



COVID-19 Response (Requirements for Entities – Modifications and Exemptions) Legislation Act 2020

How do these provisions help governance entities?

The intent of the provisions in this part of the Act is to give a wide range of governance entities relief from both statutory obligations and obligations in their constitutions and other rules that would be impossible, burdensome and/or impracticable to fulfil as a result of the effects of COVID-19. The provisions:

- enable the use of electronic communications (including electronic voting and the use of electronic signatures) when an entity's constitution or rules don't permit this [*Electronic Means Section 10 - 12*];
- allow entities to make certain modifications to their constitutions or rules (such as calling or holding meetings, rules relating to dispute resolution or waiving, suspending, deferring or reducing fees payable by members) [*Modifications Sections 13-21*]; and
- give certain registrars and Ministers the power to grant exemptions from certain statutory obligations (such as calling or holding meetings and auditing, assurance, or financial reporting or review requirements) [*Exemptions Sections 24-39*].

How long will these provisions be in effect for?

The modification and exemption powers have retrospective effect from 21 March 2020 when New Zealand moved to Level 2 of the COVID-19 alert system. They apply to 30 November and can be extended by Order in Council until no later than 31 March 2021.

Who do the provisions apply to?

The provisions apply to: a building society, a charitable trust board, a company, a credit union, a firm, a friendly society, an incorporated society, an industrial and provident society, and a limited partnership.

The provisions also apply to the following Māori governance entities:

- assembled owners (under the Te Ture Whenua Māori Act);
- a mandated iwi organisation (under the Māori Fisheries Act);
- a Māori Association (under the Māori Community Development Act);
- a Māori land trust;
- a Māori incorporation;
- a body corporate or the trustees of a trust appointed to administer a Māori reservation; and
- a Māori Trust Board.

The provisions relating to electronic means and modification also apply to post-settlement governance entities.

Who has oversight of these provisions?

For the electronic means and modification provisions, the relevant authorities are the responsible Registrar or agency. For the exemption provisions, the relevant authorities are the responsible Registrar or Minister.

For all entities other than the Māori governance entities, the responsible registrar is the registrar who acts under the legislation under which the entity is registered or incorporated.





For the Māori governance entities:

- the responsible registrars/agencies for the purposes of the electronic means and modification provisions are:
 - the Chief Registrar of the Maori Land Court for entities under the Te Ture Whenua Maori Act;
 - Te Puni Kōkiri for Maori Associations and Maori Trust Boards; and
 - Te Ohu Kai Moana for mandated iwi organisations.
- the responsible registrars or Ministers for the purposes of the exemption provisions are:
 - the Minister for Maori Development (for entities under the Te Ture Whenua Maori Act, the Maori Community Development Act and the Maori Trust Boards Act); and
 - the Minister for Fisheries (for entities under the Maori Fisheries Act).

The Chief Judge of the Maori Land Court is also empowered to grant relief to entities under the Te Ture Whenua Maori Act in relation to provisions that are usually set by the Court (e.g. terms of trust deeds).

An entity may have more than one responsible registrar if, for example, they are also an incorporated society.

What are the obligations on entities and responsible registrars, agencies and Ministers?

When the electronic means and modification provisions are relied on by an entity, the entity must:

- keep a record of the electronic means/modification and the reasons for the belief of the majority of governance officers that their use/the modification was necessary;
- as soon as is practicable after their use, make reasonable efforts to notify members of the matter
- notify the responsible registrar or agency (or registrars if there is more than one for a particular entity) – this does not apply to a firm or post-settlement governance entity; and
- when a responsible registrar or agency receives a notification, it must arrange for the information to be registered on the relevant register and otherwise make the information public in any way it sees fit.

When using the exemption power, the responsible agency or Minister must engage with the appropriate people given the nature of the exemption, with some exceptions (including that it is not reasonably practical, or the urgency of the situation requires the exemption to be made as soon as practicable).

Additional information

Electronic means:

The use of electronic communications where otherwise not permitted, requires a 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. The matters are:

- a) having or recording information in writing;
- b) calling or holding meetings;
- c) voting (though there are some matters that electronic voting can't be used for);
- 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; and
- h) retaining any information.

Modifications

An entity may modify certain provisions in its rules if a majority of the entity's governing officers believe in good faith that it is not reasonably practicable to comply with those provisions as a result of COVID-19. The matters that may be modified are:

- a) calling or holding 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 the section above; and
- j) other procedural or administrative processes.

The following matters may not be modified:

- a) the purpose or objects of the entity;
- b) the powers of the entity (other than a procedural or administrative power);
- c) the sale, transfer, or other disposition of real or personal property;
- d) voting rights or rights to a dividend or other distribution;
- e) the 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);
- g) any matter that 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; and
- i) any other matter that is not listed above.

Exemptions

Under the exemption provisions, the responsible registrar or Minister may grant exemptions from the following statutory obligations:

- 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
- g) courts);





- h) a method or form of disciplinary procedures;
- i) auditing, assurance, or financial reporting or review requirements; and
- j) any other matter specified by regulations.

The Chief Judge of the Maori Land Court may grant relief without an application in relation to the following:

- a) the terms of a trust set out by order relating to a Māori land trust;
- b) the terms of an order incorporating a Māori incorporation; and
- c) the terms of a trust set out by order relating to a Maori reservation.

