



# Cabinet Economic Development Committee

## Minute of Decision

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### Arbitrating Commercial Leases Disputes

Portfolio Justice

On 3 June 2020, the Cabinet Economic Development Committee, having been authorised by Cabinet to have Power to Act [CAB-20-MIN-0255]:

#### Background

- 1 **noted** that many small businesses are struggling to meet fixed costs due to the loss of revenue caused by COVID-19, and that there is no general contractual right to a decreased rent at this time;
- 2 **noted** that businesses are at a greater risk of insolvency when they cannot come to a reasonable agreement about a temporary change to their lease;

#### Proposed changes

- 3 **agreed** that the Property Law Act 2007 be amended to:
  - 3.1 imply a clause into leases of businesses that meet eligibility criteria that requires that a fair proportion of rent and outgoings cease to be paid when a tenant's business has suffered a material loss of revenue because of the restrictions put in place to combat COVID-19;
  - 3.2 establish the following criteria for businesses who would be eligible to have the clause referred to in paragraph 3.1 above implied into their commercial lease:
    - 3.2.1 the business has 20 or fewer full-time equivalent staff per lease site;
    - 3.2.2 the business is New Zealand based;
    - 3.2.3 the business has not already come to an agreement for a rent abatement with their landlord;
  - 3.3 provide clear rules that must be followed when determining what factors must be considered in determining a fair proportion, based on the principles that the interests of the landlord and the tenant should both be taken into account, and the financial burden of COVID-19 fairly proportioned;

- 3.4 provide clear guidance on what other measures parties may agree to as a temporary change to support them both through the pressures caused by COVID-19;
- 3.5 require any disputes under the implied clause to be settled in arbitration;
- 4 **noted** that any appeals of an arbitral decision would be allowed under the grounds established in the Arbitration Act 1996;
- 5 **agreed** that the government will support parties to access arbitration in a timely and cost-effective manner through a government subsidy provided for streamlined arbitrations at a rate of \$6,000 per arbitration;
- 6 **agreed** that the amendments will have retrospective effect and apply from the date of this policy announcement and extend for six months after enactment of the Bill;

**Financial implications**

- 7 **agreed** to establish the following new appropriation:

Vote	Appropriation Minister	Title	Type	Scope
Justice	Minister of Justice	COVID-19: arbitrating commercial lease disputes	Non-departmental output expense	This appropriation is limited to procuring arbitration services for commercial lease disputes arising due to the impacts of COVID-19.

- 8 **approved** the following changes to appropriations to give effect to the above policy decisions, with a corresponding impact on the operating balance and net core Crown debt:

Vote Justice Minister of Justice	\$m – increase/(decrease)				
	2019/20	2020/21	2021/22	2022/23	2023/24 & Outyears
Non-Departmental Output Expense: COVID-19: arbitrating commercial lease disputes	-	20.000	-	-	-

- 9 **agreed** that the changes to appropriations for 2020/21 above be included in the 2020/21 Supplementary Estimates and that, in the interim, the increase be met from Imprest Supply;

- 10 **agreed** to establish a tagged operating contingency of up to the amounts as follows in Vote Justice to provide for a subsidy for COVID-19 commercial lease disputes:

	\$m – increase/(decrease)				
	2019/20	2020/21	2021/22	2022/23	2023/24 & Outyears
COVID-19: arbitrating commercial lease disputes: Tagged Operating Contingency	-	20.000	-	-	-

- 11 **authorised** the Minister of Justice and the Minister of Finance jointly to drawdown the tagged operating contingency in paragraph 10 above, subject to their satisfaction of the estimated demand for the service;

- 12 **agreed** that the expenses incurred under paragraph 8 above and the tagged operating contingency in paragraph 10 above be charged against the COVID-19 Response and Recovery Fund;

### Legislative implications

- 13 **invited** the Minister of Justice to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above paragraphs;
- 14 **authorised** the Minister of Justice to make additional minor policy decisions, in discussion with the Minister of Finance or the Minister of Small Business, as appropriate;
- 15 **authorised** the Minister of Justice to approve the drafting and introduction of an amendment Bill.

Janine Harvey  
Committee Secretary

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#### Present:

Rt Hon Winston Peters  
Hon Kelvin Davis  
Hon Grant Robertson (Chair)  
Hon Phil Twyford  
Hon Andrew Little  
Hon David Parker  
Hon Nanaia Mahuta  
Hon Stuart Nash  
Hon Jenny Salesa  
Hon Damien O'Connor  
Hon Kris Faafoi  
Hon Shane Jones  
Hon James Shaw  
Hon Eugenie Sage

#### Officials present from:

Office of the Prime Minister  
Officials Committee for DEV