

Legislation Amendment Bill

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

25 August 2025

1 Introduction

- 1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the Legislation Amendment Bill (**Bill**), which seeks to promote high-quality legislation for New Zealand that is easy to find, use, and understand.¹
- 1.2 This submission has been prepared with input from the Law Society's Public Law and Tax Law Committees.²
- 1.3 The Law Society **wishes to be heard** in relation to this submission.

2 Drafting of tax legislation

- 2.1 Section 68 of the Legislation Act 2019 (**Act**) currently provides a framework for authorising the Inland Revenue Department (**IRD**) to draft tax legislation. New section 83AA in clause 27 of the Bill further recognises IRD's authority to draft such legislation, and enables the Attorney-General and the Minister of Revenue (**Minister**) to give drafting directions to IRD.
- 2.2 The Law Society understands that IRD is the only department to draft its own legislation (with all other bills being drafted by the Parliamentary Counsel Office (**PCO**)). The Law Commission has identified that the main reasons for adopting this practice were that in the 1990s, PCO was severely under-resourced, and there were concerns about drafting style.³ The Law Commission went on to identify numerous concerns about this unusual arrangement, with a key concern being that it enables IRD to design the policy framework, draft the legislation implementing it, and then apply and enforce it.⁴
- 2.3 The Law Society shares these concerns, and continues to observe (and raise concerns about) policymaking and drafting practices which have resulted in statutory overreach and tax legislation that is inconsistent with the New Zealand Bill of Rights Act 1990.⁵
- 2.4 In its submission on the Legislation Bill 275-1, the Law Society recommended that:⁶
- ...drafting of primary tax legislation, at least, should be moved back to PCO, as was recommended by the Law Commission.⁷ The PCO is a custodian of

¹ Explanatory Note of the Bill.

² More about these committees can be found on the Law Society's website: www.lawsociety.org.nz/professional-practice/law-reform-and-advocacy/law-reform-committees/.

³ Law Commission NZLC R107, *Review of the Statutes Drafting and Compilation Act 1920* (May 2009) at [7.1].

⁴ Above n 3 at [7.8].

⁵ For example, the Taxation (Income Tax Rate and Other Amendments) Bill 2020, which included provisions for far-reaching information-gathering powers which raised rule of law, Bill of Rights and privacy concerns. The Law Society conveyed its concerns about this Bill and IRD's drafting practices to the Minister of Revenue – see: www.lawsociety.org.nz/assets/news-files/l-Minister-Parker-tax-information-provisions-23-12-20.pdf. In addition, the Taxation (Annual Rates for 2018-19, Modernising Tax Administration, and Remedial Matters) Bill, which introduced section 6C of the Tax Administration Act 1994, providing IRD with a power to modify Inland Revenue Acts.

⁶ Law Society submission on the Legislation Bill 275-1 (23 February 2018) at [5.3].

constitutional standards and uniform drafting practices. It is undesirable in principle for officers of a department to draft legislation under the instructions of the same department, without the important influences of the wider stewardship role that PCO provides.

- 2.5 This remains the Law Society's view. Reinstating tax legislation drafting responsibilities with the PCO would enable greater separation between the policymaking and drafting processes, and improve independent external scrutiny of proposed tax legislation (which could, for example, help identify workability issues, and ways to strengthen checks and balances, and safeguards against legislative overreach, and reduce the need for frequent remedials).
- 2.6 In particular, tax bills which include the following types of provisions would benefit from independent drafting:
- (a) provisions which raise public or constitutional law issues;
 - (b) provisions which create or grant significant powers, rights or duties; and
 - (c) provisions which create offences, or set out penalties for offences.
- 2.7 In making these comments, we acknowledge that this Bill does not broaden the scope of IRD's drafting powers, or grant IRD any additional drafting powers (as noted above, new section 83AA only enables the Attorney-General and the Minister to give directions in connection with the drafting of a tax bill). However, this Bill presents an opportunity to reconsider whether it is appropriate to continue authorising IRD to draft tax legislation, at least for the Tax Administration Act, which goes far beyond technical tax matters and addresses legal rights, duties and obligations, as well as government powers, and penalties. The select committee could seek advice and submissions on this point, and recommend amendments to the Act and the Bill, if such powers are no longer considered necessary or appropriate.

3 Proposal to expand the purpose of revision bills

- 3.1 Clause 37 of the Bill seeks to amend section 96 of the Act, and broaden the purposes of revision bills. If enacted, the amendments will enable the PCO to amend legislation through revisions bills in order to (among other things):⁸
- (a) clarify Parliament's intent (noting the Act currently permits only "*minor* amendments" for this purpose);⁹
 - (b) resolve ambiguity (again, the Act currently permits this only in relation to "*minor* amendments");¹⁰
 - (c) reduce or avoid unduly onerous or burdensome requirements (noting this is not currently provided for in the Act); and

⁷ Above n 3 at 18-20.

⁸ Clause 37(5).

⁹ Section 96(3).

¹⁰ Section 96(3).

- (d) reduce or avoid unnecessary compliance costs (also not currently permitted under the Act).
- 3.2 These amendments will expand the purposes of revision bills, and introduce the ability to progress substantive legislative amendments through revision bills. The broad drafting of these provisions could mean revision bills could be used, for example, to:
- (a) narrow the scope of statutory rights, or of public services, on the basis that they seek to reduce compliance costs or burdensome statutory requirements; or
 - (b) alter the scope and application of legislation by “clarifying Parliament’s intent” in the purpose section.
- 3.3 The Explanatory Note of the Bill acknowledges the broad scope of these amendments, noting that their overall effect would be that “revision Bills will be more like ordinary Government Bills that make substantive changes to the law”. It is not clear, then, why such amendments should not be progressed as ordinary Government Bills.
- 3.4 These amendments do not appear to be supported by a regulatory impact statement (or any other policy or cost-benefit analysis). As a result, it is unclear why these amendments are considered to be necessary, what problems they seek to address, and whether they intend to significantly change the nature and purpose of revision bills.
- 3.5 Mechanisms already exist for making substantive changes to legislation: changes can currently be made via amendment bills, or Amendment Papers accompanying revision bills. These remain the appropriate mechanisms for making substantive changes to legislation, and we are not persuaded that there is a case for changing the revision process to create a third mechanism for making such changes.
- 3.6 We also note that revision bills are typically introduced and passed with much less scrutiny than other bills (presumably because they cannot currently be used to make substantive changes to the law):
- (a) Revision bills are not accompanied by Departmental Disclosure Statements which help “facilitate better scrutiny of legislation, in order to support the production of legislation that is robust and consistent with good legislative practice”,¹¹ and offer insights into the knowledge, understanding and work done by the agency responsible for preparing the legislation.¹²
 - (b) The Standing Orders also provide for a bespoke, streamlined process for passing revision bills – this process *excludes*:¹³
 - (i) first reading debates on the bill;
 - (ii) amendment or debate on whether the bill should be considered by the nominated subject select committee, or a different committee;

¹¹ Cabinet Office Circular “Disclosure Requirements for Government Legislation” (4 July 2013) CO (13) 3 at [2].

¹² See: www.regulation.govt.nz/our-work/disclosure-statements-for-government-legislation/.

¹³ Standing Orders of the House of Representatives 2023, SO 276.

- (iii) a second reading of the bill (except in limited circumstances);
- (iv) scrutiny of the bill by a committee of the whole House (except in limited circumstances); and
- (v) third reading debates on the bill.

3.7 This Bill will not modify the legislative process for revision bills. This would mean that, if these provisions are enacted in their current form, substantive amendments could be progressed without the scrutiny they would otherwise receive if they were included in a regular amendment bill. The Law Society is concerned this lack of scrutiny could:

- (a) reduce transparency and accountability within the legislative process;
- (b) undermine public confidence in the legislative process and resulting law changes; and
- (c) contribute to the passing and enactment of poorly drafted and unworkable laws, and laws which have unintended consequences.

3.8 If these provisions are to be enacted despite the concerns we have outlined above, we recommend they be accompanied by safeguards to enhance the scrutiny of revision bills (for example, requirements to produce Departmental Disclosure Statements for revision bills, and amendments to the Standing Orders to require that these bills be subject to full legislative process).¹⁴

3.9 However, if the revision process is further modified to include these (in our view, necessary) safeguards, the revision process will become considerably similar to the existing process for making substantive changes to the law (i.e., through amendment bills and Amendment Papers accompanying revision bills). This again raises questions about why these amendments are necessary.

3.10 The Law Society is concerned at the lack of justification for amendments that will create a mechanism by which substantive changes can be made to the law without the benefit of meaningful Parliamentary and public scrutiny and consideration, and which could be intentionally used to avoid scrutiny. We therefore encourage the select committee to seek advice from officials, and carefully consider whether the amendments in clause 37 are necessary and appropriate.



Mark Sherry
Vice-President

¹⁴ That is, full first reading, second reading, committee of the whole House, and third reading debates, as well as a meaningful select committee processes with opportunities for the select committee to receive and consider public submissions.