



COVID-19 Response (Requirements For Entities— Modifications and Exemptions) Act 2020

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Commencement see section 2

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the COVID-19 Response (Requirements For Entities—Modifications and Exemptions) Act 2020.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

Part 1
Preliminary

Overview

3 Overview of Act

- (1) This Act provides processes for an entity affected by COVID-19—
 - (a) to, in some circumstances, use electronic means for doing things if its constitution or rules would otherwise prevent this; and
 - (b) to modify certain requirements or restrictions in its constitution or rules if it is not reasonably practicable to comply with them.
- (2) The processes are in Part 2.
- (3) Modifications made to constitutions or rules under section 13 are temporary. However, an entity may make lasting amendments to its constitution or rules through electronic voting (*see* sections 10 and 11).

- (4) This Act also provides, in Part 3,—
- (a) powers for responsible Registrars and Ministers to exempt classes of persons from certain provisions of specified enactments; and
 - (b) powers for the Chief Judge of the Māori Land Court to grant relief from compliance with terms of certain orders made under Te Ture Whenua Maori Act 1993.
- (5) This section is only a guide to the general scheme and effect of this Act.

Interpretation

4 Meaning of entity

- (1) In this Act, **entity** means any of the following:
- (a) assembled owners under Part 9 of Te Ture Whenua Maori Act 1993:
 - (b) a building society:
 - (c) a charitable trust board:
 - (d) a company:
 - (e) a credit union:
 - (f) a firm:
 - (g) a friendly society:
 - (h) an incorporated society:
 - (i) an industrial and provident society:
 - (j) a limited partnership:
 - (k) a mandated iwi organisation:
 - (l) a Māori association:
 - (m) a Māori land trust:
 - (n) a Māori incorporation:
 - (o) a body corporate or the trustees of a trust appointed to administer a Māori reservation:
 - (p) a Māori Trust Board.
- (2) For the purposes of Part 2, **entity** also includes any post-settlement governance entity of a type not listed in subsection (1).
- (3) *See* section 7 for definitions.

5 Meaning of specified Act

In this Act, **specified Act** means any of the following Acts:

- (a) the Building Societies Act 1965:
- (b) the Charitable Trusts Act 1957:
- (c) the Companies Act 1993:

- (d) the Friendly Societies and Credit Unions Act 1982:
- (e) the Incorporated Societies Act 1908:
- (f) the Industrial and Provident Societies Act 1908:
- (g) the Limited Partnerships Act 2008:
- (h) the Maori Community Development Act 1962:
- (i) the Maori Fisheries Act 2004:
- (j) the Maori Trust Boards Act 1955:
- (k) the Partnership Law Act 2019:
- (l) Te Ture Whenua Maori Act 1993.

6 Definitions relating to responsible Registrars, agencies, and Ministers

- (1) This section defines,—
- (a) for the purposes of Part 2, in relation to an entity, the responsible Registrar or agency:
 - (b) for the purposes of Part 3, in relation to specified enactments, the responsible Registrar or Minister.

Responsible Registrar or agency

- (2) **Responsible Registrar or agency**,—
- (a) if the entity is listed in any of section 4(1)(b) to (e) or (g) to (j), means the Registrar who acts under the specified Act under which the entity is registered or incorporated:
 - (b) if the entity is listed in any of section 4(1)(a) or (m) to (o), means the Chief Registrar of the Māori Land Court:
 - (c) if the entity is a Māori association or a Māori Trust Board, means the chief executive of Te Puni Kōkiri:
 - (d) if the entity is a mandated iwi organisation, means Te Ohu Kai Moana Trustee Limited.
- (3) For the purposes of Part 2, some entities have more than 1 responsible Registrar or agency.
- (4) There is no responsible Registrar or agency in relation to—
- (a) a firm (within the meaning of the Partnership Law Act 2019):
 - (b) a post-settlement governance entity of a type not listed in section 4(1).

Responsible Registrar or Minister

- (5) For the purposes of the powers to grant exemptions under Part 3 in relation to the specified Acts (and the specified enactments made under them), **responsible Registrar or Minister** means,—
- (a) in relation to each specified Act listed in section 5(a) to (g), the Registrar as defined in the specified Act:

- (b) in relation to the Partnership Law Act 2019, the Registrar of Companies:
- (c) in relation to the Maori Community Development Act 1962, the Maori Trust Boards Act 1955, and Te Ture Whenua Maori Act 1993, the Minister for Māori Development:
- (d) in relation to the Maori Fisheries Act 2004, the Minister of Fisheries.

7 Interpretation

In this Act, unless the context otherwise requires,—

building society has the same meaning as in section 2(1) of the Building Societies Act 1965

charitable trust board means any trustees or society incorporated as a board under Part 2 of the Charitable Trusts Act 1957

commencement date means the commencement date of this Act

company has the same meaning as in section 2(1) of the Companies Act 1993

constitution or rules means,—

- (a) in the case of a company, the constitution of the company; and
- (b) in the case of any other entity, the documents or instruments constituting or defining the constitution or rules of the entity

credit union has the same meaning as in section 2 of the Friendly Societies and Credit Unions Act 1982

electronic has the same meaning as in section 209 of the Contract and Commercial Law Act 2017

electronic communication has the same meaning as in section 209 of the Contract and Commercial Law Act 2017

entity has the meaning set out in section 4

firm means a firm within the meaning of the Partnership Law Act 2019

friendly society means a society that—

- (a) is of the kind specified in section 11(1)(a) of the Friendly Societies and Credit Unions Act 1982; and
- (b) is registered under Part 2 of that Act

further period, in relation to a matter, means a period (if any) that starts on 1 December 2020 and ends on the close of the day specified in an Order in Council made under section 42 that relates to the matter

give, in relation to information, includes—

- (a) to send, post, serve, lodge, provide, or present; and
- (b) any of the other actions specified in section 224(4) of the Contract and Commercial Law Act 2017

governing body means,—

- (a) in relation to a company, the board:
- (b) in relation to a firm, the partners:
- (c) in relation to a limited partnership, the general partners:
- (d) in relation to a body corporate or unincorporate, other than a company, firm, or limited partnership, the committee or other governing body by whatever name called

governing officer means,—

- (a) in relation to a company, any person occupying the position of a director of the company by whatever name called:
- (b) in relation to a firm, any partner:
- (c) in relation to a limited partnership, any general partner:
- (d) in relation to a body corporate or unincorporate, other than a company, firm, or limited partnership, any person occupying a position in the body that is comparable with that of a director of a company

incorporated society means a society incorporated under the Incorporated Societies Act 1908

industrial and provident society means a society registered under the Industrial and Provident Societies Act 1908

information includes notices, communications, and documents

initial period means the period from the commencement date until 30 November 2020

joint Ministers means the Minister of Finance and the Minister of Commerce and Consumer Affairs, acting jointly

limited partnership means a limited partnership that is registered under section 51 of the Limited Partnerships Act 2008

mandated iwi organisation has the same meaning as in section 5 of the Maori Fisheries Act 2004

Māori association has the same meaning as in section 2 of the Maori Community Development Act 1962

Māori incorporation means a Māori incorporation under Part 13 of Te Ture Whenua Maori Act 1993

Māori land trust means a trust constituted under Part 12 of Te Ture Whenua Maori Act 1993

Māori reservation means a Māori reservation set apart under section 338 of Te Ture Whenua Maori Act 1993 or the corresponding provisions of any former Act

Māori Trust Board has the same meaning as in section 2 of the Maori Trust Boards Act 1955

modify, in relation to a requirement or restriction, includes disapplying or suspending the requirement or restriction

post-settlement governance entity means an entity established by an iwi or a hapū or any other group of Māori and approved by the Crown for the purpose of receiving redress in the settlement of the historical Treaty of Waitangi claims of that iwi or hapū or other group

Registrar of Companies means the Registrar of Companies appointed in accordance with section 357(1) of the Companies Act 1993

relevant period,—

- (a) in Part 2, in relation to an entity, means the period described in section 9(a) and (b):
- (b) in Part 3, in relation to powers to grant exemptions and relief, means the period described in section 25(a) and (b)

responsible Registrar or agency has the meaning set out in section 6

responsible Registrar or Minister has the meaning set out in section 6

specified Act has the meaning set out in section 5

specified enactment—

- (a) means a specified Act and any enactments made under the specified Act; and
- (b) in the case of the Maori Fisheries Act 2004, includes rules made by Te Ohu Kai Moana Trustee Limited under section 54(1)(b) of that Act.

Act binds the Crown

8 Act binds the Crown

This Act binds the Crown.

Part 2

Electronic means and modifications relating to constitution or rules

Application

9 Sections 10 and 13 apply for relevant period

Each of sections 10 and 13 applies in relation to an entity—

- (a) until the close of 30 November 2020; and
- (b) if its application is extended by an Order in Council made under section 42 in relation to the type of entity, for the further period.

*Electronic means***10 When electronic means permitted despite constitution or rules**

- (1) In the relevant period, this section applies in relation to an entity—
 - (a) if,—
 - (i) because of a restriction or requirement in the entity’s constitution or rules, a matter in subsection (2) may not be done by electronic means, or a majority of the entity’s governing officers, in good faith, believe that there is uncertainty as to whether the matter may be done by electronic means; or
 - (ii) the entity’s constitution or rules are silent about whether a matter in subsection (2) may be done by electronic means; and
 - (b) if a majority of the entity’s governing officers believe, in good faith, that because of the outbreak of COVID-19 it is not reasonably practicable to do the matter by non-electronic means.
- (2) The matters are—
 - (a) having or recording information in writing:
 - (b) calling or holding meetings, including for the purpose of establishing a quorum:
 - (c) voting:
 - (d) giving or receiving information:
 - (e) making or keeping new records:
 - (f) providing access to records or information held by or on behalf of the entity:
 - (g) signing any instrument:
 - (h) retaining any information.
- (3) If this section applies,—
 - (a) the matter may be done, wholly or partly, by electronic means; and
 - (b) if done by electronic means, the matter has legal effect to the same extent as if it had been done by non-electronic means in accordance with the constitution or rules.
- (4) However, subsection (3)—
 - (a) is subject to the conditions in section 12 being, or having been, complied with as required by that section; and
 - (b) in the case of voting, is subject also to section 11.
- (5) In order to do the matter by electronic means, it is not necessary to comply with a paper-based format requirement within the meaning of section 225 of the Contract and Commercial Law Act 2017.

- (6) This section does not affect any legal requirement to the extent that the requirement relates to the content of information.
- (7) Nothing in this section prevents section 13 from being used to make modifications to allow things to be done by electronic means.

11 Electronic voting

- (1) No vote may be taken or received (wholly or partly) by electronic means in reliance on section 10, and no other part of a voting process may be done in reliance on that section, unless a majority of the entity's governing officers (or the entity's governing officer, if it has only 1)—
 - (a) believe, on reasonable grounds, that the provisions in the entity's constitution or rules that relate to the integrity of the voting process—
 - (i) are or will be substantively complied with; and
 - (ii) will not be substantively compromised as a consequence of the vote; and
 - (b) sign a certificate certifying as to their beliefs under paragraph (a) and recording the reasons why, and keep that certificate with the entity's records.
- (2) In forming their beliefs under subsection (1)(a), the matters to which the governing officers must have regard include—
 - (a) whether, if a vote or other part of a voting process is done (wholly or partly) by electronic means, all persons who are entitled to vote will have a reasonable opportunity to vote and participate in the process; and
 - (b) whether any person who is entitled to vote may suffer a material detriment.

12 Conditions

- (1) The conditions that permit a matter to be done in reliance on section 10 are as follows:
 - (a) to the extent that doing the matter by electronic means relates to—
 - (i) having information in electronic form (instead of in writing), section 222 of the Contract and Commercial Law Act 2017 must be complied with:
 - (ii) recording information in electronic form (instead of in writing), section 223 of that Act must be complied with:
 - (iii) giving information in electronic form (instead of giving it in writing), section 224 of that Act must be complied with:
 - (iv) an electronic signature (instead of a non-electronic signature), section 226 or 227 of that Act must be complied with:

- (v) retaining an electronic form of information (instead of retaining the information in paper or any other non-electronic form), section 229 of that Act must be complied with:
 - (vi) providing or producing information in electronic form (instead of providing or producing the information in paper or any other non-electronic form), section 232 of that Act must be complied with:
 - (vii) providing access to information in electronic form (instead of providing access to the information in paper or any other non-electronic form), section 234 of that Act must be complied with; and
- (b) the entity must keep a record of—
- (i) the electronic communications used to do the matter (if any); and
 - (ii) the reasons for the belief of the majority of its governing officers referred to in section 10(1)(b) (and section 10(1)(a), if relevant); and
- (c) the entity must make reasonable efforts to notify all members and governing officers of the matter for which section 10 has been, or will be, relied on; and
- (d) the entity must give to the responsible Registrar or agency a written notice that—
- (i) identifies the matter for which section 10 has been, or will be, relied on; and
 - (ii) contains, or is accompanied by, a copy of the record referred to in paragraph (b)(ii).
- (2) For the purposes of meeting any conditions in subsection (1)(a) to (c), an entity may treat a person as having consented to use, provide, accept, or receive information and electronic signatures by email if—
- (a) the person has previously notified the entity of an electronic address that the person uses; and
 - (b) the entity has no reason to believe that the address is incorrect; and
 - (c) the entity believes, on reasonable grounds, that the use of email to give the information or signature will not materially disadvantage the person; and
 - (d) the person has not expressly told the entity that the person wants to use, provide, accept, or receive the particular information or signature by some means other than by email.
- (3) If subsection (1)(c) or (d) is not complied with before the matter is done, it must be complied with as soon as reasonably practicable after the matter is done.
- (4) If there is more than 1 responsible Registrar or agency, the entity must give the notice under subsection (1)(d) to each of them.

- (5) Subsection (1)(d) does not apply to a firm (within the meaning of the Partnership Law Act 2019) or to a post-settlement governance entity of a type not listed in section 4(1).

Modifications to constitution or rules

13 Process for modifying certain requirements or restrictions in constitution or rules

- (1) In the relevant period, this section applies to an entity if—
- (a) the entity’s constitution or rules contain a provision that (directly or indirectly)—
 - (i) requires a person to comply with a requirement; or
 - (ii) restricts the manner or form in which a person may exercise a power or right, or perform a function, that the person wishes to exercise or perform; and
 - (b) in the case of paragraph (a)(i), the time for complying with the requirement ends during the period that starts on 21 March 2020 and ends when the relevant period ends; and
 - (c) in the case of paragraph (a)(ii), the time at which the person wishes to exercise or perform the power, right, or function is during the period that starts on 21 March 2020 and ends when the relevant period ends.
- (2) The entity may, by a notice in writing that is signed by the majority of its governing officers (or signed by its governing officer if it has only 1), modify the requirement or restriction if—
- (a) the modification relates to a matter in section 14 and does not relate to a matter in section 15; and
 - (b) the modification is not inconsistent with any enactment or rule of law or equity; and
 - (c) a majority of the entity’s governing officers believe, on reasonable grounds, that—
 - (i) because of the outbreak of COVID-19, it is not, or is not likely to be, reasonably practicable for the person referred to in subsection (1) to comply (or comply fully) with the requirement or restriction; and
 - (ii) the modification goes no further than is, or is likely to be, reasonably necessary in the circumstances; and
 - (d) the modification—
 - (i) complies with section 17 (which relates to expiry); and
 - (ii) if it relates to dispute resolution or disciplinary proceedings, complies with the principles of natural justice; and

- (e) the majority of the entity's governing officers believe, on reasonable grounds, that the modification is not oppressive, unfairly discriminatory, or unfairly prejudicial to any member, creditor, or other person; and
 - (f) if the modification relates to a method or form of voting, the majority of the entity's governing officers believe, on reasonable grounds, that the requirements or restrictions in the entity's constitution or rules that relate to the integrity of the voting process are substantively maintained or enhanced (and section 11(2) applies to the forming of this belief with all necessary modifications); and
 - (g) the entity complies with the conditions in section 18.
- (3) A modification made by an entity in accordance with this section has legal effect to the same extent as if it were made in accordance with the constitution or rules (and the procedures for amending the constitution or rules in any enactment).
 - (4) A modification does not actually amend the text of the constitution or rules (but has legal effect under subsection (3) as if the text were amended).
 - (5) To the extent that the modification is inconsistent with any enactment or rule of law or equity, the modification is of no effect.
 - (6) *See* section 16 in relation to retrospective modifications.
 - (7) For the purposes of subsections (2)(b) and (5), provisions in other enactments (and any rules of law or equity) that relate to amending, or require compliance with, constitutions or rules are disregarded.

14 Matters that may be modified under section 13

- (1) Section 13 allows modifications relating to the following:
 - (a) calling or holding meetings (including procedures at meetings):
 - (b) a method or form of voting:
 - (c) giving or receiving information:
 - (d) making or keeping new records:
 - (e) a method or form of dispute resolution:
 - (f) a method or form of disciplinary procedure:
 - (g) a waiver, suspension, deferral, or reduction of fees or other amounts payable by members of the entity to the entity:
 - (h) a deferral of auditing, assurance, or financial reporting or review requirements:
 - (i) use of electronic means to do any matter listed in section 10(2):
 - (j) other procedural or administrative processes.
- (2) However, the list in subsection (1) is subject to regulations made under section 41(1)(a)(i) or (iii) (which may restrict, or add to, the list).

- (3) If there is any inconsistency between this section and section 15(a) to (j), that section prevails.

15 Matters that may not be modified under section 13

Section 13 does not allow modifications that relate to the following:

- (a) the purpose or objects of the entity:
- (b) the powers of the entity (other than a procedural or an administrative power):
- (c) the sale, transfer, or other disposition of real or personal property:
- (d) voting rights or rights to a dividend or other distribution:
- (e) the number, or need, for a quorum:
- (f) rights of access to courts, tribunals, or arbitral tribunals:
- (g) the duties of the governing body or governing officers (other than a procedural or an administrative duty):
- (h) fees or other payments (other than a waiver, suspension, deferral, or reduction of fees or other amounts payable by members of the entity to the entity):
- (i) an alteration or addition made to the constitution or rules by an order of a court:
- (j) any matter if the modification to that matter has a material detrimental effect (direct or indirect) on the substantive rights or powers of any creditor or other person:
- (k) any matter that is prescribed by regulations made under section 41(1)(a)(ii):
- (l) any other matter that is not listed in section 14.

16 Retrospective modifications

- (1) This section applies to the extent that a modification made under section 13 relates to either of the following:
- (a) omitting to do a required act by a due date that is before the date on which the modification is made:
 - (b) an act done in an attempt to do an act required to be done by a due date that is before the date on which the modification is made.
- (2) The modification is treated as validly made on or immediately before the due date if—
- (a) the due date is no earlier than 21 March 2020; and
 - (b) the modification is made by the entity no later than 3 months after the commencement date.

- (3) To the extent that the modification relates to a due date earlier than 21 March 2020, the modification is of no effect.

17 Modifications must expire

Modifications made in initial period

- (1) A modification made under section 13 in the initial period must have an express expiry date that is no later than the end of the initial period.
- (2) However, subsection (3) applies if—
- (a) a modification made by an entity is in force immediately before the end of the initial period; and
 - (b) an Order in Council is made under section 42(1)(b) for a further period in relation to the type of entity.
- (3) The modification does not expire at the end of the initial period but is treated as having an expiry date that is the end of the further period.
- (4) Subsection (3) does not apply if the modification expressly states that it will not apply in any further period.

Modifications made in further period

- (5) A modification made by an entity under section 13 in the further period (if any) must have an express expiry date that is no later than the end of the further period.

18 Conditions

- (1) An entity that relies on section 13 must do all of the following:
- (a) keep a written record of—
 - (i) the notice of the modification; and
 - (ii) its reasons as to how the requirements of section 13 were satisfied in respect of the modification; and
 - (iii) the reasons for the beliefs of the majority of its governing officers referred to in section 13(2)(c), (e), and (f); and
 - (b) as soon as practicable after making the modification, make reasonable efforts to notify all members and governing officers of the entity of the modification; and
 - (c) as soon as practicable after making the modification, give to the responsible Registrar or agency a written notice that—
 - (i) states that the entity is relying on section 13 of this Act; and
 - (ii) contains, or is accompanied by, a copy of the written record referred to in paragraph (a); and
 - (iii) contains, or is accompanied by, a certificate by a governing officer of the entity certifying that, in making the modification, all requirements of this Act were complied with.

- (2) If there is more than 1 responsible Registrar or agency, the entity must give the notice under subsection (1)(c) to each of them.
- (3) Subsection (1)(c) does not apply to a firm (within the meaning of the Partnership Law Act 2019) or to a post-settlement governance entity of a type not listed in section 4(1).

19 Electronic means permitted for doing certain things to make modification

- (1) This section applies if,—
 - (a) because of a restriction or requirement in an entity's constitution or rules, 1 or more matters in subsection (2) may not be done by electronic means, or a majority of an entity's governing officers, in good faith, believe that there is uncertainty as to whether the matter may be done by electronic means; and
 - (b) the majority of the entity's governing officers believe, in good faith, that it is not reasonably practicable to do the matter by non-electronic means.
- (2) The matters relate to a modification under section 13 and are—
 - (a) making and signing the written notice of modification;
 - (b) recording the beliefs under section 13(2)(c), (e), and (f);
 - (c) compliance with any condition in section 18.
- (3) If this section applies,—
 - (a) the matter may be done, wholly or partly, by electronic means; and
 - (b) if done by electronic means, the matter has legal effect to the same extent as if it had been done by non-electronic means in accordance with the constitution or rules.
- (4) However, subsection (3) is subject to the conditions in section 12(1)(a) and (b)(i) being complied with (and section 12 applies for this purpose with the necessary modifications).
- (5) In order to do the matter by electronic means, it is not necessary to comply with a paper-based format requirement within the meaning of section 225 of the Contract and Commercial Law Act 2017.
- (6) This section does not affect any legal requirement to the extent that the requirement relates to the content of information.

20 Modified method or form of voting may not be used for certain matters

- (1) A vote may not be taken or received (wholly or partly) in reliance on a modification made under section 13 to a method or form of voting if the vote relates to any of the following matters (and, to the extent they are purportedly voted on in reliance on the modification, the vote is of no effect):
 - (a) an amendment to an entity's constitution or rules (other than an amendment described in subsection (2)); or

- (b) any matter listed in section 15.
- (2) Subsection (1)(a) does not prevent a vote being taken or received (wholly or partly) in reliance on a modification made under section 13 to a method or form of voting if the amendment expires in accordance with section 17 (which applies with all necessary modifications as if the amendment were a modification referred to in that section).

21 Variation and revocation

- (1) An entity that desires to vary a modification made under section 13 may do so only under that section (with this Part applying with all necessary modifications).
- (2) A modification made by an entity under section 13 may be revoked by a notice in writing that is signed by the majority of the entity's governing officers (or signed by its governing officer, if it has only 1).
- (3) An entity must comply with section 18 (with all necessary modifications), other than section 18(1)(a)(ii) and (iii) and (c)(i), in relation to a revocation.

Records

22 Responsible Registrar or agency's obligations to register or publish

- (1) This section applies when a responsible Registrar or agency receives a written notice under this Part.
- (2) A Registrar receiving the notice—
 - (a) must arrange for particulars about the notice (including particulars about information contained in, or accompanying, the notice) to be registered on the relevant register; and
 - (b) may otherwise make the particulars available to the public in any way the Registrar thinks fit (for example, by publishing them on an Internet site).
- (3) An agency receiving the notice must make particulars about the notice (including particulars about information contained in, or accompanying, the notice) available to the public, but may do so in any way the agency thinks fit (for example, by publishing them on an Internet site).

23 Entity's obligations to keep records

On and from the end of the relevant period, the obligations that an entity has under other enactments in relation to the keeping of entity records apply to all written records and electronic communications made by or under this Part.

Part 3

Exemption powers and power to grant relief

Purpose and application

24 Purpose

The purpose of this Part is to enable the modification or relaxation of described procedural or administrative matters in specified enactments and certain orders that—

- (a) are unduly onerous or burdensome because of the effects of COVID-19; or
- (b) may not be reasonably capable of being complied with, or complied with fully, because of the effects of COVID-19.

25 Powers may only be exercised during relevant period

Every power to grant exemptions under section 26, and the power under section 30, may only be exercised—

- (a) until the close of 30 November 2020; and
- (b) if extended by an Order in Council made under section 42, during the further period.

Powers

26 Responsible Registrar or Minister may grant class exemptions

- (1) A responsible Registrar or Minister in relation to a specified Act may exempt classes of persons from compliance with any provision of the specified Act, or of a specified enactment made under the specified Act, that relates to any matter described in section 29(1).
- (2) An exemption may be granted on the terms and conditions (if any) that the responsible Registrar or Minister thinks fit.
- (3) An exemption must state the provision or provisions of the specified enactment to which the exemption applies.
- (4) To avoid doubt, an exemption may extend to exempt from compliance with any provision that is implied into a deed or an agreement by or under any provision referred to in subsection (1).

27 Restrictions on exemption powers

- (1) A responsible Registrar or Minister must not grant an exemption under this Part unless—
 - (a) the responsible Registrar or Minister is satisfied that—
 - (i) granting the exemption is necessary or desirable for the purpose of this Part as set out in section 24; and

- (ii) the extent of the exemption is not broader than is reasonably necessary to address the matters that gave rise to the exemption; and
 - (iii) the exemption is the most appropriate way of addressing those matters at the time; and
- (b) the responsible Registrar or Minister has complied with section 28.
- (2) Additionally, if the exemption relates to rules made by Te Ohu Kai Moana Trustee Limited under section 54 of the Maori Fisheries Act 2004, the Minister of Fisheries (as the responsible Registrar or Minister) must have consulted Te Ohu Kai Moana Trustee Limited on the proposed exemption.

28 Engagement about proposed exemption

- (1) For the purposes of section 27(1)(b), the responsible Registrar or Minister must—
 - (a) make available a document referred to in subsection (2) to—
 - (i) the persons or representatives of persons that the responsible Registrar or Minister considers appropriate given the proposed effect of the exemption; or
 - (ii) the public generally; and
 - (b) invite those persons to make written comments on the document; and
 - (c) give those persons 3 working days from the making of the invitation within which to make their comments to the responsible Registrar or Minister (or any longer time allowed by the responsible Registrar or Minister); and
 - (d) have regard to those comments that are received within the 3-working-day period (or within the longer time allowed by the responsible Registrar or Minister).
- (2) The document must include—
 - (a) an explanation of what the exemption is intended to achieve; and
 - (b) a description of the proposed effect of the exemption; and
 - (c) an explanation of why the responsible Registrar or Minister considers that the exemption is necessary or desirable for the purpose of this Part and why the exemption is appropriate.
- (3) Subsection (1) and section 27(1)(b) do not apply, or do not apply to a person or class of persons, if the responsible Registrar or Minister is satisfied that—
 - (a) engagement is not reasonably practical in the circumstances; or
 - (b) the urgency of the situation requires that the exemption be made as soon as practicable without that engagement; or
 - (c) the exemption benefits the persons referred to in subsection (1)(a)(i) and does not materially detrimentally affect any person; or

- (d) in the circumstances, engagement is clearly disproportionate to the nature, size, significance, and effect of the exemption.
- (4) If subsection (3) is relied on, the responsible Registrar or Minister's reasons for relying on that subsection must be published together with the exemption.

29 Description of provisions from which exemptions may be granted

- (1) For the purposes of this Act, the provisions of specified enactments for which exemptions may be granted are provisions that relate to any of the following matters:
 - (a) calling or holding meetings (including procedures at meetings):
 - (b) a method or form of voting:
 - (c) giving or receiving information:
 - (d) making or keeping new records:
 - (e) rights to inspect or access information or records:
 - (f) a method or form of dispute resolution (excluding rights of access to courts, tribunals, or arbitral tribunals):
 - (g) a method or form of disciplinary procedures:
 - (h) auditing, assurance, or financial reporting or review requirements:
 - (i) any other matter specified by regulations made under section 41(1)(b)(i).
- (2) However, the list in subsection (1) is subject to regulations made under section 41(1)(b)(ii) (which may restrict the list) and subsections (3) to (5).
- (3) No exemption may be granted that results in a process for dispute resolution or a disciplinary procedure that is contrary to the rules of natural justice.
- (4) No exemption may dilute voting rights.
- (5) No exemption may dilute the number or need for a quorum.

30 Chief Judge of Māori Land Court may grant relief without application

- (1) The Chief Judge of the Māori Land Court may, with or without an application being made, grant relief for any person or classes of persons from compliance with any of the following that relate to any matter described in section 29(1):
 - (a) the terms of a trust set out by order under section 219 of Te Ture Whenua Maori Act 1993 (relating to a Māori land trust):
 - (b) the terms of an order under Part 13 of that Act incorporating a Māori incorporation:
 - (c) the terms of a trust set out by order under section 338(7) and (8) of that Act (or the corresponding provisions of any former Act) (relating to a Māori reservation).
- (2) Before granting relief, the Chief Judge must be satisfied that—

- (a) the relief is necessary or desirable for the purpose of this Part as set out in section 24; and
 - (b) the extent of the relief is not broader than is reasonably necessary to address the matters that gave rise to the relief.
- (3) Relief may be granted on the terms and conditions (if any) that the Chief Judge thinks fit.
- (4) Sections 29, 31 to 34, and 40 apply, with all necessary modifications, to relief granted under this section (as if the relief were an exemption).
- (5) This section does not limit any powers of the court.

Time frames relevant to exemptions and relief

31 Exemptions may be retrospective to 21 March 2020

- (1) A responsible Registrar or Minister may grant an exemption under this Part in respect of past acts or omissions.
- (2) However, no exemption may relate to an act or omission that occurred before 21 March 2020.

32 Exemptions that relate to periods of time

An exemption granted under this Part in relation to a requirement that relates to a period of time (for example, a requirement to prepare and lodge financial statements for an accounting period) may, if the responsible Registrar or Minister thinks fit, apply to a period that commenced before the exemption is granted (including a period that ended before the exemption is granted) if—

- (a) the exemption is granted before the requirement would otherwise need to be complied with under the specified enactment; or
- (b) section 31 applies.

33 Exemption in force for not longer than relevant period

Exemptions granted in initial period

- (1) An exemption granted in the initial period may continue in force until the end of the initial period (and, at that point, the exemption must be treated as having been revoked unless it is sooner revoked or expires, or subsection (3) applies).
- (2) Subsection (3) applies if—
 - (a) an exemption is in force immediately before the end of the initial period; and
 - (b) an Order in Council is made under section 42 for a further period in relation to section 26 and the specified enactment to which the exemption relates.
- (3) The exemption is not revoked at the close of the initial period but continues in force until the end of the further period (unless it is sooner revoked or expires).

- (4) Subsection (3) does not apply if the exemption expressly states that it will not apply in any further period.

Exemptions granted in further period

- (5) An exemption granted in the further period (if any) may continue in force until the end of the further period (and, at that point, the exemption must be treated as having been revoked unless it is sooner revoked or expires).

Compare: 2013 No 69 s 558

Breach

34 Breach of exemption conditions

The breach of a term or condition of an exemption granted under this Part is a breach of the provision to which the exemption relates (unless the terms of the exemption otherwise provide).

Compare: 2013 No 69 s 559

Status and publication of exemptions

35 Responsible Registrar or Minister must consider whether exemption notice should be legislative instrument and drafted by PCO

- (1) The responsible Registrar or Minister must, before granting an exemption, consider—
- (a) whether the exemption should be a legislative instrument for the purposes of the Legislation Act 2012 that is drafted by the Parliamentary Counsel Office (**PCO**) under that Act; and
 - (b) whether, accordingly, a notice should be given under section 36.
- (2) In performing that duty, the responsible Registrar or Minister must have regard to—
- (a) the nature of the exemption; and
 - (b) how significant the exemption is; and
 - (c) the number and nature of the persons to whom the exemption will apply; and
 - (d) the consequences of a failure to comply with a condition of the exemption; and
 - (e) the complexity of the exemption; and
 - (f) the purposes of the Legislation Act 2012; and
 - (g) any other relevant matters.

36 Exemption is legislative instrument if notice is given

- (1) An exemption under this Part is a legislative instrument for the purposes of the Legislation Act 2012 (and must be drafted by the PCO) only if, before the

exemption is issued, the responsible Registrar or Minister notifies the Chief Parliamentary Counsel in writing that the exemption will be a legislative instrument.

- (2) All other exemptions under this Part are not legislative instruments.

37 All exemptions are disallowable instruments

Every exemption under this Part—

- (a) is a disallowable instrument for the purposes of the Legislation Act 2012; and
- (b) must be presented to the House of Representatives under section 41 of that Act.

38 Publication of exemptions that are not legislative instruments

- (1) This section applies to exemptions granted under this Part that are not legislative instruments (*see* section 36).
- (2) The exemption must be published on an Internet site maintained by or on behalf of the relevant Registrar or the government department that administers the specified enactment to which the exemption relates.

39 Exemptions must contain reasons

A responsible Registrar or Minister's reasons for granting an exemption under this Part (including why the exemption is appropriate) must be published together with the exemption.

Compare: 2013 No 69 s 571(5)

Variation and revocation

40 Variation and revocation

- (1) A responsible Registrar or Minister may vary or revoke an exemption in the same way as the responsible Registrar or Minister may grant the exemption (with the provisions relating to the granting of the exemption applying with all necessary modifications).
- (2) However, a notice must be given under section 36 for a variation or revocation of an exemption that is a legislative instrument.

Compare: 2013 No 69 s 572

Part 4 Miscellaneous

41 Regulations may change Part 2 or Part 3 matters

- (1) The Governor-General may, by Order in Council made on the recommendation of the joint Ministers, make regulations that do all or any of the following:

- (a) prescribe, for the purposes of section 13,—
 - (i) matters additional to those listed in section 14(1) (matters that may be modified):
 - (ii) matters additional to those listed in section 15 (matters that may not be modified):
 - (iii) matters listed in section 14(1) that may no longer be modified (in whole or in part):
 - (b) prescribe, for the purposes of section 26 or 30, or both,—
 - (i) matters additional to those listed in section 29(1) (matters in respect of which exemptions or relief may be granted):
 - (ii) matters listed in section 29(1) in respect of which exemptions or relief may no longer be granted (in whole or in part):
 - (c) prescribe any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.
- (2) Regulations under this section may—
- (a) relate to 1 or more classes of persons:
 - (b) relate to 1 or more specified Acts (and specified enactments made under them):
 - (c) make different provision for different cases on any differential basis.
- (3) Before making a recommendation for regulations under subsection (1)(a)(i), the joint Ministers must be satisfied that the regulations will not be inconsistent with the matters listed in section 15(a) to (j).
- (4) Before making a recommendation for regulations under subsection (1)(b), the joint Ministers must be satisfied that the regulations are necessary or desirable for the purpose of Part 3 set out in section 24.

42 Order in Council may prescribe further period

- (1) The Governor-General may, by Order in Council made on the recommendation of the joint Ministers, extend all or any of the following for a further period prescribed by the order:
- (a) the application of section 10:
 - (b) the application of section 13:
 - (c) any or all powers to grant exemptions under section 26:
 - (d) the power to grant relief under section 30.
- (2) Every further period must—
- (a) start on 1 December 2020; and
 - (b) end no later than the close of 31 March 2021.
- (3) An order under subsection (1) may—

- (a) relate to 1 or more classes of persons:
 - (b) relate to 1 or more specified Acts (and specified enactments made under them):
 - (c) make different provision (including prescribe different periods) for different cases on any differential basis.
- (4) The power to make an order under subsection (1) may be exercised once only in respect of each section listed in that subsection.
- (5) However, the Governor-General may, by Order in Council made on the recommendation of the joint Ministers,—
- (a) revoke an order made under subsection (1) (in whole or in part):
 - (b) amend an order made under subsection (1) to reduce any period.
- (6) The joint Ministers may make a recommendation for an order under subsection (1) only if they are satisfied that—
- (a) the order is necessary and desirable to address the effects of COVID-19; and
 - (b) the period of the extension or each extension recommended for that order is no longer than is reasonably necessary to address the matters that gave rise to it.
- (7) Subsection (8) applies to the extent that a proposed recommendation does any of the following in relation to a specified Act for which a joint Minister is not the responsible Minister:
- (a) extends the application of section 10 or 13 to a type of entity that is registered, incorporated, or regulated under the specified Act:
 - (b) extends a power to grant exemptions or relief in relation to the specified Act.
- (8) Before making the recommendation, the joint Ministers must consult the responsible Minister for the specified Act.
- (9) The joint Ministers' reasons for making the recommendation (including why the order is necessary or desirable) must be published together with the order.
- (10) An order made under subsection (1) must be made at least 7 days before the conclusion of the initial period.
- (11) In this section, **responsible Minister**, in relation to a specified Act, means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of the specified Act.

43 Repeals

- (1) Sections 10, 13, 26, 30, 41, and 42 are repealed on 1 April 2021.
- (2) The rest of this Act is repealed on the close of 31 May 2022.

Legislative history

13 May 2020

Divided from COVID-19 Response (Further Management
Measures) Legislation Bill (Bill 244–1), third reading

15 May 2020

Royal assent

This Act is administered by the Ministry of Business, Innovation, and Employment.