

Community Magistrates Legislation Amendment Bill

Submission of the New Zealand Law Society Te Kāhui
Ture o Aotearoa

12 August 2026

1 Introduction

- 1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the Community Magistrates Legislation Amendment Bill (**the Bill**). The Bill is an omnibus Bill proposing to amend the Bail Act 2000, the Criminal Procedure Act 2011, the District Court Act 2016, and the Land Transport Act 1998 to expand the jurisdiction of Community Magistrates, free up judicial resources, and improve the timeliness of District Court cases.
- 1.2 This submission has been prepared with input from the Law Society's Criminal Law Committee.¹
- 1.3 The Law Society acknowledges the expansion of the Community Magistrate (**CM**) jurisdiction is likely to improve timeliness in the District Court, with the benefit being improved access to justice for all. However, there are some practical workability and drafting concerns that should be addressed before the Bill is progressed. These are addressed below, and where possible, recommendations are made to address the concerns.
- 1.4 The Law Society wishes to be heard on this submission.

2 Amendments to the Bail Act 2000

- 2.1 Clauses 14 – 17 set out the amendments to the Bail Act 2000. Primarily, these propose to enable a CM to grant bail to or remand at large certain defendants who plead guilty to relevant offences.
- 2.2 It is important to ensure the proposed changes do not create any incentive for a defendant to plead guilty. Such an incentive could increase the risk of unsafe convictions and subsequent appeals, thereby undermining the objective of the Bill.
- 2.3 However, as currently drafted, we consider there is a real risk of this occurring. For example, in rural courts, there are likely to be situations in which a defendant is unable to apply for bail because section 12, 16 or 17A apply, and they do not intend to plead guilty. This is partly a practical consequence of judicial resourcing constraints. In some rural locations, a defendant may be required to wait several days before a District Court Judge is available to hear a bail application, even where the prosecution does not oppose bail.
- 2.4 By contrast, if the defendant pleads guilty, their bail application can be heard by a CM on the same day, potentially resulting in their immediate release. This differential treatment may create pressure on defendants to plead guilty for reasons unrelated to culpability. It may also raise concerns about arbitrary detention, particularly where continued detention results from court resourcing constraints rather than any assessment of risk or entitlement to bail.
- 2.5 The Law Society recommends the Select Committee seek advice from officials about whether it may be appropriate to progress the Bail Act 2000 amendments without

¹ More information about the Law Society's law reform committees is available on the Law Society's website: <https://www.lawsociety.org.nz/professional-practice/law-reform-and-advocacy/law-reform-committees/>.

requiring a guilty plea. Given the other requirements include a lack of bail opposition from the prosecution, we consider this to be a responsible compromise ensuring the safety of a guilty plea is maintained.

3 Amendments to the Criminal Procedure Act 2011

Clause 22

- 3.1 Clause 22 sets out the expansion to a CM's jurisdiction, including that a CM has jurisdiction over category 2 offences punishable by a term of imprisonment not exceeding three months'.
- 3.2 The Law Society is concerned about the proposed change to allow CMs to preside over Judge Alone Trials of category 2 offences punishable by a term of imprisonment not exceeding three months. We consider it would not be appropriate for CMs to have such jurisdiction given CM's do not have expertise in evidence law, which, at a minimum, is necessary to preside over such trials.
- 3.3 Such trials can include offences like driving with excess breath/blood alcohol, which is a particularly complex area involving technical arguments of law. It would also include wilful damage charges, which often arise in a family violence context. These require particular care given the complicated relationship dynamics at play and the frequency with which issues involving difficult evidential questions arise, such as the use of previous inconsistent statements, hostile witnesses, or hearsay.
- 3.4 Further, appeal issues may arise where a defendant convicted at a judge-alone trial in front of a CM, will only have the right to appeal to the District Court when some of the issues may warrant exploration by a higher court.
- 3.5 The determination of these issues involves nuanced legal and factual assessments that are more appropriately reserved for judicial consideration.
- 3.6 The Law Society recommends that clause 22 is amended to remove proposed new section 356(1)(b).

Clause 23

- 3.7 Clause 23 repeals sections 357 to 359 of the Criminal Procedure Act 2011 (**CPA**). Section 359 sets out the ancillary powers a CM has within their jurisdiction. Given the likelihood of ancillary matters arising in tandem to the primary criminal hearing, for example, suppression issues, costs issues or whether the court is required to be cleared, we consider a CM should retain the power to hear and determine such issues where appropriate and necessary.
- 3.8 The Law Society recommends retaining section 359 of the CPA to ensure clarity of CM ancillary powers.

Clause 24

- 3.9 Clause 24 sets out a CM's expanded jurisdiction to take guilty pleas. As drafted, this includes category 1, 2 and 3 offences. A CM must transfer a proceeding to a Judge once a

guilty plea is taken where the maximum penalty is a term of imprisonment exceeding three months.

- 3.10 Whilst the Law Society considers an expanded ability to take guilty pleas may be desirable, we note that extending this jurisdiction to all category 3 offences may raise concerns, particularly where section 13 of the Bail Act 2000 is engaged, or where proceedings are prosecuted by the Crown. In such cases, maintaining both the reality and appearance of justice is critical to ensuring the safety and integrity of convictions.
- 3.11 A decision on whether bail should continue following a guilty plea is often dependent on whether the sentencing outcome is likely to be imprisonment or not. Judges, rather than CMs are more likely to be able to accurately assess this in cases that may have high maximum penalties but may still be within range for a non-custodial sentence. For example, some low level class A drug dealing offending or sexual violation offending have a presumption of imprisonment, but non-custodial sentences may be possible.
- 3.12 Further, complex issues may arise during the guilty plea process, including concerns about pressure to plead guilty, matters falling within the Criminal Procedure (Mentally Impaired Persons) Act 2003, or cases requiring the assistance of an interpreter or communication assistant. These are circumstances in which the experience, expertise, and judgment of a Judge may be necessary to ensure that a guilty plea is entered voluntarily, knowingly, and properly, and that any resulting conviction is robust and unlikely to be successfully challenged.
- 3.13 The Law Society recommends the Select Committee consider limiting the expansion of CM jurisdiction in category three offences, for example only for those category three offences with a maximum penalty of up to seven years' imprisonment. A maximum penalty of seven years or less is unlikely to result in a substantial percentage of matters being unnecessarily considered by Judges rather than CMs given the vast majority of offences dealt with in the District Court carry a maximum penalty of seven years' or less. Restricting the scope of category three offences would also ensure there are appropriate safeguards in place and judicial oversight is retained for more serious and complex matters.

Clause 25

New section 361A

- 3.14 New section 361A enables a CM to enter a conviction where a defendant has pleaded guilty to a category 2 offence punishable by a term of imprisonment exceeding three months', or a category 3 offence.
- 3.15 However, before entering a conviction, section 11 of the Sentencing Act 2002 first requires the court to consider whether the offender would be more appropriately dealt with by discharging the offender without conviction,² convicting and discharging the

² See section 106, Sentencing Act 2002.

offender,³ or convicting the offender and ordering them to come up for sentence if called on.⁴

- 3.16 This would mean a CM would be required to consider whether it is more appropriate for an offender to be dealt with by these alternative mechanisms (before convicting an offender) in respect of matters on which the CM does not have jurisdiction to grant a discharge. On a practical level, by separating the taking of the plea and sentencing as between a CM and a Judge, the possibility arises that a CM may enter a conviction and thus effectively preclude a discharge without conviction application (for example) that might be advanced before a Judge.
- 3.17 The Law Society considers it appropriate for such decisions to remain with a Judge and does not agree with extending the CM jurisdiction to determining whether it is appropriate to grant the alternative options under section 11(1)(a) – (c).
- 3.18 The Law Society recommends new section 361A be deleted, or if it is retained, at a minimum, amend section 361A to only enable a CM to enter a conviction where the prosecution and defence consent in order to avoid the risk of precluding a defendant's opportunity to apply for a discharge without conviction. The Select Committee may also wish to seek advice from officials about the interactions of section 11 of the Sentencing Act 2002 and the proposed new section 361A.

New sections 361B and 361C

- 3.19 New sections 361B and 361C set out a CM's jurisdiction over ordering a pre-sentence report in situations where there is reason to believe that imprisonment may be appropriate, and where a community detention or home detention sentence may be appropriate, respectively.
- 3.20 In some cases, a pre-sentence report may need to be reordered, for example where a pre-sentence report has previously been ordered by a District Court Judge, but the offender then fails to attend a sentencing hearing. This is a common scenario as often such offenders' re-release on bail is considered by a CM following their arrest. It is therefore appropriate that the CM also has the power to reorder a pre-sentence report in such scenarios.
- 3.21 The Law Society recommends amending new sections 361B and 361C to ensure a CM has the power to both order a pre-sentencing report or re-order one that may have been previously requested by a District Court Judge.

4 Other matters

Schedule 5, Summary Offences Act 1981 amendment

- 4.1 Schedule 5 incorporates other consequential amendments that are relevant to the change in CM jurisdiction. This includes a proposed amendment to section 40(2) of the Summary Offences Act 1981 (**SOA**).

³ See section 108, Sentencing Act 2002.

⁴ See section 110, Sentencing Act 2002.

- 4.2 Rather than re-drafting section 40(2) of the SOA the Law Society recommends it would be clearer and simpler to repeal section 40(2) altogether. The practical effect of this would be that jurisdiction over Summary Offences Act matters would fall to be determined by the general jurisdiction grounds under the CPA.

Offence against the person of a sexual nature

- 4.3 Under the CPA, certain offences punishable by more than three months' imprisonment and which constitute 'offences against the person of a sexual nature' must be presided over by a District Court Judge.⁵ However, clause 22 of the Bill would confer trial jurisdiction to a CM in these cases creating a potential inconsistency with the CPA's requirement that they be heard by a judge.
- 4.4 Examples of such offences include disorderly behaviour or offensive behaviour where that conduct has a sexual element or peeping or peering into a dwellinghouse where that conduct is sexually motivated.
- 4.5 The Law Society recommends clause 22 is amended to explicitly state that CMs do not have jurisdiction over cases of a sexual nature. If, however, it is thought that CMs should have jurisdiction in such cases, we alternatively recommend that the Select Committee seek advice from officials about the relationship between expanding the CMs trial jurisdiction, and the CPA requirements.

Complaints mechanism

- 4.6 Given the Bill proposes significant expansion of the CM jurisdiction, the Law Society considers it appropriate that a statutory framework be established for the investigation and determination of complaints concerning CMs. Such a framework could be modelled on the Judicial Conduct Commissioner regime that applies to members of the judiciary. To date, concerns regarding the conduct of CMs have generally been addressed through an informal process involving the Chief District Court Judge.
- 4.7 The Law Society recommends including an amendment to clause 8 to establish a formal statutory complaints regime for Community Magistrates in the District Courts Act 2016, comparable to that applying to judicial officers under the Judicial Conduct Commissioner framework. Alternatively, the Law Society recommends the Select Committee seek advice from officials on whether it would be appropriate to expand the jurisdiction of the Judicial Conduct Commissioner complaints regime to include CMs.



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⁵ See sections 96, 199, 199A, Criminal Procedure Act 2011.