

Factsheet for Māori Trust Boards

Implications of the COVID-19 Response (Requirements for Entities – Modifications and Exemptions) Act 2020

COVID-19 has caused numerous unanticipated challenges to businesses, trusts, incorporated societies, and boards. As part of its effort to respond to the pandemic, the Government has enacted the *COVID-19 Response (Requirements for Entities – Modifications and Exemptions) Act 2020*. This legislation provides temporary relief for a range of governance entities from both statutory obligations and obligations in their constitutions and rules that would be impossible, burdensome or impracticable to fulfil owing to the effects of COVID-19.

The Act enables Māori Trust Boards to operate more effectively during COVID-19 restrictions. The Act:

- enables the use of electronic communications (including electronic voting and the use of electronic signatures) when an entity's constitution or rules do not permit this;
- allows entities to make temporary modifications to their constitutions or rules;
- gives the Minister for Māori Development the power to grant exemptions from certain statutory obligations.

The COVID-19 Response (Management Measures) Legislation Act 2021 has brought this Act back into effect from 3 November 2021 until 30 April 2022. This means, if an entity has been unable to comply with their constitution or rules since this date, they may be able to access relief under the Act. The Government has extended the coverage of the Act beyond 30 April 2022 up until 31 October 2022.

Electronic communications

The Act permits a Māori Trust Board to use electronic communications where it would otherwise not be permitted (for instance, where its constitution or rules require meetings to be held *kanohi ki te kanohi* and do not provide for the use of modern technology).

However, electronic communications may only be used if most of the Board members believe in good faith that it is not reasonably practicable to carry out the task by non-electronic means.

When may electronic means be used?

The following matters may be carried out by electronic means:

- having or recording information in writing
- calling or holding meetings
- voting
- giving or receiving information
- making or keeping records
- providing access to records or information
- signing any instrument
- retaining any information.

Completing these matters by electronic means will have the same legal effect as if

they were completed or authorised by non-electronic means

Are there any conditions around electronic voting?

Yes. Electronic voting is only permitted if most Board members believe the integrity of the voting process will not be substantively compromised by using electronic voting. Members must sign a certificate to this effect that must be kept with the Board's records.

What does a Māori Trust Board have to do when it uses electronic communication?

Whenever it completes a matter by electronic means, a Māori Trust Board must keep a written record of it being used and the reasons why the members believed that using it was necessary. As soon as practicable after completing the matter, the Māori Trust Board must:

- make reasonable efforts to notify all the members/beneficiaries of the matter; and
- advise Te Puni Kōkiri in writing by sending a notice identifying the matter done by electronic means, attaching a copy of the record.

Notices should be sent to: notices@tpk.govt.nz (see the templates attached to this factsheet).

Te Puni Kōkiri will then make the information publicly available on its website (www.tpk.govt.nz).

Modifications to rules

A Māori Trust Board may modify certain provisions in its constitution or rules if most of its members believe in good faith that it is not reasonably practicable to comply with those provisions because of COVID-19.

When may a Māori Trust Board modify its constitution or rules?

A Māori Trust Board may modify its constitution or rules (in the circumstances described above) relating to:

- calling or holding meetings (including procedures at meetings)
- a method or form of voting, dispute resolution, or disciplinary procedure
- giving or receiving information
- making or keeping new records
- a waiver, suspension, deferral, or reduction of fees or other amounts payable by members to the Board
- a deferral of auditing, assurance, or financial reporting or review requirements
- the use of electronic means to do any matter listed above
- other procedural or administrative processes.

If the modification relates to a method or form of voting, the members must believe that the integrity of the voting process will be maintained or enhanced.

What does a Māori Trust Board have to do when it wants to modify its constitution or rules?

Modifications must be by notice in writing signed by most of the Board members (which may be done electronically) and:

- must not be inconsistent with any enactment or rule of law or equity (other than the provision being modified)
- must not go any further than what is (or is likely to be) reasonably necessary in the circumstances; and
- must expire by 31 October 2022.

If the modification relates to dispute resolution or disciplinary proceedings, the modification must comply with the principles of natural justice.

Modifications may only be made if most of the Board members believe the modification is not oppressive, unfairly discriminatory, or unfairly prejudicial to any owner, creditor, or other person.

Is the Māori Trust Board required to notify anyone of the decision to modify its constitution or rules?

As soon as practicable after making the modification, the Māori Trust Board must:

- make reasonable efforts to notify all its owners of the modification; and
- provide Te Puni Kōkiri with a written notice explaining what it has done, attaching a copy of the record and a certificate issued by a governing officer that certifies all the requirements of the Act were complied with.

The Māori Trust Board must keep a written record of the modification and the reasons for the beliefs of its Board members.

Notices should be sent to: notices@tpk.govt.nz

After receiving the notification, Te Puni Kōkiri will arrange for information about the notice to be registered and make the information publicly available on its website.

Can a Māori Trust Board modify all the provisions of its constitution or rules?

No. There are some provisions that cannot be modified. These relate to:

- the purpose, objects, or powers of the Board (other than a procedural or administrative power)
- the sale, transfer, or other disposition of real or personal property
- voting rights or rights to a dividend or other distribution
- the number, or need, for a quorum
- rights of access to courts, tribunals or arbitral tribunals
- the duties of members (other than a procedural or an administrative duty)

- fees or other payments (other than a waiver, suspension, deferral, or reduction of fees or other amounts payable by members to the Māori Trust Board)
- an alteration or addition made to the constitution or rules by an order of a court
- any matter that has a detrimental effect on the substantive rights or powers of any creditor or other person
- any matter that is prescribed by regulations made under the Act.

Will modifications stay in place permanently?

No. Modifications are temporary and only last for the relevant period (3 November 2021 to 31 October 2022).

Exemptions from compliance obligations

The Minister for Māori Development has the power to grant exemptions from certain statutory obligations.

What should a Māori Trust Board do when it encounters difficulty complying with a statutory obligation?

If a Māori Trust Board encounters difficulty complying with its statutory obligations set out in the Māori Trust Boards Act 1955, the Board should email Te Puni Kōkiri at notices@tpk.govt.nz. Te Puni Kōkiri will advise the Minister accordingly.

When may the Minister grant an exemption?

The Minister may grant an exemption to a Māori Trust Board from a statutory obligation if the Minister is satisfied the exemption is necessary or desirable and the most appropriate way of addressing the difficulties that have arisen owing to the effects of COVID-19. The Minister must also be satisfied the exemption is not broader than is reasonably necessary, and

appropriate consultation must have also occurred.

What type of statutory obligations may be exempted?

The Minister may only grant exemptions from the following matters:

- calling or holding meetings
- a method or form of voting
- giving or receiving information
- making or keeping new records
- rights to inspect or access information or records
- a method or form of dispute resolution
- a method or form of disciplinary procedures
- auditing, assurance, or financial reporting or review requirements.

If the matter relates to dispute resolution or disciplinary proceedings, the exemption must comply with the principles of natural justice.

Exemptions may not dilute voting rights, or the number or need for a quorum.

Is the Minister under an obligation to consult?

Yes. The Minister must engage with relevant persons about the proposed exemption or the public generally, inviting them to make written comments about the proposal within three working days, and must take into account any comments received. However, there are circumstances when consultation is not required, such as when the situation is urgent or if it is not reasonably practical to do so.

Will the exemption apply to a specific Board?

The Minister may decide to exempt other Māori Trust Boards who are facing similar difficulties from the statutory obligation.

How will members and beneficiaries be informed of the exemption?

Information about the proposed exemption will be published on the Te Puni Kōkiri website.

Once granted, the exemption will be published on www.tpk.govt.nz along with the reasons for granting it (or for bypassing the engagement process, if appropriate).

What happens if a Māori Trust Board breaches the exemption?

A breach of a term or condition of an exemption is considered a breach of the provision to which the exemption relates. This means the consequences and penalties for an entity breaching a term or condition of an exemption are the same as if they had breached the provision in the Act that is the subject of the exemption, and the relevant sanctions apply.

Templates

On the following pages two templates are provided, setting out the information entities need to provide to notify Te Puni Kōkiri of (1) the use of electronic communications, and (2) modifications to a constitution or rules.

Notice of use of electronic means (s10A)

Name of entity:

Type of entity:

Name of contact person:

Position:

Email/phone:

We are relying on Section 10A of the Act for the following matter(s): *[delete those that do not apply]*

- having or recording information in writing
- calling or holding meetings, including for the purpose of establishing a quorum
- voting
- giving or receiving information
- making or keeping new records
- providing access to records or information held by or on behalf of the entity
- signing any instrument
- retaining any information.

The majority of our governing officers believe our constitution or rules do not allow us to do this matter by electronic means because: *[explain restriction or requirement in the entity's constitution or rules]*

The majority of our governing officers believe that it is not reasonably practicable to do the matter by non-electronic means, because: *[give reasons]*

Please email to: notices@tpk.govt.nz.

Notice of modification of constitution or rules (s13A)

Name of entity:

Type of entity:

Name of contact person:

Position:

Email/phone:

We are relying on Section 13A of the Act to temporarily modify our constitution or rules.

A copy of the notice of the modification is attached. [\[attach notice\]](#)

We have satisfied the requirements of s13A of the Act by: [\[explain how these requirements were satisfied\]](#)

The majority of our governing officers believe that it is not, or is not likely to be, reasonably practicable for the person referred to in s13A(1) to comply (or comply fully) with the requirement or restriction because: [\[give reasons\]](#)

The majority of our governing officers believe that the modification goes no further than is, or is likely to be, reasonably necessary in the circumstances: [\[give reasons\]](#)

The majority of our governing officers believe that the modification is not oppressive, unfairly discriminatory, or unfairly prejudicial to any member, creditor, or other person because: [\[give reasons\]](#)

[\[Include if the modification relates to a method or form of voting\]](#) The majority of our governing officers believe that the requirements or restrictions in the entity's constitution or rules that relate to the integrity of the voting process are substantively maintained or enhanced, because: [\[give reasons\]](#)

A certificate by a governing officer of the entity certifying that, in making the modification, all requirements of this Act were complied with is attached. [\[attach certificate\]](#)

Please email to: notices@tpk.govt.nz.