

The Treasury

Legislative Amendments to Reporting Timeframes due to COVID-19 Information Release

August 2020

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Treasury Report: Changes to legislation as a result of Covid-19

Date:	28 May 2020	Report No:	T2020/1636
		File Number:	LA-8-1-1 (Public Finance Act)

Action sought

	Action sought	Deadline
Minister for State Owned Enterprises (Rt Hon Winston Peters)	Agree to a legislative process that seeks an extension to the timeframes for State Owned Enterprise 2019/20 annual reports	3 June 2020
Minister of Finance (Hon Grant Robertson)	<p>Agree to a legislative process that seeks an extension to the timeframes for department and Crown entity 2019/20 annual reports</p> <p>Agree to a legislative process to amend section 26N of the Public Finance Act 1989, to extend the timeframe for the Statement on the long-term fiscal position so that it would be published no later than September 2021</p> <p>Agree to forward a copy of this briefing to the Minister of State Services</p>	3 June 2020

Contact for telephone discussion (if required)

Name	Position	Telephone	1st Contact
Megan Taylor	Manager, Strategic Performance Improvement, Office of the Government Accountant	[39]	n/a (mob) ✓
Peter Gardiner	Manager, Modelling Research and Forecasting	[35]	n/a (mob)

Minister's Office actions (if required)

Office of Rt Hon Winston Peters

Return the signed report to Treasury.

Office of Hon Grant Robertson

Return the signed report to Treasury.

Forward a copy of the briefing to the Minister of State Services.

Note any
feedback on
the quality of
the report

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Enclosure: No

Executive Summary

Covid-19 places pressure on the delivery of quality agency annual reporting

The Auditor-General has raised concerns with the Secretary of the Treasury about the impact of Covid-19 on agencies providing financial and non-financial 2019/20 end-of-year reporting and on auditors being able to provide robust audit assurance over that reporting, within the current legislative timeframes. Achieving the current timeframes will impact on the quality of reporting, cause significant stress to agencies and auditors, and may result in agencies and/or the Auditor-General breaching legislative requirements.

We are working with the staff from the Office of the Auditor-General on the response to these issues, including prioritisation and sequencing of audit work. Alongside this we recommend that timeframes be extended by two months (or slightly less where two months would extend beyond 18 December and into the Christmas period). The extensions to the existing legislative timeframes would provide agencies and auditors additional time to deal with the delays caused by Covid-19 and the greater complexity of work. Your agreement and support is sought to a legislative process to amend the relevant sections of the Public Finance Act, Crown Entities Act and State-Owned Enterprises Act, and for this to be achieved before the House rises for the Election.

We are also working with other agencies who administer legislation with annual reporting requirements. Should their Ministers also agree to extend these timeframes, we proposed that the Minister of Finance take a paper to Cabinet on behalf of all Ministers who wish to extend annual reporting timeframes.

Covid-19 impacts on meeting the legislative timeframe for the statement on the long-term fiscal position

The Treasury is required to provide a statement on the long-term fiscal position by November 2020 as set out in Section 26N of the Public Finance Act. The impact of Covid-19 means this timeframe is not achievable and we are seeking your agreement to a legislative process to extend the deadline for the statement on the long-term fiscal position to September 2021.

We will work with the Parliamentary Counsel Office to identify the most appropriate legislative mechanism and vehicle to achieve the extensions to timeframes.

Recommended Action

We recommend that the Minister for State Owned Enterprises:

- a **agree** to a legislative process seeking to amend the State-Owned Enterprises Act 1986 (SOE Act) and extend by two months the timeframes for when State Owned Enterprises must provide you with their 2018/19 annual reports, their audited financial statements and their auditors report.

Agree/disagree.

- b **agree** to seek Cabinet's approval for the proposed legislative amendments to the timeframes in the SOE Act (as set out above in (a)) in a paper prepared by the Minister of Finance on behalf of yourself and any other Ministers who wish to extend annual reporting timeframes.

Agree/disagree.

We recommend that the Minister of Finance:

- c **agree** to a legislative process to seek amendments to extend, by up to two months, the timeframes in the Public Finance Act 1989 (PFA) and Crown Entities Act 2004 (CEA), that determine when departments, organisations listed on Schedule 4 of the Public Finance Act 1989, companies listed in Schedule 4A of the Public Finance Act 1989, and Crown entities must provide annual report related information to their auditors for audit, and when the auditors must complete the audits of that information, only for the 2019/20 year.

Agree/disagree.

- d **note** that officials do not propose any change to the timeframes within which the Financial Statements of Government are provided to the Auditor-General, or the timeframe within which he must provide the audit report on those statements.
- e **agree** to seek Cabinet's approval for the proposed amendments to the annual report timeframes in the PFA and CEA (as set out above in (c)) on behalf of all Ministers who wish to extend annual reporting timeframes.

Agree/disagree.

- f **note** that if you agree to a legislative process for extending timeframes (as set out in (c) above), we would progress work with the Department of Internal Affairs and the Ministry of Business, Innovation and Employment to seek amendments to legislative timeframes for local government authorities and crown research institutes.
- g **agree** that an amendment to section 26N of the Public Finance Act 1989, to extend the timeframe within which the Treasury must prepare the statement on the long-term fiscal position should be made, so that this would be published no later than September 2021.

Agree/disagree.

- h **agree** to seek Cabinet's approval for the proposed amendment to section 26N of the Public Finance Act 1989 (as set out above in (g)).

Agree/disagree.

- i **agree** to forward a copy of this briefing to the Minister of State Services for his information as overall administrator of the Crown Entities Act.

Agree/disagree.

- j **note** that if you agree to a legislative process for extending timeframes, we would progress work with the Parliamentary Counsel Office to identify the most appropriate legislative mechanism and vehicle to achieve the extensions to timeframes.

Megan Taylor
Manager,
Strategic Performance Improvement

Peter Gardiner
Manager,
Modelling Research and Forecasting

Rt Hon Winston Peters
Minister for State Owned Enterprises

Hon Grant Robertson
Minister of Finance

Treasury Report: Changes to legislation as a result of Covid-19

Purpose of Report

1. We are seeking your approval to proceed with urgent changes to the Public Finance Act 1989, Crown Entities Act 2004, and State-Owned Enterprises Act 1986 before the House rises before the Election in August 2020.

Issues for 2019/20 annual reports caused by the impact of Covid-19

2. On 27 May 2020, the Secretary of the Treasury received a letter from the Auditor-General describing his concerns about meeting current public sector statutory reporting timeframes as a result of the Covid-19 pandemic. The Auditor-General emphasised the need for agencies and their auditors to have sufficient time to consider the risks and issues that have arisen from Covid-19 in order to achieve quality financial and non-financial reporting, and robust audit opinions.
3. The letter follows discussions on these risks and issues between staff of both agencies. In these discussions his staff have described the situation as a 'perfect storm' with three key issues for agencies and auditors arising from Covid-19:
 - For agencies, significantly increased workload to provide accurate financial and non-financial information, given the wide range of issues they need to consider such as revaluing assets and liabilities, and assessing ongoing viability; alongside difficulties in their ability to provide this information resulting from being unable to access financial systems and specialist expertise, and from the redeployment of staff.
 - For auditors, significant workload increases from being unable to do some work that would normally have been done earlier, such as interim audits that were not completed.
 - For auditors, increased auditing complexity across most, if not all, agencies (new risks and new operational responsibilities resulting from Covid-19) adding to their workload; resulting in an estimated 25% additional work.
4. The current legislative timeframes already require significant effort to meet under normal circumstances. Requiring agencies and auditors to continue to work towards the current timeframes puts further stress on agencies and auditors, and increases the likelihood of compromises in reporting and auditing quality. Modelling done by the Office of the Auditor-General (OAG) indicates that due to the factors above the gap between expected audit effort and available audit capacity is approximately 25%. The result would be many audits not meeting the current legislative timeframes, and either those agencies and/or the Auditor-General breaching legislative requirements.

Responses to address these issues

5. The Auditor-General believes the quality of agencies financial and non-financial reporting to Parliament and the public is even more critical in the current environment and should not be compromised. To maintain this quality and respond to the issues above, the OAG are undertaking the following:

- Prioritising audit work in the peak period, to ensure flow-on impacts are minimised, in particular to ensure expectations for the quality and timeliness of the Financial Statements of Government are met.
- Coordinating efforts to reduce workload impacts, including developing guidance and templates for agencies and for auditors.
- Engaging as much additional supplementary auditing resource as is available (approximately 150% of what is normally sought).
- Working with the Treasury and other lead agencies (who manage annual report legislation) to seek extensions for legislative annual report timelines.

Treasury is seeking extensions to legislative timeframes

6. Based on the issues described, we recommend that extensions be made to the legislative annual report timeframes in the Public Finance Act 1989 (PFA), Crown Entities Act 2004 (CEA), and State-Owned Enterprises Act 1986 (SOE Act). These timeframes determine (directly or indirectly) when the agencies covered by this legislation must provide information to their auditors for audit, and when the auditors must complete the audits of that information. We seek your agreement to progress the work that would provide a two-month extension to these timeframes, but limiting it to ensure all work is completed prior to Christmas 2020 (as going beyond that date would cause further issues). The proposed new timeframes for each of the pieces of legislation is detailed in Appendix One. We propose that this change would apply only for annual reports covering the 2019/20 financial year.
7. A failure to meet the reporting timeframes is a breach of the legislation by those reporting entities, but there are no penalties as such from any failure to meet the timeframes. However, without sufficient time to consider the risks and issues that have arisen from Covid-19, there will be risks to the quality of financial and non-financial reporting, and robust audit opinions. The principles of accountability and transparency are fundamental to these reporting requirements.
8. We are also in discussions with departments responsible for other legislation that includes requirements for annual reports and audits for other entities in the public sector. This includes the Department of Internal Affairs (local authorities), and the Ministry of Business, Innovation and Employment (Crown Research Institutes). It is important to take a coordinated approach to annual reporting timeframes for the following reasons:
 - a The current scheduling is based on legislative timeframes established in a variety of legislation; changing only some of the legislative timeframes would result in the need to revise the scheduling across a complex landscape.
 - b Moving some legislative timeframes and not others would mean that the unchanged timeframes would be prioritised first by agencies and auditors; which could be out of step with the desired prioritisation and sequencing.
9. We are not proposing to change the timeframes for the Financial Statements of Government (FSG). This is because to maintain the confidence of the public, Parliament and capital markets, it is important these are delivered on time. Shifting timeframes for all annual reporting apart from the FSG sends a clear signal that FSG has priority for agency and auditors annual reporting work.
10. If annual report timeframes are not shifted, there would be added pressure and reduced capacity for agencies and auditors who prepare content for the FSG as they would also be focused on meeting agency deadlines. Even with this clear signalling, we are still reliant on these agencies meeting their timeframes. If, given the difficulties

outlined above, there looks like there is risks to the FSG timelines, we will report to you and potentially seek an extension to these timeframes as well.

Timeframes for preparation of the statement on the long-term fiscal position

11. As you are aware the Treasury is required, by section 26N of the Public Finance Act, to prepare a statement on the long-term fiscal position (Statement) every four years. The last Statement was published in November 2016.
12. Treasury staff had prepared a Statement before the Covid-19 pandemic, and this was due to be published in March 2020. Due to the effects of Covid-19 a decision to delay the publication was made and the modelling and projections contained in the Statement are now out of date.
13. The Statement is required to relate to the next 40 years, and is therefore a future focussed document. We consider that due to the current uncertain effects on the economy of the pandemic, it will be very difficult to produce a meaningful statement with the necessary long-term focus by November 2020.
14. A significant amount of work goes into preparing the Statement. For example work on the last Statement began in late 2018 and took 12 months to complete. There is a relatively short time frame for Treasury staff to carry out this work. In addition, Treasury staff who carry out the economic modelling and analysis that underpins the Statement are currently working on Covid-19 related matters.
15. We propose to delay the publication of the Statement to next year, by September 2021 at the latest. This will allow time for the economic effects of Covid-19 to be more apparent, and will also enable us to prepare a more meaningful Statement that better reflects both the economic realities post-Covid-19 and a clearer understanding of New Zealand's fiscal position post Budget 2021.

Amendment of legislation at this time

16. We are still investigating what legislative vehicle could be used to make these amendments should you agree to these proposals. We understand from our discussions with Parliamentary Counsel Office that there are no firm plans for further Omnibus Bills before the election. However, this might change over the next few weeks because there have been sufficient requests for an Omnibus Bill that the Parliamentary Counsel Office are speaking to a department to potentially lead one (although there is no certainty on this). If an Omnibus Bill is proposed, we recommend that this would be the most efficient legislative vehicle in which to include the amendments we seek.
17. On the assumption that an Omnibus Bill will not be progressed, we note that there are relatively few sitting days left before the election. Therefore if you agree that it is appropriate to seek all or any of these amendments, House time would need to be prioritised for the legislation to get through before the election. If Cabinet agrees that these amendments are required before the election, then it is likely that other legislation would need to be deprioritised.

Next Steps

18. If you agree that the proposed amendments to the PFA, CEA and SOE Act should proceed before the Election we will then prepare a draft Cabinet paper seeking

approval for the amendments, and for the amendments to be prioritised before the election. If there is an Omnibus Bill, the Cabinet approval and subsequent legislative processes should be coordinated with other proposed amendments in the Omnibus Bill.

19. However, if there is no Omnibus Bill then in order to have a Bill ready for introduction in July (before the House rises on 6 August), we will need to get Cabinet approval by the end of June. This restricted timeframe for the Cabinet paper means we have not allowed for wider consultation in our proposed timeframes set out in the table below. We will work with your office on how best to progress this paper through the Cabinet office process.
20. We would also work with the Department of Internal Affairs and the Ministry of Business, Innovation and Employment to look at legislative changes to the timeframes of other annual reports and audits. Should the Ministers responsible for this legislation also agreed to seek amendments, we will work to include this in a single Cabinet paper, taken by the Minister of Finance on behalf of all other Ministers.
21. Once we have your agreement to proceed with a Cabinet paper we will communicate this intention to agencies.
22. The table below describes key steps in relation to what we are seeking and provisional target dates **on the assumption that there will not be an Omnibus Bill**. The steps and dates are dependent on your support in taking this matter to Cabinet and on Cabinet's agreement to prioritise this legislation prior to the election.

Step	Date
Minister of Finance and Minister for State Owned Enterprises respond to our proposals for seeking legislative amendments	By 3 June
Discuss the possibility of legislative changes before the House rises with the Leader of the House	By 10 June
Review and submit Cabinet paper requesting policy approval and priority of legislation	8 June, for submission to Cabinet Office on 11 June
Final policy approvals obtained from Cabinet Committee (DEV) and Cabinet	By 22 June
Drafting instructions sent to PCO	22 June
Drafting of the bill by PCO	From 22 June to 20 July
Draft bill provided to the Ministry of Justice for BORA vetting	10 July (draft bill returned from PCO)
BORA vetting of bill complete	20 July
LEG and Cabinet approval for introduction	Late July
Introduction of the Bill	Late July

Appendix One – proposed extensions to annual report and audit timeframes

The table below sets out how timeframes are proposed to be amended:

Entity type and relevant statutory provision	Proposed new date to provide auditable information to auditors (existing date in brackets)	Proposed new date for auditor to provide auditor's report (existing date in brackets)
<p>Departments</p> <p>Section 45D of the Public Finance Act 1989</p>	By 31 October 2020 (by 30 August 2020)	By 30 November 2020 (by 30 September 2020)
<p>Organisations listed on Schedule 4 of the Public Finance Act 1989</p> <p>Section 45M of the Public Finance Act 1989 and section 156 Crown Entities Act 2004</p>	By 20 November 2020 (by 30 September 2020)	By 18 December 2020 (by 30 November 2020)
<p>Companies listed on Schedule 4A of the Public Finance Act 1989</p> <p>Section 45OA of the Public Finance Act and section 156 of the Crown Entities Act 2004</p>	By 20 November 2020 (by 30 September 2020)	By 18 December 2020 (by 30 November 2020)
<p>Crown entities</p> <p>Section 156 Crown Entities Act 2004</p>	By 20 November 2020 (by 30 September 2020)	By 18 December 2020 (by 30 November 2020)
<p>State-owned Enterprises</p> <p>Section 15 of the State-Owned Enterprises Act 1986</p>	(No statutory timeframe but annual report, including the audit report must be provided to Ministers within 3 months of the end of the financial year)	SOEs must present their annual reports by 30 November 2020 (by 30 September 2020)