

# Departmental Disclosure Statement

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| COVID-19 Response (Management Measures) Legislation 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 co-ordinated by the Office of the Minister for COVID-19 Response using text supplied by Department of Internal Affairs, Land Information New Zealand, the Ministry for the Environment, the Ministry of Business, Innovation and Employment, the Ministry of Housing and Urban Development, the Ministry of Justice, and the Ministry of Transport. All the text used in this statement was provided by the relevant department or agency.

The Department of Internal Affairs, Land Information New Zealand, the Ministry for the Environment, the Ministry of Business, Innovation and Employment, the Ministry of Housing and Urban Development, the Ministry of Justice, and the Ministry of Transport. that, to the best of their knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

28 September 2021.

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## Part One: General Policy Statement

This Bill is an omnibus Bill that amends more than 1 Act. The single broad policy of the Bill is to make amendments relating to matters that are aimed at assisting the Government and New Zealanders to more effectively manage, and recover from, the impacts of COVID-19 (for example, permitting remote participation, extending statutory deadlines, addressing court backlogs, and restricting the terminations of tenancies).

The Bill amends or modifies the following legislation:

- Climate Change Response Act 2002:
- Consumer Information Standards (Origin of Food) Regulations 2021:
- Contract and Commercial Law Act 2017:
- Coroners Act 2006:
- COVID-19 Recovery (Fast-track Consenting) Act 2020:
- COVID-19 Response (Requirements For Entities—Modifications and Exemptions) Act 2020:
- Credit Contracts and Consumer Finance Act 2003:
- Criminal Procedure Act 2011:
- Epidemic Preparedness Act 2006:
- Gambling Act 2003:
- Land Transport Act 1998:
- Local Electoral Act 2001:
- Property Law Act 2007:
- Rating Valuations Act 1998:
- Residential Tenancies Act 1986:
- Resource Management Act 1991:
- Secondary Legislation Act 2021.

### *Department of Internal Affairs*

*Schedule 1* amends legislation administered by the Department of Internal Affairs.

*Part 1* amends the Gambling Act 2003. Class 3 lotteries are used to raise funds for charitable or non-commercial purposes. The amendments allow, for a period of 2 years, all class 3 gambling operators licensed to conduct a lottery to—

- offer lottery tickets by email or by phone; and receive payment via a communication device; and
- issue tickets electronically.

Previously only Countdown Kids Charitable Trust, National Heart Foundation of New Zealand, and Royal New Zealand Coastguard Incorporated were covered by a provision allowing this, and it was set to expire on 31 October 2021. Without these changes, class 3 gambling operators would face significant constraints in their ability to run their lotteries at alert level 3 as face to face sales would not be possible, and they would be unable to operate them at all under alert level 4. These lotteries provide

income for important work in our communities. Extending this provision will therefore enable all class 3 lotteries to be resilient to any future outbreaks. Expanding it to include all class 3 gambling operators licensed to conduct a lottery reflects that they will also be impacted by potential changes to alert levels.

*Part 2* amends the Local Electoral Act 2001 to provide more flexibility to delay triennial local elections..

### *Land Information New Zealand*

*Schedule 2* amends the Rating Valuations Act 1998.

COVID-19 alert levels could potentially mean that some territorial authorities would not be able to complete a credible general rating revaluation on schedule. This could be due to restrictions on movement affecting the staff of valuation service providers, in safely travelling and inspecting properties.

COVID-19 movement restrictions may again require flexibility of the scheduling provisions of the Rating Valuations Act 1998, to allow affected territorial authorities to extend the three-year revaluation requirement. Council chief executives would then apply to the Valuer General, who would make the final decision about whether a proposed extension was warranted

The Valuer General will adapt the existing operational guidelines to guide the assessment of applications for a delay to a revaluation, before inviting applications from territorial authorities

### *Ministry for the Environment*

*Schedule 3* amends legislation administered by the Ministry for the Environment.

*Part 1* amends the Climate Change Response Act 2002 by extending statutory time frames for key climate change policy decisions. This is necessary because of delays to consultation and engagement on the first emissions reduction plan caused by the current COVID-19 outbreak.

The outbreak has impacted businesses, organisations, Māori/iwi, individuals, and communities that are expected to make submissions on the emissions reduction plan proposal. The extension of statutory time frames for the emissions reduction plan (and corresponding emissions budgets decisions) will enable greater participation by New Zealanders in the consultation and engagement process.

The statutory decisions and extensions are as follows:

- the statutory deadline for the first emissions budget (for the period 2022–2025) will be extended from 31 December 2021 to 31 May 2022:
- the statutory deadline for the second emissions budget (for the period 2026–2030) will be extended from 31 December 2021 to 31 May 2022:
- the statutory deadline for the third emissions budget (for the period 2031–2035) will be extended from 31 December 2021 to 31 May 2022:
- the statutory deadline for the first emissions reduction plan (to achieve the first emissions budget) will be extended from 31 December 2021 to 31 May 2022.

The extension of time frames for the first emissions budget has consequences for the setting of auctioning limits and price controls for the New Zealand Emissions Trading Scheme through annual regulations. The regulations can only be made following Climate Change Commission advice (which itself can only happen after the relevant emissions budget is set) and public consultation. The Minister of Climate Change must consider the relevant emissions budget before recommending the regulations, and they are ordinarily subject to a three-month delay before coming into force.

In 2022, the extension to the first emissions budget's time frame means there is not enough time for this full process to happen. Accordingly, for the regulations due to be made in 2022 (after the first emissions budget is set), this Bill disapplies the usual three-month delay to commencement. The three-month delay will continue to apply to regulations made in subsequent years.

*Part 2* amends the COVID-19 Recovery (Fast-track Consenting) Act 2020 by extending the current repeal date of 8 July 2022 to 8 July 2023, which will assist economic development while uncertainty in respect of COVID-19 persists.

*Part 3* amends the Resource Management Act 1991 by deferring the requirement for local authorities to initiate 10-year reviews of regional policy statements and regional and district plans by the close of 30 September 2024, and providing a more streamlined process for the Minister for the Environment to extend the requirement for regional councils and unitary authorities to update regional policy statements in accordance with National Planning Standards to May 2024. These changes are necessary to alleviate pressures on local authorities due to the COVID-19. They are to be repealed on 1 October 2024.

### *Ministry of Business, Innovation, and Employment*

*Schedules 4 and 8* amend legislation administered by the Ministry of Business, Innovation, and Employment. The purpose of the amendments is to—

- mitigate problems with legislative compliance due to physical presence requirements and other technological impediments. A number of entities are operating remotely in order to comply with COVID-19 restrictions, which has highlighted problems with the current requirements for physical presence. These amendments will enable alternative methods of compliance while New Zealand is responding to COVID-19:
- enable the deferment of statutory deadlines and other minor exemptions where compliance is not possible or unreasonably burdensome. A number of entities have statutory and other deadlines that cannot be met, or where compliance presents an unjustifiable burden when balanced against the focus on other COVID-19 related matters. These amendments provide deferrals or exemptions from these requirements if the matters are not significant and the deferral or exemption is needed to facilitate the response to COVID-19 or to mitigate the impact of COVID-19:
- defer new regulatory requirements that would increase burdens or where the Government or businesses may no longer be ready to start by the planned date. These amendments are intended to address the difficulty government agencies or businesses would face in implementing new legislation or requirements that are due to come into force while New Zealand is responding to COVID-19.

## *Ministry of Housing and Urban Development*

*Schedule 5* amends the Residential Tenancies Act 1986.

The purpose of the amendments is to support tenants to stay at their rental homes during outbreaks of COVID-19. The current legal rules for tenancy terminations in the Residential Tenancies Act 1986 (RTA) are not consistent with government measures requiring people to stay at home during outbreaks of COVID-19. Even during COVID-19 alert level 4, which generally restricts people from moving house, tenancy terminations can proceed and fixed-term tenancies may come to an end. The amendments—

- allow a responsible Minister to make a COVID-19 tenancies order to restrict tenancy terminations. The order may apply to a specified area when necessary or desirable to support an order under the COVID-19 Public Health Response Act 2020 that generally restricts people from moving house (as has been the case when New Zealand, or a part of New Zealand, is at COVID-19 alert level 4). Empowering the Minister to make the order means it can be made quickly in response to changes in alert levels:
- set out the tenancy termination restrictions that will apply when a COVID-19 tenancies order is in force, including enabling termination in a few specified circumstances (for example, where the tenant has engaged in anti-social behaviour or is in more than 60 days rent arrears):
- provide for circumstances where a notice for termination has been given, but has not yet taken effect, when the COVID-19 tenancies order comes into force. Where a tenant has initiated a termination or discontinuation of a tenancy they can elect to reverse or defer these. Most terminations or discontinuations initiated by the landlord are cancelled or deferred, unless the tenant agrees to the termination or expiry:
- provide that, if a fixed term tenancy expires during the period a COVID-19 tenancies order is in place, unless otherwise agreed, it becomes a periodic tenancy and the tenant can remain in the tenancy:
- enable the Tenancy Tribunal to conduct proceedings as it sees fit (including on the papers) for a period of 12 months after commencement of *Schedule 5* to assist in addressing the backlog of applications due to the current outbreak of COVID-19:
- provide that, if a tenant remains in a premises as a consequence of a COVID-19 tenancies order, an incoming or prospective tenant has no right to occupy the premises.

## *Ministry of Justice*

*Schedule 6* makes the following amendments to assist New Zealand in responding to the wide-ranging effects of COVID-19:

- amending the Coroners Act 2006 to enable coroners to hold hearings remotely to provide clarity regarding the ability for coroners to use remote means (for example, audio-visual or teleconferences) to conduct hearings. Restrictions on the conduct of hearings in person as a result of COVID-19 make this clarification

tion more urgent and remote means will continue to need to be available for use by coroners:

- amending the Criminal Procedure Act 2011 to enable the High Court to revisit its earlier decisions about whether to accept a transfer of a District Court case under the Court of Trial Protocol. This increased flexibility will significantly improve the ability of the High Court to respond to pressures exacerbated by COVID-19 (for example, enabling greater use of the High Court to help reduce to reduce District Court backlogs):
- amending the Epidemic Preparedness Act 2006 to remove uncertainty about the ability of the heads of the bench to modify court rules for all matters in their court during an epidemic:
- amending the Property Law Act 2007 to—
  - support commercial tenants and landlords to come to agreements to adjust the rent (including outgoings) due under their leases, so that the parties share the financial burden of the COVID-19 response, enabling more businesses to remain solvent through the COVID-19 epidemic; and
  - provide a way to resolve disputes if no agreement can be reached.

#### *Ministry of Transport*

*Schedule 7* amends the Land Transport Act 1998. Processing and serving infringement and reminder notices and regulatory notices under the Land Transport Act 1998 faces disruption when alert levels change (particularly under levels 3 and 4). There are safety implications if these notices have not been served properly. The procedural step of serving a notice, and providing evidence of service, is crucial to taking enforcement action in the land transport system. Adding electronic service provides flexibility to safeguard the safety of the system and its participants. This Bill amends the Land Transport Act 1998 to respond to the disruption caused by the resurgence of COVID-19 by permitting the service of regulatory and infringement notices by electronic means (via fax and email).

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

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| <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>   | YES |
| COVID-19 Recovery (Fast-track Consenting) Act 2020 amendments<br>Fast-track consenting ANNUAL REPORT 2020 -2021<br><a href="https://environment.govt.nz/publications/fast-track-consenting-annual-report-20-21/">https://environment.govt.nz/publications/fast-track-consenting-annual-report-20-21/</a> |     |

### Relevant international treaties

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

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| <b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>   | NO |
| <p><b>COVID-19 Recovery (Fast-track Consenting) Act 2020 amendments</b></p> <p>A Post Implementation Assessment will be provided in lieu of a RIS given the short timeframes for the implementation of the proposed amendment.</p> <p><b>Credit Contracts Legislation Amendment Act 2019, Consumer Information Standards (Origin of Food) Regulations 2021 and Credit Contracts and Consumer Finance Act 2003 amendments</b></p> <p>Treasury's Regulatory Impact Analysis team determined that the following policy proposals contained in the Bill were exempt from the requirement to provide a Regulatory Impact Statement as they are temporary measures exercised under the declared emergency of the COVID-19 pandemic. In particular:</p> <ul style="list-style-type: none"> <li>• The proposals to defer the commencement date of the Credit Contracts Legislation Amendment Act 2019 to 1 December 2021 and to defer the commencement date of the Consumer Information Standards (Origin of Food) Regulations 2021 are exempt on the grounds that they are intended to temporarily defer the start date of legislative requirements not yet in force, in order to reduce burdens or where the Government or affected entities will no longer be ready by the planned start date, as a result of an emergency.</li> <li>• The proposals to temporarily disable section 9H(2) of the Credit Contracts and Consumer Finance Act 2003 to allow new Responsible Lending code guidance on COVID-19 related borrower hardship to come into force more quickly and to provide a modification or an exemption facility for certain compliance obligations are exempt on the grounds that they are intended to provide limited temporary exemptions or modifications to existing legislative requirements in situations where a declared emergency has made compliance with existing legislative requirements impossible, impractical or unreasonably burdensome.</li> <li>• The proposal to facilitate the use of electronic signatures in commercial contracts is exempt on the grounds that it is intended to temporarily enable alternative methods of legislative compliance in situations where a declared emergency has made compliance with the existing legislative requirements impossible, impractical or unreasonably burdensome.</li> </ul> <p><b>Property Law Act 2007 amendments</b></p> <p>The amendments were given an exemption from the RIA requirements because they are intended to manage the short term impacts of a declared emergency event, COVID-19.</p> |    |

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## Extent of impact analysis available

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| <b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b> | NO |
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| <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>   | YES |
| <b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>  | NO  |
| <p><b>COVID-19 Recovery (Fast-track Consenting) Act 2020 amendments</b><br/> Potential benefits to date are identified in 2020-21 Fast Track Annual report, available on MfE's website<br/> Costs to extend Fast-track will be the subject of a separate budget bid.</p> <p><b>Property Law Act 2007 amendments</b><br/> The size and scale of this problem is not clear. The Ministry of Justice is aware through correspondence and media reports that some businesses are struggling to pay rent, and that some landlords and tenants have not been able to agree on a variation to their lease.<br/> Because of these factors it has not been possible to undertake an analysis of potential costs and benefits.</p> |     |

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| <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>                  | NO |
| <b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>                          | NO |
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## 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?

##### **COVID-19 Recovery (Fast-track Consenting) Act 2020 amendments**

The FTCA relates to decisions ordinarily made under local and national government planning regulations, therefore does not affect New Zealand's international obligations

##### **Land Transport Act 1998 amendments**

The Land Transport Act 1998 amendment is consistent with New Zealand's international obligations.

##### **Property Law Act 2007 amendments**

Advice was received from the Ministry for Foreign Affairs and Trade, and New Zealand's international obligations have been considered.

##### **Resource Management Act 1991 amendments**

These amendments primarily relate to domestic resource management matters, namely deferring the timing of which planning instrument reviews and standards must be commenced and implemented by respectively. It 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?

**COVID-19 Recovery (Fast-track Consenting) Act 2020 amendments**

The FTCA contains specific requirements to assist the Minister in meeting obligations under the Treaty of Waitangi.

**Land Transport Act 1998 amendment**

The Land Transport Act 1998 amendment is consistent with the government's Treaty of Waitangi obligations.

**Property Law Act 2007 amendments**

Due to the pace required to develop proposals in response to the COVID-19 emergency, it has not been possible to carry out analysis of this policy in relation to the principles of the Treaty of Waitangi.

We are aware that these changes may apply to leases over Māori freehold land to the extent that they cover leased premises whose operations were interrupted by COVID-19 restrictions. We have discussed this with officials from Te Puni Kōkiri, but we have not been able to consult more broadly due to the urgency of the proposals.

**Resource Management Act 1991 amendment**

The Ministry for the Environment has assessed the Bill and considers that the primarily administrative/timing nature of the Bill means that it is not inconsistent with the principles of the Treaty of Waitangi. The Bill does not amend the requirement in section 8 of the RMA to take into account the principles of the Treaty of Waitangi.

**Consistency with the New Zealand Bill of Rights Act 1990**

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| <b>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?</b> | YES |
| The Bill has been provided to the Crown Law Office who will provide Bill of Rights Act 1990 advice to the Attorney-General.   |     |

## Offences, penalties and court jurisdictions

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| <b>3.4. Does this Bill create, amend, or remove:</b>  |     |
| <b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>  | NO  |
| <b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>   | YES |
| <p><b>Property Law Act 2007</b></p> <p>Although this Bill does not amend or remove the jurisdiction of a court or tribunal it does impact on processes by which courts and tribunals can be accessed by parties to a commercial lease. This Bill enables disputes about the implied rent reduction clause to be settled by arbitration.</p> <p>We have been told that many commercial leases use the Auckland District Law Society template, which states that arbitration is the preferred dispute resolution mechanism. So, the proposed amendment is in line with these existing arrangements.</p> <p>Decisions made by an arbitrator may be appealed to the High Court according to the provisions of the Arbitration Act 1996. The Bill does not amend or change the jurisdiction of a court or tribunal in relation to any actions for remedies or relief through the court.</p> <p><b>Residential Tenancies Act 1986 amendment</b></p> <p>The Bill provides that the Tenancy Tribunal may conduct its proceedings (whether they relate to this schedule or otherwise) as it sees fit, including on the papers. This applies for 12 months from commencement.</p> |     |

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| <b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b>  | NO |
| The Ministry of Justice was consulted on the Cabinet paper in relation to the amendments to the Residential Tenancies Act 1986 |    |

## Privacy issues

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| <b>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?</b> | YES |
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**Land Transport Act amendment**

The inclusion, on a temporary basis, of the ability to serve regulatory and infringement notices complies with the Privacy Act 2020. Waka Kotahi NZ Transport Agency has received internal legal advice that using personal information (in this case email addresses and phone numbers) collected from individuals as part of their general interactions is not hindered by the Privacy Act 2020. In some cases, such as motor vehicle registration, section 235 of the Land Transport Act provides that the purposes for which information is obtained includes law enforcement. However, generally it would fall within the exceptions in section 22 of the Privacy Act: information privacy principle 10(1)(e)(i), (ii) and (f) Privacy Act 2020. Using personal contact information for the purpose of serving a notice being necessary:

- to avoid prejudice to the maintenance of the law, including the prosecution and punishment of offences (in the case of demerit point licence suspension notices)
- for the enforcement of a law that imposes a pecuniary penalty (in the case of infringement notices)

to prevent a serious threat to public safety (in the case of licence medical suspension and revocation notices).

**3.5.1. Was the Privacy Commissioner consulted about these provisions?**

**[YES/NO]**

**Land Transport Act amendment**

The Privacy Commissioner was not consulted due to the compliance of the Land Transport Act 1998 proposal with the Privacy Act 2020. Additionally, the time constraint in making this Bill did not allow for consultation to occur.

## External consultation

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| <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>   | YES |
| <p><b>Coroners Act 2006 amendments</b></p> <p>The Chief Coroner was consulted in relation to these amendments.</p> <p><b>Criminal Procedure Act 2011 amendments</b></p> <p>The Office of the Chief Justice was consulted on these amendments.</p> <p><b>Epidemic Preparedness Act 2006 amendments</b></p> <p>The Office of the Chief Justice was consulted on these amendments.</p> <p><b>Gambling Act 2003 amendments</b></p> <p>Both the Heart Foundation and Coastguard New Zealand wrote to the Prime Minister and the Minister of Internal Affairs in August 2021 with their concerns about the expiry of section 4A of the Gambling Act 2003 on 31 October 2021, given that there continued to be a risk of Alert Level changes (which was subsequently realised). The Bill would address these concerns.</p> <p>In addition, prior to the COVID-19 situation, the issues facing Class 3 operators were included in the public discussion document “Online Gambling in New Zealand” released in late July 2019. The discussion document stated that the Government supported Class 3 operators being able to offer their gambling products by email and phone. Officials also held targeted consultation meetings on the discussion document with community organisations during the eight-week consultation period.</p> <p>Of the 2,910 submissions received which specifically related to this change, 2,897 (99 percent) supported the removal of the restriction on remote interactive gambling in order to enable Class 3 operators to undertake lotteries online. This was equivalent to 91 percent of all the written submissions received during the consultation.</p> <p><b>Property Law Act 2007 amendments</b></p> <p>Due to time constraints, only limited targeted consultation has been undertaken on the Bill.</p> <p><b>Residential Tenancies Act 1986 amendments</b></p> <p>In relation to the RTA amendments, Te Tūāpapa Kura Kāinga - the Ministry of Housing and Urban Development consulted with: the Ministries of Business, Innovation and Employment, Health, Justice, Social Development, and Pacific Peoples; the Treasury; Te Puni Kōkiri; Parliamentary Counsel Office and the Department of Prime Minister and Cabinet. Kāinga Ora was also consulted.</p> |     |

### Other testing of proposals

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| <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> | YES |
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## **COVID-19 Recovery (Fast-track Consenting) Act 2020 amendments**

The FTCA was enacted on 8 July 2020 and a series of Projects have already been successfully implemented under the legislation

## **Gambling Act 2003 amendments**

The amendments to section 4A will extend the provision which has already been in place since May 2020 with three gambling operators: Countdown Kids Charitable Trust, the National Heart Foundation of New Zealand and Royal New Zealand Coastguard Incorporated.

Since it has been in place, no issues have been identified with the way it is operating and two of the operators (Heart Foundation and Coastguard New Zealand) have sought for it to be extended. Officials expect therefore that its extension, and its expansion to other Class 3 gambling operators conducting a lottery, is workable within the existing Class 3 licensing regime.

## **Land Transport Act 1998 amendments**

Waka Kotahi NZ Transport Agency have prepared operational policy to implement the Bill's amendment to the Land Transport Act 1998.

## **Property Law Act amendments**

The Bill has been developed urgently within the context of responding to COVID-19.

## **Residential Tenancies Act 1986 amendments**

In March 2020, temporary changes were made to the RTA to sustain tenancies to the greatest extent possible and to protect tenants from becoming homeless during the COVID-19 outbreak. These changes were made by the COVID-19 Response (Urgent Management Measures) Legislation Act 2020 (the COVID-19 Act). The COVID-19 Act was drafted and passed under urgency and came into force on 26 March 2020. The COVID-19 Act included RTA amendments to restrict terminations, set out in (now expired) Schedule 5. Under the changes, tenants were still able to terminate tenancies, but the COVID-19 Act:

- invalidated termination notices that had been given by landlords, which had not yet taken effect;
- allowed tenants to revoke termination notices or Tenancy Tribunal orders they had obtained, if they had not yet taken effect; and
- continued fixed-term tenancies that otherwise would have expired. These fixed-term tenancies were converted to periodic tenancies upon their expiry.

Because of the impositions on property rights, these provisions were time-limited, as it was unclear how long New Zealand would spend in Alert Levels 3 and 4. The restrictions on tenancy terminations were set to expire after three months, unless they were extended by up to a further three months by Order in Council, if the Minister 'is satisfied that it is necessary or desirable to support measures taken to contain or mitigate the outbreak of COVID-19 or its effects'.

Following advice in early June, Ministers agreed not to use the extension and the

provisions expired on 25 June 2020. This was primarily because the significant public health risks were well managed and there was greater movement around the country under Alert Level 2.

To the extent that the measures were intended to support people to stay in tenancies and to reduce the impact of COVID-19 on rental markets, the available evidence suggests that they did achieve these objectives. Keeping tenants in existing tenancies where possible helped mitigate pressures on the housing system and helped prevent people becoming homeless during the outbreak.

*Future tenancy restrictions should be clear and proportionate*

Analysis of the tenancy termination restrictions in 2020 concluded that any further tenancy law changes have the potential to be disruptive, inconvenient and confusing. Future amendments to the RTA should be **clear** and **proportionate**, so that disruption to landlords' businesses and to tenants' living arrangements are mitigated as far as possible. Signalling the temporary changes will provide certainty for the sector in case New Zealand is put into Alert Level 4 in the future, so landlords and tenants can understand and quickly adjust to new temporary rules.

The preferred approach is to allow for the ability to link tenancy restrictions to Alert Levels and if appropriate, to regions. At Alert Level 4, the tenancy restrictions are necessary for public health to enable tenants to stay in their rental properties so that they can self-isolate. For this reason, and because unintended consequences can be mitigated if the restrictions only apply for a limited time, it was recommended the temporary changes only apply to those regions going into Alert Level 4.

## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

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

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| <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> | NO |
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### Retrospective effect

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| <b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>   | YES |
| <b>Property Law Amendment Act 2007 amendments</b><br><br>The amendments to the Property Law Act will apply retrospectively by changing leases from the date the policy was announced, on 28 September 2021. This was considered necessary for the policy to have its intended effect while ensuring businesses are aware of the upcoming changes.<br><br>The chosen approach balances the need for an effective implementation of the policy, and core legal principles.<br><br>Even though the clause does not apply to the period before 27 September 2021, payment of rent during the higher COVID-19 restrictions since 18 August 2021 must be considered in determining a fair proportion of the rent that will cease to be payable. |     |
| <b>Residential Tenancies Act 1986 amendments</b><br><br>A COVID-19 tenancies order and the restrictions under such an order will apply prospectively, that is after the commencement date of the Act (and the relevant order).<br><br>However, a COVID-19 tenancies order may affect some actions already taken, namely certain termination notices, termination agreements and Tenancy Tribunal termination orders given, agreed or obtained before the switching on date.<br><br>A COVID-19 tenancies order does not undo tenancy terminations that had already taken effect.   |     |

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

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

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| <b>4.5. Does this Bill create or amend a civil or criminal immunity for any person?</b> | NO |
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## Significant decision-making powers

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| <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>   | YES |
| <p><b>Property Law Act 2007 amendments</b></p> <p>This Bill allows parties to seek binding arbitration for disputes about the implied term if they cannot reach agreement. The implied term creates new rights and obligations under commercial leases in certain circumstances. New Zealand courts can only be accessed as provided for in the Arbitration Act 1996, which means in general only for narrow appeals of the arbitral award on questions of law.</p> <p>The implied clause providing for arbitration may override dispute resolution clauses in existing leases. However, the parties can agree to negate, vary and otherwise amend the implied clause and revert to the existing terms of the lease.</p> <p><b>Residential Tenancies Act 1986 amendments</b></p> <p>The Associate Minister of Housing (Public Housing) (the Minister) will be able to make a COVID-19 tenancies order which may apply to an area and restrict tenancy terminations for the duration of that order within that area.</p> <p>The safeguards are as follows:</p> <p>The Minister may only make the order if satisfied that:</p> <ul style="list-style-type: none"><li>• A COVID-19 Public Health Order is or will be made containing measures that, subject to any exceptions specified in the order, restrict people in the area from moving (including on a permanent or long-term basis) to a new home or other place of residence; and</li><li>• The COVID-19 tenancies order is necessary or desirable to support those measures.</li></ul> <p>Before making the order, the Minister must consult with:</p> <ul style="list-style-type: none"><li>• The Prime Minister; and</li><li>• The Minister responsible for the administration of the COVID-19 Public Health Response Act 2020.</li></ul> <p>The Minister must:</p> <ul style="list-style-type: none"><li>• Keep every COVID-19 tenancies order under review; and</li></ul> <p>If satisfied that the criteria above for making the order are no longer met, revoke the order, or amend it so that it no longer applies to the relevant area, as soon as reasonably practicable.</p> |     |

## Powers to make delegated legislation

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| <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> | NO |
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| <b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>  | YES |
| <p><b>Local Electoral Act 2001 amendment</b></p> <p>The amendments to section 73A of the Local Electoral Act 2001 extend the current ability of the Governor-General, by Order in Council, to delay key dates in triennial elections by up to six weeks under emergency circumstances. The amendments would allow further Orders in Council to be made, extending dates by up to six weeks at a time, if necessary. They will also clarify that an epidemic is one example of such an emergency legislation.</p> <p><b>Resource Management Act 1991 amendment</b></p> <p>The Bill amends section 58H of the Resource Management Act 1991, to introduce a new streamlined process for the Minister for the Environment to amend the National Planning Standards 2019, to defer the implementation of the national planning standards for regional policy statements by two years. It is noted that the Minister already the ability to amend the National Planning Standards, but the existing process to make such deferment decisions is not streamlined. The streamlined process proposed in the Bill will enable a timely response to reduce pressures on councils whilst they respond to the COVID-19 pandemic. The key safeguard is the narrow scope of the Bill. The new streamlined process can only be used to make a specific timing change that is set out in the Bill.</p> |     |

## Any other unusual provisions or features

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