

Hon David Parker, Minister of Revenue

Information Release

Tax Administration (Extension of Period of Relief for Certain Disposals of Trading Stock) Order 2022

October 2022

Availability

This information release is available on Inland Revenue's tax policy website at <https://taxpolicy.ird.govt.nz/publications/2022/2022-ir-cab-dev-22-sub-0015>

Documents in this information release

| # | Reference | Type | Title | Date |
|---|-----------------|----------------|---|-----------------|
| 1 | IR2021/624 | Policy report | Extending tax relief for donations of trading stock made by businesses in response to the COVID-19 outbreak | 9 December 2021 |
| 2 | IR2022/029 | Policy report | Cabinet paper: Extension of end date for tax relief for donations of trading stock made by businesses in response to Covid-19 | 27 January 2022 |
| 3 | DEV-22-SUB-0015 | Cabinet paper | Extension of end date for tax relief for donations of trading stock made by businesses in response to Covid-19 | 27 January 2022 |
| 4 | DEV-22-MIN-0015 | Cabinet minute | Tax Administration (Extension of Period of Relief for Certain Disposals of Trading Stock) Order 2022 | 27 January 2022 |

Additional information

The Cabinet paper was considered by the Economic Development Committee on 2 March 2022 and confirmed by Cabinet on 7 March 2022.

One attachment to the Cabinet paper is not included in this information release as it is publicly available: One attachment to the Cabinet paper is not included in this information release as it is publicly available:

- Tax Administration (Extension of Period of Relief for Certain Disposals of Trading Stock) Order 2022¹

Information withheld

Some parts of this information release would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the Act). Where this is the case, the

¹ <https://legislation.govt.nz/regulation/public/2022/0055/latest/whole.html>

relevant sections of the Act that would apply are identified. Where information is withheld, no public interest was identified that would outweigh the reasons for withholding it.

Sections of the Act under which information was withheld:

9(2)(a) to protect the privacy of natural persons, including deceased people

Accessibility

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POLICY AND REGULATORY STEWARDSHIP

Tax policy report: Extending tax relief for donations of trading stock made by businesses in response to the COVID-19 outbreak

| | | | |
|------------------------|-----------------|-----------------------|------------|
| Date: | 9 December 2021 | Priority: | Medium |
| Security level: | In Confidence | Report number: | IR2021/624 |

Action sought

| | Action sought | Deadline |
|---------------------|---------------------------------|------------------|
| Minister of Finance | Agree to recommendations | 17 December 2021 |
| Minister of Revenue | Agree to recommendations | 17 December 2021 |

Contact for telephone discussion (if required)

| Name | Position | Telephone |
|---------------|--------------------------|------------------------------------|
| Peter Frawley | Policy Lead | s 9(2)(a) [REDACTED] [REDACTED] |
| Brandon Sloan | Principal Policy Advisor | s 9(2)(a) [REDACTED] |

9 December 2021

Minister of Finance
Minister of Revenue

Extending tax relief for donations of trading stock made by businesses in response to the COVID-19 outbreak

Purpose

1. This report seeks your agreement to extend a COVID-19 relief measure concerning the income tax treatment of donated trading stock. Officials recommend that this relief, due to expire on 16 March 2022¹ is extended for a further 12 months until 31 March 2023.

Background

2. In 2020 stakeholders from both the charitable and commercial sectors informed Inland Revenue officials and your office about their concerns that the Income Tax Act 2007 disincentivises businesses from donating goods by imposing tax on the market value of the donated trading stock. This is a long-standing issue within the tax system.
3. A donation of trading stock is deemed to be a disposal. A deemed income rule in the Income Tax Act effectively reverses the deduction that was claimed when the trading stock was purchased and imposes tax on a deemed profit. You agreed to turn this rule off, as a temporary COVID-19 relief measure, for a two-year period starting 17 March 2020 (IR2021/051 refers). As a result, where a business donates trading stock to a donee organisation or public authority they are not subject to tax on deemed income and are eligible for a deduction. The purpose of the temporary measure was to provide immediate tax relief to businesses, while officials continued work on whether a more enduring solution should be inserted into the Income Tax Act.
4. This deemed income rule was introduced principally as an integrity measure. However, it arguably overreaches by imposing tax in situations where tax avoidance is not a concern. The overreach of this rule is not limited to COVID-19 but has been exacerbated by it, for example by increased donations to food banks or of masks and consumable medical equipment (such as personal protective equipment).
5. Prior to introducing this exemption, it was believed there was widespread non-compliance with the deemed income rule. Therefore, tax relief for donated trading stock has likely aligned the law with common business practice, rather than changed behaviour. Inland Revenue has limited data on trading stock donations.
6. There is public interest in this issue, with a submitter raising it with the Finance and Expenditure Committee during their hearing on the Taxation (Annual Rates for 2021-22, GST, and Remedial Matters) Bill.

Proposals

7. The temporary relief provided that where a business donates trading stock to:

¹ Taxation (Annual Rates for 2020-21, Feasibility Expenditure, and Remedial Matters) Act 2021, s 84.

- 7.1 public authorities and donee organisations (an organisation whose donors can claim a tax concession for donations made to the organisation) they are not subject to the deemed income rule and are eligible for a tax deduction.
 - 7.2 non-associated persons (which are not public authorities or donee organisations) they are not subject to the deemed income rule. However, the donor will only be able to claim a tax deduction where they can demonstrate the donation is made for business purposes.
8. The legislation allows for the COVID-19 response measure to be extended by Order in Council if you are satisfied that people in New Zealand are likely to continue, beyond the expiry of the existing period, to be significantly adversely affected by COVID-19. Officials are working on assessing the case for a more enduring solution, but the issues are complex, paragraph 13 refers. The question of allowing deductions for donated trading stock touches on a wider tax issue of recognising expenses that do not have a clear relationship with earning taxable income.

Rationale for extending the relief and consultation

9. The economic and social impacts of COVID-19 continue to be felt throughout New Zealand, for example, through increased demands on community foodbanks. Officials therefore consulted a select group of stakeholders² in November 2021 on the possibility of extending the relief measures. All responses we received were in favour of a one-year extension to provide certainty for businesses and donee organisations. Stakeholders were confident that the impacts of COVID-19 will continue beyond March 2022.
10. Stakeholders considered that taxpayers and businesses who have donated trading stock have been motivated by the need of the community rather than incentivised by specific tax rules. However, they did emphasise the need to address the potential that the tax law settings could discourage donations at this time of greater need if the relief from the deemed income rule is not extended.
11. When consulting with stakeholders on a possible extension we also asked for examples of how the temporary relief measure has made a difference to taxpayers. Federated Farmers provided the example of Meat the Need, a nationally based charity established in April 2020 to supply meat to city missions and foodbanks. Meat the Need has advised Federated Farmers that when farmers donate livestock, they often comment that the tax implication of their donation is part of their reason for donating.

An enduring solution

12. Stakeholders also voiced a strong preference for an enduring solution to the deemed income rule to ensure it does not disincentivise donations.
13. Officials note, however, that a permanent solution:
 - 13.1 would be a departure from providing tax benefits for monetary donations only,
 - 13.2 raises broader tax integrity concerns about providing tax benefits for non-cash donations where valuation of the gift can be problematic, and

² Corporate Taxpayers' Group, Chartered Accountants Australia New Zealand, Federated Farmers, Fonterra, EY, PwC, The New Zealand Law Society, and Auckland City Mission. This is the same group of stakeholders consulted on the introduction of the relief measures (IR2021/051 refers).

- 13.3 the integrity of the trading stock rules also needs to be considered alongside the original anti-avoidance purpose of the deemed income rule.
14. However, the current legislation does allow for the deemed income rule to be turned off by Order in Council whenever you are satisfied that a Civil Defence Emergency event has occurred and people in New Zealand are being significantly adversely affected as a consequence of the event.
15. Officials can progress work on an enduring solution in 2022 subject to other Government priorities on the Government's tax policy work programme.

Consultation

16. The Treasury has been consulted in the preparation of this report.

Financial implications

17. The estimated fiscal cost of the tax relief provided by the 2021 change earlier this year was \$10 million, which was spread across the 2020/21 to 2022/23 fiscal years (the change applied only to one tax year, but the impact is spread across multiple fiscal years because taxpayers file at different times). An extension has an estimated fiscal cost of \$5 million, spread across the 2022/23 and 2023/24 fiscal years.
18. Notwithstanding the recent review of the Tax Policy Scorecard (IR2021/551 refers), officials are satisfied this change meets the criteria for the Scorecard funding. This is because, although motivated in part by providing relief from COVID-19, it is an extension of an existing policy responding to a long-standing issue within the tax system.

Administrative implications

19. There are no significant administrative implications to extending this relief from the deemed income rule.

Next steps and process

20. If you agree to the recommendations in this report:
 - 20.1 officials will prepare a paper to the Cabinet Legislation Committee seeking its approval to an Order in Council that would extend the relief from the deemed income rule to 31 March 2023.
 - 20.2 officials will instruct the Parliamentary Counsel Office to draft an Order in Council.
21. Legislative and policy approval will need to be sought from Cabinet at the same time to ensure that an extension can come into force prior to 16 March 2022. We will report again on 27 January 2022.

Recommended action

We recommend that you:

- agree** to extend the exclusion from the deemed income rule for donated trading stock for a further 12 months ending (31 March 2023);

Agreed / Not agreed Agreed/Not agreed

- note** the following change as a result of the decision in recommendation 1 above, with a corresponding impact on the operating balance and net core Crown debt:

| | \$m – increase/(decrease) | | | | |
|---|---------------------------|----------------|----------------|----------------|-------------------------------|
| Vote Revenue Minister of Revenue | 2021/22 | 2022/23 | 2023/24 | 2024/25 | 2025/26 & outyears |
| Tax Revenue | - | (2.000) | (3.000) | - | - |
| Total Operating | - | 2.000 | 3.000 | - | - |

Noted

Noted

- agree** that the cost of the reduction in tax revenue shown in recommendation 2 above be charged against the Tax Policy Scorecard;

- direct** officials to provide drafting instructions to the Parliamentary Counsel Office;

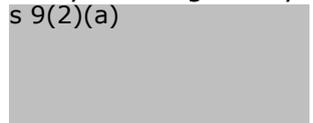
Directed / Not directed Directed /Not directed

- agree** that officials work on an enduring solution to address overreach in the deemed income rule, subject to prioritisation of the tax policy work programme.

Agreed / Not agreed Agreed/Not agreed

s 9(2)(a)


Peter Frawley
 Policy Lead
 Policy and Regulatory Stewardship
 s 9(2)(a)



Hon Grant Robertson
 Minister of Finance
 13/ 12 /2021

Hon David Parker
 Minister of Revenue
 / /2021

[IN CONFIDENCE]



Inland Revenue
Te Tari Taake

POLICY AND REGULATORY STEWARDSHIP

Tax policy report: **Cabinet paper: Extension of end date for tax relief for donations of trading stock made by businesses in response to Covid-19**

| | | | |
|------------------------|-----------------|-----------------------|------------|
| Date: | 27 January 2022 | Priority: | Medium |
| Security level: | In Confidence | Report number: | IR2022/029 |

Action sought

| | Action sought | Deadline |
|---------------------|---|-----------------|
| Minister of Revenue | <p>Approve and lodge the attached paper to Cabinet office</p> <p>Refer a copy of this report and the attached Cabinet paper to the Minister of Finance</p> | 2 March 2022 |

Contact for telephone discussion (if required)

| Name | Position | Telephone |
|---------------|--------------------------|------------------|
| Peter Frawley | Policy Lead | s 9(2)(a) |
| Brandon Sloan | Principal Policy Advisor | s 9(2)(a) |

27 January 2022

Minister of Revenue

Cabinet paper: Extension of end date for tax relief for donations of trading stock made by businesses in response to Covid-19

Purpose

1. This report recommends you approve and lodge the attached paper seeking Cabinet Economic Development Committee's approval to:
 - 1.1 extend the end date of a tax relief measure for donations of trading stock (IR2021/624 refers).
 - 1.2 authorise the submission to the Executive Council of the Tax Administration (Extension of Period of Relief for Certain Disposals of Trading Stock) Order 2022 (IR2021/624 refers).
2. For the paper to be considered at Cabinet Economic Development Committee's meeting on 2 March 2022 it needs to be lodged by 24 February 2022.

Order in Council: Tax Administration (Extension of Period of Relief for Certain Disposals of Trading Stock) Order 2022

3. On 9 December 2021 we reported to the Minister of Finance and the Minister of Revenue recommending an extension of tax relief for donations of trading stock made by businesses in response to COVID-19 which currently ends on 17 March 2022 (IR2021/624 refers).
4. The Minister of Revenue and the Minister of Finance directed officials to prepare a paper for Cabinet seeking approval to extend the tax relief for donations of trading stock until 31 March 2023.
5. The Minister of Revenue and the Minister of Finance also directed officials to instruct the Parliamentary Counsel Office to draft an Order in Council to implement the extension. The attached Paper also seeks Cabinet approval to authorise the submission to the Executive Council of the Tax Administration (Extension of Period of Relief for Certain Disposals of Trading Stock) Order 2022.
6. Note that a waiver of the 28-day rule is sought on the basis that the exercise of the power will only positively affect taxpayers and so that the current temporary relief does not expire.

Proactive release considerations

7. Officials recommend that the attached Cabinet paper should be proactively released without redaction after the Order is gazetted.

Consultation

8. The Treasury have been informed of this report and consulted on the attached Cabinet paper and agree with its contents.

Next steps

9. If you agree to the recommendations in this report, we recommend you approve and lodge the attached paper with Cabinet Office on 24 February 2022, for consideration at Cabinet Economic Development Committee on 2 March 2022.
10. A copy of this report and the attached Cabinet paper should be referred to the Minister of Finance for his information.

Recommended action

We recommend that you:

1. **Approve** and **lodge** the attached paper to Cabinet Economic Development Committee for its meeting on 2 March 2022.

Approved and lodged

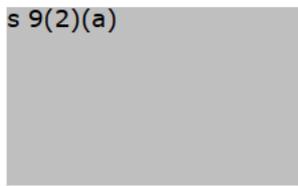
2. **Note** that a waiver of the 28-day rule is sought.

Noted

3. **Refer** a copy of this report to the Minister of Finance for his information.

Referred

s 9(2)(a)

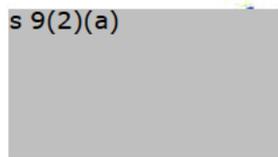


Peter Frawley

Policy Lead

Policy and Regulatory Stewardship

s 9(2)(a)



Hon David Parker

Minister of Revenue

31 / 1 /2022

In Confidence

Office of the Minister of Revenue

Chair, Cabinet Economic Development Committee

EXTENSION OF END DATE FOR TAX RELIEF FOR DONATIONS OF TRADING STOCK MADE BY BUSINESSES IN RESPONSE TO COVID-19

Proposal

1. This paper seeks the Cabinet Economic Development Committee's agreement to an Order in Council extending the end date of a tax relief measure for donations of trading stock. The extension is part of the Government's wider COVID-19 relief strategy.

Policy

2. The proposed Order extends a tax relief measure for trading stock donated by businesses in response to the COVID-19 outbreak, with the new end date being 31 March 2023.
3. As a relief measure, the Taxation (Annual Rates for 2020-21, Feasibility Expenditure, and Remedial Matters) Act 2021 provided time limited relief so that the Income Tax Act did not disincentivise businesses from donating trading stock to mitigate the economic and social impacts of COVID-19.
4. A donation of trading stock is deemed to be a disposal. A deemed income rule in the Income Tax Act effectively reverses the deduction that was claimed when the trading stock was purchased and imposes tax on a deemed profit.
5. Cabinet agreed to turn this rule off, as a temporary COVID-19 relief measure, for a two-year period starting 17 March 2020 (CAB-21-MIN-0013 refers). As a result,
 - 5.1 when a business donates trading stock to a donee organisation or public authority, taxable income does not arise; and
 - 5.2 when a business donates trading stock to a non-associated person (which are not public authorities or donee organisations) taxable income is deemed not to arise if the donation is made for a business purpose.
6. The current end date for this temporary relief measure is 17 March 2022.
7. The economic and social impacts of COVID-19 continue to be felt throughout New Zealand, for example, through increased demands on community foodbanks. Officials therefore consulted a group of stakeholders in November 2021 on the possibility of extending the relief measures. All responses were in favour of a one-year extension to provide certainty for businesses and donee organisations.

Stakeholders were confident that the impacts of COVID-19 would continue beyond March 2022.

Proposed Order in Council

8. The proposed Order, to be made under s 225ABA of the Tax Administration Act 1994, will extend the period of relief for certain disposals of trading stock. It will come into force on 16 March 2022 and extend the relief period so it ends on 31 March 2023.
9. I recommend this Order be made on the basis that the legal requirements of s 225ABA(4) of the Tax Administration Act have been met. In particular, I am satisfied that people in New Zealand are likely to continue, beyond the expiry of the existing period, to be significantly adversely affected by COVID-19. The comments from stakeholders echoed that the economic and social impacts of COVID-19 continue to be felt throughout New Zealand, for example, through increased demands on community foodbanks.

Timing and 28-Day Rule

10. The proposed Order will come into force on 16 March 2022.
11. A waiver of the 28-day rule is sought to allow the Order to come into force by 16 March 2023 on the grounds that the Order needs to be in force before the current temporary relief measure period expires. This is necessary to ensure that businesses donating trading stock to donee organisations and public authorities in response to COVID-19 are not disincentivised from donating trading stock. The change is taxpayer favourable.

Financial Implications

12. The estimated financial implications of extending the temporary relief period from the deemed income rule is shown in the table below. Over the forecast period 2021-22 to 2025-26 the estimated fiscal cost is \$5 million. This cost will be charged against the Tax Policy Scorecard.

| | \$m – increase/(decrease) | | | | |
|---|---------------------------|----------------|----------------|----------------|-------------------------------|
| Vote Revenue Minister of Revenue | 2021/22 | 2022/23 | 2023/24 | 2024/25 | 2025/26 & outyears |
| Tax Revenue | - | (2.000) | (3.000) | - | - |
| Total Operating | - | 2.000 | 3.000 | - | - |

Compliance

13. The order complies with:
 - 13.1 the principles of the Treaty of Waitangi;

- 13.2 the rights and freedoms contained in the [New Zealand Bill of Rights Act 1990](#) and the [Human Rights Act 1993](#);
- 13.3 the principles and guidelines set out in the [Privacy Act 1993](#) (if the regulations raise privacy issues, indicate whether the Privacy Commissioner agrees that they comply with all relevant principles);
- 13.4 relevant international standards and obligations;
- 13.5 the [Legislation Guidelines](#) (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Regulations Review Committee

14. Officials consider there are no grounds for the Regulations Review Committee to draw the Order to the attention of the House of Representatives under Standing Order 327.

Certification by Parliamentary Counsel

15. The regulations have been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

Impact Analysis

16. Treasury's Regulatory Impact Analysis team has determined that the extension of the end date for tax relief for donations of trading stock made by businesses in response to Covid-19 is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has been addressed by existing impact analysis [CAB-21-MIN-0013 and [RIA Pack for Supplementary Order Paper No 23 to the Taxation \(Annual Rates for 2020–21, Feasibility Expenditure, and Remedial Matters\) Bill \(March 2021\) \(ird.govt.nz\)](#)].

Communications

17. I will issue a media statement once the Order in Council is made by the Executive Council.
18. Inland Revenue will publish an article about these changes in its *Tax Information Bulletin*.

Proactive Release

19. I propose to proactively release this Cabinet paper, associated minutes, and key advice papers with appropriate redactions within 30 working days of Cabinet making final decisions.

Consultation

20. In November 2021 officials consulted a group of interested stakeholders which included the Corporate Taxpayers' Group, Chartered Accountants Australia New Zealand, Federated Farmers, Fonterra, EY, PwC, The New Zealand Law Society,

and Auckland City Mission. This is the same group of stakeholders consulted on the introduction of the relief measures as a part of the Taxation (Annual Rates for 2020-21, Feasibility Expenditure, and Remedial Matters) Act 2021. All responses we received were in favour of a one-year extension to provide certainty for businesses and donee organisations. Stakeholders were confident that the impacts of COVID-19 will continue to be felt beyond March 2022.

21. The Treasury was consulted on extending the temporary relief and its fiscal implications.

Recommendations

The Minister of Revenue recommends that the Committee:

1. **note** that the Taxation (Annual Rates for 2020-21, Feasibility Expenditure, and Remedial Matters) Act 2021 introduced temporary relief from a deemed income rule that is due to expire 17 March 2022.
2. **note** that the Tax Administration Act 1994 allows the temporary relief from the deemed income rule to be extended by Order in Council.
3. **authorise** the submission to the Executive Council of the Tax Administration (Extension of Period of Relief for Certain Disposals of Trading Stock) Order 2022.
4. **note** that section 225ABA of the Tax Administration Act 1994 requires that the Minister of Revenue be satisfied that people in New Zealand are likely to continue, beyond the expiry of the existing period, to be significantly adversely affected by COVID-19.
5. **note** the advice of the Minister of Revenue that this requirement has been met.
6. **agree** that the proposed Order should come into force on 16 March 2022 and extend the period of relief until 31 March 2023.
7. **note** that agreeing to recommendations 3 and 6 has the following estimated fiscal costs, which will be charged against the Tax Policy Scorecard.

| Vote Revenue Minister of Revenue | \$m – increase/(decrease) | | | | |
|-------------------------------------|---------------------------|--------------|--------------|---------|--------------------|
| | 2021/22 | 2022/23 | 2023/24 | 2024/25 | 2025/26 & outyears |
| Tax Revenue | - | (2.000) | (3.000) | - | - |
| Total Operating | - | 2.000 | 3.000 | - | - |

8. **note** that a waiver of the 28-day rule is sought on the basis that the exercise of the power will only positively affect taxpayers and so that the Order can come into force on 16 March 2022 before the current temporary relief expires.
9. **agree** to waive the 28-day rule so that the regulations can come into force on 16 March 2022.

Authorised for lodgement

Hon David Parker
Minister of Revenue



Cabinet Economic Development Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Tax Administration (Extension of Period of Relief for Certain Disposals of Trading Stock) Order 2022

Portfolio **Revenue**

On 2 March 2022, the Cabinet Economic Development Committee:

- 1 **noted** that the Taxation (Annual Rates for 2020-21, Feasibility Expenditure, and Remedial Matters) Act 2021 introduced temporary relief from a deemed income rule that is due to expire on 17 March 2022;
- 2 **noted** that the Tax Administration Act 1994 allows the temporary relief from the deemed income rule to be extended by Order in Council;
- 3 **noted** that section 225ABA of the Tax Administration Act 1994 requires the Minister of Revenue to be satisfied that people in New Zealand are likely to continue, beyond the expiry of the existing period, to be significantly adversely affected by COVID-19;
- 4 **noted** the advice of the Minister of Revenue that this requirement has been met;
- 5 **agreed** that the Tax Administration (Extension of Period of Relief for Certain Disposals of Trading Stock) Order 2022 will come into force on 16 March 2022 and extend the period of relief until 31 March 2023;
- 6 **noted** that the above decision has the following estimated fiscal costs, which will be charged against the Tax Policy Scorecard:

| Vote Revenue Minister of Revenue | \$m – increase/(decrease) | | | | |
|-------------------------------------|---------------------------|---------|---------|---------|--------------------|
| | 2021/22 | 2022/23 | 2023/24 | 2024/25 | 2025/26 & outyears |
| Tax Revenue | - | (2.000) | (3.000) | - | - |
| Total Operating | - | 2.000 | 3.000 | - | - |

- 7 **noted** that a waiver of the 28-day rule is sought:
 - 7.1 on the basis that the exercise of the power will only positively affect taxpayers;
 - 7.2 so that the Order can come into force on 16 March 2022 before the current temporary relief expires;

- 8 **agreed** to waive the 28-day rule so that the regulations can come into force on 16 March 2022;
- 9 **authorised** the submission to the Executive Council of the Tax Administration (Extension of Period of Relief for Certain Disposals of Trading Stock) Order 2022 [PCO 24444/4.0].

Janine Harvey
Committee Secretary

Present:

Hon Grant Robertson (Chair)
Hon Carmel Sepuloni
Hon David Parker
Hon Poto Williams
Hon Stuart Nash
Hon Kris Faafoi
Hon Willie Jackson
Hon Michael Wood
Hon Dr David Clark
Hon Dr Ayesha Verrall
Hon Meka Whaitiri
Hon Phil Twyford
Dr Deborah Russell MP

Officials present from:

Office of the Prime Minister
Officials Committee for DEV