

Short-Form Supplementary Departmental Disclosure Statement

COVID-19 Response (Further Management Measures) Legislation Bill

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.

It provides a limited supplement to the original disclosure statement for the COVID-19 Response (Further Management Measures) Legislation Bill, dated 1 May 2020, which can be found at this link <http://disclosure.legislation.govt.nz/bill/government/2020/244/>.

This supplementary disclosure statement was prepared by the Inland Revenue Department.

The Inland Revenue Department certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

11 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

1.1. Was the Ministry of Justice consulted about these provisions?	NA
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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?	YES
<p>The Supplementary Order Paper (SOP) amends a provision which authorises the exchange of information between Inland Revenue and the Ministry for Social Development for the purposes of administration of the Small Business Cashflow Scheme which will be open for applications on 12 May 2020.</p> <p>The provision enables an authorised officer of the Ministry of Social Development to provide the Commissioner of Inland Revenue with information relating to the Government's COVID-19 response related wage subsidy scheme administered by the Ministry. The Commissioner will be authorised to use the information supplied in connection with the exercise or performance of any of the Commissioner's duties, powers, or functions under the Inland Revenue Acts.</p> <p>The SOP amends this provision to ensure that the information sharing powers are wide enough to support Inland Revenue to administer and enforce the scheme.</p>	

2.1. Was the Privacy Commissioner consulted about these provisions?	YES
<p>The Office of the Privacy Commissioner (OPC) was consulted on this provision as it was being developed.</p> <p>Inland Revenue sought OPC's comments on the extent to which the information sharing provision interacted effectively with the Privacy Act as well as what additional safeguards might be appropriate to ensure best practice around privacy.</p> <p>OPC advised that the information sharing provision be made one-way (MSD to Inland Revenue) rather than two-way, highlighting that Inland Revenue has already been invested with powers to share through Schedule 7, Clause 23B. The drafting was updated in line with this recommendation.</p> <p>OPC also suggested the inclusion of a clear time-limit on the information sharing power. This was discussed within Inland Revenue and concerns raised that specifying a time frame could limit Inland Revenue's ability to audit the scheme in the future. It is necessary for the information sharing provision to enable data sharing outside of the 5-year period of the loan in specific cases, for example, investigating fraud. As the provision only applies to information shared in relation to the loan scheme, which has a finite life, it is inherently time limited. Consequently, it was decided that no amendment to the provision would be made at this time. Mechanisms around audit and investigating fraud are still being considered and will remain under review.</p> <p>Finally, OPC raised concerns around the proposal to publish the name of loan recipients (with certain exceptions). The benefits seen through this practice with regards to the wage subsidy were not as likely in relation to the loan and as the model for the loan scheme became more commercial than concessionary it is now considered unnecessary to publish recipient names. This proposal has been removed from the legislation accordingly.</p>	

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
Given the SOP 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 the guidance.	

Retrospective effect

5. Do the proposed amendments affect rights, freedoms, or impose obligations, retrospectively?	NO
<p>The proposed amendments to the Small Business Cashflow Scheme will apply retrospectively to the date of enactment of the original enabling legislation (30 April 2020). However, as applications for a loan under this scheme will not be open until 12 May 2020, this will have no practical effect for taxpayers.</p> <p>Minor technical amendments are proposed for the tax loss-carry back regime which was enacted on 30 April and applied from 15 April 2020. The amendments correct errors in the legislation as enacted and make a technical change to the provisional tax rules to ensure that when a taxpayer makes an election to carry a loss back any associated taxpayers are not adversely affected by losing their ability to use the interest concession rules. These amendments will have retrospective effect to 15 April 2020 to ensure that the legislation works as intended.</p>	

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

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?	NO
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Powers to make delegated legislation

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?	NO
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10. Do the proposed amendments create or amend any other powers to make delegated legislation?	NO
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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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