

# The Treasury

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

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## **Legislative amendments to reporting timeframes due to COVID-19**

### **Proposal**

1. This paper seeks agreement to make legislative amendments to extend statutory reporting and audit timeframes that apply to public sector agencies to recognise the impacts of COVID-19 on those agencies' and auditors' ability to provide high quality reporting and robust audit opinions (where applicable).

### **Executive Summary**

2. I am concerned about the impact COVID-19 will have on public sector agencies' financial and non-financial 2019/20 end-of-year reporting and on auditors being able to provide robust audit assurance over that reporting. This reporting is important to the fundamental principles of government accountability and transparency. Retaining the current reporting timeframes will create risks to the quality of reporting, cause significant stress to staff and auditors, and may result in agencies and/or the Auditor-General breaching legislative requirements. These issues have been raised by the Auditor-General.
3. In response to these issues, I am seeking your agreement to urgent legislation to extend the annual report timeframes in the Public Finance Act 1989 (PFA) and Crown Entities Act 2004 (CEA). These provisions apply to departments, organisations listed on schedule 4 of the PFA, companies listed on schedule 4A of the PFA, and Crown entities. I propose these amendments 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). I propose that this change would apply only for annual reports covering the 2019/20 financial year.
4. In addition to the amendments sought to the PFA and CEA, I am also aware of the need for extensions to similar timeframes for annual reporting covering the 2019/20 financial year contained in the State Owned Enterprises Act 1986, and potentially similar timeframes contained in other legislation. I therefore recommend that Ministers responsible for legislation including these timeframes be given delegated authority from Cabinet to approve policy requests for including extensions for reporting covering the 2019/20 financial year in the Bill that this paper seeks. There is currently no need to amend timeframes for annual reporting for local authorities, or council-controlled organisations, but there is a mechanism in the Local Government Act 2002 which can be used should this be necessary. Authority is also being sought for the Minister of Local Government to use this mechanism.
5. The impact of COVID-19 also means the legislative timeframe in section 26N of the Public Finance Act 1989 for the statement of long-term fiscal position is no longer achievable. I am also seeking your agreement to extend the deadline for the statement on the long-term fiscal position, so that it would be published no later than September 2021.

## **Issues for 2019/20 annual reports caused by COVID-19**

6. The ability of agencies and auditors to meet 2019/20 annual reporting timeframes, and produce quality reports and audits, is under pressure due to:
  - Increased complexity due to COVID-19, for example needing to revalue assets and liabilities, and auditing new risks and new areas of operational responsibility;
  - Delays caused by COVID-19, many interim audits were scheduled to occur while New Zealand was in lock-down and did not proceed as planned;
  - Lack of access to key staff, information and experts.
7. The current legislative timeframes already require significant effort 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.
8. A failure to meet the reporting timeframes is a breach of the legislation by those reporting entities, but there are no specific statutory penalties as such from any failure to meet the timeframes. However, without sufficient time to consider the issues that have arisen from COVID-19 and given resourcing constraints, there will be risks to the quality of financial and non-financial reporting, and robust audit opinions. It is important for public accountability and transparency reasons that Parliament and the public have access to quality reporting and audit assurance.
9. The Auditor-General is very concerned about the issues outlined above and the associated risks, and he has discussed with me and with the Secretary to the Treasury that extending reporting timeframes is the only option to adequately mitigate these risks.

## **Issues for producing the statement on the long-term fiscal position**

10. The Treasury is required to provide a statement on the long-term fiscal position (Statement) every four years as set out in Section 26N of the Public Finance Act. The next statement is due by November 2020.
11. 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. The Statement is required to relate to the next 40 years, and is therefore a future focussed document.
12. I 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. I propose an extension be applied to the timeframes for the Statement and to delay the publication to September 2021 at the latest. This will allow time for the economic effects of COVID-19 to be more apparent, and will also enable the Treasury 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.

13. The Treasury undertook analysis and produced background reports to support the Statement, and is considering how best to continue to release this material as soon as possible. Publishing this material will help ensure continued analysis and understanding of the long term fiscal implications of Government decisions, ahead of the publication of the Statement.

### **Extensions to reporting timeframes**

14. Based on the risks described, I recommend that amendments be made to the annual reporting and auditing timeframes contained in the PFA and the CEA. I propose that these amendments provide a two-month extension to 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 amendments to the PFA and CEA, including the new timeframes, are detailed in Appendix One. The changes would only apply to annual reports covering the 2019/20 financial year.
15. I also recommend that Ministers responsible for legislation be given delegated authority from Cabinet to approve policy requests for including extensions for annual reporting covering the 2019/20 financial year in the Bill, in respect of legislation containing statutory reporting and auditing timeframes for other entities in the public sector (such as State-owned Enterprises). It is important to take a coordinated approach to annual reporting timeframes for the following reasons:
  - 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.
  - 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.
16. The Treasury, working with the Office of the Auditor-General, has been discussing a coordinated approach to public sector reporting timeframes with the Department of Internal Affairs (DIA) in relation to local government. Liaison by DIA with councils and their representative bodies indicates that councils do not see a blanket extension for annual reports prepared by them and their council-controlled organisations as necessary, due to reporting work already underway and the flow-on implications a blanket extension would have for the development of councils' 2021 Long-term Plans.
17. There are also existing mechanisms to extend statutory timeframes, should issues arise for a particular council in relation to reporting or auditing complexities. The Local Government Act 2002 provides that timeframes in that Act, including those for annual reports, can be extended or non-compliance with a timeframe validated by way of an Order in Council. If local authorities or council controlled organisations are unable to meet the statutory timeframes for their annual reports, this mechanism could be used to either extend the timeframe or validate non-compliance with the timeframe. The use of this provision would be to alleviate reputational risk for councils and council-controlled organisations and would be expected to be used sparingly.
18. In order to streamline the process for seeking such Orders in Council, I seek Cabinet's approval for the Minister of Local Government to issue drafting instructions for any such Orders in Council that are necessary. I note that once such Orders are drafted they would be referred to Cabinet for approval in the usual way.

19. Note that, at this stage, I am not seeking to change the timeframes for the Financial Statements of Government (FSG). Delivering these on time is important to maintaining the confidence of the public, Parliament and capital markets. Shifting timeframes for all annual reporting apart from the FSG sends a clear signal that it is the priority for agency and auditors annual reporting work.
20. Additionally, I recommend that the statutory deadline in relation to the long-term fiscal position contained in section 26N of the PFA be extended until September 2021 at the latest.

### **Financial Implications**

21. There are no direct financial implications arising from the proposals in this paper.

### **Legislative Implications**

22. The sought amendments would provide extensions to the annual report timeframes in the PFA and CEA.
23. Specific amendment would also be made to section 26N of the PFA to extend the statutory timeframe by which the statement on the long-term fiscal position is to be produced.
24. On advice from the Parliamentary Counsel Office and the Clerk of the House, I propose that the most suitable legislative vehicle for these amendments would be an Omnibus Bill to be passed prior to the House rising on 6 August 2020.
25. I have consulted with the Leader of the House who has advised that it is possible to include an Omnibus Bill in the legislative programme and pass the legislation before the House rises on 6 August 2020.
26. An Omnibus Bill might also provide a vehicle for other urgent changes sought by the Treasury and other Departments to be included and passed prior to the House rising.

### **Impact Analysis**

#### **Regulatory Impact Statement**

27. The Treasury has determined that this proposal is a direct COVID-19 response and has suspended the RIA requirements in accordance with Cabinet decision (CAB-20-MIN-0138).

#### **Climate Implications of Policy Assessment**

28. There are no climate change implications arising from the proposals in this paper.

#### **Population Implications**

29. No significant population implications arise from the proposals in this paper.

#### **Human Rights**

30. The proposals in this paper appear to be consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. A final view as to whether the proposals will be consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993 will be possible once the legislation has been drafted.

## Consultation

31. The following agencies have been consulted on the proposals in this paper: the Ministry of Business, Innovation and Employment, the Department of Internal Affairs, the Ministry of Transport, the Parliamentary Counsel Office and the Clerk of the House of Representatives.
32. The Office of the Auditor-General has been informed about the intent and purpose of this paper.

## Communications

33. None.

## Proactive Release

34. The paper will be proactively released subject to redaction as appropriate under the Official Information Act 1982.

## Recommendations

The Minister for Finance recommends that the Committee:

1. **note** that COVID-19 has created risks on agencies' ability to produce quality 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;
2. **note** that this reporting supports the fundamental principles of government accountability and transparency;
3. **note** the statement on the long-term fiscal position is required under the Public Finance Act 1989 to be published no later than November 2020 but due to the impacts of COVID-19 this deadline is no longer achievable;
4. **agree** to amend section 26N of the Public Finance Act 1989 to extend, from November 2020 to no later than September 2021, the timeframe within which the Treasury must prepare and the Minister of Finance must present to the House of Representatives the statement on the long-term fiscal position;
5. **agree** to amend the Public Finance Act 1989 and the Crown Entities Act 2004 to extend (as set out in Appendix One), by up to two months, the timeframes in which reports and statements must be produced and in which auditors must audit those reports and statements for the 2019/20 financial year for:
  - 5.1 departments;
  - 5.2 organisations listed at Schedule 4 of the Public Finance Act 1989;
  - 5.3 companies listed in Schedule 4A of the Public Finance Act 1989; and
  - 5.4 Crown entities.
6. **note** that the Local Government Act 2002 provides that timeframes in that Act, including those for annual reports prepared by local authorities and council-controlled organisations, can be extended or non-compliance with a timeframe validated by way of an Order in Council;

7. **authorise** the Minister of Local Government to issue drafting instructions to the Parliamentary Counsel Office for the preparation of appropriate Orders in Council under section 261 of the Local Government Act 2002 applying to specific local authorities or council-controlled organisations who are likely to be unable or who have been unable to comply with the statutory timeframe to prepare their annual report, and with the effect of extending the timeframe for preparation of their annual reports, or validating non-compliance with the timeframe;
8. **agree** to the development of an Omnibus Bill to provide the amendments recommended at paragraphs 4 and 5;
9. **authorise** the Minister of Finance to issue drafting instructions to the Parliamentary Counsel Office for the amendments recommended at paragraphs 4 and 5;
10. **authorise** the Minister of Finance and the Parliamentary Counsel Office to make additional minor amendments required to implement decisions that may arise during the drafting;
11. **authorise** Ministers responsible for legislation to approve policy requests for including extensions to statutory timeframes for entities within the public sector for reporting covering the 2019/2020 financial year in the Bill;
12. **Note** that the Minister of Finance will report back with a draft Bill and timeline for the parliamentary process that will follow.

Authorised for lodgement

Hon Grant Robertson

Minister for Finance

## Appendix One – proposed extensions to annual report and audit timeframes

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

<b>Entity type and relevant statutory provision</b>	<b>Proposed new date to provide auditable information to auditors (existing date in brackets)</b>	<b>Proposed new date for auditor to provide auditor's report (existing date in brackets)</b>
<p><b><i>Departments</i></b></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><b><i>Organisations listed on Schedule 4 of the Public Finance Act 1989</i></b></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><b><i>Companies listed on Schedule 4A of the Public Finance Act 1989</i></b></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><b><i>Crown entities</i></b></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)