

Short-Form Supplementary Departmental Disclosure Statement

Immigration (COVID-19 Response) Amendment Bill
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A short form supplementary disclosure statement for proposed government amendments to a Bill seeks to bring together in one place some selected information to support and enhance the Parliamentary and public scrutiny of those proposed amendments.

It highlights certain significant powers or features in the proposed amendments that might be of particular Parliamentary or public interest and warrant an explanation.

This document provides a limited supplement to the original disclosure statement for the Immigration (COVID-19 Response) Amendment Bill, dated 4 May 2020, which can be found at this link <http://disclosure.legislation.govt.nz/bill/government/2020/243>.

This supplementary disclosure statement was prepared by the Ministry of Business, Innovation and Employment.

The Ministry of Business, Innovation and Employment certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

10 May 2020

Significant Legislative Features

Offences, penalties and court jurisdictions

1. Do the proposed amendments create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalties)?	NO
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO

Privacy issues

2. Do the proposed amendments 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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Compulsory acquisition of private property

3. Do the proposed amendments 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. Do the proposed amendments create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

5. Do the proposed amendments affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the burden of proof for offences

6. Do the proposed amendments:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for any offence or civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

7. Do the proposed amendments create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

<p>8. Do the proposed amendments 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?</p>	<p>YES</p>
<p>The SOP changes two aspects of the amendments proposed in the Bill.</p> <p>Firstly, Clauses 5 – 9 and 11 will be amended to clarify that, before making a special direction affecting a class of people, the Minister of Immigration must be satisfied that the direction:</p> <ul style="list-style-type: none"> a) does not materially disadvantage the class or classes of persons to which it relates; or b) (temporary entry visa classes only) relates to compliance with health measures taken in response to COVID-19. <p>Secondly, the Bill will be amended to require the Minister of Immigration to be satisfied, before exercising the majority of the powers (with the exception of the power to grant an individual a visa in the absence of an application), that doing so is “reasonably necessary” to manage the effects, or deal with the consequences, of the outbreak of COVID-19, or of measures taken to contain or mitigate the outbreak of COVID-19. This replaces the previous terminology “necessary or desirable”.</p> <p>These changes provide additional safeguards relating to the exercise of the powers. Adding the condition that a direction must “not materially disadvantage the class or classes of persons to which it relates” removes a possibility of the powers being exercised to remove rights or permissions currently enjoyed by classes of visa holders (such as the ability to work part time during term time which many student visas enable).</p> <p>The only exclusion from this requirement is the ability for the Minister to place a condition on temporary entry visa class holders which relates to compliance with directions, orders, or requirements of the Minister of Health, the Director-General of Health, any medical officer of health, or a District Court Judge made or given under the Health Act 1956 or any other Act (whether enacted before or after the Immigration (COVID-19 Response) Amendment Act 2020), in response to COVID-19. While this condition could materially disadvantage a class of temporary entry visa holders (lack of compliance would be in breach of visa conditions and could render individuals liable to deportation), it replicates an existing requirement on temporary entry visas granted subsequent to a change made to applications in March 2020.</p> <p>The change in terminology from “necessary or desirable” to “reasonably necessary” in terms of when the powers may be exercised sets a higher threshold, while retaining a degree of flexibility to respond to the rapidly evolving nature of the COVID-19 outbreak.</p>	

Powers to make delegated legislation

<p>9. Do the proposed amendments 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?</p>	<p>NO</p>
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10. Do the proposed amendments create or amend any other powers to make delegated legislation?	YES
<p>The proposed amendments modify special direction powers. Special directions affecting a class of visa holders or persons are disallowable instruments, but a legislative instrument, for the purposes of the Legislation Act 2012 and therefore may be considered “delegated legislation”. Refer to the response to 8 for more detail, including why the amendment is necessary, and the safeguards which apply.</p>	

Any other unusual provisions or features

11. Do the proposed amendments contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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