

Public Works Amendment Bill

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

27 January 2026

1 Introduction

1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the Public Works Amendment Bill (**the Bill**), which seeks to amend the Public Works Act 1981 (**the Act**) to:

- (a) 'Streamline' land acquisition powers and processes. This includes, amongst other process amendments, the introduction of an emergency land acquisition process and enabling Transpower New Zealand Limited (**Transpower**) to initiate processes under the Act.
- (b) Amending the Environment Court process for objections and specifying that this process is not available for emergency recovery land acquisition.
- (c) Amending compensation settings to, amongst other things, introduce an incentive payment, update existing compensation payment maximums, and require Māori freehold land to be valued as if it were general land.

1.2 This submission, prepared with input from the Law Society's Public Law Committee,¹ comments on aspects of the new emergency land acquisition process, and compensation settings.

1.3 The Law Society does not wish to be heard in relation to this submission.

2 Emergency land acquisition - clause 23, new Part 2C

2.1 Clause 23 of the Bill introduces new Parts 2B and 2C into the Act, the latter of which provides for the new emergency land acquisition process.

New section 39P

2.2 For the purposes of this process, new section 39P will modify the application of new section 18 (introduced by clause 11 of the Bill). Whereas new section 18 will require the Minister or local authority to attempt to acquire land by agreement before giving or serving a notice of intention to take the land under section 23 of the Act, new section 39P will amend this in the case of emergency land acquisition to:

- (a) Lessen the requirement in new section 18(2)(d), so that rather than requiring the Minister or local authority to '*make every endeavour* to negotiate in good faith with the owner in an attempt to reach an agreement for the acquisition of the land', they will be required only to '*make reasonable endeavours*' to do so.
- (b) Remove the requirement in new section 18(2)(a) to provide specified written information on: the nature of the public work and why the land is requested; the acquisition process; and compensation available under the Act. The Bill proposes that such information will not need to be provided to all persons with a registered interest in the affected land if it is impracticable to do so.

¹ More about this Committee can be found on the Law Society's website: www.lawsociety.org.nz/professional-practice/law-reform-and-advocacy/law-reform-committees/public-law-committee/.

- (c) Similarly, the requirement in new section 18(2)(b) to give the owners of the land an ‘invitation to sell’ (including an estimate based on a valuation) will not apply if it is impracticable to do so.
- (d) Reduce the period in which the Minister or a local authority must endeavour to negotiate an agreement from 3 months to 1 month.

2.3 The Ministry of Justice advice on the Bill’s consistency with the New Zealand Bill of Rights Act 1990 (the **Bill of Rights Act**) considers the implications of new Part 2C on section 27(1), the right of every person to the observance of the principles of natural justice by any public authority with the power to make a determination in respect of their rights, obligations, or interests protected or recognised by law.² The advice notes that the power to take land by compulsion ‘*is among the strongest available to government, and natural justice requirements are therefore likely to be significant.*’ It concludes, however, that to the extent new part 2C ‘might limit the right to natural justice,’ that limitation is justified under section 5 of the Bill of Rights Act.

2.4 As a part of that assessment, the advice suggests that the section 27(1) is limited no more than reasonably necessary, and does not ‘prevent’ the principles of natural justice from applying. However, the advice fails to specifically address the section 27 implications of the procedural changes made by new section 39P, and addresses new Part 2C only in broad terms. We note here the use of the threshold ‘impracticable’, and query whether in fact this limitation on the section 27(1) right is in fact no more than reasonably necessary. These powers will necessarily only apply when a state of emergency has been declared. Those circumstances make it more likely that there could be short-term, practical reasons why persons who would otherwise be able to receive the invitation/notice cannot do so (for example, internet and/or telephone access being interrupted). These circumstances may also make it difficult for an affected landowner to obtain legal (or other) advice, compounding the impact of the proposed reduction in information requirements. For similar reasons, the one-month timeframe may also be unreasonable in certain circumstances.

2.5 The Law Society is of the view that new section 39P should be amended to better address the rights implications that arise specifically from the procedural amendments in new section 39P. This can be done in a manner that continues to facilitate the objective of new section 39P and the emergency land acquisition process more generally. Consideration should be given to:

- (a) Replacing ‘impracticable’ with a slightly stronger test.
- (b) Requiring reasonable attempts to serve or notify other parties who may be in a position to bring the notice/invitation to the attention of the relevant affected person.
- (c) If service cannot be effected within 1 month, require service within the usual 3-month period but on the proviso that late service does not prevent the remainder

² Ministry of Justice *Consistency with the New Zealand Bill of Rights Act 1990: Public Service Amendment Bill* (11 November 2025).

of the emergency acquisition/taking powers from being exercised in the meantime.

New section 39Q

2.6 Like new section 39P, section 39Q proposes that the requirement for service of the notice of intention to take land can be dispensed with on the basis of impracticality. For the reasons set out above, the Law Society recommends this provision be strengthened to better protect the landowner (noting again that like the Minister or local authority, the landowner will also be navigating the emergency situation) and ensure they are informed of the intention before it takes effect.

New section 39V

2.7 New section 39V will modify the application of section 26 of the Act, in the case of emergency land acquisition for the restoration of public work, so that:

- (a) The Minister or local authority, when deciding whether land should be taken to support the timely and efficient restoration of public work, must have regard to:
 - (i) the importance of supporting that work, and
 - (ii) that supporting this work may require land to be taken when less information is available to the Minister or local authority than would ordinarily be the case.
- (b) A proclamation may be issued on the basis of an interim cadastral survey dataset (CSD), which contains less accurate information than a CSD supporting a proclamation ordinarily would.

2.8 In light of the engagement of section 27(1) of the Bill of Rights Act, this provision is another that would benefit from consideration of better protection for the landowner's interests. This could be achieved by including in new section 26(1C)(c), an additional requirement that the Minister or local authority have regard to the fact that less information is available to the landowner, and that the landowner has had less time than would otherwise be the case to consider any such information.

3 Compensation money paid to Public Trust if offer not accepted - Clause 27

3.1 Clause 27 of the Bill proposes to introduce new section 70A, which will apply if a landowner does not accept an offer of compensation provided under section 70, within three months. In such a case, the money must be paid to Public Trust, and held on trust for the owner until they either accept the offer, or the Land Valuation Tribunal determines the compensation payable to them.

3.2 This provision is silent on the payment of fees to Public Trust for holding these funds and could benefit from clarification that, for the avoidance of any doubt, Public Trust's fees are not to be deducted from the full amount of the compensation money.

3.3 Consideration should be given to including a mechanism allowing Public Trust to recover any costs separately, in order to protect the sum held on trust for the landowner.

4 Additional comment - Delegation by the Minister

4.1 As a final comment, and noting the Bill's proposed amendment to section 4C of the Act, the Law Society draws to the Select Committee's attention that since the drafting and introduction of this Bill the Supreme Court has issued its judgment in *Pascoe v Minister for Land Information*.³ This judgment is concerned with delegation of the negotiations function under section 18(1)(d) of the Act, and the process for this. Without expressing a view, we suggest the Select Committee may wish to consider the judgment and seek advice on whether the delegation provisions require further examination.



Jesse Savage
Vice-President

³ [2025] NZSC 195, released on 18 December 2025.