

Crimes (Virginity Testing Practices) Amendment Bill

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

8 September 2026

1 Introduction

- 1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the Crimes (Virginity Testing Practices) Amendment Bill (**the Bill**). This Bill is a Member's Bill seeking to protect vulnerable women and girls from the practice of virginity testing and hymenoplasty by inserting new offences into the Crimes Act 1961 (**the Act**).
- 1.2 This submission has been prepared with input from the Law Society's Criminal Law Committee.¹
- 1.3 The Law Society does not wish to be heard on this submission.

2 General comment

- 2.1 The Law Society is the statutory body, established in 1869, that regulates New Zealand's lawyers. One of its statutory functions is to "assist and promote, for the purpose of upholding the rule of law and facilitating the administration of justice in New Zealand, the reform of the law."² To that end, the Law Society makes submissions on legislative design and points of legal concern and seeks to assist in the production of quality legislation that will advance the rule of law, observe constitutional principles and conform with established legislative standards.
- 2.2 It is also part of the Law Society's function to advocate for legislative initiatives that are consistent with human rights norms. The Law Society acknowledges that there is a strong international human rights 'expert' consensus and support for banning virginity testing practices that characterises those practices as "harmful, scientifically unfounded and discriminatory".³ Where those practices violate the victim's human rights, the Law Society supports that international consensus.
- 2.3 At the same time, it is fundamental to good law reform that a thorough policy development process is followed. The absence of a full policy development process, particularly in relation to the creation of criminal offences, may risk creating serious defects in the law. In this regard it is significant that the World Health Organisation interagency statement identifies a number of strategies that may be adopted, including strengthening the knowledge and training of healthcare providers, building supportive legislative and policy frameworks, and empowering and mobilising communities including interventions tailored to specific populations and population subgroups.⁴
- 2.4 As a Member's Bill, the current drafting has not received the same level of preparatory policy work, consultation and testing as would typically precede the drafting of a Government Bill. While providing for a criminal offence for the practices of virginity testing and hymenoplasty (thereby banning those practices) may well be an appropriate

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/>.

² Lawyers and Conveyancers Act 2006, section 65(e).

³ Crown Law, *Bill of Rights Vet Advice*, at [13].

⁴ World Health Organisation, Human Rights Office, and United Nations Women *Eliminating virginity testing: an interagency statement*, WHO/RHR/18.15 (2018).

policy choice, that cannot be assessed without a more thorough process being undertaken. It is perhaps notable that there does not appear to have been much uptake of criminalisation as an option beyond the United Kingdom. Further, the Attorney-General may wish to consider directing the Parliamentary Counsel Office to provide drafting assistance to ensure the Bill's objectives are fully attainable.⁵

- 2.5 The Law Society's submission will therefore consider the practical workability and current drafting of the Bill, and where possible, make recommendations to address our concerns.

3 Effectiveness

- 3.1 Criminal offences should only be created when there is a clear case to do so. The Legislation Design and Advisory Committee's Guidelines (**Guidelines**) provide essential guidance on the factors to be assessed before including a new criminal offence in legislation.⁶ The Guidelines stipulate that a new criminal offence must be 'necessary' to achieve the underlying policy objective. This also includes ensuring the Ministry of Justice is consulted.
- 3.2 However, as a Member's Bill, there is no supporting documentation that appropriately considers whether the proposed criminal offences will be effective, particularly in deterring the prohibited conduct and thereby protecting vulnerable women and girls. This lack of evidence is particularly important when considering that the conduct to be prohibited typically occurs in private and is not readily able to be monitored or identified.
- 3.3 We note the United Kingdom created similar offences in 2022 via the Health and Care Act 2022. While that legislation was created with the benefit of expert consideration and recommendations from an appointed panel assessing the practices in detail,⁷ relevantly the Law Society is not aware of any successful prosecution or charging of the offences to date. Although an investigation concerning a General Practitioner being asked to perform a virginity test on someone was publicised in the media, it appears that investigation required disclosure of the request from the General Practitioner (therefore breaching medical privilege) and as such only resulted in a warning.⁸ This example, however, highlights the necessity of education and guidance on the topic for health professionals, as well as the general public, if the Bill proceeds.⁹
- 3.4 We recommend the Select Committee seek advice from officials about whether the proposed criminal offences will be effective in achieving the underlying objective of

⁵ Per section 130, Legislation Act 2019.

⁶ Legislation Design and Advisory Committee *Legislation Guidelines: 2021 edition* at Chapters 22 and 24.

⁷ Expert Panel on Hymenoplasty *Ethical, legal, and clinical implications of hymenoplasty*, 23 December 2021.

⁸ Grace Parnell "Virginity testing: Police warning after GP asked to carry out procedure" (8 January 2024) BBC < <https://www.bbc.com/news/uk-england-south-yorkshire-67913094> >

⁹ See for example the United Kingdom's Department of Health and Social Care *Guidance: Virginity testing and hymenoplasty: multi-agency guidance* (11 August 2025) Gov.uk < <https://www.gov.uk/government/publications/virginity-testing-and-hymenoplasty-multi-agency-guidance/virginity-testing-and-hymenoplasty-multi-agency-guidance> >

protecting vulnerable women and girls. It may also be appropriate to consider whether associated guidance and education for professionals who encounter these practices, is necessary.

4 Definitions

- 4.1 Clause 4 of the Bill amends the Act by inserting new sections 204C to 204E to provide for offences relating to virginity testing practices. New section 204C sets out definitions of the key terms including 'hymenoplasty,' 'virginity testing,' and 'virginity testing practices.'
- 4.2 We agree with the definitions of the terms 'hymenoplasty' and 'virginity testing' as currently drafted. They are similar to the definitions set out in the Health and Care Act 2022 (UK). While, these definitions are scientifically accurate and detailed, it may be worth considering that there are different types of virginity testing. For example, we query whether the definition is intended to include both visual and physical examinations or just physical.
- 4.3 More importantly, the Law Society is concerned the definition of 'virginity testing practices' includes hymenoplasty. This is not a testing practice. Hymenoplasty is a surgical procedure that is conducted alongside virginity testing practices. In our view, the inclusion of hymenoplasty as a 'virginity testing practice' may be misleading. We consider it would be clearer to separate the terms 'virginity testing' and 'hymenoplasty' and not group them together as 'virginity testing practices' for the purposes of the offence. Clear drafting of laws in ordinary language serves the purpose of letting members of the public know what is lawful and what is not. A person should not have to read the definition section of the legislation to see that hymenoplasty is intended to be criminalised, if this could just be stated clearly as being unlawful.
- 4.4 Alternatively, the Select Committee may wish to consider the approach taken in the United Kingdom's Health and Care Act 2022 which clearly separates out the offences of virginity testing and hymenoplasty, recognising that they are different procedures/tests.

5 Comparison to section 204A and 204B of the Crimes Act

- 5.1 Sections 204A and 204B of the Act set out the offences of female genital mutilation, and the extra-territorial jurisdiction for the offence respectively. Clause 4, new section 204D provides the offence of virginity testing practices, and clause 4, new section 204E provides the extra-territorial jurisdiction for the offence of conducting virginity testing practices.

Penalty

- 5.2 We note that new section 204D(1) prescribes a penalty of up to five years' imprisonment, whereas the penalty for female genital mutilation prescribes a penalty of up to seven years' imprisonment.¹⁰ We also note that the provisions for the criminal offence of virginity testing or hymenoplasty in the United Kingdom provides for two

¹⁰ At section 204A(2).

separate levels of penalty (either by summary judgment a fine and/or up to 12 months imprisonment, or by conviction up to five years imprisonment).¹¹

- 5.3 The Law Society does not have a view on whether the penalty should be aligned with either the United Kingdom’s provisions or the Act’s female genital mutilation offence, we nevertheless recommend the Select Committee consider the appropriateness of the penalty including whether it may be preferable to take a two-tiered approach to the penalty structure as is the approach in the United Kingdom. That is the kind of policy choice that is best made after a more thorough policy development process. This must necessarily include consideration of what factors are taken into account to distinguish between those deserving of the “light” or summary pathway, from those deserving the “heavy”/conviction pathway.

Extra-territorial jurisdiction

- 5.4 Section 204B of the Act sets out that extra-territorial jurisdiction offences apply to female genital mutilation practices that occur outside of New Zealand if the child or young person taken outside of New Zealand is under 17 years of age. However, in establishing similar extra-territorial jurisdiction, the Bill sets a slightly higher threshold of including any children under the age of 18 years’.
- 5.5 As above, given the similarity of offence types, we query whether the one-year age difference between the female genital mutilation offence and the virginity testing practices offence is intended or desirable and recommend the Select Committee seek advice from officials on this point.¹²

6 Other matters

Party liability

- 6.1 Clause 4, new section 204E(2) and (3) establishes party liability. As currently drafted, new section 204E(2) states a party will be liable if in New Zealand, they aid, incite, counsel, or procure the doing outside New Zealand any act which, if done in New Zealand, would be an offence against section 204D. It does not matter whether or not the act is in fact done. New section 204E(3) however, refers to “incites, counsels, procures, or induces” – it does not similarly include ‘aiding’. More importantly, both sections don’t include the general party liability act of ‘abetting’. It is unclear why this term has been omitted.
- 6.2 We also note the United Kingdom’s Health and Care Act 2022 includes separate offences of ‘aiding, abetting, counselling or procuring, and that of ‘offering to carry out.’¹³ While the Bill does not contain a similar offence of ‘offering to carry out’, the Select Committee may wish to consider whether one should be included.

¹¹ Health and Care Act 2022 (United Kingdom), Part 5.

¹² Above n 4 at Chapter 24, Part 2.

¹³ Health and Care Act, 2022 (UK), sections 137, 141, 145.

- 6.3 We also recommend the Select Committee consider whether the omission of ‘abets’ from the party liability provisions was intentional, and if so, what the rationale for that omission was.



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