

Fisheries Amendment Bill

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

4 May 2026

1 Introduction

- 1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the Fisheries Amendment Bill (**Bill**), which seeks to amend the Fisheries Act 1996 (**Act**) and improve the responsiveness, certainty, and efficiency of the fisheries management system.¹
- 1.2 This submission, prepared with input from the Law Society’s Criminal Law, Environmental Law, and Public Law Committees,² discusses concerns arising from the following clauses:
- (a) Clause 10, which inserts new sections 13C and 13D, which outline requirements for setting the total allowable catch for medium- and low-information stocks.
 - (b) Clause 57, which inserts new sections 227C and 227H, which will exclude the application of the Official Information Act 1982 (**OIA**) to camera recordings and create related offences for contravening these provisions.
 - (c) Clause 65, which inserts new section 313A and introduces a time limit for applying for judicial review.
 - (d) Clause 65, which inserts new section 313A(3)(b) and requires individuals to prove they did not receive notice of a decision by post.
- 1.3 The Law Society **wishes to be heard** in relation to this submission.

2 Total allowable catch for medium- and low-information stock

- 2.1 New section 13C(2) in clause 10 states, in relation to medium-information stock:

The Minister must set a total allowable catch for the stock that is *consistent* with the objective of managing the stock at or above a level that can produce the maximum sustainable yield [emphasis added].

- 2.2 In contrast, new section 13D(2) states, in relation to low-information stock:

The Minister must set a total allowable catch for the stock that is *not inconsistent* with the objective of managing the stock at or above a level that can produce the maximum sustainable yield [emphasis added].

- 2.3 The only difference between these provisions is that one uses the word “consistent” and the other uses the words “not inconsistent”. It is unclear whether this drafting is intended to convey that different tests apply to medium- and low-information stocks, or whether this is simply the result of inadvertent drafting. (Since “consistent” is the opposite of “inconsistent”, a decision that is not inconsistent with something would appear to be the same as a decision that is consistent with it.)

- 2.4 The Law Society recommends that the wording of new sections 13C(2) and 13D(2) be amended to adopt a consistent test or clarify how the test is intended to be different.

¹ Explanatory Note of the Bill.

² Information about these committees is available on the Law Society’s website: www.lawsociety.org.nz/professional-practice/law-reform-and-advocacy/law-reform-committees/public-law-committee/.

3 Application of the OIA

- 3.1 Clause 57 of the Bill will exclude the application of the OIA to all onboard camera recordings, including videos and still images, and permit their disclosure outside of the Ministry for Primary Industries (**MPI**) only in specified circumstances. This clause also creates three new offences which will impose liability on those who disclose recordings without authorisation, or fail to abide by conditions on the storage and use of camera recordings that are disclosed to them.
- 3.2 The Regulatory Impact Statement for the Bill (**RIS**) notes these amendments seek to prevent the disclosure of private and commercially sensitive information in a way that might erode fisher support for cameras and undermine the continued provision of accurate reporting.³
- 3.3 The Law Society does not support this proposed blanket exclusion of camera recordings from the OIA. The OIA is a statute of constitutional significance: it promotes freedom of information, open government, and accountability of Ministers and officials by enabling scrutiny of decisions and actions of the Government.⁴ In our view, it provides an appropriate framework for balancing the public interest in disclosing information against the need to keep sensitive information confidential.
- 3.4 Excluding an entire category of information from the application of the OIA requires a very strong justification. That does not appear to be the case here, and we consider the amendments in the Bill to be unnecessary and inappropriate for several reasons:
- (a) Sections 9(2)(a) and (b) of the OIA already permit the withholding of information where that is necessary to protect the privacy of natural persons, and where it could prejudice the commercial position of the person who supplied or who is the subject of the information.
- (b) MPI has confirmed that these provisions of the OIA already provide strong protections for camera recordings:⁵
- MPI's current approach to assessing requests for footage under the OIA provides strong protections for footage. The OIA withholding grounds have allowed MPI to withhold footage when needed to protect privacy and confidentiality – to date no footage has been released to third parties (although this is currently being tested via a complaint to the Ombudsman). Releasing other information such as annotated data has satisfied the public interest without having to release the footage itself.
- (c) It appears that only a few OIA requests for camera recordings have been made to date (the RIS notes that, as of 23 July 2025, MPI had only responded to 18 OIA requests). While MPI is required to consider each request on a case-by-case basis,⁶ this is unlikely to be an unreasonably burdensome task which justifies the introduction of a blanket exclusion.

³ Ministry for Primary Industries *Regulatory Impact Statement: Amendments to the Fisheries Act 1996* (23 July 2025) (**RIS**) at [144-145].

⁴ Section 4 of the OIA.

⁵ RIS at [142].

⁶ RIS at [143].

- (d) Administrative practice such as proactive release of information relating to the management of fisheries resources and the effects of fishing is not sufficient assurance to meet the imperatives of transparency and accountability.⁷ Such practice is neither reliable nor enforceable – weaknesses that the OIA is intended to address.
- 3.5 The Law Society is therefore of the view that these amendments do not respond to an actual policy or legal problem. A mere theoretical possibility that a recording could be released is insufficient to justify excluding the application of the OIA, when the grounds for withholding private and commercially sensitive information are adequate to enable relevant recordings to be withheld.
- 3.6 Similarly, this casts doubt on the Ministry of Justice’s advice that new section 227H does not unjustifiably limit the right to freedom of expression, protected by section 14 of the New Zealand Bill of Rights Act 1990 (**Bill of Rights Act**). That advice acknowledges that the Bill limits the right to freedom of expression, but concludes the limitation is reasonably justified under section 5 of the Bill of Rights. As the advice notes, the inquiry under section 5 asks whether the objective of the provision is sufficiently important to justify the limitation; and if so, whether the limitation is rationally connected and proportionate to that objective and limits the right or freedom no more than reasonably necessary. In the absence of a legitimate policy or legal issue (much less a sufficiently important one), it is unclear how one can reach the conclusion that the limitation of section 14 is justified.
- 3.7 If enacted, the amendments in new sections 227C and 227H could have significant consequences: they will reduce transparency and accountability, and undermine principles of open government without any clear justification. They will also prevent the Ombudsman (an independent Officer of Parliament) from considering a complaint regarding any refusal to disclose camera recordings, and from carrying out independent investigations into whether it is appropriate to withhold camera recordings.⁸ The Ministry of Justice has also noted that “the use of OIA exemptions has been increasing in New Zealand and this poses a reputational risk as New Zealand is part of the Open Government Agreement and the International Open Data Charter”.⁹ The Law Society agrees with this observation, and notes that review of current exemptions (including their appropriateness, and their ongoing impact on the integrity of the OIA) is required.¹⁰ We recommend this, and in fact any further exemptions, do not proceed until such work is undertaken.

⁷ See Ministry of Justice *Consistency with the New Zealand Bill of Rights Act 1990: Fisheries Amendment Bill* (5 March 2026) (**BORA advice**) at [10].

⁸ Section 28 of the OIA.

⁹ RIS at [172]. It clarifies that the Open Government Partnership is a voluntary, multilateral initiative to promote open government, combat corruption, and improve governance. New Zealand made a Declaration on Open and Transparent Government, which sets out a government-wide approach to increasing the openness and transparency of the New Zealand government.

¹⁰ See the Law Society’s submission on the Government’s commitment to improve scrutiny of OIA exemptions: *Law Society Feedback on Open Government Partnership Fourth National Action Plan Commitment 7 – improving scrutiny of OIA exemptions* (18 March 2024), available here: www.lawsociety.org.nz/assets/Law-Reform-Submissions/Improving-scrutiny-of-OIA-exemptions-18_3_24.pdf.

- 3.8 Finally, we note clause 57 also raises concerns where the offences and penalties in new section 227F, which apply not only to the Crown, but also to *employees* of the Crown, sit uneasily with provisions in other legislation, which recognise that public service employees are immune from civil and criminal liability.¹¹
- 3.9 The Law Society therefore recommends that subpart 5 of part 2, and schedule 1, be deleted from the Bill (noting all of these provisions relate to restrictions on the disclosure of camera recordings and the exclusion of the OIA).
- 3.10 If these clauses are to remain despite the concerns we have raised in this submission, we recommend amending the Bill as suggested below to ensure the resulting legislation is clear and workable.

Including a requirement to communicate the purpose of disclosure

- 3.11 Where a recording is to be disclosed under new section 227D, we recommend requiring the chief executive to communicate the purpose of that disclosure. This is an important consideration because the application of section 227F depends on the purpose of the disclosure, and the offences in section 227F will not apply where a recording is disclosed to a person under new section 227D(1)(a) or (e), and they share this recording with others. However, these offences would apply if a recording is disclosed to a person under sections 227D(1)(b), (c) or (d), and that person then proceeds to make an unauthorised disclosure.
- 3.12 We also recommend clarifying how the offence provisions in new section 227F would apply if a camera recording is disclosed under new section 227D(1) for multiple purposes (i.e., under more than one of the circumstances listed that section).

Clarifying the distinction between new sections 227D(1)(a) and (b)

- 3.13 We also recommend specifying, in clearer terms, the distinction between disclosures made under:
- (a) new section 227D(1)(a) for the purpose of avoiding prejudice to the maintenance of the law by a public service agency, and
 - (b) new section 227D(1)(b) to enable or assist with the performance of Ministerial, departmental or organisational functions.
- 3.14 As currently drafted, there is overlap between these two subsections because the definition of ‘function’ in new section 227D(4) provides, under subsection (b), that ‘functions’ include those that are “incidental and related to, or consequential on,” functions identified in subsection (a).
- 3.15 In our view, it is necessary to clearly distinguish between disclosures under subsections (a) and (b) because the offences in new section 227F apply to disclosures made under subsection (b) but not subsection (a).

¹¹ See, for example, section 104 of the Public Service Act 2020, and section 165 of the Search and Surveillance Act 2012.

Enabling the disclosure of information for other legitimate purposes

- 3.16 We recommend amending new section 227D to enable the chief executive of MPI to disclose information for legitimate purposes outside of the circumstances prescribed in subsection (1). The Law Society understands that officials had suggested the Bill should give MPI the flexibility to determine other additional purposes for which footage can be disclosed;¹² however, such a provision is absent from the Bill, and the reasons for this are unclear. It would be preferable to give the chief executive some flexibility to disclose recordings for other purposes in future, as disclosure outside of the circumstances in section 227C(1) would constitute an offence under section 227C(3).
- 3.17 The inclusion of such a provision would also help strike a more appropriate balance between promoting transparency and protecting privacy and commercial interests, and help reduce the risk of footage being withheld in circumstances where other legitimate reasons for disclosure arise after the enactment of this legislation.

4 Time limit for applying for judicial review

- 4.1 New section 313A in clause 65 seeks to introduce a time limit of 20 working days to apply for judicial review of any exercise, refusal to exercise, or purported exercise of a statutory power of decision under the Act. This time limit could be extended by the High Court, but only if the application for an extension of time is made within the 20-working day period.¹³
- 4.2 This new section acts as an ouster clause by imposing a procedural restriction on the availability to apply for judicial review. The Law Society does not support this clause in its current form for various reasons, which we discuss below.
- 4.3 Judicial review is the means by which the courts fulfil their constitutional role of ensuring public powers are exercised in accordance with the law and as intended by Parliament. It is a fundamental aspect of New Zealand's constitutional settings, and helps to uphold the rule of law. For these reasons, the right to judicial review of a determination is affirmed in section 27(2) of the Bill of Rights Act.
- 4.4 Ouster clauses – even those which place only procedural limits on the ability of the courts to judicially review a decision – can interfere with this important judicial function. Where that occurs, it can immunise the unlawful exercise of powers from judicial scrutiny, and thereby weaken the rule of law.¹⁴
- 4.5 In addition to these rule of law concerns, the ouster clause in the Bill also raises the following concerns:

¹² RIS at [166].

¹³ New section 313A(2)(b).

¹⁴ Law Society *Strengthening the rule of law in Aotearoa New Zealand* (June 2025) at pages 61-62. Legislation Design and Advisory Committee *Legislation Guidelines* (2021 ed) at 28.1.

The 20-working day timeframe is inadequate and risks weakening the judicial review process

- 4.6 Twenty working days is a very short period in which to assess the implications of a decision, obtain legal advice on the prospects of success for a judicial review, and file an application for judicial review.
- 4.7 MPI has also cautioned that the 20-working day may not allow for a comprehensive gathering and analysis of all relevant information that would be needed to support an application for judicial review.¹⁵ In some cases, it may be necessary to obtain information that is not publicly available at the time the decision is announced in order to make an informed assessment of the prospects of a successful judicial review application. This could be done through a request for information under the OIA; however, an OIA request may not receive a response for up to 20 working days (or longer, in some circumstances).¹⁶ This means the 20-working day timeframe in the Bill would not sit comfortably alongside the process in the OIA for obtaining information required to support an application for judicial review. Indeed, it could be deliberately frustrated by delay.
- 4.8 While the Bill permits applications for an extension to the 20-working day timeframe,¹⁷ it requires these applications to be filed within the same 20-working day timeframe in new section 313A(1)(a). We do not agree with the Ministry of Justice that this ability to seek an extension “significantly ameliorates” limits on the right to seek judicial review,¹⁸ as it continues to impose a short 20-working day timeframe for deciding whether to pursue judicial review (even in seemingly meritorious cases where the applicant genuinely requires more time to decide whether to seek an extension, and where an extension is unlikely to prejudice any other party). It would also provide no protection in cases where the applicant is not aware of the decision, since time runs from the date the decision is “notified” and this is defined in section 313A(2) as the *earlier* of when the decision is publicly notified, notified under a statutory process, or given, served or furnished on the applicant.
- 4.9 The RIS notes the proposed 20-working day limit will align the provisions in the Bill with those in the Fast-track Approvals Act 2024.¹⁹ We query whether it is appropriate to model the provisions in the Bill on a framework that was designed for the specific purpose of supporting a fast-tracked decision-making process. It is also unclear why an equally significant restriction would be needed here to achieve the policy goal of increasing certainty around fisheries decisions.²⁰

There appears to be insufficient evidence to support this restriction

- 4.10 There is insufficient evidence regarding the need to introduce the proposed 20-working day limit. The Departmental Disclosure Statement (**DDS**) identifies the purpose of the

¹⁵ RIS at [275].

¹⁶ Sections 15 and 15A of the OIA.

¹⁷ New section 313A(1)(b).

¹⁸ BORA advice at fn 9.

¹⁹ RIS at [274]; section 101 of the Fast-track Approvals Act 2024.

²⁰ RIS at page 79.

proposed change as “provid[ing] certainty to fishers and other stakeholders that key fisheries management decisions will not be challenged after a certain time”.²¹ The RIS further states:

The judicial challenges of catch limit decisions are often coming deep into the fishing year, which creates regulatory uncertainty and discourages fishers from investing in a fishery. There are judicial reviews of decisions made many years ago. And some challenges are coming from parties that have not engaged in the consultation process for the catch limit decision.

- 4.11 However, these observations are not supported by any evidence regarding the number of judicial review applications or the extent to which delayed judicial review applications are discouraging fishers from investing in a fishery.
- 4.12 We also note the Bill will impose the 20-working day timeframe on *all* applications for judicial review. In doing so, it replaces the current 30-working day timeframe for seeking judicial review of aquaculture decisions under section 186J of the Act.²² It is unclear why the timeframe for applying for judicial review of aquaculture decisions needs to be shortened in this way (noting the Bill and the RIS do not discuss this particular point or provide any evidence which suggests the current 30-working day timeframe is problematic). The Law Society shares the Ministry of Justice’s concern that the rationale for the 20-working day time limit may not apply equally to all fisheries decisions under the Act.²³ A blanket timeframe is therefore unlikely to be appropriate absent any evidence which shows it is necessary to shorten the existing timeframe in section 186J.
- 4.13 The RIS states that MPI’s preferred policy option would have been to introduce longer timeframes which apply only to some decisions made under the Act (i.e., a three-month limit for applying for judicial review of a catch limit decision, and a six-month limit for judicial review of other sustainability measure decisions).²⁴ MPI considered these to be “reasonable lengths of time for parties to assemble a challenge to a particular decision, given that most plaintiffs will seek further information from the Minister and MPI through the OIA ... before submitting a challenge to the Court”.²⁵ It is unclear why the Bill now imposes tighter blanket restrictions on all applications for judicial review in a way that conflicts with the recommendations made by MPI.
- 4.14 These raise questions about what factors have motivated these reforms, and whether these amendments will achieve their intended policy goal of reducing uncertainty and encouraging investment in fisheries.

²¹ Ministry for Primary Industries *Department Disclosure Statement: Fisheries Amendment Bill* (17 March 2026) (**DDS**) at 4.

²² Clause 63 of the Bill.

²³ BORA advice at [23].

²⁴ RIS at [271-273].

²⁵ RIS at [273].

The amendments could weaken judicial review

- 4.15 The RIS suggests it is possible the Court could choose to hear an application with less supporting information where it becomes apparent the time limit will otherwise bar the applicant from obtaining all relevant information and filing an application.²⁶
- 4.16 The introduction of a time limit could also contribute to an increase in the number of applications (for judicial review as well as for extensions of time) from applicants who simply wish to preserve their ability to seek judicial review before the application timeframe expires. An increase to the volume of applications without a corresponding increase to the High Court's resourcing could potentially create to delays in hearing matters in the High Court.
- 4.17 Such outcomes could undermine the objective of the amendments and, over time, weaken the effectiveness of the judicial review process in holding the Executive to account.

The restriction limits access to justice and the right to justice in the Bill of Rights Act

- 4.18 The procedural restrictions on judicial review engage the right to seek judicial review in section 27(2) of the Bill of Rights Act. The time limit in new section 313A should not impair this right more than is reasonably necessary to achieve its objective. It is unclear how officials have reached the conclusion that the limitation on section 27(2) is reasonably justified under section 5 of the Bill of Right Act, given the concerns raised by both the Ministry of Justice and MPI about the justification for, and scope of, the restriction.²⁷
- 4.19 The absence of evidence regarding the need for a blanket 20-working day timeframe, and the availability of effective and less-restrictive alternative options (as discussed above), suggest the 20-working day timeframe might impose an unreasonable limit on the right to judicial review, and could have disproportionate impacts on applicants seeking judicial review.
- 4.20 In our view, new section 313A could constitute an unjustified limitation on the right to judicial review in section 27(2) of Bill of Rights Act.

Lack of consultation

- 4.21 In addition to the above, the Law Society is also concerned to see the RIS states:²⁸

These proposals are a significant change to the catch limit setting provision in the Act that, because they were decided only recently, have yet to be consulted on. They are likely to be controversial at the select committee stage and seen by ENGOs, recreational groups, some iwi/Maori, and some members of the wider public as preventing judicial challenges and weakening the Act's requirement to ensure fishing is sustainable.

²⁶ RIS at [276]. The Law Society notes that usually evidence in support of a judicial review will be filed at some point after the application itself is filed, but will generally need to be collected in order to determine whether judicial review is available and to draft the application.

²⁷ BORA advice at [25].

²⁸ At [279].

- 4.22 This means this proposal to limit judicial review will have been designed and included in the Bill without any supporting evidence (as discussed above) or stakeholder and public views, including on:
- (a) whether a time limit is necessary and appropriate;
 - (b) what might be considered an appropriate timeframe; and
 - (c) how the time limit should apply to different classes of decisions.

- 4.23 Meaningful public consultation on this proposal should have occurred during the development of this policy, and before the Bill was drafted and introduced to Parliament, particularly in light of its stated “significant” and “controversial” nature. While the select committee process offers an important opportunity for public engagement, feedback received during this process is less likely to influence changes to underlying policies and policy options selected by the Minister.

Next steps

- 4.24 For the reasons given above, the Law Society’s preference would be to delete clause 65 of the Bill and remove the restriction on applying for judicial review.

- 4.25 If the Select Committee considers that some limits are necessary to encourage the timely lodgement of a challenge, these limits should:

- (a) **Set more appropriate timeframes:** a longer timeframe might address the purported mischief this provision is attempting to solve while preserving access to the courts, and maintaining the ability to mount a challenge through judicial review and hold public decision-makers to account. MPI’s recommended timeframes of three and six months (discussed at [4.13] above) may be more proportionate responses to the stated policy problem (to provide more certainty to fishers), as they impair the right to judicial review to a lesser degree, and the additional time for making an application is modest in the context of the overall time required to resolve the application.
- (b) **Only restrict applications which contribute to the stated policy problem:** if restrictions are necessary, they should apply only to applications for judicial review of specified classes of decisions that can cause uncertainty and discourage investment (and not to all decisions, as proposed in the Bill). This would be another way of ensuring any restrictions are proportionate to the policy problem that must be solved, and do not unreasonably or excessively impair the right to access the courts.
- (c) **Enable consideration of applications filed after the expiry of a timeframe:** the Bill currently requires any application for an extension of time to be filed within the 20-working day time limit in new section 313A(1)(a). This means that the High Court cannot grant an extension of time outside this 20-working day period, no matter how meritorious the application, how excusable the delay, and how little prejudice it would cause to others. We recommend giving the Court the discretion to consider applications for extensions that are brought outside of timeframes prescribed in the Bill where a certain threshold (such as the existence

of special circumstances) is met. This would allow the Court to refuse applications where, for example, there is no good reason for the delay, or where it could cause prejudice to others. This option could still achieve the underlying policy objectives while impairing the right to judicial review to a lesser extent.

- 4.26 These modifications to clause 65 could address some of the concerns we have discussed above, and deliver a policy response that is more proportionate to the problems identified in the RIS, and that limits the right to justice, and access the courts, to a lesser extent. These changes are likely to make this ouster clause more consistent with requirements under sections 5 and 27 of the Bill of Rights Act.

5 Notices sent by post

- 5.1 New section 313A(3) in clause 65 provides for the notification of decisions made under the Act. Where a notice is sent by post or registered post, subsection (3)(b) states the notice must be treated as being given, served, or furnished unless the recipient proves that, otherwise than through that person's fault, the notice was not received.
- 5.2 This subsection requires affected individuals to prove a negative. It is unclear how an individual would be expected to prove they did *not* receive a notice in the post, and what would constitute satisfactory evidence of such a claim. As currently drafted, this clause appears to be difficult to apply in practice.
- 5.3 We invite the Select Committee to seek advice from officials on this point, and to make necessary amendments to subsection (3)(b), to ensure those who receive notices by post or registered post are not unfairly impacted because of their inability to offer proof of a negative.



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