



# COVID-19 red-tape cutting measures: practical relief for KiwiSaver and lending processes – but why is it only temporary?



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The speed with which the Government and regulators responded to the regulatory compliance challenges thrown at New Zealand by the COVID-19 lockdown has been impressive. Nowhere was this more apparent than in the tightly prescribed environment within which financial service providers must operate.

Much of the relief provided in response to the Epidemic Preparedness (COVID-19) Notice 2020 (**COVID Notice**) was on a short term basis. As yet, there has been no suggestion that any consumer harm has arisen as a result of this increased flexibility and the embracing of modern technology to cater for lockdown and remote working practices. That raises the question – do these emergency responses actually highlight the fact that some of the regulatory red-tape faced by our financial service provider sector is no longer fit for purpose?

Now that the days of full lockdown are (hopefully) a thing of the past, it is surprising to think just how many of our regulatory requirements are effectively paper-based, relying upon in-person interactions and wet ink signing processes and uploading of ‘originals’. The technology to support a more digitised approach to all of the regulatory requirements faced by fund managers and other financial market participants has existed for a while now. But when it comes down to it, fully embracing that technology has not been a regulatory or business priority.

Take the clunky requirements for KiwiSaver significant financial hardship withdrawals as a prime example. At a time when a KiwiSaver member is faced with overwhelming financial stress, forcing them to access their KiwiSaver retirement savings to make current ends meet, you would think the process should be made as stress-free as possible. Yet the KiwiSaver member is faced with a regulatory red-tape requirement to complete a statutory declaration in respect of their assets and liabilities before they can access their own money. This can be daunting at the best of times, but in a COVID-19 lockdown world the physical impediments to completing a statutory declaration added a further, unwanted complication for vulnerable customers.

After some scabbling in the sector to achieve some pragmatic workarounds, with welcome support from the Financial Markets Authority, the introduction of the Epidemic Preparedness (Oaths and Declarations Act 1957) Immediate Modification Order 2020 (**Modification Order**) provided welcome relief to ease the process.

The Modification Order waived the requirement for an oath to be sworn (or an affirmation to be made) in the physical presence of the person administering the oath or affirmation. Instead, the administrator could utilise an audio-visual or audio link to take the person's sworn oath or affirmation.

Hallelujah! This practical response freed up the process and saved all concerned an extra layer of bureaucratic hardship. However, the Modification Order is temporary, ending with the expiry of the three month lifespan of the COVID Notice. But why? Enabling oaths to be remotely administered, especially in the context of individuals accessing their own savings, seems an eminently practical and efficient approach to things. KiwiSavers are thereby saved from the physical challenge of needing to front up to a lawyer's or JP's office to provide their oath or affirmation in person. What extra benefit is actually gained by forcing such an in-person process? More to the point, what is the harm in embracing modern technology and enabling these sorts of process requirements to be completed by audio-visual means on a permanent basis?

There is even a question mark over the added piece of red tape of requiring a statutory declaration as to assets and liabilities for individuals making a significant financial hardship withdrawal in the first place. Why not just require a simple statement to be made by the KiwiSaver member, with appropriate penalties imposed in the case of a false statement? For the KiwiSaver member, is there any real difference between signing a statement that the information is true and correct versus swearing an oath or affirmation?

A further example can be found in the [COVID-19 Response \(Further Management Measures\) Legislation Act 2020 \(COVID Response FMM Act\)](#) which came into effect on 16 May 2020. Among other things, this piece of legislation allows powers of attorney in security documents to be signed electronically until 16 November 2020 (with power for that expiry date to be brought forward or extended on the recommendation of the relevant Ministers). Without that relief, such powers of attorney signed electronically are unlikely to be enforceable. This greater flexibility in signing finance documentation where a security interest is granted is great. But why is that relief only temporary? What would be the real mischief

in allowing this form of modern-technology-embracing relief to be permanent? Yes, there are security risks in enabling documentation to be signed electronically, but the risk of fraud and forgery arises when documentation is signed in wet ink as well. Isn't it time we moved forward, and expedited the procedural requirements for completing documentation by removing these impediments to the digital economy?

In our view, the reforms under the COVID Response FMM Act should go further. Not only should permission for the electronic signing of powers of attorney granted in connection with a security interest be permanent, there should also be greater comfort provided for lenders relying upon electronic signatures and other instructions given electronically. That would help overcome the reluctance many have to move away from wet ink signatures as their preferred method of signing.

COVID-19, and the lockdown measures imposed to eliminate the virus from our shores, has had a fundamental impact on our economy. It has also shown us that the sound operation of financial products and services is not thrown into chaos by cutting through the red tape. Let's not waste the opportunity to look at making things easier for everyone on a permanent basis.

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