New Zealand Law Society
Te Kāhui Ture o Aotearoa

Fast-track Approvals Amendment Bill

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

17 November 2025

1 Introduction

1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the Fast-track Approvals Amendment Bill (**Bill**). The Bill proposes amendments to the Fast-track Approvals Act 2024 (**Act**). This submission has been prepared by the Law Society's Environmental Law and Public Law Committees.[1]

1.2 In the Law Society's view, the Bill contains a number of concerning and potentially unworkable proposals. Part A of this submission sets out the Law Society's specific and significant concerns regarding:

(a) Mischaracterisation of the reforms as focused on grocery competition and technical amendments.

(b) Premature legislative intervention, and a rushed policy and Parliamentary process.

(c) Enhanced Executive involvement, by way of Government policy statements and other Ministerial directions to the Environmental Protection Authority (**EPA**).

(d) Reduced and inflexible timeframes for processing fast-track applications.

(e) Substituting a notification requirement for consultation requirements, and other proposed restrictions on consultation.

(f) Changes constraining the ability of Māori communities to have meaningful and timely input on proposals, and the corresponding ability of the Crown to meet its te Tiriti o Waitangi | Treaty of Waitangi (**Treaty**) obligations.

(g) Changes to rights of appeal, raising concerns about access to justice for affected communities.

(h) Whether the Bill is likely to be successful in meeting its intended purpose.

(i) The lack of adequate transitional arrangements, which is a significant drafting and procedural gap.

1.3 In addition to these concerns, we address in Part B of the submission various other issues relating to the clarity and workability of the proposed amendments.

1.4 The Law Society **wishes to be heard** on this submission.

Part A: summarising primary concerns

2 Mischaracterisation of the reforms

2.1 The Explanatory Note to the Bill describes its purposes as, broadly, twofold: improving competition in New Zealand's grocery sector, which the Commerce Commission has found does not work well; and ensuring the operational and procedural efficiency of the

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

Act.[2] The Explanatory Note also refers to amendments which "make technical and machinery changes within the [Act's] existing overall scheme, but do not substantially alter its decision-making framework".[3] In the Law Society's view, however, the Bill involves substantially more than 'technical and machinery changes'. The scope of these changes is neither confined to nor principally concerned with grocery market purposes.[4]

2.2 The Bill proposes substantive and significant changes to the processes that the EPA has set in place to manage fast-track approvals, and to the guardrails that the panel convener has sought to establish to ensure the robustness and procedural fairness of the fast-track decision-making process. This observation prefaces and reinforces our concerns about the truncated timeframe and the rushed nature of the policy and legislative process for this Bill.

3 Premature legislative intervention and rushed process

3.1 The Act, which commenced only last year, has not yet had a chance to bed in. The amendments now proposed appear not only rushed and premature, but unnecessary based on general practice to date. As a general comment, we consider it is desirable to allow time for a new law to bed in, before making changes that materially affect clarity and certainty for all parties.

3.2 The rapidity with which the Bill is being progressed has limited the ability to consult adequately on it, for key stakeholders to evaluate its proposals, and for the Bill to be properly scrutinised by way of ordinary Parliamentary process. As we have recently noted: the rule of law is strengthened when good legislative processes are followed. These processes help to ensure that laws are understood, supported and respected by the public. They contribute to drafting law that is clearer and more predictable, that minimises unintended consequences, and that ensures stability over time.[5]

Limited consultation

3.3 We are aware that there has been incomplete consultation on the Bill, omitting participants who would be well-equipped to offer insights on any issues that have arisen to date with the Act's drafting. Consultation on the proposals in the Bill could have enabled a fuller and more nuanced consideration of the options for constructively addressing practical concerns that may have arisen with the new processes, including options other than amendment of the legislation.

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2 Explanatory note to the Fast-track Approvals Amendment Bill (219-1) at 1; "Fast-track Approvals Amendment Bill – First Reading" (Hansard, 6 November 2025); Hon Nicola Willis, Hon Chris Bishop and Hon Shane Jones "Express lane for new supermarkets underway" (media release, 3 November 2025) <www.beehive.govt.nz>.

3 Above n 2.

4 As subsequent media reports on the Bill have noted, consistent with our own analysis: in the Bill, "there was no mention of supermarkets, and grocery appeared only once in the body of the proposed legislation, in reference to the new government policy statement. The sector was not mentioned in the attached 14-page departmental disclosure statement, unlike other sectors." Fox Meyer "Fast-track changes increase Ministerial powers" (Newsroom, 5 November 2025).

5 New Zealand Law Society *Strengthening the rule of law in Aotearoa New Zealand* (June 2025).

3.4 For example, practice notes such as the Guidance Note already issued by the EPA panel convenor are an alternative option, which can work well as a medium for resolving many practical and procedural matters. It is common for tribunals and courts (including the Environment Court) to regulate such matters using practice notes. An advantage is that, compared to legislation, they allow for flexibility as things change. More generally, as a matter of both sound legislative practice and principle, we would urge caution about hurrying to amend legislation each time a practice issue is raised.

Use of urgency

3.5 The observation that the Bill has not had balanced or comprehensive policy consideration is compounded by a rapid Parliamentary process that further limits the extent to which those not consulted in preparing the Bill can contribute to the proposed legislation. Submitters have been required to provide their written submissions to the select committee within 10 days. The Committee will report back by 5 December. As publicly noted, it is the Government's intention to pass the Bill under urgency by the end of the year (that is, within approximately six weeks).[6]

4 Powers given to Ministers: enhanced Executive involvement

4.1 Proposals in the Bill for providing enhanced Executive direction and guidance to the EPA and to fast-track decision-making panels are concerning. These proposed powers in the Bill are not novel,[7] but as drafted are unusually broad. There are concerns with their potential unchecked breadth, and the need for them to operate within accepted parameters. If sufficient checks and balances are not set in place, the proposed powers risk affecting both the independence and perceived independence of the EPA's quasi-judicial processes. The Bill provides for Executive direction to be given in two ways:

(a) The Minister may, with very limited consultation and no public consultation, issue Government policy statements that panels are required to consider: clauses 5 and 45(1).

(b) There is a further proposed Ministerial power to give the EPA general directions on the performance and exercise of its functions: clause 48.

Government policy statements: clauses 5, 12 and 45

4.2 Clause 5 of the Bill inserts new section 10A, to enable the Minister to issue a Government policy statement about the regional or national benefits of certain types of projects. These policy statements will need to be considered by decision-makers. They are considered by the Minister, when deciding whether the project would have significant regional or national benefits for the purposes of referral to the fast-track process,[8] and then by panels, under clause 45.

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6 "Fast-track Approvals Amendment Bill" <www.parliament.nz> (retrieved 11 November 2025); "Express lane for new supermarkets underway", above n 2.

7 Crown Entities Act 2004, ss 103 and 114.

8 Clause 12. We note that the Minister considering a Government policy statement when making a decision to accept or decline a referral application may also have been the issuer of the statement: new section 10A(1).

4.3 The Law Society is concerned about the process of issuing these statements. The Bill proposes an essentially open-ended discretion for the Minister to issue a statement, subject only to a limited process requirement to consult with Ministerial colleagues holding relevant portfolios. There are otherwise no statutory constraints on the statement's scope. In the absence of guidelines or constraints on how the Minister may exercise such a power, there are concerns regarding the sufficiency of proposed checks and balances. For example, the provision does not contain any exclusions safeguarding the independent statutory functions of the EPA under the Act. The power to issue statements proposed in the Bill also differs from some other Government policy statement processes, which require public input and consultation.[9]

4.4 The requirement that Government policy statements are given consideration in decision-making makes processes of external and independent scrutiny vital. The proper limitations of such statements in practice should also be understood. For example, defining a housing project that will deliver more than 1000 homes as 'significant' does not assist consideration of whether the project's impacts are proportionate relative to its benefits (the ultimate issue for decision). It would be improper if Government policy statements were to purport to provide an answer to panels which takes away or undermines the purpose of having the panel as the adjudicator. Under the Act, a key consideration for the panel is understanding what the regional and/or national benefits are of any given proposal. A policy statement may be acceptable, provided it is of general nature. It would be inappropriate if statements were to go further, by purporting to provide what must be approved.

Directions to the EPA: clause 48

4.5 Clause 48 of the Bill inserts new section 93A, providing a power to the Minister to give general directions to the EPA "in relation to the EPA's performance and exercise of its functions, duties, and powers". While the Minister cannot make directions about a particular substantive application,[10] they may do so regarding the EPA's functions, duties and powers under the principal Act.

4.6 While, again, this is not novel, it could be highly concerning, depending on how such a power were to be used. In policy materials supporting the Bill, the current limits on the Minister's ability to influence the EPA's performance priorities and approach to administering the fast-track system are discussed.[11] Advice to Cabinet had included options to set expectations for the panel convener, due to concerns that the Minister's ability to ensure consistent and efficient system performance was otherwise limited. Advice from Crown Law resulted in a recommendation to Cabinet not to pursue this option.[12]

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9 We acknowledge there are different approaches: compare Crown Minerals Act 1991, s 12B; Pae Ora (Healthy Futures) Act 2022, s 35; Kāinga Ora – Homes and Communities Act 2019, s 24.

10 Clause 48, new section 93A(2).

11 Ministry for the Environment "Briefing: Technical and machinery amendments to the Fast-track Approvals Act 2024" (BRF-6601, 7 August 2025), Appendix 1 at 8.

12 Ministry for the Environment, above n 11 at 12.

4.7 Presumably, the procedural requirements relating to timing now imposed on the convener and on fast-track panels seek to address some of these concerns. However, if the new power to give general directions was used to administratively impose progressively further Ministerial restrictions on the EPA, in what is already a very constrained process in terms of time and third-party involvement, this would be of serious concern. The implication underlying the language of needing to manage EPA "performance" is also both concerning and unwarranted. In managing fast-track hearings, the EPA is supporting and administering adjudicative functions. The provision itself is not out of order, depending on how it is to be used. However, it is walking a line that risks infringing upon broader principles, if the new powers were used to undermine and interfere in quasi-judicial processes.

4.8 As one appropriate safeguard, we recommend following the approach of existing provisions in the Crown Entities Act 2004 (**CE Act**).[13] It would be appropriate to provide some form of safeguarding provision in the Bill, such as in section 113 of the CE Act. Section 113 safeguards the independence of Crown entities by providing that the Minister may not direct a specific action in regard to a statutorily independent function. The Law Society recommends a comparable provision be included in the Bill (see further our tabulated recommendations in Part B).

5 Reduced timeframes

5.1 The Bill proposes reductions of timeframes, and removes flexibility in setting timeframes:

(a) Clause 9(4) amends section 17(6) of the Act, to reduce the timeframe in which comments on a referral application must be provided by parties invited by the Minister from 20 days to 15 days.

(b) Clause 29 replaces section 50, to require the panel convener to set up a panel for each substantive fast-track application within 15 working days. (Section 50 does not currently specify a time for completing this step in the process.)

(c) Clause 32, inserting new section 52A, provides a timeframe of 10 working days for reports and other advice to be obtained.

(d) Clause 44, amending section 79, caps the timeframe for a panel to issue its decision at 60 days unless the applicant agrees to a longer timeframe.

5.2 These changes are proposed in the context of an already pressurised process, with respect to the EPA's ability to properly conduct its work and the ability for third parties to comment on fast-track applications. We again reiterate our concerns noted in 2024, submitting on what is now the Act. In commenting on the 2024 Bill,[14] we considered that requiring feedback on proposals within very short timeframes, limiting the information available to decision-makers, and providing only for a limited appeals process were features of the proposed process contributing to concerns that the proposed fast-track framework limits the right to natural justice. We noted that timeframes that are too

13 The EPA is a Crown entity (a Crown agent): Crown Entities Act 2004, Schedule 1.

14 New Zealand Law Society "Fast-track Approvals Bill" (18 April 2024).

short, allowing only rushed, incomplete or summary responses, could have significant adverse impacts on the quality of information presented to decision-makers and, as a result, the quality of the decisions themselves. Imposing strict constraints on time risks undermining robust and durable decision-making. It undermines users' confidence in the process, in a way which risks being counter-productive to the Bill's intended purposes to facilitate project delivery, as we discuss further below. It may, perversely, result in legal challenges which delay the rapid delivery of the substantive outcomes intended by the Act.

Reduced timeframe for providing comments on a referral application: clause 9(4)

5.3 The shortened timeframe of 15 working days when the Minister invites comment on a referral application will affect all parties invited to make comments at this stage, including local authorities, relevant administering authorities, Māori groups listed under section 18(2) of the Act, and the owners of Māori land in the project area. Further restricting the time period is problematic in limiting consultation rights and prioritising the speed of the process ahead of robust decision-making. We raise below, as a particular and separate concern, the implications this has for Māori, and for the Crown's Treaty relationships with those groups and its Treaty obligations. Pro-actively released policy briefings on the Bill include the view that five days' reduction in time at this early point is not material given interested parties' further ability to comment later in the process, at the time of the substantive application.[15] However, this is dependent on *if* those same groups are invited. Under clause 33 of the Bill (amending section 53), a panel's ability to direct the EPA to invite written comments on a substantive application is constrained to matters that will not be sufficiently addressed by the relevant local authorities or relevant administering agencies. As amended by the Bill, most Māori groups are also not required to be consulted by the applicant under sections 11 and 29 of the Act. They will instead be "notified".

Establishing panels: clause 29

5.4 Clause 29 replaces section 50, requiring the panel convener to set up panels within 15 working days after receiving a notice to do so from the Minister. The Law Society is concerned this pays insufficient account to the important role that panel appointments and other administrative matters being addressed during this period play in ensuring sound decision-making processes. For most applications to date, panel appointments have taken four to six weeks.[16]

5.5 We consider it likely that a 15 working-day limit to set up a panel will remove the ability the conveners currently have, and the practice that they presently follow, to conference with key participants (to discuss, among other things, the make-up of panels and the length of time required for a decision). If available time does not permit this to occur,

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15 See Ministry for the Environment, above n 11 at 13, considering that a shorter timeframe at the referral stage is proportionate relative to the 20 days allowed for comment at the substantive stage, reflecting the lower level of information and narrower decision required.

16 Jennifer Caldwell "Fast and furious: evolving practice and managing expectations under the Fast-track Approvals Act 2024" (paper to CLE New Zealand Law Society Environmental Law Conference, November 2025) at 27.

conveners will have to make those decisions in an information vacuum. Consideration may also need to be given to the practicability of the new requirement if multiple applications require panels be set up at the same time, particularly given the proposed requirement for a panel to include a person with technical expertise in relation to the sector to which the application relates. There is a limited pool of technical experts in some areas (such as stormwater), particularly experienced commissioners.

5.6 We recommend consideration is given to providing for situations where establishing a panel within the prescribed timeframe may not be feasible.

Issuing a decision: clause 44

5.7 The timeframes for making decisions are already demanding for panels and parties. The requirement for a panel to issue a decision within 60 working days of receiving comments adds to the cumulative time constraints within the process, particularly when there is no power for a panel to suspend the process. The proposed 60-day period will be unrealistic for some complex projects, particularly given that:

(a) 15–20 working days is needed to allow for consultation with the Minister as required under section 72 of the Act.

(b) The Bill also proposes to weaken the ability to require applicants to provide information prior to their application being made, and reduces pre-application consultation. These changes will impede panels in their ability to marshal information early and operate as efficiently as possible.

5.8 It is necessary that, when required, the panel convener retains the ability presently available under section 79 to set a longer time frame. Again, we return below to this issue, and our concern that imposing unduly stringent time constraints undermines rather than supports efficient and effective decision-making on important projects.

6 Restrictions on consultation

6.1 The Bill proposes limits on consultation:

(a) Under clauses 6 (amending section 11) and 14 (amending section 29), the present requirement under the Act for a fast-track applicant to consult relevant administering agencies, local authorities, iwi authorities, hapū, and Treaty settlement entities is replaced with a narrower requirement to *notify* them. Consultation is now only required with the small number of parties referred to in section 11(1)(a).

(b) Clause 33(2), amending section 53, constrains the panel's discretion to invite comments on an application. A panel will now only be permitted to invite comments from others if the local authority does not intend to comment or will not adequately address a specific point. In the Law Society's view, this provision raises major concerns about how it is intended to work, and risks which arise.

Substituting a notification requirement for consultation: clauses 6 and 14

6.2 Under the proposed amendments to section 11, the relevant local authorities, iwi authorities, hapū, and Treaty settlement entities, administering agencies, and the holder

of an interest in the land that is to be exchanged by the Crown will be notified by an applicant in writing. Being given notice of an application enables those parties to respond. However, while section 11(3) provides a right for notified parties to provide their comments, it does not require applicants to wait to receive the comments before filing their application. The substantive application only needs to address the consultation with the limited number of parties set out in section 11(1)(a).[17]

6.3 As noted above, this is a narrow category of groups. The process proposed reinforces concerns that notification (compared to consultation) could become more of an exercise in form over substance than an opportunity for genuine engagement and consideration of notified parties' views. The proposal that the substantive application should only address the consultation with section 11(1)(a) parties also illustrates how the very limited consultation that will be required under section 11 flows on to affect the merits of the substantive application process. In the Law Society's view, consultation with relevant local authorities and iwi authorities at this early stage in the process can help with early identification and potential resolution of issues. This can have benefits down the track in terms of a timely and smooth process. For example, the panel convenor may set a shorter time period for overall determination of the application, because issues have been narrowed or resolved through pre-lodgement consultation. By contrast, reducing the input of local authorities and iwi authorities in the initial phases of the process will make the job of expert panels trying to meet constrained timeframes more difficult. One concern is that it will lead to a greater need for process suspensions, slowing the process down.

Constraints on the ability of a panel to invite comments: clause 33

6.4 Clause 33 proposes restrictions on the ability of the panel to invite comments on a matter from any person or group that the panel considers appropriate. A panel will first be required to check whether relevant local authorities or administering bodies are intending to comment on the matter; and (if they are intending to comment) whether the comments that those parties intend to provide "will not enable the panel to sufficiently address the matter". This restricts the involvement of other parties, and means the perspective of third parties will not necessarily be known outside of the views of a local authority (which focuses on issues at a district or regional level).

6.5 A key concern with the proposed approach is that a panel cannot know with any certainty what comments the local authorities and administering agencies will make, what issues they will cover, and what evidence they will provide. The local authorities and administering agencies may not be in position to advise the panel what those parties' comments are anticipated to cover, as they may need to seek advice and/or go through internal processes before deciding. Even if they have formed a view on these matters, there is nothing to prevent them changing their minds. The panel therefore has no way of making an informed decision on whether local authority and administering agency comments will sufficiently address the relevant matters. It will be difficult for the

17 Clause 7(2), amending section 13.

panel to prove a negative (that the comments will not sufficiently address the matter) without knowing the content of these comments.

6.6 We note that proposed new section 53(4) would also restrict persons or groups invited to comment by the panel to commenting on "a particular matter", rather than on the application generally. Some invited commenters may have relevant information, expertise or interests regarding the application generally, rather than merely particular matters or issues relating to it.

6.7 We recommend retaining the current wording of sections 11 and 29 of the Act, and amending clause 33, if it proceeds (see further our tabulated recommendations in Part B).

7 Impacts on the Crown's Treaty obligations and Māori involvement in the process

7.1 Two issues, connected with the wider issue of notification, are concerning in their own right. They are, as discussed in this and the following sections:

(a) impacts on Māori and for the Crown in meeting its Treaty obligations; and

(b) limits on rights of appeal.

7.2 In the preceding sections, we have noted concerns about reduced timeframes for providing comments, and "notification" rather than "consultation". In consultation on the Bill, Te Puni Kōkiri indicated that reducing timeframes for comments may run counter to the Crown's obligations to its Treaty partners by reducing their opportunities to be involved in the process.[18] In the Law Society's view, this applies equally to a policy of downgrading consultation with Māori parties by notifying rather than consulting them. In our view, it would be most consistent with Treaty principles, particularly the longstanding and central principles of partnership and active protection, for the Crown to continue to require of applicants that they genuinely consult with rather than merely notify Māori groups affected by an application.[19] In practical terms, it would also assist panels in complying with the requirements of sections 7, 82 and 84 of the Act. Notification is not an adequate substitute for consultation.

7.3 In addition to the proposed consultation changes, which will adversely affect Māori involvement in fast-track decision-making processes, the Bill makes other relevant amendments. Clause 10 amends section 18, which requires a Minister to consider reports on Treaty settlement obligations and other obligations. The new proposed provision removes a specific requirement for the responsible agency to provide a draft of their report to the Minister for Māori Development and the Minister for Māori Crown Relations: Te Arawhiti. The present requirement enables those Ministers to respond to the responsible agency within 10 working days after receiving the draft report. Under the Bill, they are instead included on the list of persons and groups to whom the referral application must be provided for comment at the earliest stage (see clause 9).

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18 Ministry for the Environment, above n 11 at 6.

19 See generally: *Environmental Defence Society v King Salmon* [2014] 1 NZLR 593; [2014] NZSC 38 at [27].

7.4 Taken on its own, the latter change may be positive. However, as proposed, compared to the existing arrangements it removes a specific opportunity for Te Puni Kōkiri (which is now the agency responsible for post-settlement obligations) to review and comment on advice about those obligations in favour of a more generic consultation opportunity. It is not clear to the Law Society why the ability of Te Puni Kōkiri to comment on material relating to Treaty settlement obligations being provided to decision-makers has been or should be removed.

8 Limiting appeal rights

8.1 The Bill proposes substantial changes to rights of appeal. This is partly a consequence of the new restrictions on who can be consulted or invited to make submissions.

8.2 Clause 50, amending section 99, provides that only "any person or group that provided comments in response to an invitation given under section 17(1) or 53(2) or any of section 35(1)(a) to (d)" may appeal a decision on a question of law. Section 53(2) refers to those parties from whom panels are required to seek comments. This means that if the panel exercises its discretion under new section 53(4) to invite comments from others, then those persons will not have a right of appeal. Clause 50 further excludes those persons or groups from whom the Minister may choose to invite written comments under section 17(5).

8.3 As noted above, providing limited scope for appeals has previously led the Law Society to raise concerns about how fast-track processes engage the right to the observance of the principles of natural justice.[20] We note that, considering this issue for consistency with the New Zealand Bill of Rights Act 1990, Ministry of Justice advice focuses on proposals in the Bill for targeted consultation and expedited timeframes. It does not address the question of appeals, and changes to rights of appeal.[21]

8.4 Under the Act, rights of appeal had already been significantly limited. We consider that, in conjunction with the Bill's other changes, this does raise concerns of both natural justice and fairness. If a party is considered to be somebody from whom it is appropriate or suitable to have requested input, it is not fair or reasonable to then deprive them of the ability to challenge the outcome of the process that they have participated in, particularly when the right to appeal is already constrained to points of law.

8.5 In our view, the proposed change also will not achieve the apparent policy objective, of streamlining the process by reducing the risk of appeal. Parties who have been invited to comment but are now excluded from the ability to appeal can still file judicial review proceedings against decisions made pursuant to the legislation. Any alleged error of law that would otherwise have been raised on an appeal on a question of law may also be raised in a judicial review application. Establishing a framework that will see some parties challenge decisions by way of judicial review and others appeal on a question of law seems only likely to result in greater procedural complexity and inefficiency. In such

20 New Zealand Bill of Rights Act 1990, s 27(1); New Zealand Law Society, above n 14.

21 Ministry of Justice "Consistency with the New Zealand Bill of Rights Act 1990: Fast-track Approvals Amendment Bill" (31 October 2025). We acknowledge that addressing the point we raise here likely would not have changed the Ministry's view that limitations set in place by the Bill are justified.

a scenario, there would be two separate proceedings challenging the same decision, involving additional expense for the applicant and potential procedural complications relating to res judicata and/or issue estoppel where different courts and different applicants are challenging the same decision.

8.6 We recommend that clause 50 of the Bill is removed.

9 Consistency with the Bill's intended policy purpose

9.1 Attempts to expedite fast-track processes by constraining timeframes, the scope of interested parties' participation, and rights of appeal are concerning in themselves. Cumulatively, they are likely to be counterproductive to the outcomes the Bill seeks to achieve. Departing too far from standard principles about how to make good decisions has potential to defeat, or substantially hamper, the very purpose of fast-track consenting.

9.2 Pursuing changes that are damaging to public and process users' confidence in the fast-track process increases the likelihood of judicial review, in turn slowing the time to conclusion of proceedings and raising their costs. If the end result is that fast-track decisions are judicially reviewed rather than appealed, little will be gained; instead, perversely, it may serve to escalate costs and time involved in arriving at a final decision.

9.3 In the Law Society's observation and experience of what is occurring in the early days of the new processes, conveners are working to promote efficiency from the earliest stages of the process, by taking steps to understand what the decision-making process will involve and how it may best be managed. We have noted earlier the concept of conveners holding a conference with parties to sort out how much time all think they might need. We have queried whether there will be sufficient time for steps such as this to occur. With a reduction in the amount of time allowed to appoint a panel, panels will begin their work less familiar with matters than they are at the moment, because they are currently undertaking preparatory work before they are formally set up. Another example is requiring 60 working days for decision unless the applicant agrees. It is unlikely to benefit an applicant for the panel to lack sufficient time to make a decision. If eroding the scope to do this type of background work and arrive at correct decisions causes processes to unravel, the intentions of the Bill may not be realised.

10 The Bill lacks transitional provisions

10.1 There is currently no provision for transitional issues in the Bill. This is a significant omission, which requires correction.

10.2 Advice on the Bill has noted that it does not affect rights, freedoms, or impose obligations retrospectively.[22] In addition, under the Legislation Act 2019, legislation is presumed to apply prospectively:[23]

(a) Section 33(1) provides that the repeal or amendment of legislation does not affect the completion of a matter or thing that relates to an existing right, interest,

22 Ministry for the Environment and the Ministry of Business, Innovation, and Employment "Departmental Disclosure Statement" (23 October 2025) at 8.

23 Legislation Act 2019, s 33.

title, immunity, duty, status, or capacity (a legal position); or the commencement or completion of a proceeding commenced or in progress when the legislation is amended.

(b) Section 33(2) states that repealed or amended legislation continues to have effect for the purposes stated in subsection (1) as if the legislation had not been repealed or amended.

10.3 However, media reports have noted the Minister's expectation that the changes "would also apply to projects being considered under the regime (not just those that applied after the legislation came into force), as long as decisions had not been issued".[24]

10.4 If this is indeed the intention, any proposal to apply the amendments to existing applications and other processes would need to be specifically stated in the Bill, with a clear outline of how the amendments will apply to applications already in train.

10.5 If Parliament does not make a clear decision one way or the other, this issue is highly likely to lead to litigation.

10.6 In addition to the need to be clear about what is intended, and to set this out expressly in the Bill, the potential issues in applying the new processes to current applications should be noted. In the Law Society's view, proposing that the Bill should apply to applications in process will be in practice highly problematic. There are applications at many different points along the process. If, for example, timeframes have already been set for a proceeding, clarity will be needed on whether they should now be changed. The intended position needs to be simply, clearly set out. We acknowledge that it is going to be a complex process for drafters of the Bill to work out transitional clauses. Conversely if that task is not undertaken, it will be extremely challenging for users of the legislation. The simplest and fairest solution, we suggest, is the orthodox position that the amendments should not apply retrospectively, at least to any panels that have been formally set up.

10.7 We recommend that:

(a) Transitional provisions are inserted.

(b) Our preference is that they should provide that the provisions of the Bill do not apply to projects where the substantive application had been submitted before the Bill receives Royal assent.

(c) Alternatively, provisions relating to the panel's processes and consideration of an application could apply to projects where the substantive application had been submitted before the Bill receives Royal assent, but the panel has not yet been set up. Changes made to processes before the panel is set up should not apply to these projects.

24 Meyer, above n 4.

11 Introducing Part B

11.1 In the submission remainder, further comments are tabulated regarding the drafting and workability of various other clauses. Part B is a clause-by-clause table. The table includes recommendations intended, where possible, to mitigate some of the above concerns.

Part B: Comments on specific clauses

Bill clause	FTA section	Issue	Recommendations
4	4	**Definition of "competing application"** Query whether the amended wording for "competing application" is sufficiently clear. It seems to be circular: two "approvals" are referred to in 4(2)(a) but then 4(2)(b) refers to "the approval in paragraph (a)". Should this refer to "the approval sought by application A"?	Clarify intention and correct drafting.
5	10A	**Government policy statements** As discussed: Part A.	Insert some criteria guiding the consideration of whether the particular regional and/or national benefits of certain types of infrastructure or development projects justify a Government policy statement. Clarify that the Government policy statement should not seek to enable specific projects (as opposed to "types" of projects). When preparing a statement, require consultation to enable broader input.
6	11(1)	**Consultation on referral application** As discussed: Part A.	Retain the current wording of section 11.

			However, if section 11 is amended as proposed in the Bill: consider requiring more than one form of notification – e.g. letter and email or phone call – to mitigate a risk that a notification may be missed if it is provided in only one form.
6	11(3)	As discussed: Part A. .	Require notification be given a sufficient time before lodging an application to ensure comments can be taken into account (such as 20 working days). Applicants that do not wish to wait this period may prefer to consult.
9(4)	17(6)	**Minister invites comments** As discussed: Part A.	Delete clause 9(4).
10	18	**Report on Treaty settlements: consulted parties** As discussed: Part A.	
12	22(2)(a)(ixa)	**Criteria for assessing referral application** It could be helpful to define the term 'grocery industry', to clarify what the Minister may consider when determining whether a project meets the criteria in section 22(1).	Consider defining the term 'grocery industry'.
14	29(1)	**Pre-lodgement requirements (consultation)** Same issue as for clause 6 above.	Retain the current wording of section 29. However, if section 29 is amended as proposed,

			consider requiring more than one form of notification – e.g. letter and email or phone call.
21	41A	**Provision for priority projects** Given the new requirement to set up a panel within 15 working days, the risk that a panel may not be established with sufficient urgency to consider a priority project would seem to be significantly reduced. The difference between having priority and not will at most be a few working days.	Either delete the priority concept from the Bill, or broaden the criteria to, for example, a risk that the application will not be progressed in a timeframe reflecting its urgency.
25	46(2B)	**Suspensions for further information** Section 46(2B) would suspend the time period for the EPA to decide whether a substantive application is complete and within scope when the EPA requests further information from the applicant. The suspension would apply until the applicant provides the information or for 20 working days (whichever is shorter). In some cases, the applicant may not be able to provide the information within 20 working days. It will be difficult for the EPA to properly assess the application if the applicant has not provided the further information that it needs. If the applicant cannot provide the information within 20 working days, it is suggested that the suspension should continue to run unless the applicant advises that it	That the words "or until the end of the twentieth working day after the date of the request (whichever occurs first)" be removed from section 46(2B) and replaced with "or advises the EPA that it does not intend to provide the information."

		does not intend to provide the information. This is consistent with other applicant-led provisions of the Act which allow the applicant to suspend processing or approve a longer period for the decision to issue. If the applicant advises it does not intend to provide the information, then the EPA can move to its substantive decision on completeness.	
25	46(2C)	**Information requests from EPA** Requiring the EPA to provide the applicant with information it holds within a timeframe specified by the applicant without any indication as to what an appropriate timeframe is could lead to unrealistically short timeframes being specified. The amount of time that the provision of information will take will vary depending on the amount of information requested and the nature of the information. A requirement for the EPA to provide the information as soon as reasonably practicable would ensure that the information is provided in a timely way, without timeframes being set that are impossible to meet. Alternatively, a back-stop reasonable time period could be provided.	Provide guidance as to an appropriate timeframe. Replace the words "within any time frame specified by the applicant" in section 25(2C) with the words "as soon as is reasonably practicable and no later than 20 working days".
29	50(2)	**Time to set up panel** As discussed: Part A.	Consider providing flexibility for an extension to the 15 working-day limit where the convener has taken reasonable steps to establish the

			panel and the delay results from unavailability of persons with the requisite skills. For example, add a clause allowing the panel convener to extend the period of 15 working days if it is not reasonably practicable to set up the panel within that period, or where "exceptional circumstances" exist.
33	53(3) and (4)	**Panel invitation to third parties to comment** As discussed: Part A.	Remove clause 33(2) from the Bill. Alternatively, if it is retained, amend the drafting of new subsection 53(4) as follows: (a) Add the words "or on the application generally" after the words "on a particular matter". (b) Amend section 53(4)(b)(i) to read "the panel is not satisfied that the comments that the relevant local authorities or relevant administering agencies intend to provide will enable the panel to sufficiently address the matter".
42	New 68A and 68B	**Modifying application** The Bill does not state what happens if a panel decides not to submit a modification proposal to the Minister. Modification can occur at any point up to when panel issues their decision. Given this, further provisions may be needed either stipulating	Insert an additional subsection saying that in that case, the application proceeds unmodified. Insert a clause giving the panel (alternatively the convener) the power to extend the deadline for delivering its decision where this is necessary as a result of the modification of an application.

	minimum process and/or providing for extension of time in response to a modification. Modifications made to a proposal close to the deadline for the panel to make its decision may make the deadline impracticable. Extending the panel's deadline to account for the Minister's decision-making time is provided for, but may not be an adequate response, depending on the extent of the modification and the stage that the process has reached. It would be concerning if this provision enabled substantive changes to the scope of an application without the ability for others to comment or have input. There are legislative checks, requiring that any changes must still result in the proposal having significant regional or national benefits, but there does not appear to be any requirement to consider views of other parties including those already consulted with (for example, on the section 17 referral decision). As a matter of jurisdiction, a modification could not exceed the scope of the original listing or referral. Presumably the purpose of seeking a Ministerial determination is to ensure that proposals that are reduced in scope still meet the regional or national benefit test. We recommend making it clear that the proposed modification must fall within the scope of the original application.	Amend section 68A to make it clear that a modification must fall within the scope of the original application

44	79(2)(b)	**Timeframe for panel decisions** As discussed: Part A.	Consider providing a longer timeframe for projects which require multiple approvals under different legislation, and/or those where material modifications have been made. Another approach may be to allow for extension of the timeframe in "exceptional circumstances". We recommend adding the words "or the panel convener considers that it would not be reasonably practicable for the panel to issue its decision within 60 working days after the date specified under section 54" to section 79(2)(b)(ii).
46	84A	**Conditions relating to infrastructure** Conditions cannot bind infrastructure providers, so it is unclear what sort of conditions are envisaged, unless it is conditions in the nature of a condition precedent saying the project cannot proceed until adequate infrastructure is in place.	Clarify intention.
48	New 93A	**Directions to EPA** As discussed: Part A.	Either remove this power or provide that a Minister cannot direct the EPA on how it performs its independent decision-making role under various provisions of the Act (e.g. on whether applications are complete and within scope). We recommend drafting modelled on section 113 of the Crown Entities Act 2004.

50	99	**Appeals** As discussed: Part A.	Remove clause 50.
54	New 117A	**Amending project descriptions** New section117A is a power to amend Schedule 2 by Order in Council; in other words, what is known as a 'Henry VIII clause', providing the ability to amend the description of a project or description of the geographical location of a listed project. Limits in new section 117(2) on the power of the Minister to recommend making the Order mean that the approach is likely to be low risk, as noted in the *Legislation Design and Advisory Committee Guidelines* which state (at section 15, Part 1): *If the power is appropriately limited and the matter is otherwise appropriate for secondary legislation, it augments the Act in a manner that is consistent with Parliament's intention and that does not pose significant constitutional risk.* However, we do consider that this provision is only justified to address clear errors in the original project listing and should not be used to modify or amend proposals in a substantive manner. Further, this provision should not be used after an application has been referred to a panel. The Law Society has recently commented on a similar provision in the Public Works (Critical Infrastructure) Amendment Bill 2025,	Include a provision to make it clear that the Schedule 2 listing can only be amended before the relevant project is referred to a panel.

		recommending, similarly, that there should be a statutory time limit on revisions.	
56	Schedule 3, cl 3A	**Challenges to proposed panel members** We question the need for this clause, and the workability of it within a proposed 15-day timeframe for appointing a panel. If the clause is retained in the Bill, 3A(7) is too limited. If the proposed panel member is removed, the convener will need more time to find a replacement. If there is provision to challenge, relevant iwi authorities should also have the ability to challenge proposed panel members, where they have the power to nominate panel members. This may also be appropriate where the panel member is proposed to be appointed for their understanding of te ao Māori and Māori development. It is unclear why a panel would need advice from the Secretary for the Environment about the concerns. The panel conveners are either retired judges or senior lawyers. They are capable of assessing the merit of concerns about the suitability of a prospective panel member and the person's response, without needing the Secretary's advice. It would also be difficult for the Secretary for the Environment to provide informed and balanced comments when they have only seen the concerns of the applicant or local authority, not the	If new clause 3A is retained, amend 3A(7) to exclude the time spent on the objection whether or not the proposed panel member is confirmed, and add extra time in the latter case — potentially another 5 working days. Add references to "relevant iwi authorities" in clauses 3 and 3A of Schedule 3 where they have the power to nominate panel members, or where the panel member is proposed to be appointed for their understanding of te ao Māori and Māori development. Delete subclauses 3A(3)(b), 3A(5) and 3A(6)(b).

		response from the prospective panel member. This raises issues of fairness and natural justice.	
56	Schedule 3, cl 3A	**New clause 3A: drafting issues** In addition to the concern above, this clause has some drafting issues and queries that may warrant clarification. In new clause 3A: · There does not appear to be a time limit in (2) within which the applicant or local authority has to respond "before the prospective member is appointed". · Subclause (2) (referring to the applicant or a local authority) says "reasonable grounds to be concerned about the suitability" but subclause (5) (referring to the Secretary) says "suitability having regard to expertise, impartiality and previous involvement". Should the same tests apply to applicant/local authority feedback for consistency? · Subclause (3) says the panel convener must "invite" a prospective member to make written comments, but subclause (4) says the prospective member "must provide". Should subclause (4) also say that if providing comments, those comments must be provided within 5 working days? · Subclause (7) chapeau says time is excluded if a member is appointed. It is unclear what happens if they are not appointed, as envisaged in subclause (7)(b), and (b) refers to the day of	Clarify intent and correct these issues.

		deciding either to appoint or not appoint, which is inconsistent (compare chapeau: "If the panel convener decides to appoint the prospective panel member …"). · Subclause (7) also only excludes time from when an applicant or local authority "raises concerns" (for which there is no time limit). Should it be worded that if an applicant or local authority raises concerns, then exclude time from the date the convener notified them, rather than from receiving their concerns?	
56	Schedule 3, cl 7(1)(a)(i)	**Defining "sector"** Regarding the requirement for knowledge, skills and experience in the "sector" to which the application relates, the examples of "sectors" listed are relatively broad. What is a "sector" in this context? Depending on the 'sector' involved, this may make the task of the convener identifying qualified and unconflicted decisionmakers in a constrained timeframe challenging.	Qualify the requirement proposed so that it applies "where practicable".

Nāku noa, nā

Frazer Barton
President