

Conservation Amendment Bill

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

2 July 2026

Section A: General comments

1 Introduction

- 1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the Conservation Amendment Bill (**Bill**). The Bill amends the Conservation Act 1987 and other legislation, to support the Government's key priorities for the conservation portfolio.
- 1.2 This submission has been prepared with input from the Law Society's:
- (a) Environment Law Committee;
 - (b) Commercial and Business Law Committee;
 - (c) Criminal Law Committee; and
 - (d) Public Law Committee.¹
- 1.3 The Law Society **wishes to be heard** on this submission.
- 1.4 The Law Society has a number of detailed comments and recommendations on the drafting of individual clauses in the Bill. These are tabulated in Section B of the submission.
- 1.5 We first briefly address some broader concerns, as follows:
- (a) Omission to publicly consult on proposed changes to section 6 of the Conservation Act.
 - (b) A suite of changes which concentrate decision-making powers with the Minister, centralise policy decision-making and, consequently, weaken checks and balances on Executive power.
 - (c) The need to provide suitable processes for introducing the National Conservation Policy Statement (**NCPS**).
 - (d) Te Tiriti o Waitangi (Treaty) relationships: the Bill's proposed amendment of multiple Treaty settlement Acts, and insertion of a new section 4A to the principal Act.
 - (e) The need to review the rationale for a proposed carve-out for the Minister responsible for granting concessions from anti-competitive requirements of the Commerce Act, and reconsider how this clause is drafted if it remains in the Bill.
 - (f) Refinement of criminal offences relating to levies, and whether the Bill has provided appropriately for levies.
- 1.6 We note the announcement of 25 June 2026, that provisions around the disposal or exchange of conservation land will be removed from the Bill. As the detail of those amendments is not yet available, this submission addresses the Bill in its current form.

¹ More information about the Law Society's law reform sections and committees is available on the Law Society's website: [NZLS | Law reform committees](#).

2 Clause 6, amending section 6

2.1 Clause 6 of the Bill proposes significant amendments to section 6 of the principal Act, which sets out the Department of Conservation's functions. Section 6(e) is replaced, and a new section 6(ea) inserted. Supplementary materials describe what is proposed as follows:²

Cabinet directed the Minister of Conservation to amend the purpose statement of the Conservation Act 1987 (the Conservation Act) to ensure that wider reforms to the conservation land management system enable greater economic development on conservation land [CAB-25-MIN-0213.01].

Cabinet subsequently noted the Minister of Conservation intends to make targeted changes to parts of the Conservation Act that form the existing 'purpose architecture' which can then be implemented through the National Conservation Policy Statement (NCPS) and area plans [CAB-25-MIN-0334.01].

The proposal comprises three incisive amendments that together will amend the Department of Conservation (DOC) functions to include economic development, to the extent it is not inconsistent, with conservation and empower the NCPS and area plans to enable economic development that is not inconsistent with conservation.

2.2 Subsequently, the Department of Conservation has provided a supplementary retrospective analysis of the Cabinet decisions. This clarifies that there was no consultation on the proposed section 6 amendments.³ As a matter of process, this is concerning.

2.3 As described above, the proposed amendments affect what officials have termed the 'purpose architecture' of the Conservation Act. In the Law Society's view, they propose perhaps the most significant change made in the nearly 40-year life of the Act. The Conservation Act has no standalone purpose provision. Section 6 of the Act, which sets out the Department's functions, is fundamental to the Act's overall interpretation and operation.

2.4 The substantive question before the Committee, of whether to add functions relating to economic opportunities that arise from the use and development of land and resources, is a policy issue, on which the Law Society does not comment. As a matter of good policy and legislative practice, the Law Society does, however, have concerns with the process of proposing such a major change, postdating and thus outside of the consultation process otherwise carried out for the Bill. For Cabinet to have directed officials on such a significant matter at a late stage, without the benefit of analysis and advice (which is then prepared retrospectively) appears both poor process and bad precedent. Public engagement or, at a minimum, a robust targeted consultation process would have been appropriate, and advisable, to enable considered assessment of the implications of the change proposed.

² Department of Conservation "[Supplementary analysis report: Amending the purpose of the Conservation Act 1987](#)" (15 April 2026).

³ Supplementary analysis report, above n 2 at 3, 6-7 and 14.

3 Ministerial powers and centralisation of policy-making functions

- 3.1 In Part 2 of the Bill, which makes consequential amendments to other legislation, far-reaching changes are proposed to decision-making under a range of Acts. The Law Society has concerns regarding the extent to which these significantly concentrate decision-making with the Minister, and in doing so weaken checks and balances.
- 3.2 Again, the ultimate decision is a policy one. However, it does raise concerns from a public law perspective, and for the reasons which follow will warrant attention by the Committee given the significance of the change.
- 3.3 Summarising key aspects of the proposed changes: the NCPS, which is secondary legislation and has the purpose of setting policies for a range of listed Acts, including regulating the content of area plans, will be approved by the Minister under the Conservation Act.⁴ The Minister will also have authority for decision-making on area plans. There are amendments to the present functions of the New Zealand Conservation Authority and Conservation Boards.⁵
- 3.4 The Bill provides that:
- (a) **National Parks Act 1980:** sections 18 and 30 of the National Parks Act 1980 (functions of Authority and functions of Boards), relating to management plans and general policies, are amended.⁶ Sections 44 to 48 of the Act (management plans) are repealed.⁷
 - (b) **Reserves Act 1977:** all reserves under the Reserves Act 1977 must be administered and managed in accordance with the NCPS and area plans.⁸ Section 40B of the Reserves Act (conservation management plans in respect of reserves administered by the Department) is repealed.⁹
 - (c) **Marine Mammals Protection Act 1978:** marine mammals and sanctuaries under section 3A of the Marine Mammals Protection Act 1978 are to be administered in accordance with the NCPS and area plans.¹⁰ Sections 3B and 3D of the Marine Mammals Protection Act (general policy and conservation management strategies) are repealed.¹¹
 - (d) **Marine Reserves Act 1971:** marine reserves under section 9 of the Marine Reserves Act 1971 are to be administered, managed and controlled in accordance with the NCPS and area plans.¹²
 - (e) **Wild Animal Control Act 1977:** wild animal control plans under section 5A of the Wild Animal Control Act 1977 must be consistent with the NCPS and area

⁴ Clause 15, new section 13D.

⁵ Clauses 7 and 9.

⁶ Clauses 60–61.

⁷ Clause 63.

⁸ Clause 83.

⁹ Clause 84.

¹⁰ Clause 103.

¹¹ Clause 104.

¹² Clause 108.

plans.¹³ The Minister must administer and manage wild animals in accordance with the NCPS and area plans.¹⁴

- (f) **Wildlife Act 1953:** wildlife areas are to be managed by the Department in accordance with the NCPS and area plans.¹⁵ Sections 14C and 14D of the Wildlife Act 1953 (general policy, conservation management strategies and conservation management plans) are repealed.¹⁶
- (g) **Hauraki Gulf Marine Park Act 2000:** sections 7 and 8 of the Hauraki Gulf Marine Park Act 2000 now have the same effect as the NCPS.¹⁷
- (h) There are further various amendments to other Acts and secondary legislation to reflect the new NCPS and area plans.¹⁸

3.5 Changes proposed to the control and management provisions will also require the Minister and decision-makers to have regard to the introduced area plan covering the relevant area/park/reserve, in decision making. For example:

- (a) The Minister now must have regard to the area plan covering the park before renewing a lease or licence.¹⁹ Any authority for introduction of biological control organisms under the National Parks Act must not be inconsistent with the NCPS and area plans.²⁰
- (b) The Minister must have regard to the NCPS and any other secondary legislation made under the Act to which the land is held in making decisions under section 22 on concessions under the Wild Animal Control Act.²¹
- (c) The exclusion under section 9 of the Resource Management Act (relating to works or activity in areas held or managed under the Conservation Act or any other Act specified in Schedule 1 of that Act) applies if consistent with the NCPS.²²
- (d) “Overriding considerations” for the purposes of managing animals and decision making under the Game Animal Council Act 2023 are now defined to include the NCPS, any area plan and any reserve management plan under the Reserves Act, instead of statements of general policy, conservation management strategies, conservation management plans and any management plan under the National Parks Act or Reserves Act.²³

¹³ Clause 112.

¹⁴ Clause 113.

¹⁵ Clause 120.

¹⁶ Clause 121.

¹⁷ Clause 123.

¹⁸ See further clauses 56, 62, 70, 83, 89, 101–114, 120–121 and 156.

¹⁹ Clause 65.

²⁰ Clause 54.

²¹ Clause 114.

²² Clause 127.

²³ Clause 143.

- (e) Regional councils need to consider area plans when preparing draft regional marine oil spill contingency plans under section 291 of the Maritime Transport Act 1994.²⁴
- 3.6 In short, cumulatively, the Bill proposes a key change to governance and decision-making functions, that will have the effect of significantly concentrating Ministerial powers. Approving authority is removed from the scope of powers available to bodies including for management plans and general policies relating to parks, reserves, conservation areas, and wildlife. With these powers now sitting with the Minister, and removed from local boards and governance bodies including the New Zealand Conservation Authority, there are fewer checks and balances on decision making. The Minister instead has wide-reaching powers through the creation of secondary legislation.
- 3.7 The impact is seen in changes to the control and management provisions in the various legislation which result in areas being governed by the NCPS and area plans, not the management plans, statements of general policy, and conservation management policies previously introduced by the bodies and bespoke processes under applicable legislation. Whereas policy-making under these Acts generally required the following of bespoke processes, the Bill proposes centralising policy statement making. There is a risk of losing sight of the legislative nuance of bespoke processes under individual Acts. Objectives for the management of land, marine areas, animals, wildlife, etc and policies for overseeing management and administration of the applicable legislation (and their related purposes) are now put in place by the Minister. As a consequence, independent oversight is reduced. The effect of such change is amplified in circumstances where there is a shift from previously independent decision-making bodies, now taking on a reduced advisory or submission-based role to central government.
- 4 **Introducing the NCPS: appropriate secondary legislation processes**
- 4.1 The NCPS is secondary legislation.²⁵ As such, it is important that the process for introducing it is sufficiently public, accessible and transparent. Given the powerful role proposed for these statements in decision making, it is important there is provision for sufficient external and independent scrutiny.
- 4.2 We also query whether the new empowering provisions specify the content of the policy statement with sufficient clarity.²⁶
- 4.3 Administrative issues may arise with decision making under so many Acts being managed by one document. Setting to one side the policy benefits/disbenefits of this centralised approach (noted above), a complex web of legislative considerations may be imposed on the Minister when making an NCPS, if the content and context of these Acts is deemed by the courts to be relevant to the Minister's task.
- 4.4 To address this, one suggestion would be to consider specifying all relevant considerations in new Schedule 2 (process for making or amending National

²⁴ Clause 145.

²⁵ New section 13D(6).

²⁶ Clause 15, new sections 13A to 13I.

Conservation Policy Statement),²⁷ and providing that for the purposes of making a NCPS, that Schedule is a code.

5 Amendments to Treaty settlement Acts, and new section 4A

5.1 In Part 3 of the Bill, some 400 of the Bill's nearly 600 clauses make consequential amendments to Treaty settlement Acts. As described in clause 168 of the Bill, the changes are intended to:

reflect changes made by Part 1 of this Act to management planning terminology and management planning responsibilities under Part 3A of the Conservation Act 1987, including by—

(a) replacing references to conservation management strategies, conservation management plans, and national park management plans with references to area plans; and

(b) replacing references to general policy with references to the National Conservation Policy Statement; and

(c) updating overlay classification provisions to reflect changes where the responsibility for preparing and making planning instruments has been reallocated from the New Zealand Conservation Authority and Conservation Boards to the Director-General of Conservation and the Minister of Conservation.

5.2 On one view, the nature of the proposed amendments may be considered 'minor and technical', in the sense that they are updating relevant language to refer to the right documents and processes under the amended Act. In our further tabulated comments in Section B, the Law Society comments on a minor grammatical matter in only one of these clauses. There is, however, a matter of process, which we raise as a cautionary matter. For the Crown to unilaterally introduce the amendments proposed without proper engagement with iwi risks being seen to undermine both the status of these settlements as agreements negotiated in good faith, and expectations of the Crown within the Treaty partnership. Iwi should be able to rely on what they have agreed not being altered without prior consultation and negotiation by the Crown with them.

5.3 We have also discussed, in Section B, risks which may arise with section 4A. The Law Society supports the proposed approach of leaving section 4 of the Conservation Act untouched. There remains a concern that what is described as "a descriptive provision identifying the steps, processes, and other activities that section 4 requires the Crown to undertake before making land management decision" will have substantive implications for section 4, and may introduce significant litigation risk.

6 Other matters

Concession decision-making and the Commerce Act

6.1 Clause 33 of the Bill introduces new section 48E, which relates to concessions granted under Part 3B of the Conservation Act and, in subclause (8), provides a carve out for the Minister granting concessions from requirements of the Commerce Act. The Minister is

²⁷ Inserted by Schedule 2 of the Bill.

“deemed to have complied with any provision of the Commerce Act 1986 that relates to restrictive trade practices or the promoting of competition during the period of any prescribed concession”.

- 6.2 We have addressed the point fully in Section B and do not repeat the analysis here. However, as proposed, the drafting approach raises several questions. We recommend these are addressed, so as not to inadvertently undermine the integrity of the wider operation of the Commerce Act. We suggest the Committee seek advice on the rationale underlying subclause (8), which implies the Minister and/or the Crown is ‘in trade’ in this context.

International visitor levies

- 6.3 We have also commented in Section B on offences relating to international visitor levies, calling attention to some practical aspects of the proposed criminal and infringement offences. In addition to the issue of enforcement, as a more general comment on provisions in the Bill incorporating the changes to the levy system: there appears still some lack of information or transparency around how the charging systems will work in practice including setting fees, and ensuring consistency.
- 6.4 I trust that the Law Society’s contribution will assist the Committee.

Nāku noa, nā



Jesse Savage
Vice President

Section B: Recommendations for amendments to specific clauses

Clause	Comment	Recommendation
Part 1: Amendments to Conservation Act 1987		
Subpart 1—Amendments to Part 1		
cl 4(1) and (5) “international visitor” definition	<p>Clause 4 of the Bill, amending section 2 of the principal Act, provides that an “international visitor” means a person who is not a New Zealand citizen, or ordinarily resident in New Zealand.</p> <p>Proposed new section 2(2A) in clause 4(5) then defines as follows the phrase “ordinarily resident in New Zealand” (our emphasis):</p> <p style="padding-left: 40px;">(2A) In this Act, a person is ordinarily resident in New Zealand if—</p> <p style="padding-left: 80px;">(a) the person holds a residence class, student, or work visa granted under the Immigration Act 2009; and</p> <p style="padding-left: 80px;">(b) the person’s home is in New Zealand; and</p> <p style="padding-left: 80px;">(c) the person has lived in New Zealand <i>for at least 6 months of the previous year</i>.</p> <p>Subclause (c) has an ambiguity, italicised, which the Law Society recommends should be addressed. The question is what is meant by “the previous year”. The phrase could mean “the previous calendar year”, or (more likely) could mean “within the previous 12 months”. Another issue is whether the six months have to be a single consecutive period or six</p>	Amend proposed new section 2(2A)(c) by substituting the words “12 months” for “year”.

	months out of the previous 12. We recommend amendment of the provision to clarify these points.	
cl 4(1) “right of offer or return” definition	This term defines the right as one specified under legislation or agreement for a former owner or any other person to have land returned or offered to “the person”. It would be clearer in this context to change the term “the person” to “them”.	Amend the definition to read: “right of offer or return means a right specified under legislation or an agreement for a former owner or any other person to have land returned or offered to them the person ”
cl 4(1) “Treaty Settlement Act” definition	This definition sets out the Acts which qualify as a Treaty Settlement Act. While it is acknowledged that the definition mirrors that also included in the recent Fast-track Approvals Act, it is noted that subclauses (b)(ii) and (iii) include the word “the” before the Māori equivalent plural term “ngā”. It would be more grammatically correct to delete the word “the” in these instances.	Consider deleting the word “the” in subclauses (b)(ii) and (iii).
cl 4(2) “activity” definition	This clause replaces and expands the definition of the term “activity”. In subclause (a) of the definition, reference is made to “the construction, maintenance, use or occupation of any facility or structure associated with the activity”. While it may be inferred that “operation” forms part of “use”, given “operation” is a commonly used term it may aid clarity to include that. It may also be appropriate to include the word “upgrade”, since such a term describes an activity that goes beyond maintenance to improve a structure or facility in some way.	Consider amending subclause (a) of the definition to read as follows: “activity includes— The construction, operation , maintenance, use, upgrade or occupation of ...”
cl 5, new s 4A	This section seeks to provide “certainty” as to the steps, processes and activities that section 4 requires the Crown to undertake before making the National Conservation Policy	Consider deleting new section 4A or amend it, to make clear that it is not intended to restrict the obligation in section 4 but to simply provide guidance around consultation processes.

	<p>Statement (NCPS), area plans, concessions, land exchanges, disposals of land, and visitor amenities areas. As such, it appears to significantly qualify and reduce the effect of the directive in section 4 for DOC to interpret and administer the Act to give effect to the principles of the Treaty of Waitangi. Providing for consultation and participation in processes is substantially different and a significantly lesser right than giving effect to the principles of the Treaty, which cover a range of matters, and which have both procedural and substantive effects. The approach to, and directive effect of, section 4 is well settled and has been commented on by the Supreme Court several times.</p> <p>Clause 4A is also likely to introduce significant litigation risk, since it is not clear to what extent it is intended to restrict the scope of section 4. In particular, it is unclear whether the effect of clause 4A is confined only to prescribing a consultation process for the Treaty principle of consultation/participation, or whether its effect may extend further to restricting the implementation of other Treaty principles, such as active protection, and partnership.</p> <p>Omitting this clause would remove that uncertainty, avoid unnecessary repetition and ensure there are no inconsistencies between this clause and the provisions which it summarises. It would not leave a lacuna in the legislation, given it merely summarises what those other provisions say.</p>	
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Subpart 2—Amendment to Part 2

cl 6,
replacement
s 6(e) and new
s 6(ea)

This clause:

- rewords one of the functions of the Department of Conservation relating to the use of land, natural and historic resources for recreation purposes (section 6(e)); and
- inserts a new function about recognising economic opportunities arising from the use and development of land and resources and enabling such use and development “to the greatest extent practicable under this Act and other enactments”.

The addition of section 6(ea) is a significant change and one which appears intended to provide for a wide range of uses and developments on conservation land and of conservation resources. The broad way that this new inclusion is drafted does not appear to sit comfortably with the remainder of the functions, which are focused on conservation purposes. Nor is new section 6(ea) qualified in the same way as section 6(e) (“to the extent consistent with their conservation”). This creates high uncertainty and is likely to give rise to litigation. It is unclear, for example, whether provisions of the Act which have a more conservation-focused purpose, or which require the Treaty principles to be given effect to, would constrain what is “practicable”. More generally, litigation is likely to be needed to clarify what phrases such as “to the extent consistent” and “to the greatest extent practicable” are intended to mean in practice.

Consider redrafting new section 6(ea) to address the uncertainties and improve/ensure consistency with other provisions in the Act.

	Further consideration should be given to how the proposed new function in section 6(ea) relates to the other functions and duties under the Act.	
Subpart 4—Amendments to Part 3		
cl 13, new s 10	<p>This section relates to the access and use of conservation areas. Both subsections (4) and (6) relate to when a person who holds a concession or other consent is able to charge for access to or use of facilities or structures. There is a degree of overlap between these clauses, however the qualifiers are different. In subsection (4), a person may impose a charge to the extent their concession allows, but in subsection (6) the ability to charge is subject to the NCPS, any relevant area plan and the terms and conditions of their concession or consent.</p> <p>Where that overlap exists, there is uncertainty as to whether the additional qualifiers also apply. It may be that subsection (4) is targeted at facilities provided by the Minister, whereas subsection (6) is targeted at facilities and structures provided by the concessionaire or consent holder. If that is the case, it is suggested that subsection (4)(b) is amended to delete reference to “them or”, so it clearly only applies to facilities provided by the Minister.</p>	Clarify the intention of subsections 4 and 6 and how they relate to each other.
cl 13, new s 11	New section 11 creates an offence applicable to international visitors, for accessing an area for which a levy has been prescribed in accordance with proposed section 48D without having paid the levy. Both this clause and a proposed new	<p>Seek further advice on the intended effect of new section 48D(6)(f) (which relates to exemptions).</p> <p>If payment of the levy to a third party is envisaged and intended to suffice for compliance, it would be desirable to say so explicitly.</p>

<p>infringement offence in clause 35, inserting new section 51UA, raise largely the same issues, as follows.</p> <p>(Regarding the definition of “international visitor”, which is also relevant to these sections, see comments provided above under clause 4.)</p> <p>1. “Access fee” issues</p> <p>Both the new section 11 and new section 51UA offence provisions require an access fee to be paid if one has been set. That wording seems intended to be comprehensive. However, proposed new section 48D empowers the Director-General to grant exemptions to named individuals: see section 48D(6)(f) which “authorises the Director-General to refund or waive, in whole or in part and on the conditions that may be prescribed, payment of the levy by named persons”.</p> <p>In effect, this provision seems to empower the making of regulations that exempt certain persons from liability for the offence provisions. According to Legislation Design and Advisory Committee (LDAC) guidance relevant to this issue:²⁸ “Legislation should be very clear about which people are potentially liable for the criminal offence—that is, whether ‘any person’ is potentially liable or only a particular subset of people.” Section 48D(6)(f) is not clear on these points. Nor does the policy justification for such a power seem adequately clear or sufficient from the Bill’s explanatory note. It may have been intended to provide a power like that relevant to concession holders: see section 48E(2)(b) regarding activity</p>	<p>Consider whether absolute or strict liability was intended under new sections 11 and 51UA, and whether, for certain scenarios, there should be specific and targeted defences with the onus of proof on the defendant.</p> <p>Query whether section 11(2) is needed at all.</p> <p>Clarify whether there is any intent to attach criminal liability to persons outside of New Zealand’s borders.</p>
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Legislation Design and Advisory Committee *Legislation Guidelines: 2021 edition* (September 2021) (LDAC) at [ch 24](#).

	<p>fees payable by concession holders. However, the effect of section 48D(6)(f) goes further than section 48E(2)(b), and will have the effect of conferring a legislative immunity on named persons. The Law Society queries whether this was the legislative intent and is concerned that, if so, it may raise rule of law concerns, such as equality before the law. We recommend the Committee consider this issue.</p> <p>A further matter is that both sections 11 and 51UA require payment of the visitor levy before the international visitor accesses the relevant area. Neither the Conservation Act nor the Bill provide details as to how that payment is to be made. Proposed section 48D will allow the making of regulations which allow for third party collection of levies (presumably usually concessionaires). If the regime to be constructed envisages payment of the levy to a third party to suffice for compliance with sections 11 or 51UA, it would be desirable to say so explicitly. Otherwise, there may be difficulties in applying either offence provision if the third party collecting the levy on behalf of the government fails, deliberately or otherwise, to transfer the funds as required by the putative future regulations (either in a timely fashion or at all) or fails to record payments in a suitable way.</p> <p>2. Nature of offences</p> <p>Both proposed sections 11 and 51UA are punishable only by a fine. As such, it seems likely that — in the absence of any statutory statement to the contrary — the courts would interpret both sections as imposing absolute liability. If so, there is a risk that liability might attach to conduct which</p>	
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	<p>breaches section 51UA but which might be seen as reasonable in the circumstances — for example, where a tramper accesses a track which is in a levy area either to avoid dangers on an no-levy track on which they had been travelling, or to provide assistance to a sick or injured person within the levy area. There is also a more difficult question of whether a person allegedly infringing sections 11 or 51UA may raise as a defence the making of a reasonable mistake of fact (for example, as to the location of the boundary between levy and non-levy areas where there is no, or confusing, or wrong, signage). Such a defence would normally be available for a strict liability offence.²⁹</p> <p>If absolute liability is the intended policy, it would make available an absence of fault defence, which would likely cover the examples referred to above. However, the Law Society would advise making the policy intent more explicit, consistent with LDAC guidance which notes that legislation must be very clear if it is intended to place a legal burden of proof on the defendant and will require compelling justification for departing from the default position. Consideration must also be given to what defences should be available to the defendant.³⁰</p> <p>The Committee may accordingly wish to consider whether absolute or strict liability was intended, and whether there should be specific and targeted defences — with the onus of</p>	
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²⁹ More generally, a mistake as to whether an area was, or was not, a levy area would be likely to be classed as a mistake of law, and as such would be irrelevant to liability (Crimes Act 1961, s 25).

³⁰ LDAC above n 28, at [ch 24](#).

	<p>proof on the defendant — for situations such as those discussed above.</p> <p>3. The “absent defendant” issue</p> <p>A further matter which is unclear is whether it is intended for the proposed new sections to attach criminal liability to persons outside of New Zealand’s borders. As a practical point, there are likely to be challenges in bringing criminal proceedings or issuing infringement notices to international visitors who have left the country prior to proceedings being commenced. It is also doubtful whether this is an effective method of enforcing payment of the levy, and in any such cases the question arises of how enforcement of a fine or infringement fee is intended to be achieved. It is likely that the timetable for infringement proceedings in section 21 of the Summary Proceedings Act 1957 would expire only after a stay in NZ had concluded. The same concern is just as (or more) likely to arise in the event of prosecution for a criminal offence.</p> <p>Technically, under the Criminal Proceedings Act, a section 11 offence could be tried in the defendant’s absence. While the same is presumably true of the section 51UA infringement proceedings, where an international visitor has left jurisdiction issues will arise such as service of the charging document and summons to appear in court, successful prosecution of the trial in absentia, and enforcement of fines imposed. There is a general presumption against the extraterritorial application of domestic law, and long-established common law principles</p>	
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	<p>against enforcing penal/punitive laws of other countries, whatever criminal/civil form they may take.³¹</p> <p>These matters suggest that the criminal offence and infringement offence regime are only going to be effective where proof and enforcement processes are timely, or there is some mechanism to ensure payment if the international visitor seeks to leave New Zealand beforehand. More likely, the intention is that these provisions serve symbolic (deterrent) purposes. If anything, the infringement offence is more likely to be utilised than the criminal offence, because of its increased likelihood of timely payment before departure. This raises the question of whether the intervention of the criminal law (i.e. section 11(2)) is needed at all. In this case, the policy justification seems doubtful. According to LDAC guidance, the following factors, not all of which must be present, may be relevant in determining whether conduct should be criminalised:³²</p> <ul style="list-style-type: none"> • the conduct involves physical or emotional harm; • the conduct involves serious harm to the environment, threats to law and order, fraud, bribery or corruption, or substantial damage to property rights or the economy; • the conduct, if continued unchecked, would cause significant harm to individual or public interests such that public opinion would support the use of the criminal law; 	
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³¹ LDAC above n 28, at [ch 24](#).

³² LDAC above n 28, at [ch 24](#).

	<ul style="list-style-type: none"> the conduct is morally blameworthy, having regard to the required intent and the harm that may result; or the harm to public or private interests that would result from the conduct is foreseeable and avoidable by the offender (for example, it involves an element of intent, premeditation, dishonesty, or recklessness in the knowledge that the harms above may eventuate). <p>Proposed new section 11(2) does not seem to reach the necessary level of concern. For the reasons above, it seems likely to be a rare event to see a criminal prosecution of an offence against section 11(2). The prosecution test (especially the public interest test) is unlikely to be met in most cases, given the practicalities discussed above.</p>	
cl 13, new s 12	<p>This clause restricts the landing or take-off of aircraft in conservation areas. Subsection (1) provides some exemptions to the proposed restriction, including aircraft operated by the New Zealand Defence Force or the Civil Aviation Authority. However, there are no exemptions for emergency aircraft operated by private organisations, such as rescue helicopters and the like. Nor is there an exemption for when a civil emergency arises and private aircraft may be the quickest way to safely evacuate people. Consideration should be given to expanding the exemptions to encompass such uses.</p>	<p>Consider expanding the exemptions to cover other emergency/rescue aircraft.</p>
Subpart 5—Amendments to Part 3A		
cl 15, new s 13D(1)	<p>Section 13D relates to the NCPS. Subsection (1) states that the Minister “may” make a NCPS. However, it is clear from other</p>	<p>Change “may” to “will” or “must”.</p>

	provisions that an NCPS is required. We recommend changing “may” to “will” or “must”.	
cl 15, new s 13D(2)	<p>Section 13D(2) sets out the purpose of the NCPS. This includes, in subsection (a), setting policy in relation to a number of Acts administered by DOC, and, in subsection (b), similar wording to DOC’s function regarding recognising economic opportunities that arise from use or development of land and resources, and enabling such use or development to the greatest extent practicable.</p> <p>Our comments made above in relation to clause 6 are also applicable here.</p>	Consider redrafting new section 13D(b) to address the uncertainties and provide further guidance.
cl 15, new s 13E	<p>New section 13E provides a power, through the NCPS, to classify activities as exempt or pre-approved. While criteria are specified in subsection 1(a), subsection (2) states that a Minister is not required to be satisfied that “every instance of a particular activity will be consistent with those matters”.</p> <p>It is not clear whether the intention is to exempt an activity from having to meet any of the criteria (provided there are other activities that do meet those criteria), or to exempt a particular activity from having to meet all of the criteria. In other words, if it is consistent with at least one of the criteria it may be exempted.</p> <p>It is important that any exemption is clearly defined and limited in scope to avoid undermining the purpose for which the requirement is imposed.</p>	<p>We recommend:</p> <ul style="list-style-type: none"> • redrafting subsection (2) to clarify the intent; • amending subsection (4) to add the following new considerations: <ul style="list-style-type: none"> “(ba) the duration of the activity (bb) any relevant Treaty settlement interests”; and • amending subsection (7) to include a discretion for the Minister to set limitations to avoid breaching Treaty settlement interests.

	<p>Subsection (4) lists matters the Minister must consider when deciding whether to classify an activity as exempt or pre-approved. While scope and effects of an activity are listed, no mention is made of duration. Duration is relevant for two reasons. First, the length of time an effect endures can be relevant in terms of whether such an activity is acceptable. Secondly, as a result of Treaty settlements, some iwi such as Ngāi Tahu have rights of first refusal which are triggered where an activity is proposed on conservation land which exceeds a certain term.</p> <p>Given other Treaty settlement rights may also be impacted, whether through the management of a resource like pounamu on conservation land, or through the joint management of cultural redress conservation land, an express requirement to consider the impacts on such interests would ensure such matters are considered.</p> <p>It may also be appropriate to amend subsection (7) (which enables a Minister to set limitations to avoid, remedy or mitigate the effects of the activity) to also enable the Minister to set limitations to avoid any breach of Treaty settlement requirements.</p>	
cl 15, new s 13F	<p>New section 13F provides the Minister with a broad power to suspend or exempt pre-approved activities for up to 60 working days at a time. The section does not provide any guidance as to when it may be appropriate for such a power to be exercised, or matters that a Minister should consider prior to exercising the power. Given the potentially significant impact of a suspension on a person who is carrying out a pre-</p>	<p>Consider including criteria as to when the suspension power may be used.</p>

	approved or exempt activity (financial impact, ongoing viability of the operation, etc), it would be appropriate for some guidance to be included.	
cl 15, new s 13H(1)	<p>Section 13H relates to area plans. Subsection 13H(1) sets out the purposes of such plans. One of these purposes is to recognise economic opportunities that arise from use or development of land and resources, and enable such use or development to the greatest extent practicable.</p> <p>Similar comments to those made above in relation to cl 6 apply here.</p>	Consider redrafting new section 13H(b) to address the uncertainties and provide further guidance.
cl 15, new s 13H(4) and (5)	<p>Subsection (4) requires area plans to be consistent with the NCPS and to be made in accordance with Schedule 3. Subsection (5) sets out the matters that the Director-General must consider when preparing or amending such plans. No mention is made in either section of Treaty settlement obligations.</p> <p>Given some Treaty settlements impose obligations or restrictions in certain areas, it would be useful for there to be a specific requirement to consider any relevant Treaty settlement matters when area plans are being developed, rather than relying on iwi authorities to raise these aspects in consultation.</p>	Amend either subsection (4) or (5) to require that Treaty settlement obligations are not derogated from and are considered.
cl 18, amended s 17K(1)(a)	<p>Section 17K sets out the procedure for preparation, approval, review and amendment of freshwater fisheries plans. Replacement subsections (1)(a) and (1)(aa) address consultation and notification. While iwi authorities are</p>	Amend subsection (1)(a) to require the plans to be prepared in consultation with relevant iwi authorities.

	mentioned in subsection (1)(a), the extent to which they will be consulted depends on whether the Director-General considers this practicable and appropriate. Many fish are taonga species to iwi, and have express recognition as such under Treaty settlements. Given this, amendment of the wording of subsection (1)(a) is recommended to require the plans to be prepared in consultation with relevant iwi authorities. An alternative would be to amend (1)(aa) to require express notification to iwi authorities, however such an approach would not provide the same degree of opportunity for iwi authorities to share their mātauranga regarding such species and shape the plan.	
Subpart 6—Part 3B replaced		
cl 23, new Part 3B, s 14	<p>Clause 23 replaces Part 3B of the Conservation Act with new sections 14 to 14ZZG. New section 14 sets out the purpose of the Part which, in a similar way to other earlier provisions, refers to recognising economic opportunities and enabling use and development of land and resources to the greatest extent practicable under this Act and other Acts the Department administers.</p> <p>Similar comments apply here as made in relation to clause 6 (and others) earlier above.</p>	Consider redrafting to address the issues identified.
cl 23, s 14A(2)	Subsection (2) sets out when an activity can be carried out in a conservation area without a concession. It includes reference to any activity authorised by this Act or any Act listed in Schedule 1. Schedule 1 (with one exception) does not include Treaty Settlement Acts. As some Settlement Acts permit the	<p>Amend subsection (2) to read:</p> <p>“an activity otherwise authorised by or under this Act, or any Act listed in Schedule 1, or any other Act which expressly authorises such activities within a conservation area.”</p>

	carrying out of customary activities without the need for a resource or other consent, it is suggested that this subsection be amended to also refer to them.	
cl 23, s 14G	This section sets out the required contents of an application for a concession. No mention is made of consultation. Whether consultation has been undertaken and, if so, who it has been undertaken with, and the outcome of that consultation, is likely to be relevant and of assistance to the Minister in determining an application.	Consider including a requirement that an application note whether any consultation has been undertaken and, if so, who has been consulted and the outcome of that consultation.
cl 23, s 14K	This section sets out the matters the Minister must have regard to. Similar to section 14G, no mention is made of consultation. Whether consultation has been undertaken and, if so, who it has been undertaken with and the outcome of that consultation is likely to be relevant and of assistance to the Minister in determining an application.	Consider including a requirement that the Minister take into account whether consultation has been undertaken and, if so, who has been consulted and the outcome of that consultation.
cl 23, s 14M	<p>This clause allows the Minister to commission a report or seek advice in relation to an application. Subsection (2) includes reference to information obtained under subsection (1) at an applicant's expense, which is to be provided to the applicant.</p> <p>This appears to be intended to indicate that an applicant will be required to meet the cost of the further information. However, the way it is currently worded could be interpreted as only requiring provision of a copy of information obtained at an applicant's expense to the applicant (inferring not all information would be at the applicant's cost).</p>	<p>If the intention is that the applicant meet the cost of the further information, it is suggested that subsections 1 and 2 be amended as follows:</p> <p>“(1) The Minister may at the applicant's expense - ...</p> <p>(2) For any information obtained under subsection (1) at an applicant's expense, the Minister must - ...”</p>

cl 23, s 14R	<p>This section relates to public notification of applications. Subsection (5) sets out instances when notification is not required. This includes in subsection 5(c) “an application that the Minister is unlikely to grant for any reason”. While understanding the rationale is to avoid incurring costs for an application that may not be granted, relying on that as a reason not to notify appears circular and risks creating circumstances in which a decision could be challenged for predetermination. Further, as one of the purposes of notification is to obtain information/views to assist the Minister to assess the application, making a determination not to notify appears premature. If this exception is to remain, it is suggested that it be qualified in some way (such as by reference to the types of circumstances in section 14U), or that further guidance is provided as to the situations where applications are unlikely to be granted.</p>	Delete subsection 5(c) or reword to restrict its effect or to provide guidance as to when it applies.
cl 23 new s 14T	<p>This section requires consultation with “Māori groups with relevant interests”. There is no definition of who such groups are, and whether they are limited to tangata whenua of an area, or extend to other Māori groups who reside in an area but have no whakapapa link to that area, such as pan Māori groups and Ngā Hau e Whā marae. Clarification of what is intended would assist.</p>	Clarify the intention.
cl 23, s 14U	<p>This section deals with discontinued applications. Subsection (3) sets out the reasons that an application can be discontinued. At present, there is no mention of Treaty settlement obligations, some of which may restrict the term (such as by imposing a first right of refusal) or the ability to</p>	<p>Amend subsection (3)(a)(i) to read: “The reasons are—</p>

	undertake an activity (such as collecting pounamu). It is therefore recommended that a further reason be added, referring to any relevant Treaty Settlement Act provision.	(a) the application obviously does not comply or is inconsistent with— (i) any provisions of this Act, or an Act listed in Schedule 1, or any relevant Treaty Settlement Act; or
cl 23 s 14Z	This section sets out the grounds for declining applications. At present it does not include inconsistency with a Treaty Settlement Act obligation. However, where such an obligation exists, for example a right of first refusal for a term longer than a certain period, the Minister should be able to decline an application to avoid breaching the Crown’s obligations under that Treaty Settlement Act.	Amend subsection (1)(a) to read: “(1) The Minister must decline an application if the proposed activity would be contrary to or inconsistent with - (a) any provisions of this Act, or an Act listed in Schedule 1, or any relevant Treaty Settlement Act; or ”
cl 23, new s 14ZP	In clause 4, “activity fee” is defined as meaning a rent, fee or royalty payable in accordance with section 14ZP. However, section 14ZP does not include the term royalty. Specifically including “royalty” in the types of charges that may be required would add clarity.	Amend section 14ZP(1)(b) as follows: “may be required to pay, either to the Minister or as directed by the Minister, any other levy, royalty or charge made on an occupier or owner of land ...”
cl 23, s 14ZV	This section addresses variation of concession conditions. Subsection (3) provides the Minister with a power to unilaterally vary the conditions of a concession in certain circumstances. There is no requirement for the concession holder to be consulted about or provided with an opportunity to comment on the proposed change. Given the effect on the concession holder’s interest, and given the concession holder may possess knowledge about the workability/practicability of conditions for that particular site, it is suggested that an opportunity should be provided for the concession holder to	Amend section 14V to provide an opportunity for the concession holder to provide feedback on a proposed change to condition before the Minister makes their determination.

	provide comment, prior to a decision being made to vary the conditions.	
cl 23, s 14ZZ	This section deals with contributions to costs. Subsection (1)(b) requires a Minister to pay a contribution to costs of persons invited to make comments who fall within a prescribed class. However, there is no definition or guidance given as to how that prescribed class is determined.	Clarify how the prescribed class of persons is determined.
cl 23 s 14ZZC	This section sets out further matters relating to transfers. Subsection (1)(c) restricts the Minister from consenting to a transfer if there have been “serious or repeated breaches” of any terms and conditions of any concession that was or is held by the new concession holder. The term “serious” is not defined and is inherently subjective. It may be of assistance to provide further guidance as to what amounts to a serious breach.	Consider providing further guidance as to what constitutes a serious breach.
Subpart 6—new Part 3C		
cl 23, new s 15B(1)(b)	This is a new section relating to land exchange proposals and relates to a consultation and reporting process for such proposals, under the control of the Director-General. The section requires invitations to identified parties to provide written comments on proposals. Subsection (1)(b) identifies that this invitation must include “any person with an interest in the outgoing land”. The term “interest” is defined in section 2 of the primary Act, but may not capture all classes of concessions (also defined in section 2 of the primary Act and proposed to be replaced with a new definition which does not resolve the	Amend section 15B(1)(b) as follows: “any person with an interest in the outgoing land and any existing concession holders in respect of the outgoing land ”

	issue). Given that new section 15C(2)(a)(vii) requires the Minister to consider the impact of a proposed exchange on existing concession holders, this potential uncertainty should be addressed to capture concessions already held by parties who must be invited to provide written comment.	
cl 23, new s 15B(2)	Subsection (2)(a) requires an invitation to provide written comments on a land exchange proposal to include “sufficient details” about a proposal to allow an informed response. It is unclear what details are considered sufficient (for example, whether a summary of the proposal would be considered sufficient) and is therefore uncertain. At a minimum, to enable properly informed responses, the proposal itself should be included along with an invitation to comment.	Amend section 15B(2) as follows: “include sufficient details about the proposal, including the proposal itself , to allow an informed response”.
cl 23, new s 15C(2)(a)(iii)	This new section sets out mandatory considerations for the Minister on a land exchange proposal. Subsection 2(a)(iii) provides that the Minister must consider “the extent of net conservation benefit that would result from the exchange, if any”. Given that the Minister cannot authorise a land exchange unless it results in a net conservation benefit, the words “if any” are superfluous and should be deleted.	Amend section 15C(2)(a)(iii) to read: “the extent of net conservation benefit that would result from the exchange, if any ”.
cl 23, new s 15C(2)(a)(iv)	A mandatory consideration for the Minister is “the national and international significance of the outgoing land” under subsection (2)(a)(iv). This language is vague and would seem to invite subjective judgement, or enable the natural resources and historic resources of the relevant land to be assessed based on how well-recognised or high profile they are. It is possible that this matter duplicates or overlaps with other relevant	Consider amending section 15C(2)(a)(iv) to read: “the national and international significance of the natural resources and historic resources of the outgoing land”.

	<p>considerations. It may be preferable to amend this matter to clarify that it relates to the significance of the conservation values of the outgoing land.</p>	
<p>cl 23, new s 15C(2)(a)(ix)</p>	<p>A mandatory consideration for the Minister is “whether the consequences of the land exchange would be practical to manage on an ongoing basis, including whether it would result in an enclave of private land within any land held under this Act or an Act listed in Schedule 1” under subsection (2)(a)(ix). The use of the word “enclave” is unusual and not defined. If it is intended to refer to an island of private land within conservation land, then it would seem this is an issue relating to whether practical legal or physical access is available and possibly whether it would result in risks to the values of surrounding conservation land over time.</p>	<p>Consider clarifying what the matters of concern would be with regard to “whether the consequences of the land exchange would be practical to manage on an ongoing basis”, including potentially the ability to impose conditions to address such matters.</p>
<p>cl 23, new s 15C(2)(b)(ii)</p>	<p>This new subsection requires the Minister to be satisfied as to identified matters if they propose to authorise a land exchange. In this instance, the matter is that “the outgoing land is vested in the Crown”. It is understood that this is intended to relate to a timing issue rather than a substantive outcome, given that vesting of the outgoing land in the Crown would likely frustrate a land exchange. It is potentially addressed in the proposed new definition of “outgoing land” in clause 4, but an amendment to clarify the intent could also assist.</p>	<p>Amend section 15C(2)(b)(ii) to read: “the outgoing land is or will be vested in the Crown at the time that the exchange is authorised”.</p>
<p>cl 23, new s 15C(4)</p>	<p>The requirement for a land exchange proposal to result in a net conservation benefit is proposed to be mandatory. Therefore, the new provisions which outline the meaning of this term and how it is to be assessed should be clear and unambiguous.</p>	<p>Amend the chapeau of section 15C(4) to read either: “In carrying out an assessment, a like-for-like exchange is not necessarily required (for example, land containing a unique geological feature might be exchanged for land inhabited by</p>

	<p>Subsection (4) uses unhelpfully imprecise language when stating that “a like-for-like exchange is not <i>necessarily</i> required ...”. The subsection seems to be clear in its intent that a like-for-like exchange is not required, but rather that balancing or trade-offs of values or features (an “unders and overs” approach) is permissible. An amendment to make this position explicit would likely assist.</p>	<p>protected wildlife so long as the weighing exercise favours the exchange). However, the following matters must be taken into account:”</p> <p>Or:</p> <p>“In carrying out an assessment, a like-for-like exchange is does not need to be achieved necessarily required (for example, land containing a unique geological feature might be exchanged for land inhabited by protected wildlife so long as the weighing exercise favours the exchange). However, the following matters must be taken into account:”</p>
cl 23, new s 15C(4)(a), (b) and (c)	<p>The assessment for a net conservation benefit for a land exchange proposal involves mandatory matters to be taken into account by the Minister under new section 15C(4). Paragraphs (a), (b) and (c) refer to the relevance of legal protection of incoming and outgoing land as a relevant matter. It appears that the purpose of the legal protection that is referred to relates to the legal protection of its values related to natural resources and historic resources. Clarification that it is this purpose of legal protection that is intended to be relevant would likely aid with clarity of the Minister’s decision-making.</p>	<p>Consider amending section 15C(4)(a), (b) and (c) to clarify that the legal protection referred to is that “relating to the natural resources and historic resources” of the relevant land.</p>
cl 23, new s 15C(4)(d)	<p>Paragraph (d) of the subsection is a matter that must be taken into account by the Minister in assessing whether a net conservation benefit will result. It is not clearly drafted and its scope and intent is difficult to identify. The relevance of undertakings by the owner of the incoming land to fund improvements to that land would presumably need to relate to</p>	<p>Consider amending paragraph (d) of section 15C(4) to improve the drafting clarity. Potentially seek to separate unrelated matters into new paragraphs to enable clearer and more effective consideration of matters relevant to net conservation benefits in individual cases.</p>

	<p>its natural resources and historic resources, rather than other factors. In addition, assessing the likely success of those improvements is highly subjective in terms of what is a “reasonable time frame” and may be dependent on maintenance and improvement actions after an exchange is authorised. This introduces a temporal uncertainty in terms of both the timing and the value of improvements. Finally, paragraph (d) seems to introduce a financial or dollar value ratio consideration between the (possibly financial value) of improvements and the financial value of the incoming land. It may be helpful to break the matters in paragraph (d) down into separate paragraphs, where relevant considerations are aligned more clearly with directly relevant counter-balancing considerations, so that the Minister can take into account more clearly identified matters.</p>	
cl 23, new s 15E	<p>Subsection (1) of this new section appears to duplicate proposed new section 15D(2)(b) in terms of the imposition of conditions and could be deleted. Subsection (2) could readily be added to section 15D.</p>	<p>Consider amendments to simplify drafting and remove possible duplication.</p>
cl 23, new s 15G(7)	<p>This provision relates to the Minister’s powers to require payment or pay an amount for a land exchange. Above, issues regarding the clarity and intention of new section 15C(4)(d) have been identified, noting that it would assist with clarity of the separation of monetary payments for the land exchange to be distinct from money paid for ensuring net conservation benefits. Because section 15C(4)(d) potentially deals with implementation of improvements rather than just payment of money, this concept could also usefully be captured in this subsection.</p>	<p>Consider amending section 15G(7) as follows: “To avoid doubt, any monetary payment made or received under this section is independent of any obligation in relation to money payable or improvements required for the purposes of ensuring that the land exchange results in a net conservation benefit.”</p>

<p>cl 23, new s 15K</p>	<p>In regard to the exchange or disposal of public conservation land, the policy problem identified is that DOC is unable to exchange or dispose of land in circumstances where there would be a clear benefit for conservation.³³ The RIS states this is the position because of court decisions in <i>Buller Electricity Ltd v Attorney-General</i>³⁴ and <i>Hawke's Bay Regional Investment Co Ltd v Forest & Bird & Minister of Conservation</i>.³⁵ However, the Law Society is concerned that the policy problem articulated does not sufficiently link to the amendments proposed. The proposed grounds in new section 15K — that the land is not essential for indigenous biodiversity; its conservation values are represented elsewhere; there are no rare or distinctive species — establish only that the land can be given up without obvious conservation harm, rather than showing there is a clear benefit.</p> <p>A further concern is that Māori participation is being diminished. According to RIS analysis, there is no legislative specification as to how section 4 of the Conservation Act, relating to the Treaty, operates in land exchange and disposal processes. The RIS identifies that: <i>“Relevant questions include how much engagement is necessary and whether Treaty partners should get preference when conservation land is being given up by the Crown (outside of rights of first refusal that are already included in Treaty settlements).”</i>³⁶</p>	
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³³ Department of Conservation “Regulatory Impact Statement: Enabling more flexibility for land exchanges and disposals” (17 June 2025) at [40].

³⁴ [1995] 3 NZLR 344 (HC).

³⁵ [2018] NZSC 122.

³⁶ RIS, above n 33 at [49].

	<p>This uncertainty could be clarified through amendments. The Law Society would support doing so. As we have discussed above, there is a concern that proposed amendments in new section 4A do that in a way that curtails participation and relationships presently provided for by way of section 4.</p>	
<p>cl 23, new s 15K(1)</p>	<p>New sections 15J to 15V are in subpart 2 of Part 3C and deal specifically with land disposals.</p> <p>New section 15K(1)(b) provides that the Minister may dispose of land in certain circumstances, including that the indigenous vegetation of the land, or the habitat of indigenous fauna present on the land, is not the best or one of the best examples of that type in relation to legally protected land in an ecological district. The term “ecological district” is not defined, which introduces uncertainty in the interpretation and application of this criterion. It is understood that the Department of Conservation may have internal publications and guidelines which define ecological districts. It could improve clarity to introduce a new definition of “ecological districts” which cross-references to or incorporates the contents of such publications. Another option could be to model a definition on, or refer to, the definition of “ecological district” in clause 16 of the NPS-IB:</p> <p style="padding-left: 40px;">ecological district means:</p> <p style="padding-left: 80px;">(a) in relation to geothermal ecosystems in the Taupō Volcanic Zone, the Taupō Volcanic Zone; and</p> <p style="padding-left: 80px;">(b) for all other areas, the ecological districts as shown in McEwen, W Mary (ed), 1987. Ecological regions and districts of New Zealand. Wellington: Department of Conservation.</p>	<p>Consider introducing a new definition of ecological district to provide certainty and clarity for the purposes of new section 15K(1).</p>

cl 23, new s 15L(1)(b)	<p>Similar to new section 15B(1)(b), this subsection requires the Minister to invite written comments on a land disposal proposal from “any person with an interest in the land”. The term “interest” is defined in section 2 of the primary Act, but may not capture all classes of concessions (also defined in section 2 of the primary Act and proposed to be replaced with a new definition which does not resolve the issue). Given that new section 150(2)(a)(xii) requires the Minister to consider the impact of a proposed disposal on existing concession holders, this potential uncertainty should be addressed to capture concessions already held by parties who must be invited to provide written comment.</p>	<p>Amend section 15L(1)(b) as follows: “any person with an interest in the land and any existing concession holders in respect of the land”.</p>
cl 23, new s 15L(2)(a)	<p>This provision raises the same issue as identified earlier with regard to new section 15B(2) and the inclusion, in an invitation to make written comments, of “sufficient details” of a land disposal proposal to allow an informed response.</p> <p>Clarity about what amounts to “sufficient details” is recommended. Expressly requiring the proposal itself to be provided would also assist.</p>	<p>Amend section 15L(2)(a) as follows: “include sufficient details about the proposal, including the proposal itself, to allow an informed response”.</p> <p>Consider whether criteria could be provided, regarding what will constitute “sufficient details”.</p>
cl 23, new s 15P(2)	<p>New section 15P(2) requires the Minister’s decision on a land disposal proposal to “cover” identified matters in their decision. This is not a commonly used term in legislation and it may be helpful to use a more familiar term employed in statutory decision-making provisions.</p>	<p>Consider substituting the word “cover” in section 15P(2) with words such as “address” or “have regard to”.</p>
cl 23, new s 15W	<p>For both land exchange and land disposal proposals, section 15W requires the Minister to consult with the Minister for</p>	<p>Consider amending new sections 15C(2) and 150(2) to require the Minister to consider the consultation undertaken</p>

	Treaty of Waitangi Negotiations and the Minister for Māori Development before making a decision. To ensure greater clarity and transparency in decision-making, there may be some benefit in referring to this consultation requirement as a relevant consideration for decision-making under new sections 15C and 150.	under section 15W before deciding on land exchange or land disposal proposals.
cl 23, new s 15X	The power for the Minister to make minor boundary adjustments either by way of land exchange or land disposal, without following any public process, is potentially vague and uncertain, particularly in terms of what is considered “minor” for the purposes of subsection (1). While the examples identified in subsection (1) and the qualification in subsection (2) might be intended to limit the exercise of the Minister’s discretion, this power has the potential to create an increased risk of legal challenge.	Consider adding greater clarity as to what is considered minor in terms of a boundary adjustment under new section 15X.
cl 23, new s 15Z(2)	New Schedule 5 identifies land and categories of land that are expressly excluded from the ability to consider or authorise land exchanges or land disposals. While new section 15Z(2) limits the ability to amend Schedule 5 through an Order in Council to only specific areas of land rather than categories of land, it is a matter of concern that such powers are provided for where specific areas of land likely have very high conservation values such that they warrant high levels of protection. We note that the power constitutes a ‘Henry VIII’ clause. As advised by the LDAC, “Legislation should empower secondary legislation to amend or override an Act only if there is a strong need or benefit to do so, the empowering provision is as limited as possible to achieve the objective, and the safeguards reflect the	Reconsider whether the use of the ability to amend legislation through an Order in Council is appropriate in this instance.

	significance of the power.” ³⁷ An empowering provision that permits secondary legislation to override an Act in ways that affect its policy poses more risk, will require strong justification, and very careful designing of appropriate safeguards.	
cl 23, new s 15Z(3)	It appears that a mandatory requirement for the Minister to invite comments from persons the Minister has reason to believe are representative of interests likely to be substantially affected by an Order in Council, or representative of the public interest, is intended to be a check on the use of an Order in Council to amend new Schedule 5. The wording of this subsection is however broadly expressed and provides the Minister with some discretion as to which persons are considered to be representative. It also makes no provision for how the Minister must deal with such comments.	Consider amending subsection (3) to (a) provide less discretion as to the identification of representative persons and (b) identify how the Minister must deal with or consider any comments received before making a recommendation to amend Schedule 5 through an Order in Council.
Subpart 6 – new Part 3D		
cl 23, new s 16A(2)	New Part 3D puts in place a suite of provisions for the creation and management of visitor amenities areas (VAA). New section 16A(2) addresses the purpose of such areas with broad and inclusive language intended to enable the establishment of the types of facilities and activities envisaged for the areas. However, the language used in subsection (2)(a)(ii) differs in part to the primary purpose of such areas and activities identified in new section 16A(1) and (2)(a)(i). The drafting could be better aligned.	Consider amending new section 16A(2)(a)(ii) as follows: “any other infrastructure that supports visitors public and recreational activities amenities for visitors; ”

³⁷ LDAC, above n 28 at ch 15.

cl 23, new s 16B(2)(a)(ii)	In the VAA report prepared as part of the proposal documents, the Director-General is directed to make findings on matters of which the Minister must be satisfied under new section 16E(2)(b). As the Director-General is not the final decision-maker, it might be more accurate and reflective of their role for the VAA report to make recommendations rather than findings.	Consider amending new s16B(2)(a)(ii) as follows: “include the Director-General’s findings recommendations , with reasons, on the matters that the Minister must be satisfied of under section 16E(2)(b);”
cl 23, new s 16C(2)	New section 16C provides for a consultation process to be conducted by the Director-General on VAA draft documents. This includes a mandatory requirement to invite written comments from identified persons in subsection (2). However, because any current concessions that may be affected by the proposal must be considered for the Minister’s decision-making under new section 16D(2)(a)(v), it appears that there is a gap in new section 16C(2) by not making it mandatory for comments to be invited from existing concession holders.	Consider amending new section 16C(2) to require invitations to be given to existing concession holders to make written comments on draft VAA documents.
cl 23, new s 16C(5)	After the receipt and consideration of comments under new section 16C(2), the Director-General must publicly notify the draft documents. The process which is to be followed after public notification occurs lacks clarity. While section 49 of the primary Act provides a process that is applicable where the Act requires any thing to be publicly notified and a process is not otherwise prescribed, there remains uncertainty whether that section applies by default to the post-notification process. In that regard, section 49(2)(b) provides two options for persons or organisations wanting to make submissions or objections, which have different statutory timeframes associated with them. In addition, section 49(2)(c) provides for the person or organisation to have a reasonable opportunity of appearing	Consider amending new section 16C(5) by: <ul style="list-style-type: none"> • providing a cross-reference to section 49 of the Act; • identifying which time period for the receipt of submissions or objections applies under section 49(2)(b) of the Act; and • ruling in or out the reasonable opportunity for appearing before the Director-General in support of the objection or submission under section 49(2)(c).

	before the Director-General in support of their objection or submission, noting that this appears to be dealt with (in part at least) in new section 16D(1). New section 16C(5) should therefore provide some certainty about the process to be followed after public notification, by reference to section 49.	
cl 23, new s 16D(1)	Related to the preceding point, new section 16D(1) makes it clear that there is no right to be heard in support of a submission on a VAA draft document. It is not clear whether this is intended to relate to the Director-General's process or the Minister's process (or both). New section 16D(2) suggests that it is the Minister's process. If that is the case, new section 16D(1) could usefully be clarified.	Consider amending new section 16D(1) as follows: "A submitter on publicly notified draft documents has no right to be heard by the Minister on their submission."
cl 23, new s 16E(4)	This subsection also refers to the "findings" of the Director-General in a VAA report. It would better align with the suggested approach to new section 16B(2)(a)(ii) for the word "recommendations" to be substituted for "findings".	Consider amending new section 16E(4) to align with the earlier suggested amendment to new s 16B(2)(a)(ii).
Subpart 7—Amendment to Part 6		
cl 29(1)	Clause 29(1) which replaces section 38(1) and (2), states that the Minister may issue a permit "on application or otherwise". It is unclear what is meant by "or otherwise". For example, is it intended that the Minister could grant a hunting permit on their own volition (i.e. in the absence of an application) which would apply to any persons seeking to hunt within a particular area? Clarification would assist.	It would be clearer if the legislation specified how "otherwise" a Minister would issue a hunting permit, particularly if there are conditions attached to the permit.

cl 32(1)	Clause 32(1) amends section 48A to replace suspension with “suspension of licences and the...”. The net result is that the words following “suspension” relate to conditions of licences rather than licences themselves. It seems, however, that ‘revocation’ could relate either to the licence itself or its conditions.	We recommend including revocation in both parts of the amended clause.
cl 33, new s 48D(6)(f)	See comments and recommendations above: clause 13.	
cl 33, new s 48D(9)	Subsection (9) states that a failure to comply with consultation requirements does not affect the validity of regulations.	This clause creates confusion as to whether consultation is in fact required, or if it is optional. If the intention is to ensure that consultation is undertaken, we recommend that the clause is removed.
cl 33, new s 48E	<p>Section 48E includes a provision deeming the Minister of Conservation to have “complied with any provision of the Commerce Act 1986 that relates to restrictive trade practices or the promoting of competition during the period of any prescribed concession.” This carve-out is unusual in both its form and its breadth.</p> <p>Typically, where Parliament intends to exempt conduct from the Commerce Act, it does so by disapplying specific provisions (most commonly Part 2), as seen, for example, in section 53 of the New Zealand Public Health and Disability Act 2000 in relation to Pharmac agreements. By contrast, this provision does not disapply the Commerce Act; rather, it deems compliance with it. While the practical effect may be similar, the two approaches are conceptually distinct, and deeming</p>	<p>Examine both the scope and the necessity of the carve-out in section 48E. Consider whether it should be removed or, at a minimum, narrowed and reframed to align with the established legislative approach of disapplying specific provisions of the Commerce Act where a clear policy justification exists.</p> <p>A neater way to carve out the Minister may simply be to state that they (the Crown) are not engaging in trade for the purposes of the Commerce Act.</p>

	<p>compliance is a less transparent mechanism that obscures the nature and extent of the exemption being granted. The provision is also distinct from the specific authorisation regime under section 43 of the Commerce Act, which provides a well-established and more targeted framework for exempting conduct from the restrictive trade practices provisions.</p> <p>The breadth of this carve-out is of particular concern given the context in which it operates. The Regulatory Impact Statement makes clear the policy intent is to restrict competition by providing incumbent concessionaires with an exclusive renewal window of between two and five years before their concessions expire, during which no contestable process may be initiated. Where the stated purpose of a provision is to actively limit competition in the allocation of rights over public conservation land, the justification for simultaneously deeming the Minister to have complied with the Commerce Act warrants careful scrutiny.</p> <p>Before this Bill is passed, the Committee (and Parliament) should examine both the scope and the necessity of this carve-out, and consider whether it should be removed or, at a minimum, narrowed and reframed to align with the established legislative approach of disapplying specific provisions of the Commerce Act where a clear policy justification exists.</p> <p>In the event the carve-out remains: in creating it, is the Government conceding that it is in trade or commerce in other analogous activities, such as the granting of licences to import certain products?</p>	
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	<p>The carve-out exempts the Minister, but what about concession holders? If section 27 of the Commerce Act (anticompetitive agreements) is engaged, would they still be exposed to possible private (or even Commission) action, including penalties, damages or a ruling that provisions or of their concession are unenforceable because they gave effect to an anticompetitive agreement?</p> <p>One approach may be to query whether a Minister granting concessions constitutes the Crown 'engaging in trade' for the purpose of section 5(1) of the Commerce Act, and so is even captured by the Commerce Act.</p>	
cl 33, new s 48E(5)	<p>This subsection refers to the regulation setting out how their "currency period" is to be determined. It is unclear whether "their" refers to the regulations or the relevant concessions or class of concessions.</p>	Clarify what the clause is referring to.
Subpart 8—Amendments to Part 6A		
cl 35, new section 51UA	<p>New section 51UA provides that an international visitor must pay an access levy before accessing an area for which a levy has been prescribed in accordance with section 48D. Such a person failing to do so commits an infringement offence.</p> <p>Concerns with this clause are discussed above: see clause 13, new section 11.</p>	See further clause 13.
cls 36 and 37	<p>Amendments to section 51X and new section 51YA regarding service of infringement notices and reminder notices seem both clear and effective. However, as earlier discussed (above new sections 51UA and 11), enforcement of any fine may be</p>	The Committee may wish to seek further advice on the option of giving appropriate government agents power to impose instant fines.

	difficult if the alleged offender has already departed New Zealand. Giving appropriate government agents power to impose instant fines might be an alternative, and more effective, option.	
Part 2: Consequential amendments to other legislation		
Subpart 2—Amendments to Reserves Act 1977		
cl 73(1) “activity” definition	This clause replaces and expands the definition of the term “activity”. As noted above for the clause 4(2) definition of “activity”, in subclause (a) of the definition reference is made to “the construction, maintenance, use or occupation of any facility or structure associated with the activity”. While it may be inferred that “operation” forms part of “use”, given “operation” is a commonly used term it may aid clarity to include that. It may also be appropriate to include the word “upgrade”, since such a term describes an activity that goes beyond maintenance to improve a structure or facility.	Consider amending subclause (a) of the definition to read as follows: “activity includes— The construction, operation , maintenance, use, upgrade or occupation of ...”
cl 100 and Schedule 5 (new Schedule 1AA to Reserves Act)	These provisions insert a new transitional provisions clause into the Reserves Act 1977. In subclause 2(1), there is reference to “consultation with Māori groups with relevant interests in relation to the proposal”. As per earlier comments in relation to clause 23, new section 14T, there is no definition of who such groups are, and whether they are limited to tangata whenua of an area, or extend to other Māori groups who reside in an area but have no whakapapa link to that area — for example, pan Māori groups and Ngā Hau e Whā marae. Clarification of what is intended would assist.	Clarify the meaning of Māori groups with relevant interests.

Subpart 6—Amendments to the Wildlife Act 1953		
cl 117, s 2(1)	See earlier comments in relation to the definition of “activity” at clause 4(2) above.	See clause 4(2) above.
Subpart 9—Amendments to Marine and Coastal Area (Takutai Moana) Act 2011		
cl 130, s 71(1)	This clause amends section 71 by replacing the word application with “a complete application” in subsection 1. However, it is not clear what is meant by a complete application, and whether this is intended to only apply once a determination has been made by the Minister that an application is complete.	Clarify the intent.
Part 3—Consequential amendments to Treaty settlement Acts		
cl 365	<p>Clause 365(4) replaces section 23(3) of the Ngāti Manawa Claims Settlement Act 2012. New section 23(3) and (4) refer to “the Te Urewera Board”. Current section 23(3), other subsections in section 23, and other sections in the Ngāti Manawa Claims Settlement Act 2012 all refer to “Te Urewera Board” without “the” preceding it.</p> <p>For consistency, the word “the” should be omitted before “Te Urewera Board” in new section 23(3) and (4).</p>	Remove the word “the” preceding “Te Urewera Board” in new section 23(3) and (4).

Schedule 1—Part 3 inserted into Schedule 1AA Conservation Act		
cl 17	<p>This provision provides that costs may be recovered under section 60BA for matters that had already begun before the commencement date of the Act, only for costs incurred after the commencement date.</p>	<p>For matters begun before the commencement date, it seems reasonable to continue with the cost recovery process set out currently in the current Act. To allow new cost recovery provisions to apply retrospectively to applications commencing before the amendments were in place introduces concerns around retrospectivity. We recommend that any applications lodged prior to commencement of the Amendment Bill are subject to the current cost recovery mechanisms within the Act.</p>
cl 24	<p>This provision sets out the Crown’s obligation to work with post-settlement governance entities to enter agreements to uphold Treaty settlement redress or arrangements. Subclause (3) states that this requirement will cease on the second anniversary of the commencement date.</p> <p>The words “to the greatest extent possible” in clauses 24(1) and 24(2)(a) are subjective and introduce uncertainty into the provisions. What one party considers possible may differ from the other. The phrase also does not appear necessary, given there is already a degree of flexibility provided in the clause through reference to “equivalent” arrangements.</p> <p>The clause imposes a two-year timeframe for such agreements to be made, with a limited provision for the Crown to continue discussions or enter agreements after that time. Given the number of Treaty settlements, there is potential that such discussions/agreements may not be concluded with all parties. There is considerable scope for disagreement between iwi and</p>	<p>Remove the words “to the greatest extent possible” in clauses 24(1) and 24(2)(a).</p> <p>We recommend that subclause (3) is removed. If the time period is not removed, we recommend that it is extended.</p> <p>Include provisions for dispute resolution.</p>

	<p>the Crown over what is required in order to provide equivalent settlement redress or arrangements.</p> <p>Given the potential for disagreement and the number of iwi with whom it will be necessary for the Crown to negotiate, a two-year timeframe for negotiations appears unrealistic. If the Crown is unable to complete such agreements within two years, its obligation to negotiate should not cease. That would be unfair to iwi and inconsistent with the Treaty’s principles. A Treaty settlement entity should also not be prejudiced due to the Crown’s delay or failure to engage within the proposed 2-year timeframe.</p> <p>There is also no provision for dispute resolution or a binding determination of disagreements between the Crown and iwi over what comprises equivalent redress or arrangements. Providing for this is recommended.</p>	
cl 25(2)	This clause includes the qualifier “to the greatest extent possible”, as in clause 24. This phrase should be deleted for the reasons noted above under clause 24.	Delete the words “, to the greatest extent possible under the amendment Act,” from clause 25(2).
Schedule 2—Schedules 2 and 3 of Conservation Act 1987 replaced		
Schedule 2—Process for making or amending NCPS		
cls 3, 4, 10 and 12	Consultation is required with “iwi authorities” in clauses 3 and 4 and with “relevant iwi authorities” in clauses 10 and 12 in relation to preparing the NCPS. It is unclear why the qualifier “relevant” has been added to clauses 10 and 12. While clauses 10 and 12 apply to the ‘short process’, given the changes are	Amend clauses 10 and 12 to delete the qualifier “relevant”.

	not referred to as being limited to specific areas and cover the addition, removal or amending of exempt or pre-approved activities, all iwi authorities should be consulted.	
cl 14(1)	The heading to clause 14 states that it relates to “minor <u>and</u> technical amendments” to the NCPS. However, the text of the section provides the Minister with a power to make a “minor <u>or</u> technical amendment”. These references should be amended to be consistent. Further, given the intention of the clause appears to be to allow minor changes without requiring consultation, it is suggested that the clause should be amended to make it clear that any technical amendments must also be minor to fall within the scope of this clause.	Amend clause 14(1) to read as follows or to wording equivalent in effect: “(1) This clause, instead of clauses 2 to 13, applies if - (a) the Director-General considers a minor or technical amendment (including a minor technical amendment) to the NCPS is necessary; or (b) the Minister directs the Director-General to prepare a minor or technical amendment to the NCPS.”
cl 15	This clause relates to hearings. It confirms that there is no right to be heard but a Minister may give a submitter an opportunity to be heard. There is no guidance as to how the Minister should exercise this discretion.	Consider whether it would be helpful to include guidance as to the factors a Minister should consider when deciding whether to give a submitter an opportunity to be heard.
Schedule 3—Process for making or amending area plans		
cl 13	The same issue as described in Sch 2 cl 14(1) above.	Amend clause 13(1) to read as follows or to wording equivalent in effect: “(1) This clause, instead of clauses 2 to 12, applies if - (a) the Director-General considers a minor or technical amendment (including a minor technical amendment) to an area plan is necessary; or

		(b) the Minister directs the Director-General to prepare a minor or technical amendment to an area plan.”
cl 14	The same issue as described in Sch 2 cl 15 above.	Same response as set out in Sch 2 cl 15 above.