parliament</li> <li>○ Public Service leaders - the State Services Commissioner, the Deputy State Services Commissioner and the Solicitor-General</li> <li>○ three other executive branch leaders of non-Public Service departments - the Commissioner of Police, the Chief of the Defence Force and the Chief Parliamentary Counsel</li> <li>○ a number of other public sector leaders</li> <li>○ some elected members in local government.</li> </ul> </li> </ul>	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>NO</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>NO</b>

## 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?**

No relevant international obligations have been identified in the policy development process.

### 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 separate formal steps have been taken to determine whether the policy to be given effect by this Bill are consistent with the principles of the Treaty of Waitangi.

### 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?**

YES

Following introduction of the Bill, the advice to the Attorney-General will be published on the Ministry of Justice website at: <https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/>

### Offences, penalties and court jurisdictions

**3.4. Does this Bill create, amend, or remove:**

(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?

NO

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

NO

**3.4.1. Was the Ministry of Justice consulted about these provisions?**

YES

The Secretary for Justice was consulted regarding the question of application of these provisions to the Judiciary, in order to notify the Chief Justice of the Government's considerations.

### 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

## External consultation

<b>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?</b>	<b>YES</b>
<p>The Ministry of Business, Innovation and Employment, Department of Internal Affairs, the Remuneration Authority and the Parliamentary Service have been consulted on the Cabinet paper and/or the draft Bill. They advised on policy and implementation matters.</p> <p>The Prime Minister announced the intention of Ministers to seek a pay reduction on 15 April 2020. Many officers covered by the Remuneration Authority Act 1977, subsequently made public statements regarding their commitment to take a similar reduction were the legislative amendments made to enable this.</p>	

## Other testing of proposals

<b>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?</b>	<b>NO</b>

## 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

### 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

### Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO

### 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

### Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO

## Significant decision-making powers

<b>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?</b>	<p style="text-align: center;"><b>YES</b></p>
<p>This Bill allows the Remuneration Authority to reduce the remuneration of certain individuals, whereas at present their remuneration usually cannot be reduced.</p> <p>The safeguards that apply to this power are:</p> <ul style="list-style-type: none"> <li>• it is limited in scale, to a maximum of 20% of their current remuneration</li> <li>• it is limited in time, to a period of up to six months</li> <li>• the Remuneration Authority must apply its existing criteria in deciding whether it is appropriate to reduce remuneration, including fairness to the individual</li> <li>• in practice, the Remuneration Authority will consult the individual concerned to understand whether there are any reasons why a remuneration reduction would be unfair to that individual, for example, if they have already made an equivalent charitable donation.</li> </ul>	

## Powers to make delegated legislation

<b>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?</b>	<p style="text-align: center;"><b>NO</b></p>

<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<p style="text-align: center;"><b>NO</b></p>

## Any other unusual provisions or features

<b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<p style="text-align: center;"><b>NO</b></p>