

COVID-19 Response Act: guide for Māori land trusts, Māori incorporations, and Māori reservations

The *COVID-19 Response (Requirements for Entities – Modifications and Exemptions) Act 2020* provides temporary relief for governance entities who are unable to meet their statutory obligations or the obligations in their constitution or rules because of the COVID-19 outbreak.

This guide provides information on the Act for the following governance entities:

- Māori land trusts,
- Māori incorporations, and
- body corporates or trustees appointed to administer a Māori reservation.

In this guide, the term 'entity' refers to these types of entities.

A separate guide covers assembled owners under Part 9 of Te Ture Whenua Māori Act 1993.

The Act will help entities affected by the COVID-19 restrictions to operate more effectively. It covers the period 21 March to 30 November 2020.

The Act allows for:

- 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;
- temporary modifications to their constitutions or rules;
- the Minister for Māori Development to grant exemptions from certain statutory obligations under Te Ture Whenua Māori Act; and
- the Chief Judge of the Māori Land Court to grant relief from certain terms of Māori trust orders and Māori incorporation orders.

Further guidance on each of these is provided in the sections below.

This guide is a summary only. If you are unsure about anything, please refer to the Act and, if necessary, seek legal advice. You can read the Act itself here:

<http://legislation.govt.nz/act/public/2020/0014/latest/LMS344839.html>

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Use of 'electronic means'

The Act allows your entity to do things by electronic means, even when this is not permitted by your entity's constitution or rules, up to 30 November 2020.

What is meant by 'electronic means'

The term 'electronic means' refers to:

- 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.

What do we need to do to use electronic means?

If your entity's constitution or rules prohibit it from doing the thing listed above by electronic means (or aren't clear one way or the other), the Act allows you to use electronic means.

However, there are a few conditions you have to meet.

Firstly, a majority of your trustees or governing officers must believe in good faith that it is not reasonably practicable to do the thing by non-electronic means (such as *kanohi ki te kanohi*). You need to record the reasons that your governing officers have for this belief.

Secondly, you must keep a record of any electronic communications (such as emails) used to do the thing.

What about electronic voting?

If your entity wants to use the Act to conduct electronic voting, there is an extra step.

The majority of your trustees or governing officers must believe:

- that the way the electronic voting is done will comply substantively with the current provisions about voting in your entity's constitution or rules; and
- that the current provisions about voting in the entity's constitution or rules will not be substantively compromised as a consequence of the electronic vote.

Your governing officers must sign a certificate recording these beliefs and keep the certificate with the entity's records.

Who do we need to notify?

Your entity must make reasonable efforts to notify all its members and governing officers about its decision to use electronic means.

Your entity must also notify the Chief Registrar of the Māori Land Court about what you've done and provide relevant information. More on this below.

How do we notify the Māori Land Court?

When your entity uses the Act to do something electronically, you must notify the Chief Registrar of the Māori Land Court in writing. Along with this notice, you must include a record of the beliefs of your governing officers described above.

To help you include all the necessary information in this notice, we've created a template (below). Notices should be emailed to mlcnationaloffice@justice.govt.nz

All notices will be publicly available on the MLC website.

Template: Notice of use of electronic means

Complete and email to: mlcnationaloffice@justice.govt.nz. Please include your name and position in the email (this information will not be made public).

Name of entity:	
Type of entity:	<i>[e.g. Māori land trust, Māori incorporation, Māori reservation]</i>
We are relying on section 10 of the Act for the following matter(s):	<i>[e.g. having or recording information in writing, calling or holding meetings, voting, giving or receiving information, etc (delete those that don't apply)]</i>
The reason(s) the majority of our governing officers believe our constitution or rules do not allow us to do this matter by electronic means is(are):	<i>[explain restriction or requirement in the entity's constitution or rules]</i>
The reason(s) the majority of our governing officers believe it is not reasonably practicable to do the matter by non-electronic means is(are):	<i>[give reasons]</i>
Please complete if this notice covers voting :	
The majority of our governing officers believe that the way the electronic voting is done will comply substantively with the current provisions about voting in our constitution or rules.	<i>[yes/no]</i>
The majority of our governing officers believe that the current provisions about voting in the entity's constitution or rules will not be substantively compromised as a consequence of the electronic vote.	<i>[yes/no]</i>

Modification to constitution or rules

There may be other things (other than using electronic means) that your entity might have been prevented from doing because of the COVID-19 restrictions.

The Act also allows your entity to temporarily modify certain provisions in your rules or constitution to address issues arising from COVID-19.

These temporary modifications must only last for the period of the Act: 21 March 2020 to 30 November 2020.

What parts of our constitution or rules can be modified?

The Act only allows modifications to your constitution or rules that relate to:

- calling or holding meetings (including procedures at meetings)
- a method or form of voting
- giving or receiving information
- making or keeping new records
- a method or form of dispute resolution
- a method or form of disciplinary procedure
- a waiver, suspension, deferral, or reduction of fees or other amounts payable by members to the entity (e.g. by owners to a Māori land trust)
- 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

What cannot be modified?

You must not modify the parts of your constitutions or rules that relate to:

- the purpose or objects of the entity
- the powers of the entity (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 the governing body or governing officers (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 entity)
- an alteration or addition made to the constitution or rules by an **order of a court** (see below)
- any matter that has a material detrimental effect on the substantive rights or powers of any creditor or other person
- any matter that is prescribed by regulations made under the COVID-19 Response (Requirements for Entities – Modifications and Exemptions) Act 2020 Act.

What about trusts and incorporations established by a Māori Land Court order?

Many Māori trusts and incorporations were established by an order of the Māori Land Court. These entities cannot modify the parts their constitution or rules made by an order of the Court. These entities must apply to the Māori Land Court itself. This process is explained in the next section.

How do we modify our constitution or rules?

The Act allows you to temporarily modify your constitution or rules in the ways described above.

However, there are a few requirements which must be met.

The modification must not be inconsistent with any Act or rule of law or equity.

The majority of your governing officers must believe:

- that the modification is necessary because the COVID-19 outbreak means it is not reasonably practicable to comply; and
- that the modification does not go any further than necessary in the circumstances; and
- that the modification is not oppressive, unfairly discriminatory, or unfairly prejudicial to any member, creditor, or other person.

The modification must have a clear expiry date that is no later than 30 November 2020.

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

If the modification relates to **voting**, the majority of your trustees or governing officers must believe that the current provisions in your entity's constitution or rules that relate to the integrity of the voting process will be substantively maintained or enhanced.

The modification must be made by notice in writing, signed by the majority of your entity's governing officers.

You must keep a written record of the details of how the requirements above were met (including the beliefs of the governing officers) and of the written notice of the modification.

Who do we need to notify?

As soon as possible after making the modification, your entity must make reasonable efforts to notify all members and governing officers of the modification. If your entity is a Māori land trust, for example, that would be all the owners and trustees.

Your entity must also notify the Chief Registrar of the Māori Land Court about what you've done and provide relevant information. More on this below.

How do we notify the Māori Land Court?

When your entity uses the Act to modify its constitution or rules, you must notify the Chief Registrar of the Māori Land Court in writing and provide other information.

To help you include all the necessary information in this notice, we've created a template (below). Your notice should be emailed to mlcnationaloffice@justice.govt.nz

All notices will be publicly available on the MLC website.

Template: Notice of modification of constitution or rules

Complete and email to: mlcnationaloffice@justice.govt.nz. Please include your name and position in the email (this information will not be made public).

Name of entity:	
Type of entity:	<i>[e.g. Māori land trust, Māori incorporation, Māori reservation]</i>
We are relying on section 13 of the Act for to modify our constitution or rules	<i>[yes/no]</i>
A copy of the notice of the modification is attached.	<i>[attach notice]</i>
We satisfied the requirements of s 13 of the Act by:	<i>[explain how these requirements were satisfied]</i>
The reason(s) the majority of our governing officers believe that it is not, or is not likely to be, reasonably practicable to comply (or comply fully) with our constitution or rules is(are):	<i>[give reasons]</i>
The reason(s) 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 is(are):	<i>[give reasons]</i>
The reasons(s) 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 is(are):	<i>[give reasons]</i>
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.	<i>[attach certificate]</i>
Please complete if this notice covers voting :	
The reason(s) 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, is(are):	<i>[give reasons]</i>

Exemptions from obligations under Te Ture Whenua Māori Act

If your entity is having trouble or difficulty in meeting your statutory obligations under Te Ture Whenua Māori Act 1993, you can apply for an exemption from those obligations. The Minister for Māori Development has the power to grant these exemptions.

What kinds of statutory obligations are covered?

The Minister for Māori Development may grant an exemption to a requirement in Te Ture Whenua Māori Act relating to:

- 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.

The Minister cannot grant an exemption that would dilute voting rights, or the number or need for a quorum, and any exemption relating to dispute resolution or disciplinary proceedings must comply with the principles of natural justice.

These exemptions can only cover the period 21 March to 30 November 2020.

How do we request an exemption?

If your entity is having difficulty with your obligations under Te Ture Whenua Māori Act 1993, you should write to Te Puni Kōkiri to request an exemption. Te Puni Kōkiri will then work with you to determine whether an exemption is possible.

Email your request to notices@tpk.govt.nz

When may the Minister grant an exemption?

The Minister must be satisfied the exemption is necessary or desirable and the most appropriate way to deal with difficulties resulting from the COVID-19 outbreak, and that the exemption is not broader than necessary.

The Minister may also consult with relevant persons about the exemption and invite interested people to make written comments about the exemption within three working days (or any longer time) that would be taken into account when considering whether the exemption should be made.

The Minister may decide to not consult publicly if a situation is urgent, the exemption will not be detrimental to any person, or consultation is disproportionate to the nature, size, significance and effect of the exemption.

How will we know if an exemption has been granted?

Te Puni Kōkiri will contact the entity and persons affected by the exemption known to Te Puni Kōkiri.

The exemption will also be published on the Te Puni Kōkiri website, along with the reasons for bypassing the engagement process, if appropriate, and documents setting out the details of the proposed exemption.

Relief from the terms of a Māori Land Court order

Many entities covered by this guidance are established by an order of the Māori Land Court.

If your entity is having difficulty in complying with the terms of its trust order or incorporation order, you can apply to the Chief Judge of the Māori Land Court for relief.

What kind of relief is available?

The Chief Judge may grant relief from terms of a court order relating to:

- 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.

Relief can only cover the period 21 March to 30 November 2020.

How do we get relief?

You may apply to the Chief Judge of the Māori Land Court for relief. No application fee is payable.

Use the Māori Land Court's **Form 1**, which can be downloaded here:

<https://www.maorilandcourt.govt.nz/assets/Documents/Forms/MLC-Form-1-General-application.pdf>

Please provide:

- the name of your entity
- the names of the trustees or the members of the committee of management
- the type of relief you are seeking
- the sections relied upon
- the grounds for the application

Email the completed form to mlcnationaloffice@justice.govt.nz

When may the Chief Judge grant relief?

The Chief Judge may grant relief if he is satisfied that the relief is necessary or desirable and the extent of the relief is not broader than necessary.

Further Information

You may wish to seek independent legal or professional advice about whether your entity is able meet its statutory obligations or the obligations in their constitution or rules because of the COVID-19 outbreak.

If you have any general questions about the legislation, contact Te Puni Kōkiri at notices@tpk.govt.nz