

House of Representatives

Supplementary Order Paper

Tuesday, 12 May 2020

**COVID-19 Response (Further Management Measures) Legislation
Bill**

*Proposed amendments for the consideration of the Committee of the
whole House*

Key:

- **this is inserted text**
- **~~this is deleted text~~**

Note: This Supplementary Order Paper shows amendments to the Bill that are being proposed by the Minister for the purposes of consideration in Committee of the whole House. This document does—

- **NOT have official status in terms of unamended text**
- **NOT have the status of an as-reported version of the Bill.**

Explanatory note

This Supplementary Order Paper amends the COVID-19 Response (Further Management Measures) Legislation Bill. The main changes in the SOP are summarised below.

Changes to *Part 2*: requirements for entities: modifications and exemptions

Broadly, *clauses 11 and 14* relate to entities doing things by electronic means and modifying certain provisions in their constitution or rules. In the Bill as introduced, these clauses would have applied for an initial period expiring on the close of 30 September 2020. *Clause 10* now provides for *clauses 11 and 14* to apply for an initial period expiring on the close of 30 November 2020.

The same change is made in *clause 26* in respect of the initial period that applies for the purposes of the exemption powers and the power to grant relief in *clauses 27 and 31*.

Orders in Council can provide for any or all of *clauses 11, 14, 27, and 31* to continue for a further period to expire no later than the close of 31 March 2021. This power is retained but the maximum possible further period is now 4 months because of the extended initial period (*see clause 43(2)*).

Clause 11 contains provisions that permit things to be done by electronic means despite what an entity's constitution or rules say. In the Bill as introduced, *clause 12* prevented entities from voting by electronic means in reliance on *clause 11* in the following 2 circumstances:

- when voting on an amendment to their constitution or rules (unless that amendment was temporary and expired no later than the end of the initial period); and
- when voting on a matter listed in *clause 16*. For instance, this would have prevented electronic voting in relation to the purpose or objects of the entity, rights to a dividend, and any increase in fees payable by members.

These restrictions have been removed in relation to *clause 11*. The effect of *new clause 12* is that voting, or any other part of a voting process, can occur by electronic means in reliance on *clause 11* if a majority of an entity's governing officers believe, on reasonable grounds, that the provisions in the entity's constitution or rules relating to the integrity of the voting process are or will be substantively complied with and will not be substantively compromised as a consequence of the vote. Governing officers must sign a certificate to this effect. *New clause 12(2)* contains matters to which they must have regard when forming their beliefs.

Clause 13 imposes conditions on doing things by electronic means in reliance on *clause 11*. For example, in terms of the *clause 13(1)(a)* conditions, for some things to be done electronically, a person's consent is required and consent can be inferred. *New clause 13(1A)* also provides for a situation where an entity can treat a person as having consented to use, provide, accept, and receive information and electronic signatures by email.

Clause 14 gives an entity the ability, by notice in writing signed by the majority of its governing officers (or its governing officer, if it has only 1) to make temporary modi-

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fications to its constitution or rules in certain circumstances. If the modification relates to a method or form of voting, *new clause 14(2)(ea)* requires the governing officers to believe, on reasonable grounds, that the integrity of the voting process is substantively maintained or enhanced.

The amendment to *clause 15(1)(a)* is a clarification consequential on the existing drafting of *clause 30(1)(a)*.

Clause 16 lists matters in constitutions and rules that cannot be modified under *clause 14*. The amendments to *clause 16* insert, as matters that may not be modified, the number or the need for a quorum, rights of access to courts or tribunals or arbitral tribunals, and any alteration or addition to the constitution or rules made by an order of a court.

The amendments to *clause 42* are mainly consequential on the deletion of *clause 12* in the Bill as introduced. A regulation-making power is included for administrative matters that may be required (for example, transitional or application provisions if lists of what may be modified are changed).

Change to *Part 4 of Schedule 2*: amendment to Contract and Commercial Law Act 2017

Clause 19 of Schedule 2 inserts *new section 218A to 218D*. *New section 218A* modifies subpart 3 of Part 4 of the Contract and Commercial Law Act 2017 so that the subpart applies to deeds that create a power of attorney in connection with a security interest. The effect of that modification is to enable such deeds to be executed remotely without the need for execution in the physical presence of witnesses.

In the Bill as introduced, the modification would have applied from the day after the date on which the Bill receives the Royal assent. The amendments in this SOP provide for the modification to also apply retrospectively, to such deeds made on or after 21 March 2020.

Changes to *Schedule 3: Commerce and Consumer Affairs*: new *Schedule 12* inserted into Companies Act 1993

New Schedule 12 of the Companies Act 1993 contains the safe harbour provisions that relate to 2 director's duties.

New clause 1AA as inserted in *Schedule 12* sets out the purpose of the schedule. The purpose relates to giving directors of companies that are facing significant liquidity problems because of the effects of the outbreak of COVID-19 more certainty about their duties when agreeing to the business of the company being carried on or causing or allowing it to be carried on and when agreeing to the company incurring obligations. *Clause 1AA* also provides for what the schedule is not intended to do—which relates to not facilitating the ability of companies that have no realistic prospect of continuing to trade or operate in the medium or long term to defer decisions to liquidate to the detriment of their creditors.

In the Bill as introduced, *clause 3* of this schedule provided that directors of companies incorporated on or after 25 March 2020 could not access the safe harbour provi-

sions. That date has been amended to give access to directors of some companies incorporated before 3 April 2020.

New clauses 8(2)(a) and 9(4)(a) require the Minister of Finance and the Minister of Commerce and Consumer Affairs to have regard to the purpose of the schedule when deciding whether to recommend regulations.

Changes to *Schedule 4: Commerce and Consumer Affairs: new Schedule 13 inserted into Companies Act 1993*

New Schedule 13 of the Companies Act 1993 establishes the COVID-19 business debt hibernation regime (**BDH**).

Clause 3 is amended to provide that *Schedule 13* does not apply to operators of designated settlement systems or licensed derivatives issuers.

A definition of enforce has been moved from *clause 44* to *clause 4(1)*.

The definition of excluded debt in *clause 4(1)* has been clarified. The protections in *Part 5* of the schedule do not apply to excluded debts. In summary,—

- the term now includes salary, wages, and other employment debts. Previously, these amounts were referred to separately:
- the term has been amended to ensure that it does not include interest or penalties on pre-existing debts or other amounts that fall due for payment on or after the entity enters into BDH if the obligation to pay the amount was entered into before the entity enters into BDH. This reflects the intent of the Bill that enforcement of pre-existing obligations are covered by the protections (and that this may include, for example, rent payable under an existing lease).

A new definition of voting date has been added to *clause 4(1)*. This is basically the last date on which creditors may vote on a proposed arrangement under the schedule. The definition will clarify certain time periods in *Schedule 13*. For example, the notice to creditors about the vote under *clause 9* must be sent and received not less than 5 working days before the voting date. In addition, under *clause 15*, the protections in *Part 5 of Schedule 13* cease to apply at the close of the voting date, if the proposed arrangement is not approved.

Clause 5 is amended so that directors no longer need to make statutory declarations when agreeing to the entity entering into BDH. Instead, the directors need to sign certificates that state the required matters.

Clause 6 is amended to require an entity to notify contact details to the Registrar when it enters into BDH.

Clause 7 is amended to require an entity to give a notice to the FMA when it is entering into BDH if the entity is a broker. A similar change is made to *clause 27* to require the broker to notify the FMA of the results of voting on a proposed arrangement.

Clauses 18 and 71 are amended to clarify that an entity in BDH can enter into receivership or be put into liquidation (at which point, the protections in *Part 5* cease to apply).

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New clause 18A allows an entity to voluntarily come out of BDH by delivering a notice to the Registrar. The board of the entity must send a copy of the notice to each creditor.

Various changes are made to clarify how *Schedule 13* applies to general security holders. A general security holder is a secured creditor that is entitled to a charge on or over the whole, or substantially the whole, of the property of the entity. The main change is in *clause 20* to clarify that the protections in *Part 5* of the schedule do not apply at any stage in relation to a general security holder (or to the debts owing to the general security holder). Accordingly, a general security holder can still enforce their charge (and take other actions to enforce payment of the debts owed to it).

Clause 23 relates to voting on a proposed arrangement. It requires a majority in number and value of the creditors to vote in favour of a resolution in order for it to be approved. The amendment clarifies that the value attributed to creditors must not include any excluded debt (and, accordingly, every amount of excluded debt must be disregarded).

Clause 35 is clarified to provide that the court's powers under that clause to stay proceedings or prevent other actions do not apply in relation to excluded debts or debts owed to general security holders.

Clause 43, which relates to guarantees, is amended to include a definition of relative.

Clauses 46(3) and 50(3) may have allowed certain BDH protections to apply retroactively before the entity enters into BDH. These provisions have been deleted to remove this effect.

Clause 54 gives an exemption from provisions about voidable transactions. The exemption has been narrowed so that it no longer applies to section 293 of the Companies Act 1993 (which relates to voidable charges). The exemption continues to apply to section 292 of that Act (which relates to insolvent transactions).

Clause 66 has been amended to allow an entity to send a notice by email to a creditor who is a natural person.

New clause 72A confirms that section 65K of the Public Finance Act 1989 (which restricts the Crown's ability to lend money) does not prevent the Crown from voting for an arrangement under the schedule.

Change to *Schedule 5*: Corrections

The amendments to *Schedule 5* alter *new section 139A* of the Corrections Act 2004 to restrict the use of audio links in proceedings under sections 133 to 138 of the Corrections Act 2004 to circumstances where it is not reasonably practicable for the participant to attend in person and video link is either unavailable or unable to be used. Also, a provision is added to clarify who may seek a determination that the use of an audio link is contrary to the interests of justice (to ensure consistency with comparable provisions in the Courts (Remote Participation) Act 2010).

Changes to *Part 2 of Schedule 6*: amendments to the Courts (Remote Participation) Act 2010

The amendments to *clause 5 of Schedule 6* alter *new section 8A* of the Courts (Remote Participation) Act 2010 by removing the ability to use audio links in sentencing and by adding a provision clarifying who may seek a determination that the use of audio links is contrary to the interests of justice in the particular case (to ensure consistency with section 8(4) of the principal Act).

Change to Schedule 11: Health

Clause 4 of Schedule 11 inserts *new section 6A* into the Mental Health (Compulsory Assessment and Treatment) Act 1992 (the **Act**) to ensure that examinations and other assessments under the Act can be undertaken by audiovisual link if it is not practicable for the person to be physically present. The amendment to *clause 4 of Schedule 11* clarifies that judicial examination by audio link only, as provided for under the amendment in this Bill to the Courts (Remote Participation) Act 2010, is not permitted under *new section 6A*.

Changes to Schedule 12: Housing

Schedule 12 amends section 88 of the Unit Titles Act 2010 to ensure that members can attend body corporate meetings (and body corporate committee meetings) by audio or audiovisual link.

The changes in the SOP to *clause 2 of Schedule 12*—

- reflect the proper term for the rules of bodies corporate; and
- provide for the amendment to section 88—
 - to apply retrospectively from 25 March 2020; and
 - to remain in effect through to the end of the 12-week period that starts on the date on which the Epidemic Preparedness (COVID-19) Notice 2020 expires or is revoked.

New Schedule 14A: Land Information

New Schedule 14A amends the Rating Valuations Act 1998 (the **Act**) to enable the Valuer-General to relax the time frame by which a territorial authority is required to undertake the general revaluation of its district valuation roll. Section 9 of the Act requires a territorial authority to revise its district valuation roll at intervals of not more than 3 years by revaluing every rating unit within its district to ensure that the roll represents values current as at the date of the revaluation.

Clause 2 of new Schedule 14A amends section 9 of the Act to enable the Valuer-General, at the request of a territorial authority, to extend the time frame for the revaluation to a date not later than 1 year after it was originally due. However, the Valuer-General must be satisfied that the territorial authority is unlikely or not reasonably able to revise its district valuation roll so that it represents values current as at the date of the revaluation because of constraints on—

- the practicality of carrying out physical inspections; or
- the availability and reliability of market evidence or other information that the Valuer-General may require under section 10 of the Act.

Change to Schedule 16: Police

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Schedule 16 amends the Arms Act 1983 (the **Act**).

The change in this SOP to *clause 2 of Schedule 16* inserts *new section 65I(8A)* into the Act to provide legislative assurance that the fee payable by a holder of an extended licence (a licence that expires on a date between 25 March 2020 and 25 September 2020 and which, under *new section 65I(5)*, continues in force for a further 4 months after that expiry date) who applies during the extended period of their licence for a replacement new licence is the same as the fee they would have been liable to pay had the application been made on 24 March 2020.

Changes to *Schedule 17: Workplace Relations and Safety*

Schedule 17 inserts a *new Part 3B* into the Parental Leave and Employment Protection Act 1987 (the **Act**).

The change in this SOP to *clause 2 of Schedule 17* inserts *new section 30JMA* into the Act to clarify that COVID-19 response work is not a return to work to which section 42 of the Parental Leave and Employment Protection Act 1987 applies.

The Honourable Chris Hipkins, in Committee, to propose the amendments shown in the following document.

Hon Chris Hipkins

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Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the COVID-19 Response (Further Management Measures) Legislation Act **2020**.

2 Commencement

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

**Part 1
Amendments to Acts**

3 Amendments to Acts as set out by ministerial portfolio in Schedules 1 to 17

Amend the Acts specified in **Schedules 1 to 17** of this Act as set out in those schedules.

Part 2 Requirements for entities: modifications and exemptions

Subpart 1—Preliminary

Overview

4 Overview of Part

- (1) This **Part** 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 temporarily 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 **subpart 2**.
- (2A) Modifications made to constitutions or rules under **section 14** are temporary. However, an entity may make lasting amendments to its constitution or rules through electronic voting (see **sections 11 and 12**).
- (3) This **Part** also provides, in **subpart 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.
- (4) This section is only a guide to the general scheme and effect of this **Part**.

Interpretation

5 Meaning of entity

- (1) In this **Part**, **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;

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- (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 **subpart 2**, **entity** also includes any post-settlement governance entity of a type not listed in **subsection (1)**.
- (3) See **section 8** for definitions.

6 Meaning of specified Act

In this **Part**, **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.

7 Definitions relating to responsible Registrars, agencies, and Ministers

- (1) This section defines,—
- (a) for the purposes of **subpart 2**, in relation to an entity, the responsible Registrar or agency:
 - (b) for the purposes of **subpart 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 5(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 5(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 **subpart 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 5(1)**.
- Responsible Registrar or Minister*
- (5) For the purposes of the powers to grant exemptions under **subpart 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 6(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.

8 Interpretation

In this **Part**, 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 **Part**

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

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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 5**

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 ~~October~~ December 2020 and ends on the close of the day specified in an Order in Council made under **section 43** that relates to the matter

give, in relation to information, includes ~~serve, lodge, provide, or present—~~

- (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 September ~~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 **subpart 2**, in relation to an entity, means the period described in **section 10(a) and (b)**;
- (b) in **subpart 3**, in relation to powers to grant exemptions and relief, means the period described in **section 26(a) and (b)**

responsible Registrar or agency has the meaning set out in **section 7**

responsible Registrar or Minister has the meaning set out in **section 7**

specified Act has the meaning set out in **section 6**

specified enactment—

- (a) means a specified Act and any enactments made under the specified Act; and

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- (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.

Part binds the Crown

9 Part binds the Crown

This **Part** binds the Crown.

Subpart 2—Electronic means and modifications relating to constitution
or rules

Application

10 Sections 11 and 14 apply for relevant period

Each of **sections 11 and 14** applies in relation to an entity—

- (a) until the close of 30 ~~September~~ November 2020; and
- (b) if its application is extended by an Order in Council made under **section 43** in relation to the type of entity, for the further period.

Electronic means

11 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 (~~but subject to **section 12**~~);
- (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)** is subject to the conditions in **section 13** being, or having been, complied with as required by that section.~~
- (4) However, **subsection (3)**—
- (a) is subject to the conditions in **section 13** being, or having been, complied with as required by that section; and
 - (b) in the case of voting, is subject also to **section 12**.
- (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 14** from being used to make modifications to allow things to be done by electronic means.

12 Electronic voting

- (1) No vote may be taken or received (wholly or partly) by electronic means in reliance on **section 11**, 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—

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- (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 ~~When electronic voting may not be used~~

- (1) ~~A vote may not be taken or received (wholly or partly) by electronic means in reliance on **section 11** if—~~
 - (a) ~~the vote is on an amendment to an entity's constitution or rules (other than an amendment described in **subsection (2)**); or~~
 - (b) ~~the vote relates to a matter listed in **section 16**.~~
- (2) ~~**Subsection (1)(a)** does not prevent a vote on an amendment to an entity's constitution or rules being done (wholly or partly) by electronic means if the amendment expires in accordance with **section 18** (which applies with all necessary modifications, as if the amendment were a modification referred to in that section).~~

13 Conditions

- (1) The conditions that permit a matter to be done in reliance on **section 11** 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 11(1)(b)** (and **section 11(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 11** 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 11** 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)**.
- (1A) 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.
- (2) 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.
 - (3) If there is more than 1 responsible Registrar or agency, the entity must give the notice under **subsection (1)(d)** to each of them.
 - (4) **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 5(1)**.

Modifications to constitution or rules

14 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)—

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- (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 15** and does not relate to a matter in **section 16**; 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 18** (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
 - (ea) 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 12(2)** applies to the forming of this belief with all necessary modifications); and
 - (f) the entity complies with the conditions in **section 19**.

- (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 17** 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.

15 Matters that may be modified under section 14

- (1) **Section 14** 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 11(2)**:
 - (j) other procedural or administrative processes.
- (2) However, the list in **subsection (1)** is subject to regulations made under **section 42(1)(a)-or-(e)(i) or (iii)** (which may restrict, or add to, the list).
- (3) If there is any inconsistency between this section and **section 16(a) to (g)**, that section prevails.

16 Matters that may not be modified under section 14

- Section 14** 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:

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- (da) the number, or need, for a quorum:
- (db) rights of access to courts, tribunals, or arbitral tribunals:
- (e) the duties of the governing body or governing officers (other than a procedural or an administrative duty):
- (f) 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):
- (fa) an alteration or addition made to the constitution or rules by an order of a court:
- (g) any matter ~~that~~ 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:
- (h) any matter that is prescribed by regulations made under **section 42(1)(a)(ii)(b)**:
- (i) any other matter that is not listed in **section 15**.

17 Retrospective modifications

- (1) This section applies to the extent that a modification made under **section 14** 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.

18 Modifications must expire

Modifications made in initial period

- (1) A modification made under **section 14** 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 43(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 14** in the further period (if any) must have an express expiry date that is no later than the end of the further period.

19 Conditions

- (1) An entity that relies on **section 14** 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 14** 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 14(2)(c) and (e), (e), and (ea)**; 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 14** of this **Part**; 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 **Part** 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 5(1)**.

20 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

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- 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 14** and are—
- (a) making and signing the written notice of modification;
 - (b) recording the beliefs under **section 14(2)(c) and (e), (e), and (ea)**;
 - (c) compliance with any condition in **section 19**.
- (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 13(1)(a) and (b)(i)** ~~(which apply with any necessary modifications)~~ being complied with (and **section 13** 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.

21 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 14** 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 16**.
- (2) **Subsection (1)(a)** does not prevent a vote being taken or received (wholly or partly) in reliance on a modification made under **section 14** to a method or form of voting if the amendment expires in accordance with **section 18** (which applies with all necessary modifications as if the amendment were a modification referred to in that section).

22 Variation and revocation

- (1) An entity that desires to vary a modification made under **section 14** may do so only under that section (with this **subpart** applying with all necessary modifications).
- (2) A modification made by an entity under **section 14** 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 19** (with all necessary modifications), other than **section 19(1)(a)(ii) and (iii) and (c)(i)**, in relation to a revocation.

Records

23 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 **subpart**.
- (2) A Registrar receiving the notice—
 - (a) must arrange for ~~information 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 ~~information particulars~~ available to the public in any way the Registrar thinks fit (for example, by publishing ~~it~~them on an Internet site).
- (3) An agency receiving the notice must make ~~information 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 ~~it~~them on an Internet site).

24 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 **subpart**.

Subpart 3—Exemption powers and power to grant relief

Purpose and application

25 Purpose

The purpose of this **subpart** 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

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- (b) may not be reasonably capable of being complied with, or complied with fully, because of the effects of COVID-19.

26 Powers may only be exercised during relevant period

Every power to grant exemptions under **section 27**, and the power under **section 31**, may only be exercised—

- (a) until the close of 30 ~~September~~ November 2020; and
- (b) if extended by an Order in Council made under **section 43**, during the further period.

Powers

27 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 30(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)**.

28 Restrictions on exemption powers

- (1) A responsible Registrar or Minister must not grant an exemption under this **subpart** unless—
 - (a) the responsible Registrar or Minister is satisfied that—
 - (i) granting the exemption is necessary or desirable for the purpose of this **subpart** as set out in **section 25**; 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 29**.
- (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.

29 Engagement about proposed exemption

- (1) For the purposes of **section 28(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 **sub-part** and why the exemption is appropriate.
- (3) **Subsection (1)** and **section 28(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.

30 Description of provisions from which exemptions may be granted

- (1) For the purposes of this **Part**, the provisions of specified enactments for which exemptions may be granted are provisions that relate to any of the following matters:

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- (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 42(1)(d)(i)**.
- (2) However, the list in **subsection (1)** is subject to regulations made under **section 42(1)(d)(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.

31 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 30(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 **subpart** as set out in **section 25**; 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 30, 32 to 35, and 41** 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

32 Exemptions may be retrospective to 21 March 2020

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

33 Exemptions that relate to periods of time

An exemption granted under this **subpart** 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 32** applies.

34 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 43** for a further period in relation to **section 27** 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

35 Breach of exemption conditions

The breach of a term or condition of an exemption granted under this **subpart** 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

36 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 37**.
- (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.

37 Exemption is legislative instrument if notice is given

- (1) An exemption under this **subpart** 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 **subpart** are not legislative instruments.

38 All exemptions are disallowable instruments

Every exemption under this **subpart**—

- (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.

39 Publication of exemptions that are not legislative instruments

- (1) This section applies to exemptions granted under this **subpart** that are not legislative instruments (*see* **section 37**).
- (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.

40 Exemptions must contain reasons

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

Compare: 2013 No 69 s 571(5)

Variation and revocation

41 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) ~~A~~ However, a notice must be given under **section 37** for a variation or revocation of an exemption that is a legislative instrument.

Compare: 2013 No 69 s 572

Subpart 4—Miscellaneous

42 Regulations may change subpart 2 or subpart 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 14**, ~~matters additional to those listed in **section 15(1)** (matters that may be modified):—~~
 - (i) matters additional to those listed in **section 15(1)** (matters that may be modified):
 - (ii) matters additional to those listed in **section 16** (matters that may not be modified):
 - (iii) matters listed in **section 15(1)** that may no longer be modified (in whole or in part):

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- (b) ~~prescribe, for the purposes of **section 12 or 14**, or both, matters additional to those listed in **section 16** (matters that may not be modified):~~
 - (e) ~~prescribe, for the purposes of **section 14**, matters listed in **section 15(1)** that may no longer be modified:~~
 - (d) prescribe, for the purposes of **section 27 or 31**, or both,—
 - (i) matters additional to those listed in **section 30(1)** (matters in respect of which exemptions or relief may be granted):
 - (ii) matters listed in **section 30(1)** in respect of which exemptions or relief may no longer be granted: ~~(in whole or in part):~~
 - (e) prescribe any other matters contemplated by this **Part**, 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 16(a) to (g)**.
- (4) Before making a recommendation for regulations under **subsection (1)(d)**, the joint Ministers must be satisfied that the regulations are necessary or desirable for the purpose of **subpart 3** set out in **section 25**.

43 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 11**:
 - (b) the application of **section 14**:
 - (c) any or all powers to grant exemptions under **section 27**:
 - (d) the power to grant relief under **section 31**.
- (2) Every further period must—
- (a) start on 1 ~~October~~ 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 11** or **14** 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.

44 Repeals

- (1) **Sections 11, 14, 27, 31, 42, and 43** are repealed on 1 April 2021.
- (2) The rest of this **Part** is repealed on the close of 31 May 2022.

Schedule 1
Biosecurity

s 3

Part 1
Amendment to Biosecurity Act 1993**1 Amendment to Biosecurity Act 1993**

This Part amends the Biosecurity Act 1993.

2 New section 130A inserted (Modifications to section 130 while epidemic notice in force for COVID-19)

After section 130, insert:

130A Modifications to section 130 while epidemic notice in force for COVID-19

- (1) Section 130(3) is modified as set out in **subsections (2) to (5)** while the Epidemic Preparedness (COVID-19) Notice 2020 is in force.
- (2) An inspector or authorised person may serve a notice declaring a place to be a restricted place by giving notice in accordance with section 164A(1) (which includes delivery by sending the notice by fax or email to the person's fax number or email address).
- (3) The notice must be given by serving a copy on the occupier of each place included in the area of the restricted place or by delivering a copy of the notice to the occupier in accordance with section 164A(1).
- (4) However, a notice may be given in accordance with section 164A(2) if the inspector or authorised person cannot with reasonable diligence discover an occupier of the place who can be found quickly.
- (5) Section 164A(3), which provides for when a notice delivered by post is deemed to be given or made, applies to a written notice that is delivered in accordance with this section by post.
- (6) This section is repealed when the Epidemic Preparedness (COVID-19) Notice 2020 expires or is revoked.

Part 2
Amendment to National Animal Identification and Tracing Act 2012**3 Amendment to National Animal Identification and Tracing Act 2012**

This Part amends the National Animal Identification and Tracing Act 2012.

4 Schedule 2 amended

In Schedule 2, after clause 22, insert:

22A Modifications to clause 22 while epidemic notice in force for COVID-19

- (1) Clause 22 is modified as set out in **subsections ~~subclauses (2) and (3)~~** while the Epidemic Preparedness (COVID-19) Notice 2020 is in force.
- (2) Despite clause 22(5), an infringement notice or a cancellation notice referred to in that subclause may be served by sending it by email or other electronic means to the person, instead of the notice being personally delivered or served by post.
- (3) Clause 22(6) is modified so that if an infringement notice or a cancellation notice is served under clause 22(5) by sending it by email or other electronic means to a person, for the purposes of the Summary Proceedings Act 1957, the notice is treated as being served on the person at the time the email or other electronic communication first enters an information system that is outside the control of the NAIT officer or NAIT authorised person.
- (4) This clause is repealed when the Epidemic Preparedness (COVID-19) Notice 2020 expires or is revoked.

Schedule 2

Commerce and Consumer Affairs

s 3

Part 1

Amendments to Commerce Act 1986

1 Amendments to Commerce Act 1986

This Part amends the Commerce Act 1986.

2 New sections 65AA to 65AE inserted

After section 65, insert:

65AA Applications during epidemic period

- (1) In this section and **sections 65AB to 65AD**, **epidemic period** means a period—
 - (a) commencing on the day on which this section comes into force; and
 - (b) ending at the close of the 6-month period that starts on the date on which the Epidemic Preparedness (COVID-19) Notice 2020 expires or is revoked.
- (2) A person who wishes to enter into a contract or arrangement, or arrive at an understanding, that the person considers would contain, or may contain, a cartel provision may, during the epidemic period, apply to the Commission for an authorisation to do so and the Commission may grant an authorisation for that person to enter into the contract or arrangement, or arrive at the understanding.
- (3) A person who wishes to give effect to a provision of a contract or arrangement or understanding that the person considers would contain, or may contain, a cartel provision, may, during the epidemic period, apply to the Commission for an authorisation to do so, and the Commission may grant an authorisation for that person to give effect to the provision of the contract or arrangement or understanding.
- (4) Subject to the modifications set out in **sections 65AB and 65AC**,—
 - (a) an authorisation under **subsection (2)** is to be treated as if it were an authorisation under section 58(1);
 - (b) an authorisation under **subsection (3)** is to be treated as if it were an authorisation under section 58(2).

65AB Modifications in relation to application under section 65AA

- (1) The modifications set out in this section apply in relation to an application for an authorisation under **section 65AA(2) or (3)**.

- (2) For the purposes of section 59, a contract that contains a cartel provision must be treated as if it were a contract to which section 27 applies.
- (3) Section 61(6) must be treated as if it provides that the Commission shall not make a determination granting an authorisation pursuant to an application under section **65AA(2) or (3)** unless it is satisfied that—
 - (a) the entering into of the contract or arrangement or the arriving at the understanding; or
 - (b) the giving effect to the cartel provision of the contract, arrangement or understanding,—
as the case may be, to which the application relates, will in all the circumstances result, or be likely to result, in such a benefit to the public that—
 - (c) the entering into of the contract or arrangement or the arriving at the understanding should be permitted; or
 - (d) the giving effect to the cartel provision should be permitted.
- (4) For the purpose of **subsection (3)**, it is not necessary for the Commission to determine whether a particular provision is in fact a cartel provision, providing there are reasonable grounds for believing it might be.

65AC Modifications in relation to certain applications made during epidemic period

- (1) The modifications set out in this section apply in relation to—
 - (a) an application for authorisation under section 58(1) or (2) made during the epidemic period; or
 - (b) an application for an authorisation under **section 65AA(2) or (3)**.
- (2) Despite section 60(1), the Commission may, in its discretion, waive all or part of any fee payable for the application.
- (3) Despite section 61(5), the Commission may, in its discretion, determine the application without complying with section 62.

65AD Provisional authorisations for certain applications made during epidemic period

- (1) This section applies if the Commission receives an application under section 58(1) or (2) or **65AA(2) or (3)** during the epidemic period.
- (2) The Commission may make a determination in writing granting a provisional authorisation for an application under section 58(1) or (2) or **65AA(2) or (3)** if the Commission considers it is appropriate to do so—
 - (a) for the purpose of enabling due consideration to be given to the application; or
 - (b) for any other reason.

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- (3) The Commission is not required to comply with section 61(5) to (6A) before granting a provisional authorisation.
- (4) For the purposes of this section, a reference in any of sections 58A, 58B, 59(1)(a) and (2)(a), 59A, 59B, 61(2), 65, 92, 100, 104, 105, or 106(10) to an authorisation must be treated as if it is a reference to a provisional authorisation.
- (5) A provisional authorisation remains in force until—
 - (a) the applicant withdraws its application for an authorisation; or
 - (b) the Commission revokes the provisional authorisation under section 65; or
 - (c) the Commission declines or grants the application for an authorisation under section 58(1) or (2) or **65AA(2) or (3)**.
- (6) **Subsection (5)** does not limit the Commission’s ability to grant a provisional authorisation for such period as the Commission sees fit.

65AE Repeal of sections 65AA to 65AE

This section and **sections 65AA to 65AD** are repealed immediately after the expiry of the 6-month period that starts on the date on which the Epidemic Preparedness (COVID-19) Notice 2020 expires or is revoked.

3 Schedule 1AA amended

In Schedule 1AA, after Part 2, insert:

**Part 3
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12 Application of provisions after repeal

For the purposes of an application that is made during the epidemic period, sections **sections 65AA to 65AD** continue to apply as if they remained in force, despite their repeal by **section 65AE**, to the application including in relation to—

- (a) any authorisation or provisional authorisation granted on the application;
- (b) any appeal in relation to a determination of the Commission on the application.

**Part 2
Amendments to Companies Act 1993**

4 Amendments to Companies Act 1993

This **Part** amends the Companies Act 1993.

Subpart 1—Voidable transactions; “safe harbour” relating to 2 directors’
duties

5 Section 126 amended (Meaning of director)

In section 126(1)(b) and (c), after “149,”, insert “**291A to 293,**”.

6 New section 138B inserted (Safe harbour for directors relating to effects of COVID-19)

After section 138A, insert:

138B Safe harbour for directors relating to effects of COVID-19

- (1) The provisions of **Schedule 12** have effect according to their terms.
- (2) This section and **Schedule 12** are repealed on the close of 31 May 2022.

7 New section 291A inserted (Meaning of related party)

After the cross-heading above section 292, insert:

291A Meaning of related party

- (1) For the purposes of this section, a person is **related** to a company if the person—
 - (a) is a director or senior manager of the company or of a close body corporate of the company; or
 - (b) is the spouse of a director or senior manager of the company; or
 - (c) is a grandparent, parent, child, grandchild, brother, sister, nephew, niece, uncle, aunt, or first cousin of a director or of a senior manager of the company, whether or not by a step relationship; or
 - (d) is the spouse of a person who is related to the company under **paragraph (c)**; or
 - (e) is a close body corporate of the company; or
 - (f) is a partner of the company or of a director of the company (under the Partnership Law Act 2019); or
 - (g) is a close business associate of the company; or
 - (h) has an interest, direct or indirect, in 5 percent or more of any class of shares of the company; or
 - (i) has an interest, direct or indirect, in 20 percent or more of any class of shares of a close body corporate of the company; or
 - (j) is the spouse of a person who is related to the company under any of **paragraphs (f) to (i)**; or
 - (k) is a child, parent, brother, or sister (whether or not by a step relationship) of a person who is related to the company under any of **paragraphs (f) to (i)**; or

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- (l) is a trustee of a trust under which the company, or a person related to the company (under **paragraphs (a) to (k)**), is a beneficiary who—
 - (i) is presently entitled to a share of the trust estate or of the income of the trust estate; or
 - (ii) is, individually or together with other beneficiaries, in a position to control the trustee; or
 - (m) is a trustee of a trust if—
 - (i) the trust is a family trust within the meaning of section 173M(5) of the Tax Administration Act 1994; and
 - (ii) a majority of the individuals who are beneficiaries under the trust are related to the company (under **paragraphs (a) to (k)**); or
 - (n) is a nominee of a person who is related to the company under any of **paragraphs (a) to (m)**.
- (2) In sections 292 and 293, a person is a **related party** of a company in relation to a transaction or charge if the person is related to the company at the time the transaction is made or the charge given.
- (3) However, in the case of a transaction referred to in section 292(4B)(a), a person is a **related party** of a company if the person is related to the company at any point during the continuing business relationship.
- (4) For the purposes of determining whether, in this section, a person is a **close body corporate** of a company (or whether 2 bodies corporate are **close**), 2 bodies corporate (**A** and **B**) are **close** if—
 - (a) B is A's holding company or subsidiary; or
 - (b) more than half of A's issued shares (other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital) are held by B and bodies corporate that are close to B (whether directly or indirectly, but other than in a fiduciary capacity), or vice versa; or
 - (c) more than half of the issued shares (other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital) of each of A and B are held by members of the other (whether directly or indirectly, but other than in a fiduciary capacity); or
 - (d) the businesses of A and B have been so carried on that the separate business of each body corporate, or a substantial part of that business, is not readily identifiable; or
 - (e) there is another body corporate to which A and B are both close.
- (5) In this section,—

close business associate, in relation to a company, means a person who has a close professional or business relationship with the company, or with a director or senior manager of the company, that allows the person to—

- (a) assess the solvency of the company; or
- (b) obtain information from the company or any other person involved with the company that will enable the person to assess the solvency of the company

director, in relation to a body corporate that is not a company, has the same meaning as in relation to a company

senior manager has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013.

8 Section 292 amended (Insolvent transaction voidable)

- (1) In section 292(1)(b), replace “specified” with “restricted”.
- (2) After section 292(1), insert:
 - (1A) A transaction by a company is voidable by the liquidator if it—
 - (a) is an insolvent transaction; and
 - (b) is entered into with a related party of the company within the related party period.
- (3) In section 292(4B)(c), replace “subsection (1) applies” with “subsections (1) and **(1A)** (as relevant) apply”.
- (4) In section 292(4B)(d), after “subsection (1)”, insert “or **(1A)**”.
- (5) After section 292(4B), insert:
 - (4C) For the purposes of subsections (1), **(1A)**, (4A), and (4B), **restricted period** means—
 - (a) the period of 6 months before the date of commencement of the liquidation together with the period commencing on that date and ending at the time at which the liquidator is appointed; and
 - (b) in the case of a company that was put into liquidation by the court, the period of 6 months before the making of the application to the court together with the period commencing on the date of the making of that application and ending on the date on which, and at the time at which, the order of the court was made; and
 - (c) if—
 - (i) an application was made to the court to put a company into liquidation; and
 - (ii) after the making of the application to the court a liquidator was appointed under section 241(2)(a) or (b),—

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the period of 6 months before the making of the application to the court together with the period commencing on the date of the making of that application and ending on the date and at the time of the commencement of the liquidation.

- (6) In section 292(5),—
- (a) replace “subsections (1)” with “**subsections (1A)**”;
 - (b) replace “**specified period**” with “**related party period**”;
 - (c) replace “paragraph (a) or paragraph (b) of section 241(2)” with “section 241(2)(a) or (b)”.
- (7) Repeal section 292(6).

9 Section 293 amended (Voidable charges)

- (1) In section 293(1)(a), replace “specified” with “restricted”.
- (2) After section 293(1), insert:
- (1AA) A charge over any property or undertaking of a company is voidable by the liquidator if—
- (a) the charge was given to a related party within the related party period; and
 - (b) immediately after the charge was given, the company was unable to pay its due debts.
- (3) In section 293(1A), replace “Subsection (1) does not apply if” with “Neither subsection (1) nor **(1AA)** applies to a charge that”.
- (4) In section 293(1A)(a), replace “the charge secures” with “secures”.
- (5) Replace section 293(1A)(b) with:
- (b) is in substitution for a charge that,—
- (i) in the case of subsection (1), was given before the restricted period;
 - (ii) in the case of **subsection (1AA)**, was given before the related party period.
- (6) In section 293(4), after “subsection (1)”, insert “or **(1AA)**”.
- (7) In section 293(5), after “subsection (1)”, insert “or **(1AA)** (as relevant)”.
- (8) After section 293(5), insert:
- (5A) For the purposes of subsections (1) to (2), **restricted period** means—
- (a) the period of 6 months before the date of commencement of the liquidation together with the period commencing on that date and ending at the time at which the liquidator is appointed; and
 - (b) in the case of a company that was put into liquidation by the court, the period of 6 months before the making of the application to the court

together with the period commencing on the date of the making of that application and ending on the date on which, and at the time at which, the order of the court was made; and

- (c) if—
- (i) an application was made to the court to put a company into liquidation; and
 - (ii) after the making of the application to the court a liquidator was appointed under section 241(2)(a) or (b),—

the period of 6 months before the making of the application to the court together with the period commencing on the date of the making of that application and ending on the date and at the time of the commencement of the liquidation.

- (9) In section 293(6),—
- (a) replace “subsection (1)” with “**subsections (1AA) and (1A)**”;
 - (b) replace “**specified period**” with “**related party period**”;
 - (c) replace “paragraph (a) or paragraph (b) of section 241(2)” with “section 241(2)(a) or (b)”.
- (10) Repeal section 292(7).

10 Schedule 1AA amended

After Part 2 of Schedule 1AA, insert:

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6 Application of changes to voidable transactions provisions

- (1) The amendments made to section 126 and Part 16 by the **COVID-19 Response (Further Management Measures) Legislation Act 2020** apply only in respect of liquidations that commence on or after the date on which those amendments came into force.
- (2) Section 126 and Part 16, as in force immediately before those amendments come into force, continue to apply in respect of liquidations that commenced before those amendments came into force.

11 New Schedule 12 inserted

After Schedule 11, insert the **Schedule 12** set out in **Schedule 3** of this Act.

Subpart 2—COVID-19 business debt hibernation scheme

12 New sections 395A and 395B inserted

After section 395, insert:

395A COVID-19 business debt hibernation

- (1) The provisions set out in **Schedule 13** have effect according to their terms.
- (2) That schedule applies to companies and other entities in accordance with **clause 3** of that schedule.
- (3) This section, **section 395B**, and **Schedule 13** are repealed on the close of 31 May 2022.

395B Regulations relating to COVID-19 business debt hibernation

- (1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:
 - (a) prescribing classes of entities and circumstances for the purposes of **clause 3 of Schedule 13**, including providing for either or both of the following:
 - (i) that schedule to apply only if prescribed preconditions are satisfied:
 - (ii) that schedule to cease to apply if prescribed ongoing conditions are not satisfied:
 - (b) prescribing a date under **clause 3(3)(b) of Schedule 13**:
 - (c) prescribing any kind of debt or claim as an excluded debt:
 - (d) prescribing a date under **clause 5(3) of Schedule 13**:
 - (e) specifying, for the purposes of **clause 8 of Schedule 13**, circumstances in which a subsequent notice may be delivered:
 - (f) prescribing further information that must be included under **clause 10 of Schedule 13** in a notice under **clause 9** of that schedule:
 - (g) providing for the manner in which voting must or may be conducted for the purposes of **Schedule 13** and requirements for adopting a resolution under **clause 23** of that schedule:
 - (h) specifying modifications, additions, or variations to how **Part 8 of Schedule 13** applies:
 - (i) ~~specifying modifications, additions, or variations to how the Oaths and Declarations Act 1957 applies in relation to statutory declarations required under **Schedule 13**:~~
 - (j) prescribing effects of arrangements that are permitted under **clause 29** of that schedule:

- (k) exempting, on terms or conditions, any class of entities, or class of arrangements, from—
 - (i) compliance with any provision or provisions of **Schedule 13**; or
 - (ii) any requirement or restriction under that schedule:
- (l) prescribing transitional, savings, or related provisions in connection with an entity ceasing to be an entity in BDH (including provisions relating to the rights, duties, or powers of the entity or its creditors, or both).
- (2) Regulations under **subsection (1)(a)** may, without limitation, prescribe a class of entity to which **Schedule 13** does not apply in any way, including (for example) by reference to the size of the entity, its legal form, or the nature of any of its business, property, or affairs.
- (3) Regulations under this section must be made on the recommendation of—
 - (a) the Minister of the Crown who, under the authority of a warrant or with the authority of the Prime Minister, is responsible for the administration of this Act; and
 - (b) the Minister of Finance.
- (4) The Ministers may make a recommendation under **subsection (3)** only if the Ministers have had regard to—
 - (a) the purposes of **Schedule 13** as set out in **clause 1** of that schedule; and
 - (b) the effect of the regulations on—
 - (i) the creditors of entities that have significant liquidity problems; and
 - (ii) the integrity of corporate insolvency law.
- (5) The Ministers may make a recommendation for regulations under **subsection (1)(l)** only if the Ministers are satisfied that the regulations are necessary or desirable for the orderly transition of an entity out of being an entity in BDH.
- (6) Different matters may be prescribed, provided for, or specified in respect of different kinds of entity or other circumstances.

13 New Schedule 13 inserted

After **Schedule 12**, insert the **Schedule 13** set out in **Schedule 4** of this Act.

14 Amendments to other enactments

Amend the enactments specified in **Part 11** below as set out in that Part.

Part 3

Amendments to Consumers' Right to Know (Country of Origin of Food) Act 2018

15 Amendments to Consumers' Right to Know (Country of Origin of Food) Act 2018

This Part amends the Consumers' Right to Know (Country of Origin of Food) Act 2018.

16 Section 5 amended (New consumer information standard: country of origin of regulated foods)

Replace section 5(6) with:

- (6) The Minister must make the recommendation before 4 June 2021.

17 Section 6 replaced (Repeal of this Act)

Replace section 6 with:

6 Repeal of this Act

This Act is repealed on 4 June 2021.

Part 4

Amendment to Contract and Commercial Law Act 2017

18 Amendment to Contract and Commercial Law Act 2017

This Part amends the Contract and Commercial Law Act 2017.

19 New sections 218A to 218D inserted

After section 218, insert:

218A Temporary modification relating to powers of attorney and outbreak of COVID-19

- (1) ~~Subsection (2) applies for the period described in section 218B.~~
- (2) ~~Despite section 218(2)(d) and paragraph (e) of Part 3 of Schedule 5, this sub-part applies to a deed that creates a power of attorney in connection with a security interest.~~
- (2) Despite section 218(2)(d) and paragraph (e) of Part 3 of Schedule 5, this sub-part applies to a deed—
- (a) that creates a power of attorney in connection with a security interest;
and
- (b) that is made during the period specified in section 218B.

- (3) In **subsection (2)**, **security interest** means an interest in property created or provided for by a transaction that, in substance, secures payment or performance of an obligation, without regard to—
- (a) the form of the transaction; and
 - (b) the identity of the person who has title to the property that is subject to the security interest.

218B Period for which temporary modification applies

- (1) The modification in **section 218A(2)**—
- ~~(a) applies from the day on which this section comes into force; and~~
 - (a) applies on and from 21 March 2020; and
 - (b) ceases to apply—
 - (i) immediately after the expiry of the 6-month period that starts on the day on which this section comes into force; or
 - (ii) if an order is made under **subsection (3)**, immediately after the expiry of the period specified in that order.
- (2) Despite **subsection (1)(b)**, if an order is made under **subsection (5)**, the modification ceases to apply on the date appointed in that order.
- (3) The Governor-General may, by Order in Council made on the recommendation of the Ministers, extend the application period by up to 6 months from the end of the initial period.
- (4) The application period may be extended under **subsection (3)** only once.
- (5) The Governor-General may, by Order in Council made on the recommendation of the Ministers, appoint a date (within the initial period or, if an order is made under **subsection (3)**, within the further period) on which the modification ceases to apply.
- (6) In this section and **section 218C**,—
- initial period** means the initial 6-month period during which the modification applies in accordance with **subsection (1)(a) and (b)(i)**
- Ministers** means the Minister of Finance and the Minister of Commerce and Consumer Affairs.

218C Requirements relating to orders made under section 218B

- (1) The Ministers must not recommend the making of an order under **section 218B(3)** extending the application of the ~~temporary~~ modification unless the Ministers are satisfied that the extension—
- (a) is necessary or desirable to address the effects of COVID-19; and
 - (b) is no longer than is reasonably necessary to address those effects.

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- (2) The Ministers' reasons for making the recommendation in **subsection (1)** (including why the order is necessary or desirable) must be published together with the order.
- (3) An order made under **section 218B(3)** must be notified in the *Gazette* at least 7 days before the end of the initial period.
- (4) The Ministers must not recommend the making of an order under **section 218(5)** unless the Ministers are satisfied that the modification is no longer necessary or desirable to address the effects of COVID-19.
- (5) An order under **section 218B(3) or (5)** is a legislative instrument and a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

218D Repeal of temporary modification provisions

This section and **sections 218A to 218C** are repealed on the close of 30 June 2021.

Part 5

Amendment to Credit Contracts and Consumer Finance Act 2003

20 Amendment to Credit Contracts and Consumer Finance Act 2003

This Part amends the Credit Contracts and Consumer Finance Act 2003.

21 Section 9H amended (Responsible Lending Code comes into force by notice in *Gazette*)

After section 9H(2), insert:

- (2A) Despite subsection (2), a notice that is published in the *Gazette* on or before 14 August 2020 may state a date or dates that is sooner than the 28th day after the date on which the notice is published in the *Gazette*.
- (2B) **Subsection (2A)** and this subsection are repealed on 15 August 2020.

Part 6

Amendment to Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019

22 Amendment to Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019

This Part amends the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019.

23 Section 2 amended (Commencement)

In section 2(4), replace “the expiry of the 12-month period that starts on the date of Royal assent” with “30 August 2021”.

Part 7
**Revocation of Financial Services Legislation Amendment Act
Commencement Order 2019**

**24 Financial Services Legislation Amendment Act Commencement Order
2019 revoked**

The Financial Services Legislation Amendment Act Commencement Order 2019 (LI 2019/252) is revoked.

Part 8
Amendments to Insolvency Act 2006

25 Amendments to Insolvency Act 2006

This Part amends the Insolvency Act 2006.

26 New section 193A inserted (Meaning of related party)

After section 193, insert:

193A Meaning of related party

- (1) In this subpart, a person is **related** to a bankrupt (**A**) if the person is any of the following:
- (a) A's spouse:
 - (b) A's grandparent, parent, child, grandchild, brother, sister, nephew, niece, uncle, aunt, or first cousin, whether or not by a step relationship:
 - (c) the spouse of a person who is related to A under **paragraph (b)**:
 - (d) a company of which A is a director or senior manager:
 - (e) a company, if A has a direct or indirect interest in 5 percent or more of any class of the company's shares:
 - (f) a person with whom A is in partnership in a firm:
 - (g) a close business associate of A:
 - (h) the spouse of a person who is related to A under **paragraphs (f) to (g)**:
 - (i) a parent, child, brother, or sister (whether or not by a step relationship) of a person who is related to A under **paragraphs (f) to (g)**:
 - (j) a trustee of a trust under which A, or a person related to A (under **paragraphs (a) to (i)**), is a beneficiary who—
 - (i) is presently entitled to a share of the trust estate or of the income of the trust estate; or
 - (ii) is, individually or together with other beneficiaries, in a position to control the trustee:

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Legislation Bill**

Schedule 2

- (k) a trustee of a trust if—
 - (i) the trust is a family trust within the meaning of section 173M(5) of the Tax Administration Act 1994; and
 - (ii) a majority of the individuals who are beneficiaries under the trust are related to A (under **paragraphs (a) to (i)**):
- (l) a nominee of a person who is related to A under **paragraphs (a) to (k)**.
- (2) In this subpart, a person is a **related party** of A in relation to a transaction or charge if the person is related to A at the time the transaction is made or the charge given.
- (3) However, in the case of a transaction referred to in section 197(a), a person is a **related party** of A if the person is related to A at any point during the continuing business relationship.
- (4) In this section,—
 - close business associate**, in relation to A, means a person who has a close professional or business relationship with A that allows the person to—
 - (a) assess the solvency of A; or
 - (b) obtain information from A or any other person involved with A that will enable the person to assess the solvency of A
 - company** means a company as defined in section 3, but also includes a limited partnership
 - director** has the same meaning as in section 126(1)(a) to (c), (1A), and (4) of the Companies Act 1993 (applied with all necessary modifications)
 - limited partnership** has the meaning set out in section 6 of the Limited Partnerships Act 2008
 - partnership** and **firm** have the same meanings as in section 7(1) of the Partnership Law Act 2019
 - senior manager** has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013.

27 Section 194 amended (Insolvent transaction may be cancelled)

- (1) In section 194(b), replace “2 years” with “6 months”.
- (2) In section 194, insert as subsection (2):
- (2) A transaction by the bankrupt may be cancelled on the Assignee’s initiative if it—
 - (a) is an insolvent transaction; and
 - (b) was made with a related party of the bankrupt within 2 years immediately before the bankrupt’s adjudication.

28 Section 198 amended (Insolvent charge may be cancelled)

- (1) In section 198(a), replace “2 years” with “6 months”.
- (2) In section 198, insert as subsection (2):
 - (a) the charge was given to a related party of the bankrupt within 2 years immediately before the bankrupt’s adjudication; and
 - (b) immediately after the charge was given, the bankrupt was unable to pay his or her due debts.

29 Section 199 amended (Charge for new consideration or charge in substitution not affected)

- (1) In section 199(2),—
 - (a) replace “section 198” with “**section 198(1)**”;
 - (b) replace “2 years” with “6 months”.
- (2) After section 199(2), insert:
- (3) A charge may not be cancelled under **section 198(2)** if the charge is a substitute for an existing charge that was given by the bankrupt more than 2 years before adjudication, except to the extent that—
 - (a) the amount secured by the substituted charge is greater than the amount that was secured by the existing charge; or
 - (b) the value of the property subject to the substituted charge at the date of substitution was greater than the value of the property subject to the existing charge at that date.

30 Section 201 amended (Charge for unpaid purchase price given after sale of property)

Replace section 201(1) with:

- (1) This section applies—
 - (a) if the bankrupt, after purchasing property, has within 2 years immediately before adjudication given the seller a charge over the property; and
 - (b) to the extent that section 198 would otherwise affect the charge.

31 Section 203 replaced (Charge agreed before specified period may not be cancelled)

Replace section 203 with:

203 Charge agreed before specified period may not be cancelled

A charge given by the bankrupt under an agreement to give the charge—

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- (a) may not be cancelled under **section 198(1)** if the agreement to give the charge was made before the period of 6 months immediately before adjudication:
- (b) may not be cancelled under **section 198(2)** if the agreement to give the charge was made before the period of 2 years immediately before adjudication.

32 Schedule 1AA amended

After Part 2 of Schedule 1AA, insert:

**Part 3
Provisions relating to COVID-19 Response (Further Management
Measures) Legislation Act 2020**

- 26 Application of changes to subpart 7 of Part 3 (Irregular transactions before adjudication)**
- (1) The amendments made to subpart 7 of Part 3 of this Act by the **COVID-19 Response (Further Management Measures) Legislation Act 2020** apply only in respect of bankruptcies that commence on or after the date on which those amendments came into force.
 - (2) Subpart 7 of Part 3 of this Act, as in force immediately before those amendments come into force, continues to apply in respect of bankruptcies that commenced before those amendments came into force.

**Part 9
Amendment to Insolvency Practitioners Regulation Act 2019**

33 Amendment to Insolvency Practitioners Regulation Act 2019

This Part amends the Insolvency Practitioners Regulation Act 2019.

34 Section 2 amended (Commencement)

In section 2(3), replace “the first anniversary of the date of Royal assent” with “1 June 2021”.

**Part 10
Amendment to Insolvency Practitioners Regulation (Amendments)
Act 2019**

35 Amendment to Insolvency Practitioners Regulation (Amendments) Act 2019

This Part amends the Insolvency Practitioners Regulation (Amendments) Act 2019.

36 Section 2 amended (Commencement)

In section 2(3), replace “the first anniversary of the date of Royal assent” with “1 June 2021”.

Part 11

Other amendments relating to COVID-19 business debt hibernation regime in Companies Act 1993

37 Amendment to Charitable Trusts Act 1957

- (1) This clause amends the Charitable Trusts Act 1957.
- (2) After section 25, insert:

25A COVID-19 business debt hibernation may apply

- (1) **Section 395A** and **Schedule 13** of the Companies Act 1993 (which establish a COVID-19 business debt hibernation regime) may apply to a board under **clause 3** of that schedule.
- (2) This section is repealed on the close of 31 May 2022.

38 Amendments to Friendly Societies and Credit Unions Act 1982

- (1) This clause amends the Friendly Societies and Credit Unions Act 1982.
- (2) After section 90, insert:

90A COVID-19 business debt hibernation may apply

- (1) **Section 395A** and **Schedule 13** of the Companies Act 1993 (which establish a COVID-19 business debt hibernation regime) may apply to a society under **clause 3** of that schedule.
- (2) This section is repealed on the close of 31 May 2022.
- (3) After section 138, insert:

138A COVID-19 business debt hibernation may apply

- (1) **Section 395A** and **Schedule 13** of the Companies Act 1993 (which establish a COVID-19 business debt hibernation regime) may apply to a credit union under **clause 3** of that schedule.
- (2) This section is repealed on the close of 31 May 2022.

39 Amendment to Incorporated Societies Act 1908

- (1) This clause amends the Incorporated Societies Act 1908.
- (2) After section 23B, insert:

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23C COVID-19 business debt hibernation may apply

- (1) **Section 395A** and **Schedule 13** of the Companies Act 1993 (which establish a COVID-19 business debt hibernation regime) may apply to a society under **clause 3** of that schedule.
- (2) This section is repealed on the close of 31 May 2022.

40 Amendment to Industrial and Provident Societies Act 1908

- (1) This clause amends the Industrial and Provident Societies Act 1908.
- (2) After section 15, insert:

15A COVID-19 business debt hibernation may apply

- (1) **Section 395A** and **Schedule 13** of the Companies Act 1993 (which establish a COVID-19 business debt hibernation regime) may apply to a registered society under **clause 3** of that schedule.
- (2) This section is repealed on the close of 31 May 2022.

41 Amendment to Limited Partnerships Act 2008

- (1) This clause amends the Limited Partnerships Act 2008.
- (2) After section 92, insert:

92A COVID-19 business debt hibernation may apply

- (1) **Section 395A** and **Schedule 13** of the Companies Act 1993 (which establish a COVID-19 business debt hibernation regime) may apply to a limited partnership under **clause 3** of that schedule.
- (2) This section is repealed on the close of 31 May 2022.

42 Amendment to Partnership Law Act 2019

- (1) This clause amends the Partnership Law Act 2019.
- (2) After section 34, insert:

34A COVID-19 business debt hibernation may apply

- (1) **Section 395A** and **Schedule 13** of the Companies Act 1993 (which establish a COVID-19 business debt hibernation regime) may apply to a partnership under **clause 3** of that schedule.
- (2) This section is repealed on the close of 31 May 2022.

Schedule 3
Commerce and Consumer Affairs: new Schedule 12 inserted into
Companies Act 1993

s 3

Schedule 12
Safe harbour provisions relating to outbreak of COVID-19

s 138B

1AA Purpose of schedule

- (1) The purpose of this schedule is to give to directors of companies that are facing significant liquidity problems because of the effects of the outbreak of COVID-19 more certainty about their duties when—
- (a) agreeing to the business of the company being carried on or causing or allowing the business of the company to be carried on; and
 - (b) agreeing to the company incurring obligations.
- (2) However, it is not a purpose of this schedule to facilitate the ability of a company that has no realistic prospect of continuing to trade or operate in the medium or long term to defer a decision to enter into liquidation to the detriment of its creditors.

1 Overview of schedule

- (1) This schedule applies in relation to actions of directors of certain companies during safe harbour periods.
- (2) **Subclause (1)** is only a guide to the overall scheme and effect of this schedule.

2 Interpretation

In this schedule, unless the context otherwise requires,—

action includes omission

commencement date means the commencement date of **section 138B**

company in BDH means a company to which the protections in **Part 5** of **Schedule 13** apply

Ministers means the Minister of Finance and the Minister of the Crown who, under the authority of a warrant or with the authority of the Prime Minister, is responsible for the administration of this Act, acting jointly

reaching a compromise or other arrangement includes a proposed arrangement being approved by the company's creditors under **Schedule 13**

safe harbour period has the meaning set out in **clause 4**.

**Proposed amendments to
COVID-19 Response (Further Management Measures)
Legislation Bill**

Schedule 3

Application of safe harbour provisions

3 Companies to which safe harbour provisions apply

- (1) **Clauses 5 and 6** apply to a company (including a company in BDH) if,—
- (a) as at 31 December 2019 (or any later benchmark date prescribed in regulations for a new safe harbour period), the company was able to pay its debts as they became due in the normal course of business; or
 - (b) the company was incorporated on or after 1 January 2020 but before ~~25 March 2020~~ 3 April 2020.
- (2) However, **clauses 5 and 6** do not apply to a company that is—
- (a) a registered bank within the meaning of section 2(1) of the Reserve Bank of New Zealand Act 1989;
 - (b) a licensed insurer;
 - (c) an NBDT within the meaning of section 5 of the Non-bank Deposit Takers Act 2013;
 - (d) a qualifying counterparty within the meaning of section 122A of the Reserve Bank of New Zealand Act 1989;
 - (e) a company incorporated on or after ~~25 March 2020~~ 3 April 2020;
 - (f) a company of a class prescribed in any regulations made under **clause 8**.
- (3) In addition, **clauses 5 and 6**—
- (a) do not apply in the circumstances, or to the transactions, prescribed in any regulations made under **clause 8**; and
 - (b) cease to apply if conditions prescribed in any regulations made under **clause 8** are not satisfied.

4 Meaning of safe harbour period

- (1) In this schedule, **safe harbour period** means—
- (a) the initial safe harbour period; and
 - (b) if regulations are made under **clause 9(1)(b)**, the new safe harbour period.
- (2) The **initial safe harbour period** means the period that starts on 3 April 2020 and ends—
- (a) on the close of 30 September 2020; or
 - (b) if regulations are made under **clause 9(1)(a)**, on the close of the date to which the period is extended.
- (3) The **new safe harbour period** means the period prescribed in the regulations made under **clause 9(1)(b)**.

Safe harbour provisions

5 Safe harbour relating to reckless trading

- (1) This clause applies to the following actions of a director of a company taken during a safe harbour period:
 - (a) agreeing to the business of the company being carried on in any manner:
 - (b) causing or allowing the business of the company to be carried on in any manner.
- (2) The actions of the director do not breach section 135 if, at the time of taking them, the director, in good faith, is of the opinion that—
 - (a) the company has, or in the next 6 months is likely to have, significant liquidity problems; and
 - (b) the liquidity problems are, or will be, a result of the effects of COVID-19 on the company, its debtors, or its creditors; and
 - (c) it is more likely than not that the company will be able to pay its due debts on and after the date in **subclause (3)**.
- (3) For the purposes of **subclause (2)(c)**, the date is—
 - (a) 30 September 2021; or
 - (b) any later date prescribed by the regulations.
- (4) For the purposes of the opinion required by **subclause (2)(c)**, the director may have regard to—
 - (a) the likelihood of trading conditions improving;
 - (b) the likelihood of the company reaching a compromise or other arrangement with its creditors;
 - (c) any other matters the director considers to be relevant.
- (5) In this clause, **regulations** means regulations made under **clause 9**.
- (6) *See* **clause 3**, for companies to which this clause applies.

6 Safe harbour relating to section 136 duty

- (1) **Subclause (2)** applies to a director of a company—
 - (a) who, during a safe harbour period, agrees to the company incurring an obligation; and
 - (b) who, at the time of agreeing to the company incurring the obligation, is, in good faith, of the opinion that the company has, or in the next 6 months is likely to have, significant liquidity problems.
- (2) For the purposes of section 136, the director has reasonable grounds to believe that the company will be able to perform the obligation when it is required to do so if the director, in good faith, is of the opinion that—

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Schedule 3

- (a) the liquidity problems are, or will be, a result of the effects of COVID-19 on the company, its debtors, or its creditors; and
- (b) it is more likely than not that the company will be able to pay its due debts on and after the date in **subclause (4)**.
- (3) However, **subclause (2)** only applies if the company incurs the obligation in the safe harbour period.
- (4) For the purposes of **subclause (2)(b)**, the date is—
 - (a) 30 September 2021; or
 - (b) any later date prescribed by the regulations.
- (5) For the purposes of the opinion required by **subclause (2)(b)**, the director may have regard to—
 - (a) the likelihood of trading conditions improving;
 - (b) the likelihood of the company reaching a compromise or other arrangement with its creditors;
 - (c) any other matters the director considers to be relevant.
- (6) In this clause, **regulations** means regulations made under **clause 9**.
- (7) See **clause 3**, for companies to which this clause applies.

Miscellaneous

7 Burden of proof

A person who wishes to rely on a provision of this schedule in a proceeding for, or relating to, a breach of section 135 or 136 has the burden of proving that the provision applies.

8 Regulations relating to companies, etc, to which safe harbour provisions apply

- (1) The Governor-General may, by Order in Council made on the recommendation of the Ministers, make regulations that prescribe classes of companies, or classes of transactions or other circumstances, for the purposes of **clause 3**, including providing for either or both of the following:
 - (a) for **clause 5 or 6**, or both, to apply only if conditions prescribed in the regulations are satisfied;
 - (b) for **clause 5 or 6**, or both, to cease to apply if conditions prescribed in the regulations are not satisfied.
- (2) Before recommending the making of regulations under **subclause (1)**, the Ministers must have regard to ~~the effect of the regulations on—~~
 - (a) the provisions of **clause 1AA** (which relates to the purpose of this schedule); and
 - (b) the effect of the regulations on—

- ~~(i) the creditors of companies that have significant liquidity problems; and~~
 - ~~(ii) the integrity of corporate insolvency law.~~
 - ~~(a) the creditors of companies that have significant liquidity problems; and~~
 - ~~(b) the integrity of corporate insolvency law.~~
- (3) Different matters may be prescribed in respect of different classes of companies, transactions, or other circumstances.
- (4) *See also **clause 9*** (for regulations prescribing a benchmark date).
- 9 Regulations relating to safe harbour periods**
- (1) The Governor-General may, by Order in Council made on the recommendation of the Ministers, make regulations that—
 - (a) extend the initial safe harbour period until no later than 31 March 2021;
 - (b) provide for **clause 5 or 6**, or both, to apply for a new safe harbour period—
 - (i) of no more than 6 months; and
 - (ii) that ends no later than the close of 30 September 2021.
- (2) The powers in **subclause (1)(a) and (b)** may each be exercised once only.
- (3) However, the Governor-General may, by Order in Council made on the recommendation of the Ministers,—
 - (a) revoke regulations made under **subclause (1)** (wholly or in part);
 - (b) amend regulations made under **subclause (1)** to reduce the period of an extension or a new safe harbour period.
- (4) The Ministers must not recommend the making of regulations under **subclause (1)** unless the Ministers are satisfied that the extension or new safe harbour period is—
 - (a) have had regard to the provisions of **clause 1AA** (which relates to the purpose of this schedule); and
 - (b) are satisfied that the extension or new safe harbour period is—
 - (i) necessary or desirable to address the effects of COVID-19; and
 - (ii) no longer than is reasonably necessary to address the matters that gave rise to it.
 - ~~(a) necessary or desirable to address the effects of COVID-19; and~~
 - ~~(b) no longer than is reasonably necessary to address the matters that gave rise to it.~~
- (5) Regulations made under **subclause (1)(a)** may prescribe a date for the purposes of **clauses 5(3) and 6(4)**, but that date must be no later than 31 March 2022.

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Schedule 3

- (6) Regulations made under **subclause (1)(b)** may do either or both of the following:
- (a) prescribe a benchmark date under **clause 3(1)(a)**, being a date that is—
 - (i) no earlier than 30 June 2020; and
 - (ii) no later than the date that is 3 months before the start of the new safe harbour period:
 - (b) prescribe a date, for the purposes of **clauses 5(3) and 6(4)**, but that date must be not later than 18 months after the start of the new safe harbour period.
- (7) **Subclauses (5) and (6)** do not limit **subclause (1)**.

Schedule 4
Commerce and Consumer Affairs: new Schedule 13 inserted into
Companies Act 1993

s 3

Schedule 13
COVID-19 business debt hibernation

s 395A

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**Part 1
Preliminary provisions**

1 Purposes

- (1) A purpose of this schedule is to provide for the business, property, and affairs of an entity that is facing significant liquidity problems, or an entity that may in the future face such problems, because of the effects of the outbreak of COVID-19 to operate in a way that—
 - (a) maximises the chances of the entity, or as much as possible of its business, continuing in existence; or
 - (b) if it is not possible for the entity or its business to continue in existence, results in a better return for the entity's creditors and members than would result from an immediate liquidation of the entity.
- (2) In addition, it is a purpose of this schedule to give an entity referred to in **sub-clause (1)** some temporary protections relating to its debts in order to give it an opportunity to develop, with its creditors, a longer-term approach to its liquidity problems.
- (3) However, it is not a purpose of this schedule to—
 - (a) facilitate the ability of an entity that has no realistic prospect of continuing to trade or operate in the medium or long term to defer a decision to enter into liquidation to the detriment of its creditors; or
 - (b) allow any debts owing by an entity to be cancelled; or
 - (c) allow the rights of a creditor to be varied, in any significant way, after the end of the temporary period of protection.

2 Overview of schedule

- (1) This schedule provides for certain entities to enter into business debt hibernation (**BDH**).
- (2) If an entity is in BDH, certain protections apply. These protections temporarily prevent certain actions being taken by the entity's creditors and other persons (*see Part 5*). In summary (and subject to **Part 6**),—
 - (a) a mortgage or other charge over the entity's property is unenforceable;
 - (b) an owner or a lessor must not recover property used by the entity;

- (c) a proceeding in a court, a tribunal, or an arbitral tribunal must not be begun or continued against the entity;
 - (d) enforcement processes against the entity are halted.
- (2A) The protections do not apply in relation to a creditor with security over the whole, or substantially the whole, of the entity's property.
- (3) The protections start when the entity delivers to the Registrar a notice that the entity is entering into BDH (*see Part 2*). A copy of the notice must be sent to each known creditor.
 - (4) The protection initially lasts for up to 1 month. This is to give the entity and its creditors an opportunity to consider an arrangement to deal with the entity's situation. If the arrangement is approved by a majority of the creditors in number and value, the protection may continue for a further 6 months (*see Part 3*). ~~However, the protections during this 6-month period do not apply to a creditor with security over the whole, or substantially the whole, of the entity's property.~~
 - (5) The process for obtaining the creditors' approval of the arrangement is set out in **Part 4**. That Part also sets out the effects of an approved arrangement. In particular, the permitted scope of an arrangement is narrower than a compromise under Part 14 of the Companies Act 1993 (for example, an arrangement cannot involve any cancellation of the debts of an entity).
 - (6) The protections are subject to certain rights of creditors and other persons under **Part 6**.
 - (7) While the entity is in BDH, certain voidable transaction provisions do not apply. This is intended to encourage businesses to keep transacting with the entity (*see Part 7*).
 - (8) This clause is only a guide to the general scheme and effect of this schedule.
- 3 Application of schedule**
- (1) This schedule applies to a company or any other kind of entity (as defined in **clause 4(1)**).
 - (2) However, this schedule does not apply to any of the following:
 - (a) a registered bank within the meaning of section 2(1) of the Reserve Bank of New Zealand Act 1989;
 - (b) a licensed insurer;
 - (c) an NBDT within the meaning of section 5 of the Non-bank Deposit Takers Act 2013;
 - (ca) an operator of a designated settlement system within the meaning of section 156M(1) of the Reserve Bank of New Zealand Act 1989;
 - (cb) an entity that holds a market services licence that covers the service of acting as a derivatives issuer in respect of a regulated offer of derivatives

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(as those terms are defined in section 6(1) of the Financial Markets Conduct Act 2013):

- (d) an entity that is in liquidation, in voluntary administration, subject to a deed of company arrangement, or subject to statutory management:
 - (e) an entity if a receiver has been appointed in relation to the whole or substantially the whole of the assets and undertaking of the entity:
 - (f) an entity that is subject to any other process (whether in New Zealand or another country) under which the assets and affairs of the entity are administered, or the assets of the entity are realised, for the benefit of creditors:
 - (g) a qualifying counterparty within the meaning of section 122A(1) of the Reserve Bank of New Zealand Act 1989:
 - (h) an entity formed or established on or after ~~25 March 2020~~ 3 April 2020:
 - (i) an entity of a class prescribed by the regulations.
- (3) In addition,—
- (a) this schedule—
 - (i) does not apply in the circumstances prescribed in the regulations; and
 - (ii) ceases to apply if conditions prescribed in the regulations are not satisfied; and
 - (b) an entity may not enter into BDH after the later of—
 - (i) 24 December 2020; and
 - (ii) any later date prescribed by the regulations.
- (4) If an entity enters into BDH before the date that applies under **subclause (3)(b)**, nothing in that paragraph prevents the entity from continuing as an entity in BDH after that date.

4 Interpretation

- (1) In this schedule, unless the context otherwise requires,—
- arrangement**—
- (a) means any arrangement between an entity and its creditors (including an arrangement that relates to the governance or management of the entity); but
 - (b) does not include an arrangement to the extent that it contravenes **clause 29**
- BDH** means business debt hibernation under this schedule
- board** means,—
- (a) in relation to a company within the meaning of this Act, the board of the company:

- (b) in relation to a partnership (other than a limited partnership), 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, partnership, or limited partnership, the committee or other governing body by whatever name called

broker has the same meaning as in section 77A(1) of the Financial Advisers Act 2008

constitution means,—

- ~~(a) in the case of a company within the meaning of this Act, the constitution of the company; and~~
- ~~(b) in the case of any other entity, the documents or instruments constituting or defining the constitution of the entity~~

creditor—

- (a) includes—
 - (i) a person who, in a liquidation, would be entitled to claim in accordance with section 303 that a debt or liability is owing to that person by the entity; and
 - (ii) a secured creditor; but
- ~~(b) does not include—~~
 - ~~(i) an employee of the entity in relation to salary, wages, or other amounts owing by the entity to the employee in connection with the employment relationship; or~~
 - ~~(ii) a person to the extent that the person is owed or must be paid an excluded debt~~
- (b) does not include a person to the extent that the person is owed or must be paid an excluded debt

director means,—

- (a) in relation to a company or an overseas company, any person occupying the position of a director of the company, by whatever name called:
- (b) in relation to a partnership (other than a limited partnership), 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, partnership, or limited partnership, any person occupying a position in the body that is comparable with that of a director of a company

electronic vote has the meaning set out in **subclause (2)**

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enforce, in relation to a charge over property of an entity in BDH, includes—

- (a) to appoint a receiver of property of the entity under a power contained in an instrument relating to the charge:
- (b) to obtain an order for the appointment of a receiver of that property for the purpose of enforcing the charge:
- (c) to enter into possession, or assume control, of that property for that purpose:
- (d) to appoint a person to enter into possession or assume control (whether as agent for the secured creditor or for the entity) for that purpose:
- (e) to exercise, as secured creditor or as a receiver or person so appointed, a right, power, or remedy existing because of the charge, whether arising under an instrument relating to the charge, under a written or unwritten law, or otherwise

enforcement process, in relation to property, means—

- (a) execution against that property; or
- (b) any other enforcement process in relation to that property that involves a court or a sheriff (within the meaning of section 239C)

enters into BDH has the meaning set out in **subclause (4)**

entity means any of the following:

- (a) a company:
- (b) an overseas company registered under Part 18 of this Act:
- (c) a limited partnership registered under the Limited Partnerships Act 2008:
- (d) an overseas limited partnership registered under that Act:
- (e) any other body corporate:
- (f) a partnership (within the meaning of the Partnership Law Act 2019):
- (g) an unincorporated body of persons

entity in BDH has the meaning set out in **subclause (4)**

excluded debt—

- (a) means—
 - (i) ~~a debt that was incurred on or after the date on which the entity delivers a notice to the Registrar under **clause 6** after the entity enters into BDH; or~~
 - (ia) any salary, wages, or other amounts owed by the entity to an employee in connection with the employment relationship; or
 - (ii) any amount withheld or deducted from the salary or wages of an employee as required by the Income Tax Act 2007, the Tax Administration Act 1994, the Child Support Act 1991, the Kiwi-

- Saver Act 2006, or the Student Loan Scheme Act 2011 and any such amount that should have been withheld or deducted from the salary or wages by the entity; or
- (iii) any amount payable by an entity to the Commissioner of Inland Revenue in accordance with subpart 3 of Part 3 of the KiwiSaver Act 2006; or
 - (iv) any other debt or claim of a kind prescribed in the regulations; but
- (b) ~~does not include interest that accrues on a debt referred to in **paragraph (a)(i)** on or after the date referred to in that subparagraph~~
- (b) does not include—
- (i) interest or penalties (regardless of when they fall due for payment) if the interest or penalties relate to a debt that was incurred before the entity enters into BDH; or
 - (ii) any other amount that falls due for payment after the entity enters into BDH if the obligation to pay the amount is imposed under a contract or a deed that was entered into by the entity before the entity enters into BDH
- general security holder** has the meaning set out in **clause 20**
- protection period** has the meaning set out in **clause 13**
- regulations** means regulations made under **section 395B**
- secured creditor**, in relation to an entity, means a person entitled to a charge on or over property owned by that entity-
- voting date** means—
- (a) the last date on which a creditor may vote on the resolution referred to in **clause 9**; or
 - (b) if the entity decides to hold a meeting of creditors to vote on that resolution, the date of the meeting.
- (2) For the purposes of this schedule, a creditor may make an **electronic vote** by giving the creditor's vote in electronic form, whether by means of an electronic communication or otherwise (for example, a vote sent by email).
 - (3) In **subclause (2)**, **electronic** and **electronic communication** have the same meanings as in section 209 of the Contract and Commercial Law Act 2017.
 - (4) For the purposes of this schedule, an entity—
 - (a) is an **entity in BDH** if the protections in **Part 5** of this schedule apply to the entity; and
 - (b) **enters into BDH** when the protections in **Part 5** of this schedule start to apply to the entity (*see* **clause 14**).
 - (5) Any term or expression that is defined or used in another part of this Act and used in this schedule has, in relation to an entity other than a company, the

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same meaning as in the other part of this Act (but applied with all necessary modifications as if it were a company).

Part 2

Board of entity may agree to enter into BDH

5 Board of entity may agree to entity entering into BDH

- (1) The board of an entity may agree to the entity entering into BDH if,—
 - (a) as at 31 December 2019, the entity was able to pay its debts as they became due in the normal course of business; and
 - (b) at least 80% of the directors of the entity vote in favour of a resolution for the entity to enter into BDH; and
 - (c) each director who votes in favour of the resolution has ~~made a statutory declaration~~ signed a certificate that—
 - (i) ~~declares~~ states that, as at 31 December 2019, the entity was able to pay its debts as they became due in the normal course of business; and
 - (ii) ~~includes a declaration~~ statements about the matters set out in **subclause (2)**; and
 - (iii) sets out the grounds for the opinions referred to in that subclause; and
 - (d) each of the directors who vote in favour of the resolution are acting in good faith.
- (2) For the purposes of **subclause (1)(c)(ii)**, the director must ~~declare~~ state that, in good faith, the director is of the opinion that,—
 - (a) the entity has, or in the next 6 months is likely to have, significant liquidity problems; and
 - (b) the liquidity problems are, or will be, a result of the effects of COVID-19 on the entity, its debtors, or its creditors; and
 - (c) it is more likely than not that the entity will be able to pay its due debts on and after the date in **subclause (3)**.
- (3) For the purposes of **subclause (2)(c)**, the date is—
 - (a) 30 September 2021; or
 - (b) any later date prescribed by the regulations.
- (4) For the purposes of the opinion required by **subclause (2)(c)**, the director may have regard to—
 - (a) the likelihood of trading conditions improving:

- (b) the likelihood of a proposed arrangement being approved by its creditors under this schedule (or of the entity reaching a compromise or other arrangement with its creditors);
 - (c) any other matters they consider to be relevant.
- (5) **Subclause (1)(a) and (c)(i)** does not apply to an entity that was formed or established on or after 1 January 2020 but before ~~25 March~~ 3 April 2020.
- 6 Entity may enter BDH by delivering notice to Registrar**
- (1) This clause provides for how an entity may enter into BDH (and receive the benefit of the protections in **Part 5** of this schedule).
 - (2) The entity enters into BDH by delivering to the Registrar a notice that—
 - (a) states that the board of the entity has agreed to the entity entering into BDH under **clause 5**; and
 - (b) states the legal name and the address of the entity (including the registered office of the entity (if any)); and
 - (c) states the entity’s New Zealand Business Number (if any); and
 - (d) states the address (which may be an electronic address) and telephone number to which inquiries may be directed during normal business hours.
- 7 Copy of notice must be sent to creditors**
- (1) The board of the entity must send to each known creditor a copy of the notice under **clause 6** as soon as is reasonably practicable after the notice is delivered to the Registrar under that clause.
 - (2) The notice sent to creditors under **subclause (1)** must—
 - (a) contain, or be accompanied by, a copy of each ~~statutory declaration~~ made certificate signed under **clause 5**; and
 - (b) contain at least a high-level description of a proposed arrangement between the entity and its creditors that is intended to address the entity’s significant liquidity problems; and
 - (c) include the information specified in **subclause (4)(b) and (c)**; and
 - (d) state the address (which may be an electronic address) and telephone number to which inquiries may be directed during normal business hours; and
 - (e) state the date on which the notice is delivered to the Registrar under **clause 6**.
 - (3) The notice that is sent to a creditor must also specify the amount owing or estimated to be owing to that particular creditor.
 - (4) For the purposes of this clause, the entity must compile a list of creditors known to the entity, setting out—

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- (a) the amount owing or estimated to be owing to each of them; and
- (b) the total amount owing or estimated to be owing to the creditors; and
- (c) the number of creditors.

(4A) If the entity is a broker, the board of the entity must send to the FMA a copy of the notice under **clause 6** as soon as is reasonably practicable after the notice is delivered to the Registrar under that clause.

(5) If the board of an entity fails to comply with this clause, every director of the entity commits an offence and is liable on conviction to a fine not exceeding \$10,000.

8 Restriction on entering into BDH more than once

- (1) If a protection period has started as a result of an entity complying with **clause 6**, the entity may not, at any time, deliver a subsequent notice under that clause.
- (2) Accordingly, an entity may not enter into BDH more than once.
- (3) However, this clause does not apply if—
 - (a) the court orders otherwise (on an application made by the entity); or
 - (b) the regulations permit a subsequent notice to be delivered.

9 Entity must develop proposal for arrangement and send notice to creditors

- (1) This clause facilitates a vote by the entity's creditors to approve an arrangement proposed by the entity. *See **clause 15***, which provides that the protections of BDH will cease after 1 month unless the creditors vote to approve the arrangement.
- (2) The entity must—
 - (a) prepare a final proposed arrangement; and
 - (b) send to each known creditor a notice that—
 - (i) requests that the entity's creditors vote on a resolution to approve the proposed arrangement (the **resolution**); and
 - (ii) includes the matters set out in **clause 10**.
- (3) The notice must be sent and received not less than 5 working days before—the voting date.
 - ~~(a) the last date on which a creditor may vote on the resolution; or~~
 - ~~(b) if the entity decides to hold a meeting of creditors to vote on the resolution, the date of the meeting.~~
- (4) ~~The voting date under **subclause (3)(a) or (b)** must be before the expiry of the 1-month period that starts on the date on which the entity enters into BDH (see **clause 14**).~~
- (5) See section 392 (which provides for when a notice is deemed to have been received).

10 Contents of notice

- (1) The notice under **clause 9** must—
 - (a) describe the proposed arrangement in sufficient detail to enable a creditor to form a reasoned judgment in relation to it (including the terms of the proposed arrangement and the reasons for it); and
 - (b) set out the text of the resolution to be voted on; and
 - (c) explain when and how a creditor may vote on the resolution, including ~~the last date for voting under **clause 9(3)**~~ voting date and the manner of voting (for example, the notice may state that the creditor may email its vote to a particular email address before a particular time on a particular date); and
 - (d) explain that the proposed arrangement will be binding on all creditors if approved in accordance with **clause 22**; and
 - (e) explain that a related creditor's vote on the resolution must be disregarded unless the court orders otherwise (*see* **clauses 31 to 34**); and
 - (f) state the name of the person authorised to receive and count votes; and
 - (g) contain the information required under **clause 11** (if any); and
 - (h) contain all other information (if any) required by the regulations.
- (2) The notice may include any other information that the entity considers is useful to its creditors.
- (3) The information about when and how a creditor may vote on the resolution must—
 - (a) give the creditors a fair and reasonable opportunity to participate in the vote; and
 - (b) comply with all other requirements prescribed by the regulations (if any).
- (4) **Subclause (3)** is subject to **clauses 31 to 34** (which may prevent related creditors from voting).

11 Creditors' meeting is voluntary

- (1) An entity is not required to hold a meeting of creditors to vote on a resolution to approve the proposed arrangement.
- (2) However, if the entity decides to hold a meeting of creditors the notice sent under **clause 9** must include a statement of the following (as applicable):
 - (a) the time and place of the meeting to be held under **clause 56(a)**;
 - (b) the time and method of communication for the meeting to be held under **clause 56(b)**;
 - (c) the time and address for the return of voting information for the meeting to be held under **clause 56(a), (b), or (c)**.

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- (3) If a meeting of creditors is held, it must be conducted in accordance with **Part 8** of this schedule (subject to the modifications, additions, or variations specified in the regulations).

12 Effect of irregularity or failure

An irregularity in or a failure to receive a notice under **clause 9** does not invalidate a vote by creditors if—

- (a) the irregularity or failure is not material; or
- (b) in the case of a meeting of creditors being held, all the creditors entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity or failure; or
- (c) all the creditors entitled to vote agree to waive the irregularity or failure.

Part 3
When protection applies

13 Protection period

- (1) This Part sets out when the protections in **Part 5** of this schedule apply.
- (2) In this schedule, the **protection period** is the period during which the protections in **Part 5** of this schedule apply.

14 When protections start to apply (and entity enters into BDH)

Part 5 of this schedule starts to apply (and the entity enters into BDH) when the entity has delivered to the Registrar a notice under **clause 6**.

15 Protections generally apply for 1 month and additional 6 months if creditors approve arrangement

- (1) **Part 5** of this schedule ceases to apply on the earlier of the following:
 - (a) immediately after the expiry of the 1-month period that starts when the entity enters into BDH (*see clause 14*):
 - (b) at the close of the ~~relevant date referred to in clause 9(3)~~ voting date, if the proposed arrangement is not approved under **clause 22**.
- (2) However, if the arrangement is approved under **clause 22**, **Part 5** of this schedule continues to apply until the expiry of the 6-month period that starts on the date of the approval.
- (3) ~~Subclause (2)~~ This clause is subject to **clauses 16 to 21**.

16 Protections cease to apply if conditions not complied with

If the approval under **clause 22** is given subject to the entity complying with 1 or more conditions and the entity materially fails to comply with any of those conditions, **Part 5** of this schedule ceases to apply.

17 Protections cease to apply if entity fails to send new-declarations certificates on request

- (1) During the protection period, a creditor may request that—
 - (a) at least 80% of the directors of the entity ~~make new statutory declarations~~ sign new certificates that comply with **clause 5(1)(c)**; and
 - (b) the entity sends to the creditor a copy of those ~~declarations~~ certificates within 5 working days after the request is received.
- (2) The entity must comply with the request unless the entity has complied with another request under this clause from the creditor or another creditor within the previous 2-month period.
- (3) If the entity relies on **subclause (2)**, the entity must instead, within that 5-working-day period, send to the creditor a copy of the ~~statutory declarations~~ certificates sent for the other request.
- (4) **Part 5** of this schedule ceases to apply if the entity fails to comply with this clause.

18 Protections cease if entity subsequently becomes subject to compromise or enters voluntary administration, receivership, or liquidation

- (1) This clause applies if, after the entity enters into BDH,—
 - (a) a compromise is approved under section 230 in relation to the entity; or
 - (b) the court orders that an arrangement or a compromise be binding on the entity under section 236; or
 - (c) a vote on a compromise is held at a meeting of creditors or a class of creditors in accordance with Schedule 5 but the compromise is not adopted in accordance with clause 5 of that schedule; or
 - (d) voluntary administration of the entity begins under Part 15A of this Act; or
 - (e) a receiver is appointed for the whole, or substantially the whole, of the property of the entity; or
 - (f) the entity is put into liquidation.
- (2) **Part 5** of this schedule ceases to apply, in the case of—
 - (a) **subclause (1)(a)**, when the compromise comes into effect;
 - (b) **subclause (1)(b)**, when the order comes into effect;
 - (c) **subclause (1)(c)**, at the close of the meeting;
 - (d) **subclause (1)(d)**, when the voluntary administration begins; ;
 - (e) **subclause (1)(e)**, when the receiver is appointed;
 - (f) **subclause (1)(f)**, when the liquidation commences.

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18A Entity may decide to come out of BDH early

- (1) This clause applies if a majority of the directors of an entity that is in BDH vote in favour of a resolution for the entity to cease to be an entity in BDH before the end of the protection period that would otherwise apply.
- (2) The board of the entity may deliver to the Registrar a notice that states that the board of the entity has agreed to the entity ceasing to be an entity in BDH on a date specified in the notice (the **specified date**).
- (3) The specified date must be at least 5 working days after the date on which the notice is delivered to the Registrar.
- (4) **Part 5** of this schedule ceases to apply on the close of the specified date.
- (5) The board of the entity must send to each known creditor a copy of the notice under **subclause (2)** as soon as is reasonably practicable after the notice is delivered to the Registrar.
- (6) If the board of an entity fails to comply with **subclause (5)**, every director of the entity commits an offence and is liable on conviction to a fine not exceeding \$10,000.

19 Protections subject to approval

If approval under **clause 22** is given, **Part 5** of this schedule applies subject to the modifications or variations specified in the arrangement that limit or reduce the protections provided by those provisions.

20 ~~Protections during additional 6 months do not apply to creditor with security over whole, or substantially whole, of entity's property~~

- (1) ~~This clause applies if a secured creditor (C) is entitled to a charge on or over the whole, or substantially the whole, of the property of an entity in BDH.~~
- (2) ~~**Part 5** of this schedule ceases to apply in relation to C on the earlier of the following:~~
 - (a) ~~immediately after the expiry of the 1-month period that starts when the entity enters into BDH (see **clause 14**);~~
 - (b) ~~at the close of the date referred to in **clause 9(3)**, if the proposed arrangement is not approved under **clause 22**.~~
- (3) ~~If the protection period continues under **clause 15(2)**, the continued protection under **Part 5** of this schedule relates only to creditors other than C.~~

20 Protections do not apply to general security holders

- (1) **Part 5** of this schedule does not apply in relation to a general security holder of an entity in BDH (or to the debts owing to the general security holder).
- (2) In particular, nothing in this schedule prevents any of the following persons from enforcing a charge referred to in **subclause (4)**:
 - (a) the general security holder:

- (b) a receiver or person appointed as mentioned in **paragraph (a), (b), or (d)** of the definition of enforce in **clause 4(1)** as that definition applies in relation to the charge (regardless of when the receiver or person is appointed).
- (3) **Subclause (2)** does not limit **subclause (1)**.
- (4) In this schedule, **general security holder**, in relation to an entity, means a secured creditor that—
- (a) holds a charge on or over the whole, or substantially the whole, of the property of the entity; or
- (b) holds 2 or more charges on or over the property of the entity where the property that is subject to those charges together constitutes the whole, or substantially the whole, of the property of the entity.
- 21 Protections do not apply to employment debts or excluded debts**
- Part 5** of this schedule does not apply in relation to— excluded debts.
- (a) salary, wages, or other amounts owing by the entity to an employee in connection with the employment relationship; or
- (b) excluded debts.

Part 4

Process for approval of arrangement and its effects

Approval of arrangement

- 22 When arrangement is approved**
- (1) An arrangement is approved by creditors if the arrangement is adopted in accordance with **clause 23**.
- (2) This clause and **clause 23** are subject to **clauses 31 to 34** (which may prevent a related creditor from voting).
- 23 Approval needs majority in number and value of creditors**
- (1) A resolution to approve a proposed arrangement is adopted if—
- (a) a majority in number and value of the creditors who are entitled to vote and who vote on the proposal, vote in favour of the resolution; and
- (b) all other requirements prescribed in the regulations (if any) are satisfied.
- (2) The value attributed to each creditor must be based on the amount of the debts owed by the entity to the creditor immediately before the start of the protection period.
- (2) The value attributed to creditors must not include any excluded debt (and, accordingly, every amount of excluded debt must be disregarded).

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24 Duty to receive and count votes

- (1) A person (A) who is authorised to receive and count votes that have been made on a resolution to approve a proposed arrangement must—
 - (a) collect together all votes that have been made; and
 - (b) count the number of creditors voting in favour of the resolution and determine the total amount of the debts owed by the entity to those creditors (*see clause 23(2), which provides for excluded debts to be disregarded*); and
 - (c) count the number of creditors voting against the resolution and determine the total amount of the debts owed by the entity to those creditors (*see clause 23(2), which provides for excluded debts to be disregarded*); and
 - (d) sign a certificate—
 - (i) that certifies that A has carried out the duties set out in **paragraphs (a) to (c)**; and
 - (ii) ~~stating that states~~ whether A is relying on **subclause (2)**; and
 - (iii) if A is relying on **subclause (2)**, ~~describing that describes~~ how A has made the assessment or estimate referred to in that subclause; and
 - (iv) ~~stating that states~~ the results of the counts and determinations required by **paragraphs (b) and (c)**; and
 - (e) ensure that the certificate required by **paragraph (d)** is given to the entity.
- (2) If A, acting in good faith, considers there is uncertainty about—
 - (a) whether a person is a creditor, A may act under this clause on the basis of a reasonable assessment of whether the person is a creditor:
 - (b) whether a person is a related creditor, A may act under this clause on the basis of a reasonable assessment of whether the person is a related creditor:
 - (c) the amount owing to a creditor, A may act under this clause on the basis of a reasonable estimate of the amount that is owing.
- (3) Nothing in **subclause (2), clause 26 or 27**, or any other provision in this schedule prevents a court from making a determination about whether a resolution to approve a proposed arrangement was, in fact, ~~adopted~~ approved under **clause 22**.
- (4) ~~For the purpose of determining the total amount of the debts owed by the entity to creditors, every amount of excluded debt must be disregarded.~~

25 Amounts must not be determined by reference to class of creditor

The person who is acting under **clause 24** must not determine amounts by reference to different classes of creditor (but this does not limit **clauses 31 to 34**).

26 Board of entity must prepare certificate of result of vote

- (1) The board of the entity must, as soon as practicable, prepare a certificate of the result of the vote, including—
 - (a) a statement of whether the arrangement was approved under **clause 22**; and
 - (b) a statement of the terms of the arrangement (if it is approved).
- (2) The certificate is evidence of the outcome of the vote (unless the contrary is proved).
- (3) If the board of an entity fails to comply with **subclause (1)**, every director of the entity commits an offence and is liable on conviction to a fine not exceeding \$10,000.

27 Board must ensure creditors and Registrar are notified of result of vote

- (1) The board of the entity must ensure that, as soon as practicable,—
 - (a) a copy of each certificate under **clauses 24 and 26** is sent to each known creditor of the entity; and
 - (b) there is delivered to the Registrar a notice of the outcome of the vote and a statement of whether the arrangement was approved under **clause 22**.
- (1A) If the entity is a broker, the board of the entity must send to the FMA a copy of the notice and statement referred to in **subclause (1)(b)** as soon as is reasonably practicable after the notice and statement are delivered to the Registrar.
- (2) If the board of an entity fails to comply with **subclause (1) or (1A)**, every director of the entity commits an offence and is liable on conviction to a fine not exceeding \$10,000.

Effect of approved arrangement

28 Arrangement is binding

- (1) An arrangement approved by the creditors of an entity in accordance with this schedule is—
 - (a) binding on the entity; and
 - (b) binding on all creditors to whom notice was sent under **clause 9**.
- (2) This clause is subject to **clauses 20 and 29**.

29 Restriction on effect of arrangement

- (1) The arrangement must not have the effect of—

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- (a) cancelling all or part of a debt of the entity that is owing to a creditor; or
 - (b) varying the rights of a creditor or the terms of that debt (other than a variation specified in **subclause (2)** or permitted under **subclause (3)**); or
 - (c) preventing the exercise of any of the creditor's powers, or restricting any of the creditor's rights, after the end of the protection period.
- (2) ~~The~~ For the purposes of **subclause (1)(b)**, the arrangement may have the effect of—
- (a) reducing the amount of any payment to be made by the entity to a creditor during the protection period (without a consequential change being made to an annual interest rate):
 - (b) postponing, during a protection period, the dates on which payments are to be made by the entity to a creditor (without a consequential change being made to the annual interest rate or annual interest rates):
 - (c) preventing the exercise of any of the creditor's powers, or restricting any of the creditor's rights, to enforce payment of the due debt during the protection period.

Example

An arrangement may provide that, during the protection period, an entity will pay each of its existing creditors 40 cents for each dollar that they would otherwise be paid.

The other 60 cents in the dollar will remain owing and will need to be paid in the future (unless the creditor later agrees otherwise) because the arrangement only defers payment of an amount. It may not cancel any part of the debt.

- (3) ~~The~~ For the purposes of **subclause (1)(b)**, the arrangement may also—
- (a) have an effect that is incidental or consequential on an effect that is permitted under **subclause (2)** (whether during or after the protection period); and
 - (b) have any other effect permitted under the regulations (whether during or after the protection period).
- (3A) **Subclauses (2) and (3)** are subject to **subclause (1)(a)** (that is, the arrangement must not have the effect of cancelling all or part of a debt).
- (4) A provision of the arrangement that contravenes this clause is of no effect to the extent of the contravention.
- (5) Nothing in this clause limits the application of **Part 5** in relation to the creditor.

Variation of arrangement

30 Variation of arrangement

- (1) An arrangement approved under **clause 22** may be varied—

- (a) in accordance with any procedure for variation incorporated in the arrangement as approved; or
 - (b) by the approval of a variation of the arrangement in accordance with this schedule, which, for that purpose, applies with all necessary modifications as if the proposed variation were a proposed arrangement.
- (2) A variation made as referred to in **subclause (1)(a)** must be notified to the Registrar and can have no effect before that happens.
 - (3) The provisions of this schedule apply to any arrangement that is varied in accordance with this clause.
 - (4) A variation may not purport to extend the length of the protection period.

Related creditors

31 Related creditor's vote to be disregarded unless court orders otherwise

- (1) The entity (and the person who is acting under **clause 24**) must disregard a related creditor's vote on a resolution to approve a proposed arrangement unless the court orders otherwise.
- (2) A related creditor may apply to the court for an order that its vote be taken into account.
- (3) A related creditor that intends to apply for an order must,—
 - (a) before a vote is taken on the resolution, send notice in writing to the entity that the creditor—
 - (i) is a related creditor; and
 - (ii) intends to apply to the court for an order that its vote be taken into account; and
 - (b) within 5 working days of the meeting of creditors, make an application to the court.
- (4) The court may make an order that a related creditor's vote be taken into account only if satisfied that ordering that the applicant's vote (or the applicants' votes) be taken into account—
 - (a) is not contrary to the interests of the creditors, or a class of creditors, as a whole; and
 - (b) will not prejudice, and is not reasonably likely to prejudice, the interests of the creditors to an extent that is unreasonable having regard to—
 - (i) the benefits accruing to the applicant (or the applicants), or to some or all of the related creditors, from the resolution or from the failure to pass the resolution; and
 - (ii) the nature of the relationship between the applicant (or the applicants) and the entity, or between the related creditors and the entity; and

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(iii) any other relevant matter.

(5) In this schedule,—

related creditor means a creditor who is a related person of the entity

related person means, in relation to an entity,—

- (a) a promoter; or
- (b) a relative or spouse of a promoter; or
- (c) a relative of a spouse of a promoter; or
- (d) a director, shareholder, or other member; or
- (e) a relative or spouse of a director, shareholder, or other member; or
- (f) a relative of a spouse of a director, shareholder, or other member; or
- (g) a related body corporate (within the meaning of section 12(2) of the Financial Markets Conduct Act 2013); or
- (h) another entity of which a director is also a director of the entity

relative has the same meaning as in clause 5(2) of Schedule 1 of the Financial Markets Conduct Act 2013 (applied with all necessary modifications).

32 Creditor’s vote disregarded if entity considers creditor is related creditor

(1) If the entity (or the person who is acting under **clause 24**) considers that a creditor that votes on a resolution to approve a proposed arrangement is a related creditor, and the creditor has not sent a notice under **clause 31**, the entity or person must (unless the court orders otherwise)—

- (a) disregard the creditor’s vote; and
- (b) send a notice in writing to the creditor stating the reasons for the entity’s or person’s view.

(2) The court may, on the application of the creditor, order that the creditor’s vote be taken into account if satisfied that the creditor is not a related creditor.

(3) The creditor must make any application under this clause to the court within 5 working days of receiving the notice.

33 Further powers where court orders creditor’s vote be taken into account

(1) If the court orders, under **clause 31 or 32**, that a creditor’s vote be taken into account, the court may also do 1 or more of the following:

- (a) order that the resolution be set aside or treated as having passed;
- (b) order that a new vote be held on the resolution;
- (c) order that the protection period is extended by a period that the court thinks fit to allow a new vote to be held on the resolution;
- (d) make any other orders that the court thinks necessary.

- (2) Despite any application under **clause 31 or 32**, the outcome of the vote on the resolution is valid and effective unless the court orders otherwise.

34 Power of court where outcome of voting determined by related creditor

- (1) **Subclauses (2) and (3)** apply in relation to a resolution to approve a proposed arrangement if,—
- (a) after the voting is completed, the board of the entity becomes aware that a creditor that voted on the resolution is a related creditor; and
 - (b) the board is satisfied that,—
 - (i) in accordance with **clause 31 or 32**, the related creditor’s vote should have been disregarded; and
 - (ii) the resolution would not have been passed or defeated if the vote cast by the related creditor (or, if there is more than 1 related creditor, the votes cast by the related creditors) had been disregarded.
- (2) Despite **clause 31(1) or 32(1)**, the outcome of the vote on the resolution is valid and effective unless the court orders otherwise under **subclause (4)**.
- (3) The board of the entity must, as soon as practicable after becoming aware that this subclause applies to the resolution, send a notice of that fact to every known creditor.
- (4) The court may, on the application of the entity or a creditor, do 1 or more of the following:
- (a) order that the resolution be set aside or treated as having passed;
 - (b) order that a new vote be held on the resolution;
 - (c) order that a specified related creditor or creditors must not vote or may vote on the resolution;
 - (d) order that the protection period is extended by a period that the court thinks fit to allow a new vote to be held on the resolution;
 - (e) make any other orders that the court thinks necessary.
- (5) If the board of an entity fails to comply with **subclause (3)**, every director of the entity commits an offence and is liable on conviction to a fine not exceeding \$10,000.

Other powers of court

35 Powers of court

- (1) On the application of the entity, the court may—
- (a) give directions in relation to a procedural requirement imposed by this schedule, or waive or vary any such requirement, if satisfied that it would be just to do so; or

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- (b) order that, during a period specified in the order, beginning not earlier than the date on which notice was sent about the proposed arrangement and ending not later than 5 working days after the date on which notice was sent of the result of the voting on it,—
 - (i) proceedings in relation to a debt owing by the entity be stayed; or
 - (ii) a creditor refrain from taking any other measure to enforce payment of a debt owing by the entity.
 - (2) **Subclause (1)(b)** does not apply in relation to—
 - (a) any debt that is owed by the entity to a general security holder; or
 - (b) any excluded debt.
- 36 Court may order that creditor is not bound**
- (1) The court may order that a creditor is not bound by an arrangement, or make any other order that it thinks fit, if the court is satisfied that—
 - (a) insufficient notice of the matters required to be notified under **clause 7 or 9** was sent to the creditor (or no notice was received by the creditor); or
 - (b) **clause 10(3)** was materially contravened in relation to the creditor; or
 - (c) there was some other material irregularity in obtaining approval of the arrangement; or
 - (d) in the case of a creditor who voted against the arrangement, the arrangement is unfairly prejudicial to the creditor.
 - (2) An arrangement is not unfairly prejudicial to a creditor merely because the creditor is a secured creditor (or has a preferential claim under Schedule 7) and other creditors are not secured creditors (or do not have a preferential claim).
 - (3) An application under this clause—
 - (a) may only be made by a creditor of the entity who was entitled to vote on the arrangement; and
 - (b) must be made not later than 10 working days after the date on which notice of the result of the voting was sent to the creditor under **clause 27**.

**Part 5
Protections for entity in BDH**

37 Charge unenforceable

- (1) A person must not, during the protection period for an entity in BDH, enforce a charge over the property of the entity, except—
 - (a) with the permission of the court; or

(b) in accordance with terms of an arrangement that has been approved under **clause 22**.

(2) This clause is subject to **Part 6**.

38 Owner or lessor must not recover property used by entity

During the protection period for an entity in BDH, the owner or lessor of property that is used or occupied by, or is in the possession of, the entity must not take possession of the property or otherwise recover it, except—

- (a) with the entity's written consent; or
- (b) with the permission of the court; or
- (c) in accordance with terms of an arrangement that has been approved under **clause 22**.

39 Proceeding must not be begun or continued

(1) During the protection period for an entity in BDH, a proceeding against the entity in connection with a debt or in relation to any of its property must not be begun or continued, except—

- (a) with the entity's written consent; or
- (b) with the permission of the High Court and in accordance with the terms that the High Court imposes; or
- (c) in accordance with terms of an arrangement that has been approved under **clause 22**.

(2) This clause does not apply to a proceeding against the entity in connection with—

- (aa) a debt that is owed by the entity to a general security holder; or
- (a) an excluded debt; or
- (b) salary, wages, or other amounts owing by the entity to an employee in connection with the employment relationship.

(3) In this clause, **proceeding** means a proceeding in the High Court or any other court, a tribunal, or an arbitral tribunal.

40 Entity not liable in damages for refusing consent

An entity is not liable in damages for a refusal to give an approval or consent for the purposes of this schedule.

41 Enforcement process halted

During the protection period for an entity in BDH, an enforcement process in relation to the entity's property must not be begun or continued except with the permission of the court and in accordance with the terms that the court imposes.

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42 Duties of court officer in relation to entity's property

- (1) This clause applies to a sheriff or registrar or other appropriate officer of the court (a **court officer**) who receives written notice that an entity is in BDH under this schedule.
- (2) During the protection period for the entity, the court officer must not—
 - (a) take action to sell property of the entity under an execution process; or
 - (b) pay to a person (other than the entity)—
 - (i) proceeds of the sale of the entity's property (at any time) under an execution process; or
 - (ii) money of the entity seized (at any time) under an execution process; or
 - (iii) money paid (at any time) to avoid the seizure or sale of property of the entity under an execution process; or
 - (c) take action in relation to the attachment of a debt due to the entity; or
 - (d) pay to any person (other than the entity) money received because of the attachment of a debt due to the entity.
- (3) The court officer must deliver to the entity any property of the entity that is in the court officer's possession under an execution process (whenever begun).
- (4) The court officer must pay to the entity all proceeds or money of a kind referred to in **subclause (2)(b) or (d)** that—
 - (a) is in the court officer's possession; or
 - (b) has been paid into the court and has not since been paid out.
- (5) The costs of the execution or attachment are a first charge over property delivered under **subclause (3)** or proceeds or money paid under **subclause (4)**.
- (6) In order to give effect to a charge under **subclause (5)** on proceeds or money the court officer may retain, on behalf of the person entitled to the charge, so much of the proceeds as the court officer thinks necessary.
- (7) The court may, if it is satisfied that it is appropriate to do so, permit the court officer to take action, or make a payment, that **subclause (2)** would otherwise prevent.
- (8) A person who buys property in good faith under a sale under an execution process obtains a good title to the property as against the entity, despite anything else in this schedule.

43 ~~Protection not to trigger enforcement of guarantee of liability of director, member, or relative~~ Certain guarantees may not be enforced during protection period

- (1) During the protection period for an entity in BDH, except with the court's permission and in accordance with the terms that the court may impose, a guarantee of a liability of the entity must not be enforced against—

- (a) a director of the entity; or
 - (b) a shareholder or other member of the entity; or
 - (c) the spouse or relative of a director, a shareholder, or any other member of the entity.
- (2) In this section, **liability** means a debt, liability, or other obligation.
- (2) In this clause, —
- liability** means a debt, liability, or other obligation
- relative** has the same meaning as in clause 5(2) of Schedule 1 of the Financial Markets Conduct Act 2013 (applied with all necessary modifications).

Part 6

Rights of secured creditor, owner, or lessor

44 **Meaning of terms used in this Part**

In this Part, unless the context otherwise requires, —

enforce, in relation to a charge over property of an entity in BDH, includes —

- (a) to appoint a receiver of property of the entity under a power contained in an instrument relating to the charge;
- (b) to obtain an order for the appointment of a receiver of that property for the purpose of enforcing the charge;
- (e) to enter into possession, or assume control, of that property for that purpose;
- (d) to appoint a person to enter into possession or assume control (whether as agent for the secured creditor or for the entity) for that purpose;
- (e) to exercise, as secured creditor or as a receiver or person so appointed, a right, power, or remedy existing because of the charge, whether arising under an instrument relating to the charge, under a written or unwritten law, or otherwise

relevant period means, in relation to a secured creditor holding a charge over property of an entity in BDH, the period that —

- (a) begins when the entity has delivered to the Registrar a notice under **clause 6**; and
- (b) ends on the earlier of the following:
 - (i) immediately after the expiry of the 1-month period that starts when the entity enters into BDH (see **clause 14**);
 - (ii) at the close of the relevant date referred to in **clause 9(3) voting date**.

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45 If secured creditor acts before or during relevant period

- (1) This clause applies if—
- (a) ~~the whole, or substantially the whole, of the property of an entity in BDH is subject to a charge; and~~
 - (b) ~~before or during the relevant period, the secured creditor enforces the charge in relation to all property of the entity subject to the charge, whether or not the charge is enforced in the same way in relation to all that property.~~
- (2) This clause also applies if—
- (a) ~~an entity is in BDH; and~~
 - (b) ~~the same person is the secured creditor in relation to each of 2 or more charges over the property of the entity; and~~
 - (c) ~~the property of the entity (in this subclause called the **charged property**) subject to the respective charges together constitutes the whole, or substantially the whole, of the entity's property; and~~
 - (d) ~~before or during the relevant period, the secured creditor enforces together the charges in relation to all the charged property—~~
 - (i) ~~whether or not the charges are enforced in the same way in relation to all the charged property; and~~
 - (ii) ~~whether or not any of the charges is enforced in the same way in relation to all the property of the entity subject to that charge; and~~
 - (iii) ~~in so far as the charges are enforced in relation to property of the entity in a way referred to in **paragraph (a), (b), or (d)** of the definition of enforcee in **clause 44**, whether or not the same person is appointed in respect of all of the last-mentioned property.~~
- (3) Nothing in **clause 37** or in an order under **clause 48** prevents any of the following persons from enforcing the charge:
- (a) ~~the secured creditor;~~
 - (b) ~~a receiver or person appointed as mentioned in **paragraph (a), (b), or (d)** of the definition of enforcee in **clause 44** as that definition applies in relation to the charge, or any of the charges (even if appointed after the relevant period).~~

46 If enforcement of charges begins before entity enters into BDH

- (1) This clause applies if, before the start of the protection period, a secured creditor, receiver, or other person, for the purpose of enforcing a charge over the property,—
- (a) entered into possession, or assumed control, of the property of the entity; or
 - (b) entered into an agreement to sell the property; or

- (c) made arrangements for the property to be offered for sale by public auction; or
 - (d) publicly invited tenders for the purchase of the property; or
 - (e) exercised any other power in relation to the property.
- (2) Nothing in **clause 37** prevents the secured creditor, receiver, or other person from enforcing the charge in relation to the property.
- (3) However, ~~clause 37~~ continues to apply in relation to an entity if —
- (a) ~~the entity enters into BDH on or before the date that is 10 working days after the commencement of this clause; and~~
 - (b) ~~the action that is taken under **subclause (1)(a) to (e)** is only taken on or after that commencement.~~

47 Charge over perishable property

- (1) This clause applies if perishable property of an entity in BDH is subject to a charge.
- (2) Nothing in **clause 37** prevents the secured creditor, a receiver, or a person appointed (at any time) as mentioned in **paragraph (a), (b), or (d)** of the definition of enforce in ~~clause 44~~ **clause 4(1)** from enforcing the charge, so far as it is a charge over perishable property.

48 Court may limit powers of secured creditor, etc, in relation to property subject to charge

- (1) This clause—
- (a) applies if,—
 - (i) for the purpose of enforcing a charge over property of an entity, the secured creditor, a receiver, or other person does an act of a kind referred to in **clause 46**; and
 - (ii) the entity is an entity in BDH when the secured creditor, receiver, or other person does that act; but
 - ~~(b) does not apply in a case where **clause 45** applies.~~
 - (b) does not apply in connection with the enforcement of a charge that is held by a general security holder.
- (2) On an application by the entity, the court may order the secured creditor, receiver, or other person not to perform specified functions or exercise specified powers, except as permitted by the order.
- (3) The court may make an order only if satisfied that what the entity proposes to do during the protection period will adequately protect the secured creditor's interests.
- (4) An order—
- (a) may be made only, and has effect only, during the protected period; and

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(b) has effect despite **clauses 46 and 47**.

49 Giving notice under security agreement

Clause 37 does not prevent a person from giving a notice under the provisions of a security agreement.

50 If recovery of property begins before protection period

(1) This clause applies if, before the protection period, a receiver or other person, for the purpose of enforcing a right of the owner or lessor of the property to take possession of the property or otherwise recover it,—

- (a) entered into possession of, or assumed control of, property used or occupied by, or in the possession of, the entity; or
- (b) exercised any other power in relation to the property.

(2) **Clause 38** does not prevent the receiver or other person from performing a function, or exercising a power, in relation to the property.

(3) However, ~~**clause 38** continues to apply in relation to an entity if—~~

- (a) ~~the entity enters into BDH on or before the date that is 10 working days after the commencement of this section; and~~
- (b) ~~the action that is taken under **subclause (1)(a) or (b)** is only taken on or after that commencement.~~

51 Recovering perishable property

Nothing in **clause 38** prevents a person from taking possession of, or otherwise recovering, perishable property.

52 Court may limit powers of receiver, etc, in relation to property used by entity

(1) This clause applies if,—

- (a) for the purpose of enforcing a right of the owner or lessor of property used or occupied by, or in the possession of, an entity to take possession of the property or otherwise recover it, a person—
 - (i) enters into possession, or assumes control, of the property; or
 - (ii) exercises any other power in relation to the property; and
- (b) the entity is in BDH when the person does so.

(2) On an application by the entity, the court may order the person not to perform specified functions, or exercise specified powers, in relation to the property, except as permitted by the order.

(3) The court may make an order only if satisfied that what the entity proposes to do during the protection period will adequately protect the interests of the owner or lessor.

(4) An order—

- (a) may be made only, and has effect only, during the protection period; and
- (b) has effect despite **clauses 50 and 51**.

53 Giving notice under agreement about property

Nothing in **clause 38** prevents a person from giving a notice to a entity under an agreement relating to property that is used or occupied by, or is in the possession of, the entity.

Part 7

Exemption from provisions about voidable transactions and dispositions that prejudice creditors

54 When provisions do not apply

- (1) The provisions referred to **subclause (2)** do not apply to a transaction by an entity in BDH if—
 - (a) the transaction is—
 - (i) entered into by the entity during the protection period; or
 - (ii) specifically authorised under an arrangement that has been approved under **clause 22**; and
 - (b) the transaction is entered into by all the parties—
 - (i) in good faith; and
 - (ii) on arm's-length terms.
- (2) The provisions are—
 - ~~(a) sections 292 to 296 (which relate to voidable transactions); and~~
 - (a) section 292 (which relates to insolvent transactions) and sections 294 to 296 to the extent that those sections relate to section 292; and
 - (b) subpart 6 of Part 6 of the Property Law Act 2007 (which relates to setting aside dispositions that prejudice creditors).
- (3) A transaction between an entity and another party (**P**) is on **arm's-length terms** if the terms—
 - (a) would be reasonable in the circumstances if the parties were connected or related only by the transaction in question, each acting independently, and each acting in its own best interests; or
 - (b) are less favourable to P than the terms referred to in **paragraph (a)**.
- (4) In this clause, **transaction** includes a disposition within the meaning of section 345 of the Property Law Act 2007.
- (5) Section 92 of the Limited Partnerships Act 2008 applies subject to this clause.

Part 8 Procedure for meeting

55 Part applies only if creditor's meeting is held

- (1) This Part applies only if a meeting of creditors is held for the purposes of this schedule.
- (2) However, this Part applies subject to the modifications, additions, or variations specified in the regulations.

56 Methods of holding meetings

A meeting of creditors may be held in 1 or more of the following ways:

- (a) by assembling together those creditors who are entitled to take part and who choose to attend at the place, date, and time appointed for the meeting:
- (b) by means of audio, or audio and visual, communication by which all creditors participating can simultaneously hear each other throughout the meeting:
- (c) by conducting a postal or an electronic vote in accordance with **clause 61** of those creditors entitled to take part.

57 Adjournment of meeting

- (1) If the meeting of creditors agrees, the chairperson may adjourn the meeting from time to time and from place to place.
- (2) An adjourned meeting must be held in the same place unless another place is specified in the resolution for the adjournment.
- (3) An adjournment does not extend the protection period (and, in all cases, the voting date must continue to be before the expiry of the 1-month period that starts on the date on which the entity enters into BDH).

58 Chairperson

- (1) A person appointed by the directors of the entity must act as chairperson of the meeting, but if no such person is appointed or is able to act, the creditors participating must choose one of their number to act as chairperson of the meeting.
- (2) The person convening a meeting under **clause 56(c)** must do everything necessary that would otherwise be done by the person chairing a meeting.
- (3) The chairperson or convenor does not have a casting vote.

59 Quorum

A quorum for a meeting of creditors is present if—

- (a) 3 creditors who are entitled to vote, or their proxies, are present or have cast postal or electronic votes; or

- (b) if the number of creditors entitled to vote does not exceed 3, the creditors who are entitled to vote, or their proxies, are present or have cast postal or electronic votes.

60 Proxies

- (1) A creditor may exercise the right to vote either by being present in person or by proxy.
- (2) A proxy for a creditor is entitled to attend and be heard at a meeting of creditors as if the proxy were the creditor.
- (3) A proxy must be appointed by notice in writing signed by the creditor, and the notice must state whether the appointment is for a particular meeting or a specified term not exceeding 12 months.
- (4) No proxy is effective in relation to the meeting unless a copy of the notice of appointment is delivered to the entity not less than 2 working days before the start of the meeting.

61 Postal or electronic votes

- (1) A creditor entitled to vote at a meeting of creditors held in accordance with **clause 56(a), (b), or (c)** may exercise the right to vote by casting a postal or an electronic vote in relation to a matter to be decided at that meeting.
- (2) A creditor may cast a postal or an electronic vote on all or any of the matters to be voted on at the meeting by sending, by post or electronic means, information that indicates their vote to a person authorised to receive and count those votes in relation to that meeting, so as to reach that person not less than 2 working days before the start of the meeting or, if the meeting is held under **clause 56(c)**, not later than the date named for the return of the voting information.

62 Proposed arrangement may not be varied at meeting

The proposed arrangement that is voted on at a meeting must be the final proposed arrangement described in the notice sent to creditors under **clause 9** (that is, the arrangement must not be varied).

63 Bodies corporate may act by representatives

A body corporate that is a creditor may appoint a representative to attend a meeting of creditors on its behalf.

64 Other proceedings

A meeting of creditors may regulate its own procedure (except as provided in this Part and in the regulations (if any)).

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65 Effect of irregularity or defect

- (1) An irregularity or a defect in the proceedings at a meeting of creditors does not invalidate anything done by a meeting of creditors, unless the court orders otherwise.
- (2) The court may, on the application of a creditor of the entity, make an order under **subclause (1)** if it is satisfied that substantial injustice would be caused if the order were not made.

**Part 9
Miscellaneous provisions**

66 How notices or documents must be sent to creditors

- (1) Section 391 provides for how a notice or other document must be sent to a creditor of an entity under this schedule (regardless of whether the entity is a company).
- (2) However, section 391(1) applies for the purposes of this schedule as if it also permitted a notice or other document that must or may be sent to a creditor (C) who is a natural person to be sent by email to an electronic address if—
 - (a) C has previously notified the entity that C uses that electronic address;
and
 - (b) the entity has no reason to believe that the address is incorrect.

67 Effect of actions under schedule

Neither an entity becoming an entity in BDH nor anything in or effected by, or done under, this schedule—

- (a) places any person in breach of, or otherwise in default under, an enactment, an instrument, a confidence, a trust, or any other rule of law or equity, or makes any person liable for a civil wrong; or
- (b) may be used as evidence that an entity is unable to pay due debts or is otherwise insolvent; or
- (c) entitles any person—
 - (i) to require the payment or performance of a liability not otherwise arising for payment or performance; or
 - (ii) to exercise a right not otherwise becoming exercisable; or
- (d) invalidates or discharges an instrument or any provision of an instrument; or
- (e) releases a surety from a liability.

68 Right for new advance of money or credit may not be enforced

If 1 or more rights of a person (A) cannot be enforced against an entity in BDH (B) for a period because of any provision in this schedule and B has a right under a contract, an agreement, or an arrangement against A for a new advance of money or credit, that right of B cannot be enforced during the same period.

69 Burden of proof

An entity that wishes to rely on a protection in **Part 5** of this schedule in a proceeding has the burden of proving—

- (a) that **clauses 5 and 6** were complied with; and
- (b) that notice of the proposed arrangement was sent under **clause 9**; and
- (c) all other matters that are relevant to whether the protection applies to the entity.

70 Registrar must register or publicly notify information about notices

(1) If a notice is delivered to the Registrar under **clause 6, 18A, 27, or 71**, the Registrar must do either or both of the following:

- (a) arrange for information relating to the notice to be registered on any register kept under this Act or any other enactment that the Registrar thinks fit (and the information may be registered regardless of whether the register is kept by the Registrar);
- (b) otherwise make that information available to the public in any way the Registrar thinks fit (for example, publishing it on an Internet site).

(2) The power under **subclause (1)** includes, without limitation, the power to arrange for information to be registered in the New Zealand Business Number Register established under section 18 of the New Zealand Business Number Act 2016 (and, if the information is registered, it must be treated as being public primary business data for the purposes of that Act).

71 Schedule does not prevent subsequent compromise or, voluntary administration, receivership, or liquidation

(1) This schedule does not prevent—

- (a) an entity in BDH from becoming subject to a compromise under Part 14 of this Act; or
- (b) an entity in BDH from becoming subject to an order under section 236; or
- (c) a voluntary administration of an entity in BDH beginning under Part 15A of this Act; or
- (d) a general security holder appointing a receiver for the whole, or substantially the whole, of the property of the entity; or
- (e) the entity being put into liquidation.

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Schedule 4

- (2) *See*, however, **clause 18** (which provides for protections to cease).
- (3) The board of the entity must, within 5 working days after an event referred to in **subclause (1)(a) to (e)** occurs, deliver to the Registrar a notice that advises the Registrar of that event.
- (4) If the board of an entity fails to comply with **subclause (3)**, every director of the entity commits an offence and is liable on conviction to a fine not exceeding \$10,000.

72 Effect of arrangement in liquidation of entity

- (1) If an arrangement is approved under **clause 22**, the court may, on an application, make any order that the court thinks fit with respect to the extent, if any, to which the arrangement will, if the entity is put into liquidation, continue in effect and be binding on the liquidator of the entity.
- (2) If an arrangement is approved under **clause 22** and the entity is subsequently put into liquidation, the court may, on an application, make any order that the court thinks fit with respect to the extent, if any, to which the arrangement will continue in effect and be binding on the liquidator of the entity.
- (3) An application under—
 - (a) **subclause (1)** may only be made by—
 - (i) the entity; or
 - (ii) a receiver appointed in relation to property of the entity; or
 - (iii) with the leave of the court, any creditor or member of the entity;
 - (b) **subclause (2)** may only be made by—
 - (i) the liquidator; or
 - (ii) a receiver appointed in relation to property of the entity; or
 - (iii) with the leave of the court, any creditor or member of the entity.

72A Crown not prevented from voting to approve arrangement

- (1) This clause applies if the Crown is a creditor of an entity that has entered into BDH.
- (2) Nothing in section 65K of the Public Finance Act 1989 prevents the Crown from voting to approve an arrangement under this schedule (including an arrangement that would have the effect of deferring the payment of an amount).

73 Schedule applies despite anything contrary in Construction Contracts Act 2002

The schedule applies despite anything to the contrary in the Construction Contracts Act 2002.

Schedule 5 Corrections

s 3

1 Amendment to Corrections Act 2004

This schedule amends the Corrections Act 2004.

2 New section 139A inserted (Mode of hearing or reaching decisions)

After section 139, insert:

139A Mode of hearing or reaching decisions

- (1) This section applies instead of section 139, while the Epidemic Preparedness (COVID-19) Notice 2020 is in force.
- (2) Any hearing or application under any of sections 133 to 138 may be conducted or, as the case requires, determined with all or any of the interested persons participating in one of the following ways, rather than by being present in person:
 - (a) by video link; or
 - (b) ~~unless the hearing adjudicator or Visiting Justice considers that it is contrary to the interests of justice to do so, by audio link.~~
 - (b) if it is not reasonably practicable for the participant to attend in person and video link is unavailable or unable to be used, by audio link unless the hearing adjudicator or Visiting Justice considers that it is contrary to the interests of justice to use audio link.
- (2A) To avoid doubt, a motion to determine whether the use of audio link is contrary to the interests of justice may be made by the participant or the hearing adjudicator or Visiting Justice (as the case may be).
- (3) In this section, **audio link**, in relation to an interested person's appearance at any proceeding, means facilities that enable audio communication between the interested persons when some or all of them are not physically present at the place of hearing for all or part of the proceeding.
- (4) This section is repealed on the date on which the Epidemic Preparedness (COVID-19) Notice 2020 expires or is revoked.

Schedule 6 Courts

s 3

Part 1

Amendment to Coroners Act 2006

1 Amendment to Coroners Act 2006

This Part amends the Coroners Act 2006.

2 New section 21B inserted (Preliminary inspection must include taking of swabs in certain circumstances relating to COVID-19)

After section 21A, insert:

21B Preliminary inspection must include taking of swabs in certain circumstances relating to COVID-19

- (1) This section—
 - (a) applies on and from the day on which this section comes into force; and
 - (b) ceases to apply immediately after the expiry of the 30-day period that starts on the date on which the Epidemic Preparedness (COVID-19) Notice 2020 expires or is revoked.
- (2) If this section applies, a preliminary inspection of a body performed under section 21A must also include the taking and testing of nasopharyngeal and oropharyngeal swabs in any case where the deceased is suspected to have had COVID-19 at the time of death.
- (3) This section is repealed immediately after the expiry of the 30-day period that starts on the date on which the Epidemic Preparedness (COVID-19) Notice 2020 expires or is revoked.

Part 2

Amendments to Courts (Remote Participation) Act 2010

3 Amendments to Courts (Remote Participation) Act 2010

This Part amends the Courts (Remote Participation) Act 2010.

4 New section 7A inserted (Use of audio links in civil proceedings)

After section 7, insert:

7A Use of audio links in civil proceedings

- (1) In any circumstances in which a judicial officer or a Registrar would otherwise have determined under section 7 that AVL be used for the appearance of a par-

participant in a civil proceeding, the judicial officer or Registrar may determine that AL be used instead of AVL if,—

- (a) the judicial officer or Registrar considers the criteria set out in section 5 (which applies as if the reference to AVL were a reference to AL) in deciding whether the use of AL is appropriate in the circumstances; and
 - (b) the judicial officer or Registrar determines that it is not contrary to the interests of justice to use AL instead of AVL.
- (2) For the purposes of this section and **section 8A, audio link or AL**, in relation to a participant's appearance at any proceeding, means facilities that enable audio communication between participants when some or all of them are not physically present at the place of hearing for all or part of the proceeding.
- (3) This section is repealed when the Epidemic Preparedness (COVID-19) Notice 2020 expires or is revoked.

5 New section 8A inserted (Use of audio links in criminal procedural or sentencing matters)

After section 8, insert:

8A Use of audio links in criminal procedural or sentencing matters

- (1) In any circumstances in which AVL must or may be used in accordance with section 8 for the appearance of a participant in a criminal procedural or sentencing matter, the judicial officer or Registrar may determine that AL be used instead of AVL if—
- (a) the judicial officer or Registrar considers the criteria set out in sections 5 and 6 (which apply as if the reference to AVL were a reference to AL) in deciding whether the use of AL is appropriate in the circumstances; and
 - (b) the defendant is not required to attend the hearing; and
 - (c) the judicial officer or Registrar determines that it is not contrary to the interests of justice to use AL instead of AVL.
- (1A) To avoid doubt, a motion to determine whether AL is contrary to the interests of justice may be made by the participant or the judicial officer or Registrar (as the case may be).
- (2) This section is repealed when the Epidemic Preparedness (COVID-19) Notice 2020 expires or is revoked.

Part 3

Amendments to Epidemic Preparedness Act 2006

6 Amendments to Epidemic Preparedness Act 2006

This Part amends the Epidemic Preparedness Act 2006.

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Schedule 6

7 New section 4A inserted (Transitional, savings, and related provisions)

After section 4, insert:

4A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in **Schedule 1** have effect according to their terms.

8 New section 27 inserted (Provisions regarding COVID-19 set out in Schedule 2)

After section 26, insert:

27 Provisions regarding COVID-19 set out in Schedule 2

- (1) Provisions regarding COVID-19 are set out in **Schedule 2**.
- (2) This section and **Schedule 2** are repealed on the earlier of the following:
 - (a) 31 October 2021;
 - (b) a date set by the Governor-General by Order in Council made on the recommendation of the Minister of Health with the agreement of the Minister of Justice.
- (3) The Minister of Health may recommend the making of an Order in Council under **subsection (2)(b)** only if the Minister is satisfied that it is unnecessary for this section to remain in force because—
 - (a) the effects of COVID-19 have diminished to such an extent that it is no longer necessary to rely on the changes made to the law by this section; or
 - (b) for any other reason arising since the commencement of this section, it is no longer necessary for this section to remain in force.

9 New Schedules 1 and 2 inserted

After **section 27** (as inserted by this Act), insert:

Schedule 1
Transitional, savings, and related provisions

s 4A

Part 1
Provision relating to COVID-19 Response (Further Management Measures) Legislation Act 2020

1 Savings provision relating to clause 1 of Schedule 2

- (1) This clause applies to **clause 1 of Schedule 2**.
- (2) Any extension or shortening of time arising out of the application of **clause 1 of Schedule 2** (as it read immediately after the commencement of this clause) and applied to proceedings continues to apply to the proceedings until they are concluded, whether or not **clause 1 of Schedule 2** is repealed before the proceedings are concluded.

Schedule 2
Provision regarding COVID-19

s 27

1 Power of courts to extend or shorten time

- (1) In relation to a proceeding before it, a court may, in its discretion, extend or shorten the time appointed by rules of court or an enactment, or fixed by a court order, for doing an act or taking a step on the terms that the court thinks just if satisfied that it is necessary or desirable to do so because of circumstances relating to COVID-19.
- (2) In this clause, **court** includes a tribunal.

Compare: 2011 No 12 s 82

Schedule 7
Customs

s 3

1 Amendments to Customs and Excise Act 2018

This schedule amends the Customs and Excise Act 2018.

2 Schedule 1 amended

(1) In Schedule 1, after clause 7(1), insert:

(1A) Unless revoked earlier, the following orders continue in force until the close of 30 September 2021, at which time they are revoked:

(a) Customs Import Prohibition Order 2017:

(b) Customs Export Prohibition Order 2017.

(2) In Schedule 1, clause 7(2), replace “An” with “Any other”.

Schedule 8 Environment

s 3

1 Amendments to Resource Management Act 1991

This schedule amends the Resource Management Act 1991.

2 New section 2AC inserted (Availability of documents during COVID-19 response)

After section 2AB, insert:

2AC Availability of documents during COVID-19 response

Interpretation

- (1) In this section, **document** includes the following if they are required to be made available for inspection to the public, a class of members of the public, a person, or a class of persons, whether free of charge or at a reasonable cost:
- (a) information of any kind; and
 - (b) public notices of any kind; and
 - (c) reports and evidence of any kind; and
 - (d) policy statements and plans of any kind, together with any changes or variations of those documents.

Application of this section

- (2) This section applies if this Act requires a document to be made available for inspection in physical form to the public, a class of members of the public, a person, or a class of persons at a specified place such as council offices or a library.
- (3) This section applies on and from 25 March 2020.

How documents may be made available

- (4) The requirement referred to in **subsection (2)** is satisfied if the person responsible for making the document available—
- (a) makes it available in electronic form free of charge on an Internet site; and
 - (b) provides advice on how the document may be obtained or accessed.
- (5) In addition, the person responsible for making a document available may—
- (a) make it available for inspection; and
 - (b) upon request, make a physical copy of the document available for purchase at a reasonable cost.

Repeal

- (6) This section is repealed on 31 October 2021.

3 New section 39AA inserted (Hearing using remote access facilities during COVID-19 response)

After section 39, insert:

39AA Hearing using remote access facilities during COVID-19 response

Interpretation

(1) In this section,—

audio link means a facility (such as a telephone facility) that enables audio communication between an authority and 1 or more persons with a right to be heard at a hearing

audiovisual link means a facility that enables both audio and visual communication between an authority and 1 or more persons with a right to be heard at a hearing.

remote access facility means any of the following:

- (a) audio link;
- (b) audiovisual link;
- (c) any other similar facility

Direction to use remote access facilities

(2) For the purposes of section 39, an authority may direct that a hearing or part of a hearing may be conducted using 1 or more remote access facilities.

(3) A direction may be made under **subsection (2)**—

- (a) on the initiative of the authority itself; or
- (b) at the request of any person with a right to be heard at the hearing under section 40.

(4) An authority may make a direction under **subsection (2)** provided that the authority—

- (a) considers it appropriate and fair to do so; and
- (b) is satisfied that the necessary remote access facilities are available.

(5) If a hearing is conducted in full or in part using a remote access facility, the authority must,—

- (a) if it is reasonably practicable to do so, enable access to the hearing by making the hearing available live and free of charge to the public, for example, on an Internet site; or
- (b) as soon as practicable after the hearing closes, make available free of charge on its Internet site—
 - (i) an audio or a video recording of the hearing; or
 - (ii) a written transcript of the hearing.

Exclusions

- (6) This section does not apply—
- (a) to a public hearing if the relevant authority is represented by 1 or more persons appearing in person at the hearing and 1 or more persons make submissions or give evidence by means of a remote access facility; or
 - (b) to a hearing to which section 47A of the Local Government Official Information and Meetings Act 1987 applies.

Deemed compliance

- (7) A hearing conducted in full or in part before 25 March 2020 using a remote access facility is deemed to comply with this section.

Period for which this section applies

- (8) This section applies on and from 25 March 2020.
- (9) This section is repealed on 31 October 2021.

Schedule 9

Fisheries

s 3

1 Amendments to Fisheries Act 1996

This schedule amends the Fisheries Act 1996.

2 Section 79 amended (Suspension of permit for non-payment of deemed value)

(1) After section 79(1), insert:

(1A) However, the chief executive may cease the suspension if—

- (a) the total amount of deemed values owed by the commercial fisher includes an amount demanded under section 76 during the period that begins on 20 April 2020 and ends on 30 September 2021; and
- (b) the chief executive and the commercial fisher enter into an agreement (a **repayment agreement**) for repayment of the total amount owed within a new specified time limit.

(1B) For the purpose of subsection (1), any amount for which there is a repayment agreement does not count towards the total amount of deemed values owed by a commercial fisher, unless there has been a failure to pay the amount within the time limit specified in the agreement.

(2) After section 79(2), insert:

(2A) Subsection (2) also applies to the cessation of suspension of a fishing permit under **subsection (1A)**.

(3) After section 79(6), insert:

(7) **Subsections (1A), (1B), and (2A)** and this subsection are repealed on 1 October 2021.

3 Section 79A amended (Suspension of fishing permit of other persons)

(1) After section 79A(7), insert:

(7A) A suspension of a fishing permit under subsection (1) also ceases to be of effect if the chief executive ceases suspension of person A's licence under **section 79(1A)**.

(2) After section 79A(9), insert:

(10) **Subsection (7A)** and this subsection are repealed on 1 October 2021.

4 Schedule 1AA amended

In Schedule 1AA, after Part 1, insert:

Part 2

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- 2 Continuation of certain amendments to section 79 while repayment agreements remain in effect**
- (1) This clause applies if any amount for which there is a repayment agreement under **section 79(1A)(b)** has not been paid by 1 October 2021.
 - (2) For the purpose of section 79(1), and until the amount is paid, the amount does not count towards the total amount of deemed values owed by a commercial fisher, unless there has been a failure to pay the amount within the time limit specified in the agreement.

Schedule 10 Food Safety

s 3

1 Amendment to Food Act 2014

This schedule amends the Food Act 2014.

2 Schedule 4 amended

In Schedule 4, after clause 3, insert:

3A Renewal of registrations that expire during, or in 4 weeks after, COVID-19 lockdown period

- (1) Despite clause 3, a registration may be renewed under this clause—
 - (a) after the expiry of the period during which the registration is effective; and
 - (b) whether the expiry occurs before, on, or after the date on which this clause comes into force.
- (2) To avoid doubt, an affected person must not operate the affected business until the registration is renewed.
- (3) A registration that expires during a COVID-19 lockdown period may be renewed by paying the prescribed fee (if any) to the proper authority within 1 month after the end of the COVID-19 lockdown period.
- (4) A registration that expires during the 4 weeks that immediately follow any COVID-19 lockdown period may be renewed—
 - (a) if the proper authority, having considered the impact of the COVID-19 lockdown period on affected persons generally and their ability to meet registration requirements, is satisfied that it is appropriate to extend the deadline for renewal by 1 month; and
 - (b) if the prescribed fee (if any) is paid within 1 month after the date on which the registration expired.
- (5) On payment of the prescribed fee, the proper authority may renew the registration for a further period determined by the authority, unless the proper authority is satisfied that any 1 or more of the criteria specified in section 56 or 86(b) or, as the case may be, section 116 are no longer being met.
- (6) In this clause, **COVID-19 lockdown period** means the period during which any order or other restriction is in force under section 70(1)(f), (g), (h), (i), (la), or (m) of the Health Act 1956 that—
 - (a) relates to COVID-19; and
 - (b) results in an affected person being unable to operate the affected food business.

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Schedule 10

- (7) This clause is repealed immediately after the expiry of the 2-month period that starts on the date on which the Epidemic Preparedness (COVID-19) Notice 2020 expires or is revoked.

Schedule 11 Health

s 3

1 Amendments to Mental Health (Compulsory Assessment and Treatment) Act 1992

This schedule amends the Mental Health (Compulsory Assessment and Treatment) Act 1992.

2 New section 2AA inserted (Meaning of mental health practitioner during COVID-19 response)

After section 2, insert:

2AA Meaning of mental health practitioner during COVID-19 response

In this Act, unless the context otherwise requires,—

mental health practitioner means—

- (a) a medical practitioner; or
- (b) a nurse practitioner; or
- (c) a registered nurse practising in mental health

registered nurse practising in mental health means a health practitioner who—

- (a) is, or is deemed to be, registered with the Nursing Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of nursing and whose scope of practice includes the assessment of the presence of mental disorder as defined under this Act; and
- (b) holds a current practising certificate.

3 New section 2B inserted (Modification to section 2A during COVID-19 response)

After section 2A, insert:

2B Modification to section 2A during COVID-19 response

In section 2A(b), “health practitioner” is modified to “mental health practitioner”.

4 New section 6A inserted (Use of audiovisual links permitted during COVID-19 response)

After section 6, insert:

6A Use of audiovisual links permitted during COVID-19 response

- (1) This section applies if—

- (a) a clinician, psychiatrist, or mental health practitioner exercises a power under this Act that requires access to a person; or
- (b) a Judge, any person directed by a Judge, or a member of a Review Tribunal is required to examine a person under this Act.
- (2) If the clinician, psychiatrist, or mental health practitioner considers that it is not practicable for the person to be physically present, the clinician, psychiatrist, or mental health practitioner may use an audiovisual link to access the person to exercise a power under this Act.
- (3) If the Judge or member of the Review Tribunal considers that it is not practicable for the person to be physically present for an examination, the Judge, a person directed by a Judge, or a member of a Review Tribunal may use an audiovisual link to examine the person under this Act.
- (4) In this section, **audiovisual link**, in relation to the exercise of a power in respect of a person under this Act, means facilities that enable both audio and visual communication with the person.
- (5) To avoid doubt, an examination may not be carried out under this section by audio link.

5 New section 7B inserted (Modification to section 7A during COVID-19 response)

After section 7A, insert:

7B Modification to section 7A during COVID-19 response

In section 7A(1)(a), “health practitioner” is modified to “mental health practitioner”.

6 New section 8C inserted (Modification to section 8B during COVID-19 response)

After section 8B, insert:

8C Modification to section 8B during COVID-19 response

In section 8B(1) to (5), “health practitioner” is modified to “mental health practitioner” in each place.

7 New section 9A inserted (Modifications to section 9 during COVID-19 response)

After section 9, insert:

9A Modifications to section 9 during COVID-19 response

- (1) In section 9(1), “the Director of Area Mental Health Services must make” is modified to “the Director of Area Mental Health Services or duly authorised officer must make”.

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(2) In section 9(1) and (3), “health practitioner” is modified to “mental health practitioner”.

8 New section 10A inserted (Modification to section 10 during COVID-19 response)

After section 10, insert:

10A Modification to section 10 during COVID-19 response

In section 10, “health practitioner” is modified to “mental health practitioner” in each place.

9 New section 11A inserted (Modification to section 11 during COVID-19 response)

After section 11, insert:

11A Modification to section 11 during COVID-19 response

In section 11(1) and (2), “health practitioner” is modified to “mental health practitioner” in each place.

10 New section 38A inserted (Modifications to section 38 during COVID-19 response)

After section 38, insert:

38A Modifications to section 38 during COVID-19 response

(1) In section 38(2)(b), (3), and (4), “medical examination” is modified to “examination”.

(2) In section 38(3) to (6), “medical practitioner” is modified to “mental health practitioner” in each place.

11 New section 41A inserted (Modification to section 41 during COVID-19 response)

After section 41, insert:

41A Modification to section 41 during COVID-19 response

In section 41(3)(b), (4)(a), and (4)(b)(ii), “medical examination” is modified to “examination”.

12 New section 42A inserted (Modification to section 42 during COVID-19 response)

After section 42, insert:

42A Modification to section 42 during COVID-19 response

In section 42(2)(c), “medical certificate” is modified to “assessment certificate”.

13 New section 45A inserted (Modification to section 45 during COVID-19 response)

After section 45, insert:

45A Modification to section 45 during COVID-19 response

In section 45(4)(d), “medical practitioner” is modified to “mental health practitioner”.

14 New section 96A inserted (Modification to section 96 during COVID-19 response)

After section 96, insert:

96A Modification to section 96 during COVID-19 response

In section 96(4) and (5), “health practitioner” is modified to “mental health practitioner” in each place.

15 New section 97A inserted (Visitations by remote technology permitted while epidemic notice in force for COVID-19)

After section 97, insert:

97A Visitations by remote technology permitted while epidemic notice in force for COVID-19

- (1) A district inspector or an official visitor may make a visit required by section 96 using remote technology, if the district inspector or official visitor considers that it is not practicable to make the visit in person.
- (2) If a district inspector or an official visitor makes a visit required by section 96 using remote technology, —
 - (a) the hospital or service must provide them with the means to—
 - (i) visually inspect all areas of the hospital or service; and
 - (ii) communicate with every person in the hospital or service, whether detained or not; and
 - (b) any information required to be provided under section 97(2) may be provided by electronic means.
- (3) In this section, **remote technology** means technology that enables a person to—
 - (a) view a place at which they are not physically present; and
 - (b) communicate with a person at that place.
- (4) This section is repealed when the Epidemic Preparedness (COVID-19) Notice 2020 expires or is revoked.

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16 New section 109A inserted (Modification to section 109 during COVID-19 response)

After section 109, insert:

109A Modification to section 109 during COVID-19 response

In section 109(1)(b), (2), (3), (3A), and (4)(b), “medical practitioner” is modified to “mental health practitioner”.

17 New section 110AA inserted (Modifications to section 110 during COVID-19 response)

After section 110, insert:

110AA Modifications to section 110 during COVID-19 response

- (1) In the heading to section 110, “**medical practitioner**” is modified to “**mental health practitioner**”.
- (2) In section 110, “medical practitioner” is modified to “mental health practitioner” in each place.
- (3) In section 110(1)(a) and (4), “medical examination” is modified to “examination”.

18 New section 110BA inserted (Modifications to section 110 during COVID-19 response)

After section 110B, insert:

110BA Modifications to section 110B during COVID-19 response

- (1) In the heading to section 110B, “**medical practitioner**” is modified to “**mental health practitioner**”.
- (2) In section 110B, “medical practitioner” is modified to “mental health practitioner” in each place.

19 New section 110D inserted (Modifications to section 110C during COVID-19 response)

After section 110C, insert:

110D Modifications to section 110C during COVID-19 response

- (1) In section 110C(1) and (2), “medical practitioner” is modified to “mental health practitioner” in each place.
- (2) In section 110C(3)(a), “medical examination” is modified to “examination”.

20 New section 111A inserted (Modification to section 111 during COVID-19 response)

After section 111, insert:

111A Modification to section 111 during COVID-19 response

In section 111, “medical practitioner” is modified to “mental health practitioner” in each place.

21 New section 127A inserted (Modification to section 127 during COVID-19 response)

After section 127, insert:

127A Modification to section 127 during COVID-19 response

In section 127(8), “medical certificates” is modified to “assessment certificates”.

22 New section 134A inserted (Modification to section 134 during COVID-19 response)

After section 134, insert:

134A Modification to section 134 during COVID-19 response

In section 134(1), (2), and (5), “medical practitioner” is modified to “mental health practitioner”.

23 New section 137A inserted (Temporary COVID-19 response provisions repealed)

After section 137, insert:

137A Temporary COVID-19 response provisions repealed

(1) **Sections 2AA, 2B, 6A, 7B, 8C, 9A, 10A, 11A, 38A, 41A, 42A, 45A, 96A, 109A, 110AA, 110BA, 110D, 111A, 127A, 134A, and clauses 3A and 8A of Schedule 1** are repealed on the earlier of the following:

- (a) 31 October 2021;
- (b) a date set by the Governor-General by Order in Council on the recommendation of the Minister.

(2) The Minister may recommend the making of an Order in Council under **subsection (1)(b)** only if the Minister is satisfied that it is unnecessary for the provisions specified in **subsection (1)** to remain in force because—

- (a) the effects of COVID-19 have diminished to such an extent that it is no longer necessary to rely on the changes made to the law by those provisions; or
- (b) for any other reason arising since the commencement of those provisions, it is no longer necessary for those provisions to remain in force.

24 Schedule 1 amended

(1) In Schedule 1, after clause 3, insert:

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Schedule 11

3A Attendance by remote technology during COVID-19 response

- (1) A Review Tribunal may determine that a participant be permitted to appear at a hearing by remote technology if the Tribunal considers that it is not practicable for the participant to be physically present.
- (2) The Tribunal must take into account the following criteria when making a determination:
 - (a) the available remote technology must allow, wherever reasonably practicable, the person to be both heard and seen:
 - (b) the potential impact of the use of the technology on the effective maintenance of the rights of the person under clause (3), including the right to assess the credibility of witnesses and the reliability of evidence presented to the Tribunal:
 - (c) any other relevant matters.
- (3) In this clause,—
 - (a) **participant**, in relation to a hearing, means a person who is, in that hearing, any of the following:
 - (i) a party:
 - (ii) the patient:
 - (iii) a person referred to in clause 2(6):
 - (iv) counsel:
 - (v) a witness:
 - (vi) a member of the Review Tribunal; and
 - (b) **remote technology**, in relation to a participant’s appearance at a hearing, means technology that enables communication between participants, when some or all of them are not physically present at the place of the hearing.

- (2) In Schedule 1, after clause 8, insert:

8A Clause 8 modified during COVID-19 response

In clause 8(2)(b)(i), “medical professions” is modified to “health professions”.

Schedule 12 Housing

s 3

1 Amendment to Unit Titles Act 2010

This schedule amends the Unit Titles Act 2010.

2 Section 88 amended (Meetings)

After section 88(2), insert:

- (3) Members of a body corporate may attend a general meeting (and members of a body corporate committee may attend a committee meeting) in person, by audio link, or by audiovisual link despite—
 - (a) any limitation or condition on the use of an audio link or audiovisual link that is contained in the ~~body corporate's constitution~~ body corporate operational rules; or
 - (b) anything to the contrary in this Act or the regulations.
- (4) **Subsection (3)** applies while the Epidemic Preparedness (COVID-19) Notice 2020 is in force.
- (5) This subsection and **subsections (3) and (4)** are repealed when the Epidemic Preparedness (COVID-19) Notice 2020 expires or is revoked.
- (4) **Subsection (3)** applies on and from 25 March 2020.
- (5) This subsection and **subsections (3) and (4)** are repealed immediately after the expiry of the 12-week period that starts on the date on which the Epidemic Preparedness (COVID-19) Notice 2020 expires or is revoked.

Schedule 13
Internal Affairs

s 3

Part 1**Amendment to Fire and Emergency New Zealand Act 2017****1 Amendment to Fire and Emergency New Zealand Act 2017**

This Part amends the Fire and Emergency New Zealand Act 2017.

2 Section 52 amended (FENZ may prohibit fire in open air and prohibit or restrict other activities)

After section 52(2), insert:

- (2A) At any time while the Epidemic Preparedness (COVID-19) Notice 2020 is in force, FENZ may also prohibit the lighting of fires in open air in any area without needing to consider the matters in section 52(2).
- (2B) This subsection and **subsection (2A)** are repealed when the Epidemic Preparedness (COVID-19) Notice 2020 expires or is revoked.

Part 2**Amendment to Gambling Act 2003****3 Amendment to Gambling Act 2003**

This Part amends the Gambling Act 2003.

4 New section 4A inserted (Modification of definition of remote interactive gambling during specified period due to effects of COVID-19)

After section 4, insert:

- 4A Modification of definition of remote interactive gambling during specified period due to effects of COVID-19**
- (1) The purpose of this section is to enable certain class 3 gambling operators to undertake remote interactive gambling for a specified period due to the effects of COVID-19 on their ability to fund-raise.
- (2) This section applies during the period—
- (a) beginning on the day on which this section comes into force; and
 - (b) ending on the close of 31 October 2021.
- (3) While this section applies, paragraph (b) of the definition of **remote interactive gambling** in section 4(1) must be read as if the following subparagraph were inserted after subparagraph (iv):

-
- “(v) class 3 gambling in the form of a raffle conducted by Countdown Kids Charitable Trust, the National Heart Foundation of New Zealand, or Royal New Zealand Coastguard Incorporated (a **specified operator**), but only where all or any of the following apply:
- (A) the specified operator offers tickets, or a person makes a request for a ticket, in the raffle by email or telephone:
 - (B) payment for a ticket is made via a communication device:
 - (C) a ticket is issued electronically.”
- (4) This section is repealed on the close of **31 October 2021**.
- (5) The repeal of this section does not otherwise affect the previous operation of the definition of remote interactive gambling (as amended by this section) or anything done under it.

Schedule 14 Justice

s 3

1 Amendments to Property Law Act 2007

This Part amends the Property Law Act 2007.

2 New sections 120A to 120E inserted

After section 120, insert:

120A COVID-19 outbreak extension of remedial period: application

Mortgages to which sections 120B to 120E apply

- (1) **Sections 120B to 120E** apply to a mortgage in operation in the COVID-19 period (even if it came into operation, was varied, or both, before or in that period) if—
- (a) section ~~120~~ 119(1) applies to the mortgage under sections 75 to 78, 125, and 126; and
 - (b) the current mortgagor has been in default in that period.

Definitions

- (2) In this section and **sections 120B to 120E**,—
- COVID-19 period** means all or any of the period that—
- (a) starts on 1 April 2020; and
 - (b) ends at the close of the 6-month period that starts on the date on which the Epidemic Preparedness (COVID-19) Notice 2020 expires or is revoked
- enforcement action**, for a mortgage, if the current mortgagor has been in default, includes taking 1 or both of the following actions:
- (a) exercising a power specified in section 119(2);
 - (b) seeking payment of amounts secured by the mortgage and payable by any person under an acceleration clause
- remedial period** means the period (under section 120(1)(c), and as extended by **sections 120B and 120C**) within which the current mortgagor must remedy the default or cause it to be remedied.

120B COVID-19 outbreak extension of remedial period: extension

- (1) This section applies to enforcement action taken for reasons that are or include that the current mortgagor has been in default in the COVID-19 period.
- (2) For the purposes of that enforcement action, “20 working days” in section 120(1)(c) must be read as “40 working days”.

120C COVID-19 outbreak extension of remedial period: notices

- (1) This section applies to a notice under section 119—
 - (a) served on or after 1 April 2020 and before the commencement of this section; and
 - (b) based on the remedial period being less than 40 working days; and
 - (c) whether or not the remedial period for the notice as served ended before the commencement of this section.
- (2) The notice must be taken to be based on the remedial period being 40 working days.

120D COVID-19 outbreak extension of remedial period: enforcement

- (1) Enforcement action must be taken not to comply with section 119(1) if that enforcement action is—
 - (a) taken before the commencement of this section; and
 - (b) inconsistent with **sections 120B and 120C**.
- (2) However, nothing in this section affects—
 - (a) section 184 (which provides protection to a person who purchases mortgaged property from a mortgagee or receiver); and
 - (b) section 51 of the Land Transfer Act 2017 (which provides, in the case of a transfer of an estate or interest in land, for title by registration except as provided for by that section); and
 - (c) any other enactment or law that protects, or protects a person claiming through, a person who acquires property for valuable consideration and in good faith.

120E COVID-19 outbreak extension of remedial period: proceedings

- (1) This section applies to a proceeding—
 - (a) in or before a court or tribunal, or before a person acting judicially; and
 - (b) about, or about matters that include, a mortgage to which this section applies under **section 120A(1)**.
- (2) In particular, this section applies even if the proceeding—
 - (a) commenced before the commencement of this section; and
 - (b) is not finally determined (at first instance, or on any appeal) on the commencement of this section.
- (3) Any relief granted in the proceeding (for example, any leave granted by a court to exercise a power specified in section 119(2)) must be not inconsistent with **sections 120B to 120D**.

3 New sections 129A to 129E inserted

After section 129, insert:

129A COVID-19 outbreak extension of remedial period: application

*Mortgages to which **sections 129B to 129E** apply*

- (1) **Sections 129B to 129E** apply to a mortgage in operation in the COVID-19 period (even if it came into operation, was varied, or both, before or in that period) if—
- (a) section 128(1) applies to the mortgage under sections 75 to 78, 135, and 136; and
 - (b) the current mortgagor has been in default in that period.

Definitions

- (2) In this section and **sections 129B to 129E**,—
- COVID-19 period** means all or any of the period that—
- (a) starts on 1 April 2020; and
 - (b) ends at the close of the 6-month period that starts on the date on which the Epidemic Preparedness (COVID-19) Notice 2020 expires or is revoked

enforcement action, for a mortgage, if the current mortgagor has been in default, includes taking 1 or both of the following actions:

- (a) exercising a power to sell the mortgaged goods;
- (b) seeking payment of amounts secured by the mortgage and payable by any person under an acceleration clause

remedial period means the period (under section 129(1)(c), and as extended by **sections 129B and 129C**) within which the current mortgagor must remedy the default or cause it to be remedied.

129B COVID-19 outbreak extension of remedial period: extension

- (1) This section applies to enforcement action taken for reasons that are or include that the current mortgagor has been in default in the COVID-19 period.
- (2) For the purposes of that enforcement action, “10 working days” in section 129(1)(c) must be read as “30 working days”.

129C COVID-19 outbreak extension of remedial period: notices

- (1) This section applies to a notice under section 128(1)—
- (a) served on or after 1 April 2020 and before the commencement of this section; and
 - (b) based on the remedial period being less than 30 working days; and
 - (c) whether or not the remedial period for the notice as served ended before the commencement of this section.
- (2) The notice must be taken to be based on the remedial period being 30 working days.

129D COVID-19 outbreak extension of remedial period: enforcement

- (1) Enforcement action must be taken not to comply with section 128(1) if that enforcement action is—
 - (a) taken before the commencement of this section; and
 - (b) inconsistent with **sections 129B and 129C**.
- (2) However, nothing in this section affects—
 - (a) section 184 (which provides protection to a person who purchases mortgaged property from a mortgagee or receiver); and
 - (b) section 124 of the Personal Property Securities Act 1999 (which provides, in the case of transfer of collateral sold by a secured party, for a purchaser to acquire good title to goods); and
 - (c) any other enactment or law that protects, or protects a person claiming through, a person who acquires property for valuable consideration and in good faith.

129E COVID-19 outbreak extension of remedial period: proceedings

- (1) This section applies to a proceeding—
 - (a) in or before a court or tribunal, or before a person acting judicially; and
 - (b) about, or about matters that include, a mortgage to which this section applies under **section 129A(1)**.
- (2) In particular, this section applies even if the proceeding—
 - (a) commenced before the commencement of this section; and
 - (b) is not finally determined (at first instance, or on any appeal) on the commencement of this section.
- (3) Any relief granted in the proceeding (for example, any leave granted by a court to exercise any power to sell the mortgaged goods) must be not inconsistent with **sections 129B to 129D**.

4 New sections 245A to 245E inserted

After section 245, insert:

245A COVID-19 outbreak extension of applicable periods: application

*Leases to which **sections 245B to 245E** apply*

- (1) **Sections 245B to 245E** apply to a lease in operation in the COVID-19 period (even if it came into operation, was varied, or both, before or in that period) if—
 - (a) section 245 applies to the lease under section 206; and
 - (b) the rent has been in arrears in that period.

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(2) In this section and **sections 245B to 245E**,—
applicable periods means the following periods (as extended by **sections 245B and 245C**):

- (a) the arrears period in section 245(1)(a);
- (b) the notice period in section 245(3)(c)

COVID-19 period means all or any of the period that—

- (a) starts on 1 April 2020; and
- (b) ends at the close of the 6-month period that starts on the date on which the Epidemic Preparedness (COVID-19) Notice 2020 expires or is revoked

enforcement action, for a lease, if the rent has been in arrears, includes taking all or any of the following actions:

- (a) exercising a right to cancel the lease because of a breach of the covenant to pay rent under the lease;
- (b) applying to a court for an order for possession of the land;
- (c) re-entering the land peaceably (and without committing forcible entry under section 91 of the Crimes Act 1961).

245B COVID-19 outbreak extension of applicable periods: extensions

- (1) This section applies to enforcement action taken for reasons that are or include a breach of the covenant to pay rent under the lease because the rent has been in arrears in the COVID-19 period.
- (2) For the purposes of that enforcement action,—
 - (a) “10 working days” in section 245(1)(a) must be read as “30 working days”; and
 - (b) “10 working days” in section 245(3)(c) must be read as “30 working days”.

245C COVID-19 outbreak extension of applicable periods: notices

- (1) This section applies to a notice under section 245(1)(b) or (2)—
 - (a) served on or after 1 April 2020 and before the commencement of this section; and
 - (b) based on the arrears period in section 245(1)(a), the notice period in section 245(3)(c), or both, being a period of less than 30 working days; and
 - (c) whether or not 1 or both of those applicable periods for the notice as served ended before the commencement of this section.

- (2) The notice must be taken to be based on the arrears period in section 245(1)(a), the notice period in section 245(3)(c), or both, being a period of 30 working days.

245D COVID-19 outbreak extension of applicable periods: enforcement

- (1) Enforcement action must be taken not to comply with sections 244 and 245 if that enforcement action is—
- (a) taken before the commencement of this section; and
 - (b) inconsistent with **sections 245B and 245C**.
- (2) However, nothing in this section affects—
- (a) section 184 (which provides protection to a person who purchases mortgaged property from a mortgagee or receiver); and
 - (b) section 51 of the Land Transfer Act 2017 (which provides, in the case of a transfer of an estate or interest in land, for title by registration except as provided for by that section); and
 - (c) any other enactment or law that protects, or protects a person claiming through, a person who acquires property for valuable consideration and in good faith.

245E COVID-19 outbreak extension of applicable periods: proceedings

- (1) This section applies to a proceeding—
- (a) in or before a court or tribunal, or before a person acting judicially; and
 - (b) about, or about matters that include, a lease to which this section applies under **section 245A(1)**.
- (2) In particular, this section applies even if the proceeding—
- (a) commenced before the commencement of this section; and
 - (b) is not finally determined (at first instance, or on any appeal) on the commencement of this section.
- (3) Any relief granted in the proceeding (for example, on an application made under section 244(1)(a) for an order for possession of the land, or otherwise in exercise of the powers conferred by sections 253 to 264) must be not inconsistent with **sections 245B to 245D**.

5 Repeals

The following sections are repealed immediately after the expiry of the 6-month period that starts on the date on which the Epidemic Preparedness (COVID-19) Notice 2020 expires or is revoked:

- (a) **sections 120A to 120E**;
- (b) **sections 129A to 129E**;
- (c) **sections 245A to 245E**.

Schedule 14A
Land Information

s 3

1 Amendment to Rating Valuations Act 1998

This Schedule amends the Rating Valuations Act 1998.

2 Section 9 amended (General revaluation of rolls at 3-yearly intervals)

After section 9(3), insert:

- (4) Despite subsection (1), the Valuer-General may, at the request of the chief executive of a territorial authority,—
- (a) determine, in accordance with **subsection (5)**, that the territorial authority is not required to undertake the general revaluation by the due date; and
 - (b) require the territorial authority to undertake the general revaluation by a date—
 - (i) agreed to by the chief executive; and
 - (ii) not later than 1 year after the due date.
- (5) The Valuer-General may make a determination under **subsection (4)(a)** only if satisfied that the territorial authority is unlikely or is not reasonably able to revise its district valuation roll so that it represents values current as at the date of the revaluation because of constraints on—
- (a) the practicality of carrying out physical inspections; or
 - (b) the availability and reliability of market evidence or other information that the Valuer-General may require under section 10.
- (6) In this section, **due date** means the last day by which a territorial authority must undertake the general revaluation in accordance with the time frame in subsection (1).
- (7) **Subsections (4) to (6)** and this subsection are repealed on 30 June 2021.

Schedule 15 Local Government

s 3

Part 1

Amendment to Freedom Camping Act 2011

1 Amendment to Freedom Camping Act 2011

This Part amends the Freedom Camping Act 2011.

2 New section 13A inserted (Bylaw revocation postponed as result of outbreak of COVID-19)

After section 13, insert:

13A Bylaw revocation postponed as result of outbreak of COVID-19

- (1) **Subsection (2)** applies instead of section 13(6) during the period starting on the date on which this section comes into force and ending on 30 June 2021.
- (2) A bylaw that is not reviewed as required by section 13, and that is not earlier revoked by the local authority concerned, is revoked on the later of—
 - (a) the date that is 2 years after the last date on which the bylaw should have been reviewed under that section; and
 - (b) 30 June 2021.
- (3) This section is repealed on 1 July 2021.

Part 2

Amendments to Local Electoral Act 2001

3 Amendments to Local Electoral Act 2001

This Part amends the Local Electoral Act 2001.

4 New section 5AA inserted (Temporary definition of public notice as result of outbreak of COVID-19)

After section 5, insert:

5AA Temporary definition of public notice as result of outbreak of COVID-19

- (1) This section provides a temporary definition of public notice, which applies as a result of the outbreak of COVID-19.
- (2) In this Act, unless the context otherwise requires, **public notice** means a notice that—

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- (a) is made available on the local authority's Internet site until the relevance of the notice, or any opportunity for review or appeal in relation to the matter notified, has lapsed; and
 - (b) is published in 1 or more newspapers circulating in the region or district of the relevant local authority.
- (3) However, a local authority is not required to publish a notice in 1 or more newspapers if it is satisfied that, as a result of the outbreak of COVID-19, it is not reasonably practicable to do so, taking into account—
- (a) the cost of publication; and
 - (b) the reduced effectiveness of publication.
- (4) This section is repealed on 1 November 2020.

5 New sections 73AB and 73AC inserted

After section 73A, insert:

73AB Adjournment of electoral processes and conduct of polls while epidemic notice in force for COVID-19

- (1) The Governor-General may, by Order in Council, in the period during which the Epidemic Preparedness (COVID-19) Notice 2020 is in force, specify a later date for 1 or more of the following in respect of an election to fill an extraordinary vacancy:
- (a) the date by which, or dates during which, a certain qualification entitles an elector to be included on the electoral roll:
 - (b) the nomination day:
 - (c) the voting period:
 - (d) the polling day:
 - (e) the date by which anything else may or must be done under this Act or regulations made under this Act.
- (2) The Governor-General may, by Order in Council, in the period during which the Epidemic Preparedness (COVID-19) Notice 2020 is in force, specify a later date for 1 or more of the following in respect of a poll:
- (a) the date by which, or dates during which, a certain qualification entitles an elector to be included on the electoral roll:
 - (b) the voting period:
 - (c) the polling day:
 - (d) the date by which anything else may or must be done under this Act or regulations made under this Act.
- (3) A date specified by an order—
- (a) may be outside the period during which the Epidemic Preparedness (COVID-19) Notice 2020 is in force; but

- (b) must be no more than 6 weeks after the date that would otherwise have applied.
- (4) A date may be specified by an order only if the order commences on or before the date that would otherwise have applied.
- (5) One or more further orders may be made under this section specifying a later date for a matter that has been the subject of an earlier order.
- (6) An order must be made on the recommendation of the Minister.
- (7) Before recommending the making of an order, the Minister—
 - (a) must be satisfied, on reasonable grounds, that it is necessary to ensure that the adverse effects of COVID-19, or measures related to COVID-19 such as restrictions on the movement of electors, do not deny electors a reasonable opportunity to cast a valid vote in the election or poll, or to nominate a candidate or accept nomination as a candidate for the election; and
 - (b) must have consulted every local authority and electoral officer that will be affected.
- (8) On commencement of an order,—
 - (a) a date specified in the order has effect in relation to—
 - (i) the election of members of the 1 or more local authorities, local boards, and community boards to which the order applies; or
 - (ii) the poll to which the order applies; and
 - (b) this Act and any regulations made under it apply to the election or poll with any necessary modifications.
- (9) The relevant electoral officer must, as soon as practicable, give public notice of every change of date made by an order under this section and may give any other notice they consider desirable.
- (10) In **subsections (3)(b) and (4)**, the date that would otherwise have applied, for a further order relating to a matter that has been the subject of an earlier order, means the date that was specified in that earlier order.

Compare: 2001 No 35 s 73A

73AC Repeal and revocation

- (1) **Section 73AB** and this section are repealed and any orders made under **section 73AB** are revoked when the Epidemic Preparedness (COVID-19) Notice 2020 expires or is revoked.
- (2) Those repeals and the revocation of an order made under **section 73AB** do not affect the completion of anything done or yet to be done under the authority of such an order.
- (3) **Subsection (2)** does not limit section 18 of the Interpretation Act 1999.

6 New sections 120A to 120C inserted

After section 120, insert:

120A Change of voting period for election to fill extraordinary vacancy in Ōtorohanga District Council during COVID-19 restricted movement period

- (1) This section applies—
 - (a) to the election underway to fill the current extraordinary vacancy in the Ōtorohanga ward of the Ōtorohanga District Council; and
 - (b) if a COVID-19 restricted movement period is in existence on the day this section comes into force (the **existing COVID-19 period**).
- (2) Despite any other provision in this Act, the voting period for that election is a period of 22 and a half days starting at least 10 days after the last day of the existing COVID-19 period but is not to begin earlier than 28 May 2020.
- (3) The voting period in **subsection (2)** may be changed by an Order in Council under **section 73AB** if 1 or more further COVID-19 restricted movement periods follow the existing COVID-19 period.
- (4) The electoral officer for the Ōtorohanga District Council—
 - (a) must give public notice, as soon as practicable after this section comes into force, of the effect of **subsection (2)**; and
 - (b) must give public notice, as soon as practicable following the last day of the existing COVID-19 period, of the actual dates for the voting period and polling day (*see also section 73AB(9)* for the requirement for public notice to be given if dates are changed by Order in Council under that section); and
 - (c) may give any other notice they consider desirable.
- (5) In this section, **COVID-19 restricted movement period** means a period during which orders are in force under section 70(1) of the Health Act 1956 that—
 - (a) relate to COVID-19; and
 - (b) restrict the movement of electors for the election described in **subsection (1)(a)** to an extent that may deny them a reasonable opportunity to cast a valid vote in the election or require premises on which functions related to that election will be undertaken to be closed.

Compare: 2001 No 35 s 73

120B Modification to section 120 if new extraordinary vacancy to be filled by election while epidemic notice in force for COVID-19

- (1) Despite section 120(1)(a), if an extraordinary vacancy is to be filled by an election under section 117(1) before the end date, the chief executive of the relevant local authority may defer giving notice of the vacancy to the relevant electoral officer.

- (2) Before doing so, the chief executive must consult with the electoral officer and must have regard to—
 - (a) the need to ensure the safety of voters and electoral officials, including in relation to public health considerations; and
 - (b) the extent to which the principles in section 4 can be met in the circumstances; and
 - (c) the need to ensure that the election process is free from corrupt or illegal practices; and
 - (d) the need to ensure that the election process is concluded in a timely and expeditious manner.
- (3) If a chief executive decides to defer notifying an electoral officer under this section, the chief executive must—
 - (a) give public notice of the deferment as soon as practicable, and may give any other notice the chief executive considers desirable; and
 - (b) give the notice required by section 120(1)(a) to the electoral officer—
 - (i) when the chief executive considers it is appropriate to do so having regard to the matters in **subsection (2)(a) to (d)**; but
 - (ii) no later than as soon as practicable after the end date.
- (4) In this section, **end date** means the date on which the Epidemic Preparedness (COVID-19) Notice 2020 expires or is revoked.

Compare: 1993 No 87 s 195C; 2001 No 35 s 73

120C Repeal

- (1) **Sections 120A and 120B** and this section are repealed when the Epidemic Preparedness (COVID-19) Notice 2020 expires or is revoked.
- (2) Those repeals do not affect the completion of anything done or yet to be done under **section 120A or 120B**.
- (3) **Subsection (2)** does not limit section 18 of the Interpretation Act 1999.

Part 3 Amendments to Local Government Act 2002

7 Amendments to Local Government Act 2002

This Part amends the Local Government Act 2002.

Meaning of public notice

8 New section 5A inserted (Temporary definition of public notice as result of outbreak of COVID-19)

After section 5, insert:

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5A Temporary definition of public notice as result of outbreak of COVID-19

- (1) This section provides a temporary definition of public notice, which applies (instead of the definition in section 5(1)) as a result of the outbreak of COVID-19.
- (2) In this Act, unless the context otherwise requires, **public notice**, in relation to a public notice given by a local authority, means a notice that—
 - (a) is made publicly available on the local authority’s Internet site until the relevance of the notice, or any opportunity for review or appeal in relation to the matter notified, has lapsed; and
 - (b) is published in at least—
 - (i) 1 daily newspaper circulating in the region or district of the local authority; or
 - (ii) 1 or more other newspapers that have a combined circulation in that region or district at least equivalent to that of a daily newspaper circulating in that region or district.
- (3) However, a local authority is not required to publish a notice in 1 or more newspapers if it is satisfied that, as a result of the outbreak of COVID-19, it is not reasonably practicable to do so, taking into account—
 - (a) the cost of publication; and
 - (b) the reduced effectiveness of publication.
- (4) This section is repealed on 1 November 2020.

Special consultative procedure

9 New sections 83B to 83D inserted

After section 83A, insert:

83B Use of special consultative procedure during outbreak of COVID-19

- (1) A local authority that is required, by this Act or any other enactment, to use or adopt the special consultative procedure, may take the modified approach to using the special consultative procedure that is set out in this section.
- (2) When making decisions about the timing and manner of consultation steps in the course of using the special consultative procedure, the local authority may rely on 1 or more of the modifications set out in **subsection (4)**.
- (3) The local authority may take the modified approach at any relevant point of the special consultative procedure if, and only to the extent that, it is satisfied that to do so is necessary or desirable to support measures taken to contain or mitigate the outbreak of COVID-19 or its effects, including, without limitation, by addressing the impacts and consequences of the outbreak for any aspect of the well-being of the community.
- (4) The modifications to the special consultative procedure are as follows:

- (a) the minimum period referred to in section 83(1)(b)(iii) is 7 days;
- (b) the matters set out in section 83(1)(d) and (e) are highly desirable but not mandatory.

83C Long-term plan commencing on 1 July 2021

Section 83B does not apply to the requirement that a local authority use or adopt the special consultative procedure for the long-term plan that must be adopted under section 93 for the period commencing on 1 July 2021.

83D Repeal of sections 83B and 83C and this section

Sections 83B and 83C and this section are repealed on 1 October 2020.

Amendment of long-term plans

10 New section 93DA inserted (Amendments to long-term plan during outbreak of COVID-19)

After section 93D, insert:

93DA Amendments to long-term plan during outbreak of COVID-19

- (1) This section applies to a local authority using the special consultative procedure in making an amendment to the authority's current long-term plan.
- (2) Despite section 93D(4), the local authority may adopt a consultation document that does not contain a report from the Auditor-General as required by that provision if—
 - (a) the proposed amendment of the long-term plan is necessary or desirable to support measures taken to contain or mitigate the outbreak of COVID-19 or its effects including, without limitation, by addressing the impacts and consequences of the outbreak for any aspect of the well-being of the community; and
 - (b) the local authority is satisfied that obtaining and including the report will prevent the authority from amending the long-term plan by 30 June 2020.
- (3) This section is repealed on 1 August 2020.

11 New section 94A inserted (Long-term plan amended during outbreak of COVID-19)

After section 94, insert:

94A Long-term plan amended during outbreak of COVID-19

- (1) This section applies to a long-term plan that is amended using a special consultative procedure in which the local authority adopts a consultation document of a kind authorised by **section 93DA(2)**.

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- (2) Despite section 94(2), the amended long-term plan is not required to contain a report by the Auditor-General of the kind required by that provision.
- (3) However, the amended long-term plan must contain a statement—
 - (a) that the plan incorporates an amendment that has not been audited; and
 - (b) that includes the reasons why the amendment was not audited.
- (4) The local authority must include a statement under **subsection (3)** in the amended long-term plan immediately before the Auditor-General's report under section 94(1).
- (5) This section is repealed on 1 August 2020.

12 New section 160B inserted (Bylaw revocation postponed as result of outbreak of COVID-19)

After section 160A, insert:

160B Bylaw revocation postponed as result of outbreak of COVID-19

- (1) **Subsection (2)** applies instead of section 160A during the period starting on the date on which this section comes into force and ending on 30 June 2021.
- (2) A bylaw that is not reviewed as required under section 158 or 159, and that is not earlier revoked by the relevant local authority, is revoked on the later of—
 - (a) the date that is 2 years after the last date on which the bylaw should have been reviewed under section 158 or 159; and
 - (b) 30 June 2021.
- (3) This section is repealed on 1 July 2021.

Transitional, savings, and related provisions

13 Schedule 1AA amended

In Schedule 1AA, after Part 3, insert:

Part 4

Provisions relating to COVID-19 Response (Further Management Measures) Legislation Act 2020

22 Special consultative procedure commenced before 17 May 2020

- (1) **Subclause (2)** applies if, in meeting a requirement to use or adopt the special consultative procedure, a local authority has complied with section 83(1)(b)(i) before 17 May 2020.
- (2) **Section 83B** does not apply and the local authority must continue and conclude the special consultative procedure set out in section 83 without modification.

- (3) **Subclause (4)** applies if, in meeting a requirement to use or adopt the special consultative procedure, a local authority has not yet complied with section 83(1)(b)(i) before 17 May 2020.
- (4) **Section 83B** applies and the local authority may continue and conclude consultation by using the special consultative procedure as modified by that section.
- 23 Modified special consultative procedure commenced after 17 May but before 1 October 2020**
- (1) This clause applies if, in meeting a requirement to use or adopt the special consultative procedure, a local authority commences the procedure after 17 May 2020 and complies with section 83(1)(b)(i) before 1 October 2020.
- (2) Despite **clause 24** and **section 83D**, the local authority may continue using the special consultative procedure as modified by **section 83B** until the procedure is concluded.
- 24 Repeal of this Part**
- This Part is repealed on 1 October 2020.

Part 4

Amendment to Local Government Official Information and Meetings Act 1987

- 14 Amendment to Local Government Official Information and Meetings Act 1987**
- This Part amends the Local Government Official Information and Meetings Act 1987.
- 15 New section 2A inserted (Temporary definition of publicly notified as result of outbreak of COVID-19)**
- After section 2, insert:
- 2A Temporary definition of publicly notified as result of outbreak of COVID-19**
- (1) This section provides a temporary definition of publicly notified, which applies (instead of the definition in section 2(1)) as a result of the outbreak of COVID-19.
- (2) In this Act, unless the context otherwise requires, **publicly notified** means made known by means of a notice that—
- (a) is made publicly available on the local authority’s Internet site until the relevance of the notice, or any opportunity for review or appeal in relation to the matter notified, has lapsed; and

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- (b) is published in at least—
 - (i) 1 daily newspaper circulating in the region or district of the local authority; or
 - (ii) 1 or more other newspapers that have a combined circulation in that region or district at least equivalent to that of a daily newspaper circulating in that region or district.
- (3) However, a local authority is not required to publish a notice in 1 or more newspapers if it is satisfied that, as a result of the outbreak of COVID-19, it is not reasonably practicable to do so, taking into account—
 - (a) the cost of publication; and
 - (b) the reduced effectiveness of publication.
- (4) This section is repealed on 1 November 2020.

**Part 5
Amendment to Local Government (Rating) Act 2002**

16 Amendment to Local Government (Rating) Act 2002

This Part amends the Local Government (Rating) Act 2002.

17 New section 5A inserted (Temporary definition of public notice as result of outbreak of COVID-19)

After section 5, insert:

5A Temporary definition of public notice as result of outbreak of COVID-19

- (1) This section provides a temporary definition of public notice, which applies (instead of the definition in section 5) as a result of the outbreak of COVID-19.
- (2) In this Act, unless the context otherwise requires, **public notice** means a notice that—
 - (a) is made publicly available on the local authority’s Internet site until the relevance of the notice, or any opportunity for review or appeal in relation to the matter notified, has lapsed; and
 - (b) is published in a newspaper circulating generally in the district to which the subject matter of the notice relates.
- (3) However, a local authority is not required to publish a notice in a newspaper if it is satisfied that, as a result of the outbreak of COVID-19, it is not reasonably practicable to do so, taking into account—
 - (a) the cost of publication; and
 - (b) the reduced effectiveness of publication.
- (4) This section is repealed on 1 November 2020.

Part 6
Amendment to Waste Minimisation Act 2008

18 Amendment to Waste Minimisation Act 2008

This Part amends the Waste Minimisation Act 2008.

19 New section 58A inserted (Temporary bylaw review process as result of outbreak of COVID-19)

After section 58, insert:

58A Temporary bylaw review process as result of outbreak of COVID-19

- (1) **Subsection (2)** applies instead of section 58(3) during the period starting on the date on which this section comes into force and ending on 30 June 2021.
- (2) For the purposes of section 58(1) and (2), sections 160 and **160B** of the Local Government Act 2002 apply, with all necessary modifications.
- (3) This section is repealed on 1 July 2021.

Schedule 16

Police

s 3

1 Amendment to Arms Act 1983

This schedule amends the Arms Act 1983.

2 New section 65I inserted (Duration of licences extended because of COVID-19 outbreak)

Before section 66, insert:

65I Duration of licences extended because of COVID-19 outbreak

- (1) This section applies despite sections 8 and 25(1).
- (2) **Subsection (3)** applies if—
 - (a) the period for which a licence (an **original licence**) was issued expired on or before 24 March 2020 (the **original expiry date**); and
 - (b) the holder of the original licence applied before the original expiry date for a new licence to replace the original licence; and
 - (c) the application referred to in **paragraph (b)** has not yet been determined.
- (3) If this subsection applies, the original licence, unless it is sooner surrendered or revoked, continues as if it had not expired on the original expiry date and must be treated as continuing in force until the earlier of the following:
 - (a) the date on which the licence holder is notified of the determination made on their application for a new licence;
 - (b) the date that is 12 months after the original expiry date.
- (4) **Subsection (5)** applies if the period for which a licence (an **original licence**) was issued expires on a date during the period commencing on 25 March 2020 and ending on 25 September 2020 (the **original expiry date**).
- (5) If this subsection applies, the original licence, unless it is sooner surrendered or revoked, does not expire on its original expiry date but must be treated as continuing in force until the date that is 4 months after the original expiry date (the **extended expiry date**).
- (6) If the holder of a licence that continues in force under **subsection (5)** (an **extended licence**) applies for a new licence to replace the extended licence before the extended expiry date, the extended licence, unless it is sooner surrendered or revoked, does not expire on the extended expiry date but must be treated as continuing in force until the earlier of the following:
 - (a) the date on which the licence holder is notified of the determination made on their application for a new licence;

- (b) the date that is 12 months after the original expiry date.
- (7) While a licence is treated as continuing in force under **subsection (3), (5), or (6)**,—
 - (a) any endorsement on the licence, and any condition to which that endorsement is subject, continues to apply unless sooner revoked; and
 - (b) any condition to which the licence is subject continues to apply.
- (8) In this section, **licence** means—
 - (a) any dealer’s licence; or
 - (b) a firearms licence (other than a licence referred to in section 25(2) granted to a visitor to New Zealand).
- (8A) If the holder of an extended licence applies before the end of the extended expiry date for a new licence to replace the licence that has been extended, the fee payable in respect of that application is the fee the holder would have been liable to pay had the holder made an application on 24 March 2020 to replace their licence.
- (9) This section is repealed on the close of 25 September 2021.

Schedule 17 Workplace Relations and Safety

s 3

1 Amendments to Parental Leave and Employment Protection Act 1987

This schedule amends the Parental Leave and Employment Protection Act 1987.

2 New Part 3B inserted

After section 30J, insert:

Part 3B COVID-19 response workers

30JA Repeal of this Part

This Part is repealed immediately after the expiry of the 2-year period that starts on the date on which the Epidemic Preparedness (COVID-19) Notice 2020 expires or is revoked.

30JB Retrospective application of this Part

This Part applies on and from 25 March 2020 as if it were in force on and from that date.

30JC Interpretation

In this Part,—

COVID-19 emergency period means the period starting on 25 March 2020 and ending on the date on which the Epidemic Preparedness (COVID-19) Notice 2020 expires or is revoked

COVID-19 response work means work that occurs (all or in part) during the COVID-19 emergency period

COVID-19 response worker has the meaning given in **section 30JD**
parental leave does not include partner's leave.

30JD Meaning of COVID-19 response worker

- (1) This section applies to a person if—
 - (a) the person is entitled to parental leave; and
 - (b) the person is—
 - (i) an employee who has agreed with their employer to temporarily return to work to respond to circumstances related to the outbreak of COVID-19; or

- (ii) a self-employed person who wants to temporarily return to work to respond to circumstances related to the outbreak of COVID-19.
- (2) A person to whom this section applies is a **COVID-19 response worker** if, in circumstances related to the outbreak of COVID-19,—
 - (a) their role cannot reasonably be filled by another person (because of the person’s skill, qualifications, or experience); or
 - (b) there is higher demand than usual for workers doing their role.

30JE COVID-19 response work day is not keeping-in-touch day

A day of COVID-19 response work is not a keeping-in-touch day.

Parental leave payments

30JF Application for parental leave payments after period of COVID-19 response work

- (1) This section applies to a COVID-19 response worker who has not yet received all the parental leave payments to which the worker is entitled under—
 - (a) section 71D; and
 - (b) section 71J (as that section applies to a COVID-19 response worker in accordance with **section 30JK**); and
 - (c) section 71L (as that section applies to a COVID-19 response worker in accordance with **section 30JI**).
- (2) The worker is entitled to parental leave payments if—
 - (a) the worker has ~~made an application~~ applied for parental leave payments under section 71I; and
 - (b) the worker temporarily returns to work for COVID-19 response work; and
 - (c) the worker applies for payment in accordance with **subsection (5)**.
- (3) The temporary return—
 - (a) may not be for longer than 12 weeks (unless a Labour Inspector determines that a longer period is reasonable under **section 30JR**); and
 - (b) must be in 1 continuous period (unless a Labour Inspector determines that more than 1 period is reasonable under **section 30JR**).
- (4) The worker may apply to the department for parental leave payments to be paid for the period for which the worker resumes parental leave after finishing COVID-19 response work.
- (5) The application must include—
 - (a) the date ~~when~~ on which the worker will resume (or has resumed) parental leave; and
 - (b) confirmation that the worker—

- (i) is a COVID-19 response worker; and
- (ii) is applying in relation to COVID-19 response work; and
- (iii) has not yet received all the parental leave payments referred to in **subsection (1)**.

30JG COVID-19 response worker must notify temporary return to work if receiving payment

- (1) A COVID-19 response worker must notify the department under this section and not under section 71U(1) if, during the period for which the worker is receiving a parental leave payment or preterm baby payment, the worker temporarily returns to work for COVID-19 response work.
- (2) The worker may notify at the same time as the worker applies under **section 30JF** for payments to resume after the temporary return to work.
- (3) This section overrides the obligation in section 71U(1) for the worker to notify the department of the worker's return to work.

30JH No payments in relation to period of COVID-19 response work

- (1) The department must not pay parental leave payments or preterm baby payments to a COVID-19 response worker in relation to the period of COVID-19 response work.
- (2) Any payments received by the worker in respect of that period are recoverable under section 71X as an overpayment.

30JI End of parental leave payments

- (1) Section 71L(1) does not apply to a COVID-19 response worker and this section applies instead.
- (2) A parental leave payment is payable to the worker in respect of a child for a period that ends on the earlier of—
 - (a) the date on which the worker has received all the parental leave payments to which the worker is entitled under section 71D and section 71J (as that section applies to a COVID-19 response worker in accordance with **section 30JK**); and
 - (b) the date on which the worker permanently returns to work as an employee or a self-employed person (as notified under section 71U).

30JJ Primary carer leave need not be for 1 continuous period

- (1) The requirement in section 9 that primary carer leave be taken in 1 continuous period does not apply to a COVID-19 response worker and instead there may be more than 1 period of primary carer leave.
- (2) However, the periods must not together exceed the maximum period allowed under section 9.

- (3) This Act applies accordingly so that references to a period of leave must be read as references to periods.

30JK Payment need not relate to 1 continuous period

- (1) The requirement in sections 71DA(2) and 71J that payment be made for 1 continuous period does not apply to a COVID-19 response worker and instead there may be more than 1 period.
- (2) However, the periods must not together exceed the maximum period for which payments are payable under section 71DA(2) or 71J.
- (3) This Act applies accordingly so that references to a period during which payments are payable must be read as references to periods.

Extended leave

30JL Applicable end date for extended leave

For the purposes of section 27, the **applicable end date** for a COVID-19 response worker's extended leave means,—

- (a) in relation to employees who meet the 6-month employment test, the date on which the worker has had 6 months of parental leave; and
- (b) in relation to employees who meet the 12-month employment test, the date on which the worker has had 12 months of parental leave.

Preterm baby payments

30JM Preterm baby payments

- (1) This section applies (and section 71DA(5A)(a)(i) does not) to a COVID-19 response worker who is entitled to a preterm baby payment under section 71DA.
- (2) If the worker temporarily returns to work for COVID-19 response work, the department must not pay preterm baby payments to the worker in relation to the period of COVID-19 response work.
- (3) Any preterm baby payments received by the worker in respect of that period are recoverable under section 71X as an overpayment.
- (4) However, if the return to work finishes before the end of the preterm baby payment period, the worker's preterm baby payments—
- (a) resume on the date on which the worker resumes parental leave; and
- (b) continue until the end of what would have been the 36th week of pregnancy had the child not been born prematurely.

Remuneration and holiday pay for COVID-19 response workers

30JMA Remuneration and holiday pay for COVID-19 response workers

- (1) A temporary return to work by a COVID-19 response worker for COVID-19 response work is not a return to work for the purposes of section 42(2)(c).
- (2) Section 21(2) of the Holidays Act 2003 must be used to calculate an employee's holiday pay entitlements in respect of any portion of annual holidays that relates to a period of COVID-19 response work.

Subsequent children

30JN Parental leave within 6 months of end of previous period of parental leave in respect of another child

Section 6 does not apply to a COVID-19 response worker (in respect of a subsequent child) if a period of 6 months has elapsed after the end of the period for which a COVID-19 response worker would have taken parental leave (but for the COVID-19 response work).

30JO Subsequent parental leave payments

Section 71F(a) does not apply to a COVID-19 response worker if a period of 6 months has elapsed after the end of the period for which the worker would have received a parental leave payment (but for the COVID-19 response work).

Regulations

30JP Regulations

Regulations may be made under section 73 prescribing the information that must be given in, or the documents that must be attached to,—

- (a) an application under **section 30JF** by a COVID-19 response worker for parental leave payments;
- (b) a notice relating to a return to work by a COVID-19 response worker.

Department's discretion in relation to this Part

30JQ Department's discretion about irregular applications

Section 71IA applies to an application made under **section 30JF** as if an **irregularity** includes—

- (a) an application being made after the COVID-19 response worker has begun COVID-19 response work; and
- (b) an application under section 71I being made at the same time as an application under **section 30JF**; and

- (c) an application being made after the COVID-19 response worker has begun parental leave again after completing COVID-19 response work; and
- (d) an application being made after the commencement of this section and in respect of COVID-19 response work that occurred at any time during the COVID-19 emergency period (whether the work was performed before or after the commencement of this section); and
- (e) an application being made after a notice was given in accordance with section 71U (and the department may treat the notice as sufficient to comply with **section 30JG**).

Role of Labour Inspectors in relation to this Part

30JR Labour Inspectors may make determinations

- (1) A Labour Inspector may determine, for the purposes of an application made under **section 30JF**,—
 - (a) that a temporary return to work for longer than 12 weeks is a temporary return to work and is a reasonable period in the circumstances; or
 - (b) that more than 1 temporary return to work is reasonable in the circumstances and is a temporary return to work, as long as the returns do not together exceed a period of 12 weeks (or any other period determined under **paragraph (a)**).
- (2) A Labour Inspector must, as soon as practicable after making a determination, serve a copy on the worker and any employer.
- (3) The consequences of a determination are that it is prima facie evidence of the matter determined.
- (4) Sections 70C and 70E apply to a determination under this section in the same way as those sections apply to a determination under section 70A.