



23 March 2020

Rt Hon Jacinda Ardern
Prime Minister

Hon Kris Faafoi
Minister of Commerce

Copied to:
Carolyn Tremain, CEO
Ministry of Business, Innovation and Employment

Emergency petition to empower directors to govern in extraordinary times

The Institute of Directors (IoD) acknowledges the government's initial response to support organisations in responding to COVID-19. These are extraordinary times that call for extraordinary measures. Now, more than ever, New Zealand needs to empower directors to govern organisations to ultimately benefit New Zealand's wellbeing and prosperity.

We urge the government, as part of its support package, to provide emergency interim relief (similar to that announced in Australia yesterday)¹ for directors (and other governors) from personal liability where an organisation may be trading while insolvent due to the impact of COVID-19. As in Australia, an exclusion from personal liability for 6 months subject to reasonable limitations including to ensure that organisations are not inappropriately using creditors' funds.

The Companies Act 1993 sets out duties of directors including a duty not to trade while insolvent. The consequences of directors breaching these duties can be significant including, at a personal level, significant compensation awards against them.

Boards have to be across an array of complex and diverse issues, and they are current governing through extraordinary times due to COVID-19. The role of boards is now more important than ever in guiding companies through the period ahead for the benefit of stakeholders and New Zealand.

¹ See the Australian government's press conference transcript available here:
<https://www.pm.gov.au/media/press-conference-australian-parliament-house-act-22march>

There is a risk that the weight of potential personal liability under the Companies Act 1993 may result in placing companies into administration or liquidation too soon. This is a real likelihood with significant ramifications for stakeholders, communities and New Zealand. Ceasing trade too early may be destructive to organisational value and exacerbate the risk. The period ahead will require courageous leadership, business dynamism, innovation, and balancing short-term solutions and long-term considerations.

Providing emergency interim relief for directors is a matter of urgency and we would welcome the opportunity to discuss this with you.

Yours sincerely

A handwritten signature in black ink, appearing to read 'K Patterson', written in a cursive style.

Kirsten Patterson
Chief Executive
Institute of Directors