

# Departmental Disclosure Statement

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COVID-19 Response (Further Management Measures) Legislation Bill (No 2)
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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 Parliamentary Counsel Office with input from the Inland Revenue Department, Ministry of Business, Innovation and Employment, Treasury, and Department of Internal Affairs.

The Parliamentary Counsel Office, Inland Revenue Department, Ministry of Business, Innovation and Employment, Treasury, and Department of Internal Affairs certify that to the best of their knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

23 July 2020

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## Part One: General Policy Statement

This Bill is an omnibus Bill that amends 8 enactments. The single broad policy of the Bill is to make amendments relating to administrative matters, such as timelines for financial reporting, and to taxation legislation that are aimed at assisting the Government and New Zealanders to more effectively manage, and recover from, the impacts of COVID-19.

Broadly, the amendments deal with the following issues:

- extending certain statutory deadlines relating to the 2019/20 financial year, including those for annual reporting and auditing by public sector entities, local authorities, and council-controlled organisations;
- amending the Accident Compensation (Experience Rating) Regulations 2019 so they continue to apply for the 2021-22 tax year;
- amending tax legislation in relation to—
  - supporting the implementation of the research and development loan scheme;
  - qualification periods for in-work tax credit;
  - the power of the Commissioner of Inland Revenue (Commissioner) to vary due dates and deadlines;
  - the remission of interest for provisional taxpayers.

The enactments amended are:

- Accident Compensation (Experience Rating) Regulations 2019
- Crown Entities Act 2004
- Crown Research Institutes Act 1992
- Income Tax Act 2007
- Local Government Act 2002
- Public Finance Act 1989
- State-Owned Enterprises Act 1986
- Tax Administration Act 1994.

## 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>

<b>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?</b>	<b>N/A</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>
Regulatory Impact Analysis did not apply because the policy proposals are directly related to the COVID-19 response and the regulatory impact analysis requirements were suspended.	

<b>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?</b>	<b>N/A</b>

<b>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?</b>	<b>N/A</b>

### 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>NO</b>

<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?**

The policy to be given effect by the Bill does not impact 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?**

The policy to be given effect by this Bill has been considered in light of the principles of the Treaty of Waitangi and is consistent with those principles.

### 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?**

NO

### 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?**

N/A

### 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?**

YES

The Bill contains a proposal that would allow Inland Revenue to share taxpayer information with Callaghan Innovation and the Ministry of Business, Innovation and Employment to increase the efficacy of the R&D loan scheme. However, because of the restrictions on eligibility to the scheme, the information shared is not expected to be of a personal nature.

<b>3.5.1. Was the Privacy Commissioner consulted about these provisions?</b>	<b>YES</b>
The Privacy Commissioner did not identify any concerns with the information sharing proposal.	

### 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>NO</b>
Because of the short timeframes available for developing a policy response to the COVID-19 outbreak, there has been no external consultation on the policies to be given effect by this Bill.	

### 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>YES</b>
<p>Consultation with relevant departments and departmental agencies was undertaken.</p> <p>In addition, DIA consulted the New Zealand Society of Local Government, and the Office of the Auditor-General on the change to extend annual report timeframes for local authorities and council-controlled organisations. The Treasury consulted the Office of the Auditor-General on extending reporting deadlines for public entities. MBIE consulted the Office of the Auditor-General on extending deadlines for Crown Research Institute reports. Inland Revenue and MBIE consulted Callaghan Innovation and the Office of the Privacy Commissioner on the tax amendments to support the R&amp;D loan scheme</p> <p>The tax 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>	

## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

<b>4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?</b>	<b>NO</b>

### Charges in the nature of a tax

<b>4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	<b>NO</b>
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

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>YES</b>
<p>The amendments to the Commissioner of Inland Revenue's administrative flexibility power to vary due dates or deadlines would apply from 17 March 2020, being the application date of the original administrative flexibility power. Variations created under this power are optional for taxpayers to comply with so there would be no adverse effects from retrospective application.</p> <p>The tax amendments to support the R&amp;D loan scheme would apply from 1 July 2020, being the date that the loan scheme began.</p> <p>The provisional tax and use of money interest remission provision would apply to interest that has accrued after 30 March 2020 on terminal tax payable for the 2020-21 tax year by provisional taxpayers. The amendment would be taxpayer favourable.</p>	

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

<b>4.4. Does this Bill:</b>	
<b>(a) create or amend a strict or absolute liability offence?</b>	<b>NO</b>
<b>(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?</b>	<b>NO</b>

### Civil or criminal immunity

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

## 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>	<b>YES</b>
<p>This Bill amends the Commissioner of Inland Revenue’s temporary discretionary power 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. The amendment specifically allows the Commissioner to shorten or otherwise modify a time-related requirement if it is advantageous to taxpayers. 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>The Commissioner may only exercise her discretion to shorten a time-related requirement if she considers it is likely to be advantageous for taxpayers generally or a group of taxpayers.</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

<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>	<b>YES</b>
<p>As above, this could apply to a class of taxpayers.</p>	

<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>NO</b>

## 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>	<b>No</b>