



# **COVID-19 Response (Further Management Measures) Legislation Act 2020**

Public Act      2020 No 13  
Date of assent      15 May 2020  
Commencement      see section 2

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

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

**2 Commencement**

- (1) This Act comes into force on the day after the date on which it receives the Royal assent, except as provided in this section.
- (2) Schedule 18, Part 1, clause 2 and Schedule 18, Part 2, clause 8 come into force on 15 April 2020.
- (3) Schedule 18, Part 1, clauses 3 and 4, and Schedule 18, Part 2, clauses 6, 7, 9, and 10 come into force on 30 April 2020.

**3 Amendments to Acts as set out by ministerial portfolio in Schedules 1 to 19**

Amend the Acts specified in Schedules 1 to 19 of this Act as set out in those schedules.

## Schedule 1 Biosecurity

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### 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- (6) This section is repealed when the Epidemic Preparedness (COVID-19) Notice 2020 expires or is revoked.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 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

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### 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.
- (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**

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

- 12 Application of provisions after repeal**

For the purposes of an application that is made during the epidemic period, 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

- (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),—

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 293(7).

#### **10 Schedule 1AA amended**

After Part 2 of Schedule 1AA, insert:

### **Part 3**

#### **Provision relating to COVID-19 Response (Further Management Measures) Legislation Act 2020**

#### **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 24 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 Tax Administration Act 1994 applies to an instalment arrangement referred to in clause 74 of Schedule 13:
  - (j) prescribing effects of arrangements that are permitted under clause 30 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 and provisions relating to an instalment arrangement that ceases to be in force under clause 74 of Schedule 13).
- (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) 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.
- (2) In subsection (1), **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(1)—
  - (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 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.
- (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 218B(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:

- (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):
- (2) A charge over any property of a bankrupt may be cancelled on the Assignee’s initiative if—
  - (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)”; and
  - (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—

- (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 Provision 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:

**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

#### 1 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.

#### 2 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.

#### 3 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 5.

*Application of safe harbour provisions***4 Companies to which safe harbour provisions apply**

- (1) Clauses 6 and 7 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 3 April 2020.
- (2) However, clauses 6 and 7 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 3 April 2020;
  - (f) a company of a class prescribed in any regulations made under clause 9.
- (3) In addition, clauses 6 and 7—
- (a) do not apply in the circumstances, or to the transactions, prescribed in any regulations made under clause 9; and
  - (b) cease to apply if conditions prescribed in any regulations made under clause 9 are not satisfied.

**5 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 10(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 10(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 10(1)(b).

*Safe harbour provisions*

**6 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 10.
- (6) See clause 4, for companies to which this clause applies.

**7 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—

- (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 10.
- (7) See clause 4, for companies to which this clause applies.

*Miscellaneous*

**8 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.

**9 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 4, including providing for either or both of the following:
  - (a) for clause 6 or 7, or both, to apply only if conditions prescribed in the regulations are satisfied;
  - (b) for clause 6 or 7, 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—
  - (a) the provisions of clause 1 (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.
- (3) Different matters may be prescribed in respect of different classes of companies, transactions, or other circumstances.
- (4) *See also* clause 10 (for regulations prescribing a benchmark date).
- 10 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 6 or 7, 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—
  - (a) have had regard to the provisions of clause 1 (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.
- (5) Regulations made under subclause (1)(a) may prescribe a date for the purposes of clauses 6(3) and 7(4), but that date must be no later than 31 March 2022.
- (6) Regulations made under subclause (1)(b) may do either or both of the following:
  - (a) prescribe a benchmark date under clause 4(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 6(3) and 7(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

<b>Schedule 13</b>		
<b>COVID-19 business debt hibernation</b>		
		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.

- (3) The protections do not apply in relation to a creditor with security over the whole, or substantially the whole, of the entity's property.
- (4) 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.
- (5) 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).
- (6) 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).
- (7) The protections are subject to certain rights of creditors and other persons under Part 6.
- (8) 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).
- (9) 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:
  - (d) an operator of a designated settlement system within the meaning of section 156M(1) of the Reserve Bank of New Zealand Act 1989:
  - (e) 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 (as those terms are defined in section 6(1) of the Financial Markets Conduct Act 2013):
  - (f) an entity that is in liquidation, in voluntary administration, subject to a deed of company arrangement, or subject to statutory management:
  - (g) 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:

- (h) 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:
  - (i) a qualifying counterparty within the meaning of section 122A(1) of the Reserve Bank of New Zealand Act 1989:
  - (j) an entity formed or established on or after 3 April 2020:
  - (k) 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 30
- 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

**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 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)

**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 after the entity enters into BDH; or
  - (ii) any salary, wages, or other amounts owed by the entity to an employee in connection with the employment relationship; or
  - (iii) 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
  - (iv) 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
  - (v) any other amount payable by an entity to the Commissioner of Inland Revenue that is subject to an instalment arrangement under section 177B of the Tax Administration Act 1994 that was entered into before the entity enters into BDH; or
  - (vi) any other debt or claim of a kind prescribed in the regulations; but
- (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 21

**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 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 signed a certificate that—
    - (i) 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 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 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 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 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—
  - (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.
- (5) 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.
- (6) 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.
- (4) The voting date 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 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 23; and
  - (e) explain that a related creditor's vote on the resolution must be disregarded unless the court orders otherwise (*see* clauses 32 to 35); 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 32 to 35 (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 55(a):
  - (b) the time and method of communication for the meeting to be held under clause 55(b):
  - (c) the time and address for the return of voting information for the meeting to be held under clause 55(a), (b), or (c).
- (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 voting date, if the proposed arrangement is not approved under clause 23.
  - (2) However, if the arrangement is approved under clause 23, 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) This clause is subject to clauses 16 to 22.
- 16 Protections cease to apply if conditions not complied with**
- If the approval under clause 23 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 certificates on request**
- (1) During the protection period, a creditor may request that—
    - (a) at least 80% of the directors of the entity sign new certificates that comply with clause 5(1)(c); and
    - (b) the entity sends to the creditor a copy of those 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 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.

**19 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.

**20 Protections subject to approval**

If approval under clause 23 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.

**21 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.

## 22 Protections do not apply to excluded debts

Part 5 of this schedule does not apply in relation to excluded debts.

# Part 4

## Process for approval of arrangement and its effects

### *Approval of arrangement*

## 23 When arrangement is approved

- (1) An arrangement is approved by creditors if the arrangement is adopted in accordance with clause 24.
- (2) This clause and clause 24 are subject to clauses 32 to 35 (which may prevent a related creditor from voting).

## 24 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 creditors must not include any excluded debt (and, accordingly, every amount of excluded debt must be disregarded).

## 25 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 24(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 24(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) that states whether A is relying on subclause (2); and
    - (iii) if A is relying on subclause (2), that describes how A has made the assessment or estimate referred to in that subclause; and
    - (iv) 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 27 or 28, 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, approved under clause 23.
- 26 Amounts must not be determined by reference to class of creditor**  
 The person who is acting under clause 25 must not determine amounts by reference to different classes of creditor (but this does not limit clauses 32 to 35).
- 27 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 23; 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.

## **28 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 25 and 27 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 23.
- (2) 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.
- (3) If the board of an entity fails to comply with subclause (1) or (2), every director of the entity commits an offence and is liable on conviction to a fine not exceeding \$10,000.

### *Effect of approved arrangement*

## **29 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 21 and 30.

## **30 Restriction on effect of arrangement**

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

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**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.

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- (3) 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).
- (4) 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).
- (5) A provision of the arrangement that contravenes this clause is of no effect to the extent of the contravention.
- (6) Nothing in this clause limits the application of Part 5 in relation to the creditor.

*Variation of arrangement*

**31 Variation of arrangement**

- (1) An arrangement approved under clause 23 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***32 Related creditor's vote to be disregarded unless court orders otherwise**

- (1) The entity (and the person who is acting under clause 25) 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
    - (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).

**33 Creditor’s vote disregarded if entity considers creditor is related creditor**

- (1) If the entity (or the person who is acting under clause 25) 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 32, 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.

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

- (1) If the court orders, under clause 32 or 33, 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 32 or 33, the outcome of the vote on the resolution is valid and effective unless the court orders otherwise.

**35 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 32 or 33, 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 32(1) or 33(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*

### **36 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
  - (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.

### **37 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 28.

## **Part 5**

### **Protections for entity in BDH**

#### **38 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 23.
- (2) This clause is subject to Part 6.

#### **39 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 23.

#### 40 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 23.
- (2) This clause does not apply to a proceeding against the entity in connection with—
  - (a) a debt that is owed by the entity to a general security holder; or
  - (b) an excluded debt.
- (3) In this clause, **proceeding** means a proceeding in the High Court or any other court, a tribunal, or an arbitral tribunal.

#### 41 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.

#### 42 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.

#### 43 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.

**44 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 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**

**45 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 38 prevents the secured creditor, receiver, or other person from enforcing the charge in relation to the property.
- 46 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 38 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 4(1) from enforcing the charge, so far as it is a charge over perishable property.
- 47 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 45; 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 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
    - (b) has effect despite clauses 45 and 46.

**48 Giving notice under security agreement**

Clause 38 does not prevent a person from giving a notice under the provisions of a security agreement.

**49 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 39 does not prevent the receiver or other person from performing a function, or exercising a power, in relation to the property.

**50 Recovering perishable property**

Nothing in clause 39 prevents a person from taking possession of, or otherwise recovering, perishable property.

**51 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 49 and 50.

**52 Giving notice under agreement about property**

Nothing in clause 39 prevents a person from giving a notice to an 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

#### 53 When provisions do not apply

- (1) The provisions referred to in 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 23; 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) 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

#### 54 Part applies only if creditors' 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.

## **55 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 60 of those creditors entitled to take part.

## **56 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).

## **57 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 55(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.

## **58 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.

## **59 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.

**60 Postal or electronic votes**

- (1) A creditor entitled to vote at a meeting of creditors held in accordance with clause 55(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 55(c), not later than the date named for the return of the voting information.

**61 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).

**62 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.

**63 Other proceedings**

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

**64 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**

#### **65 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.

#### **66 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.

#### **67 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.

#### **68 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.

**69 Registrar must register or publicly notify information about notices**

- (1) If a notice is delivered to the Registrar under clause 6, 19, 28, or 70, 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).

**70 Schedule does not prevent subsequent compromise, 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.
- (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.

**71 Effect of arrangement in liquidation of entity**

- (1) If an arrangement is approved under clause 23, 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 23 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.

**72 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.

**74 Arrangement treated as instalment arrangement under Tax Administration Act 1994**

- (1) This clause applies to the extent that an arrangement approved under clause 23 involves 1 or more payments being made to the Commissioner of Inland Revenue.
- (2) The arrangement must be treated as being an instalment arrangement under section 177B of the Tax Administration Act 1994 when the arrangement is approved under clause 23.

- (3) The instalment arrangement ceases to be in force at the end of the protection period.
- (4) The Tax Administration Act 1994 applies to the instalment arrangement—
  - (a) subject to the modifications, additions, or variations specified in the regulations; and
  - (b) with all other necessary modifications.

## 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) 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.
- (3) 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).
- (4) 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.
- (5) 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 matters)**

After section 8, insert:

**8A Use of audio links in criminal procedural 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 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.
- (2) 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).
- (3) 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.

**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**

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

- 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, or section 11 of the COVID-19 Public Health Response Act 2020, that—
  - (a) relates to COVID-19; and
  - (b) results in an affected person being unable to operate the affected food business.

- (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”.

(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.

**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 110B 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:

### 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 operational rules; or
  - (b) anything to the contrary in this Act or the regulations.
- (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 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.

*Definitions*

- (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 15

### 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 16 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—

- (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 the movement of electors for the election described in subsection (1)(a) is restricted to an extent that may deny them a reasonable opportunity to cast a valid vote in the election, or premises on which functions related to that election will be undertaken are required to be closed, because of—
  - (a) an order or other restriction under section 70(1) of the Health Act 1956 that relates to COVID-19; or
  - (b) an order under section 11 of the COVID-19 Public Health Response Act 2020.

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 rele-

- vant 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:

**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).
- (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
  - (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 17

### 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).
- (9) 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.
- (10) This section is repealed on the close of 25 September 2021.

## Schedule 18

### Revenue

s 3

### Part 1

#### Amendments to Income Tax Act 2007

#### 1 Amendments to Income Tax Act 2007

This Part amends the Income Tax Act 2007.

#### 2 Section IZ 8 amended (Election to use net loss for 2019–20 or 2020–21 year as tax loss in preceding year)

- (1) In section IZ 8(1), in the words before the paragraphs, replace “being available” with “being an available”.
- (2) In section IZ 8(2)(c), replace “section 3” with “section 3(1)”.
- (3) In section IZ 8(8)(c), replace “section IP 4(2)(d) and (4)” with “section IP 4(4)”.
- (4) In section IZ 8, list of defined terms, delete “qualifying individual”.

#### 3 Section MB 13 amended (Family scheme income from other payments)

- (1) After section MB 13(2)(j), insert:  
(jb) a loan made under the small business cashflow scheme:
- (2) In section MB 13, in the list of defined terms, insert “small business cashflow scheme”.

#### 4 Section YA 1 amended (Definitions)

- (1) This clause amends section YA 1.
- (2) In the definition of **exempt interest**, insert after paragraph (d):  
(db) payable in relation to a loan made under the small business cashflow scheme; or
- (3) In the definition of **small business cashflow scheme**, replace “established by the Crown” with “established and administered by the Crown”.

### Part 2

#### Amendments to Tax Administration Act 1994

#### 5 Amendments to Tax Administration Act 1994

This Part amends the Tax Administration Act 1994.

**6 Section 3 amended (Interpretation)**

In section 3(1), in the definition of **tax**, after paragraph (cb), insert:

- (cc) for the purposes of sections 6, 6A, 6B, 156 to 165, 174AA, 176, 177, and 177A to 177CA, includes an amount payable in relation to a loan made under the small business cashflow scheme:

**7 Section 7AA amended (Authorisation to make payments under small business cashflow loan scheme)**

- (1) After section 7AA(4), insert:

(4B) For the purposes of this section, the chief executive of the Ministry of Social Development is authorised to provide the Commissioner with any information relating to the wage subsidy scheme administered by the Ministry.

(4C) The Commissioner may use the information provided under subsection (4B) in connection with the exercise or performance of any of the Commissioner's duties, powers, or functions under the Inland Revenue Acts.

- (2) In section 7AA(6), replace the definition of **small business cashflow scheme** with:

**small business cashflow scheme** means the Small Business Cashflow (Loan) Scheme established and administered by the Crown to provide loans to assist small-to-medium businesses in the circumstances arising from the continuing impact of COVID-19 related measures or circumstances

**wage subsidy scheme** means a subsidy scheme that is established as part of the Government's COVID-19 response measures and which the Ministry administers on behalf of the Government

**8 Section 120KBB amended (Interest for most standard method and some estimation method provisional taxpayers)**

Replace section 120KBB(1)(c) with:

- (c) the provisional tax associates of the person that are liable to pay provisional tax—
  - (i) are interest concession provisional taxpayers:
  - (ii) use, for the tax year, the GST ratio method described in section RC 5(6) of the Income Tax Act 2007:
  - (iii) use, for the tax year, the estimation method described in section RC 7 of the Income Tax Act 2007, and have elected to use a net loss under section IZ 8 of that Act for the tax year; and

**9 Section 157 amended (Deduction of tax from payments due to defaulters)**

In section 157(10), in the definition of **income tax**, paragraph (i), replace “notice under section 101I(5) of the KiwiSaver Act 2006” with “notice under section 101I(5) of the KiwiSaver Act 2006:”, and insert:

- (j) an amount payable in relation to a loan made under the small business cashflow scheme

**10 Schedule 7 (Disclosure rules) amended**

Repeal schedule 7, part C, clause 45B.

## Schedule 19

### 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 at the end of the COVID-19 response period.

**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 response period** means the period starting on 25 March 2020 and ending 3 months after 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 response 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 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 30JS); and
  - (b) must be in 1 continuous period (unless a Labour Inspector determines that more than 1 period is reasonable under section 30JS).
- (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 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*

### 30JN 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*

**30JO 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).

**30JP 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*

**30JQ 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*

**30JR 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 response 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*

**30JS 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.

**Legislative history**

5 May 2020	Introduction (Bill 244–1), first reading and referral to Epidemic Response Committee
12 May 2020	Reported from Epidemic Response Committee, second reading
13 May 2020	Committee of the whole House (Divided from Bill 244–1), third reading
15 May 2020	Royal assent

This Act is administered by the Department of the Prime Minister and Cabinet.