New Zealand Law Society
Te Kāhui Ture o Aotearoa

Public Works (Critical Infrastructure) Amendment Bill

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

11 June 2025

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 (Critical Infrastructure) Amendment Bill (**Bill**). The Bill proposes changes to the way that land is compulsorily taken under the Public Works Act 1981 (**PWA**) for public works projects defined as "critical infrastructure".

1.2 This submission has been prepared by the Law Society's Public Law and Environmental Law Committees.[1] It identifies several matters in the Bill that the Law Society recommends correcting or improving, to ensure that the processes to expedite land acquisition are clear, workable, and more consistent with natural justice.

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

2 General comments

2.1 The Bill proposes a new Part 2A for the PWA, setting out the new acquisition process. Critical infrastructure projects to which the proposed new Part would apply are listed in Schedule 2A. These are public works (mainly roads) already listed in Schedule 2 of the Fast-track Approvals Act 2024, or roads of national significance in the Government Policy Statement on Land Transport 2024. The Bill proposes two significant changes to the PWA process for such projects:

(a) removing the right of objection to the Environment Court under section 23 of the PWA, to be replaced by a new submission process; and

(b) providing for premium compensation payments to incentivise land disposal when a local authority or Minister wishes to take it for critical infrastructure.

Replacing a judicial process with a submissions process: natural justice concerns

2.2 The Law Society is concerned that the proposed "streamlined" objection process significantly erodes the rights of landowners to object to their land being taken and does not adequately allow for natural justice for those who wish to object. At present, if land is to be acquired under the PWA:

(a) the landowner can object through an Environment Court process to the land being taken;[2]

(b) appeals to the High Court, from the Environment Court objection decision, are available on questions of law;[3] and

(c) as well as the Environment Court objection process, landowners can seek judicial review of decisions to take land.

2.3 The Bill changes this process for critical infrastructure projects so that:

(a) the objection process to the Environment Court is removed (as above);

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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.

2 Public Works Act 1981, s 24.

3 Public Works Act 1981, s 24(14); Resource Management Act 1991, s 299.

(b) instead, a landowner has to engage in a submissions process with the decisionmaker responsible for taking the land (either a Minister or a local authority); and

(c) there appears to be no right of appeal, although the ability to seek judicial review remains.

2.4 For the following reasons, the Law Society questions whether replacing a judicial process with a submissions process to the decisionmaker is appropriate, particularly where this concerns the compulsory acquisition of land from private owners:

(a) Central or local government acquisition of private land where the private owner does not wish to part with the land is a significant exercise of state power.

(b) The current process enables the objection to be independently considered by a judge of the Environment Court, who has had no prior role in the decision.

(c) As now proposed in the Bill, the decision-making person or entity that has determined to issue a notice to take land — and so is already inclined to the acquisition of the land — is the one who will also receive and determine whether they accept the objector's submissions. When the Minister or local authority, having already formed a view that the land is needed, is the one considering the objection, there is legitimate basis for scepticism that an objector's submissions will have a fair hearing.

(d) The objector retains some ability to go to court, because they could seek judicial review. However, it is likely that a judicial review application is more costly than the present Environment Court process. Judicial review is also primarily concerned with process and legality objections, and so is typically available on more limited grounds than the present objection process and proposed submission process.

2.5 In the Law Society's view:

(a) The natural justice issues outlined above are sufficiently concerning to give good grounds to reconsider whether proposed Part 2A should proceed.

(b) If it does proceed, and the process of an objecting party having to submit through the decisionmaker is retained, then improvements to the Bill are needed to facilitate working within the proposed tight timeframes and improve natural justice protections. These are described below.

3 Working within the streamlined process

3.1 As drafted, the Bill provides for a landowner to receive a notice of intention to take land for a critical infrastructure project. The landowner then has, from service of the notice, 30 working days to submit their full submission, comprising:

(a) 10 working days from service to indicate that they wish to make a submission; and

(b) a further 20 working days.

3.2 There is also provision for a discretionary extension to the initial 10 working-day timeframe: for a further 10 working days, if the Minister or local authority considers that allowing this is reasonably necessary.[4] However, that is not a long period, particularly if the objecting party needs to:

(a) Obtain expert advice to support their submission; or

(b) Rely on the Official Information Act 1982 or Local Government Official Information and Meetings Act 1987 to obtain information from the taking entity on the reasons why their land was needed, and alternatives that have been considered. That information would almost certainly come out in the current Environment Court objection process through evidence or document provision.

3.3 There is consequently a risk of the landowner having to pursue the submission process with urgency or least with short notice, and potentially without full information on the decisionmakers' reasons and rationale for taking the land. Given the significance of acquiring land compulsorily, this is not consistent with natural justice. To improve it, the Law Society recommends:

(a) providing for electronic service for processes under Part 2A (recognising that timeframes are very tight);

(b) placing a proactive obligation on the decisionmaker to provide information and documents when serving the initial notice; and

(c) enabling requests to be made to a Minister or the local authority for an additional short extension of the standard 20 working-day submission timeframe where expert advice is needed that will take longer than 20 working days to obtain and/or where further documents are required from the proposed taking entity.

Amending section 4 of the PWA to require electronic service under Part 2A

3.4 Section 4 of the PWA provides for service and content of notices. It provides, presently, for personal or postal service.

3.5 As summarised above, timeframes under the new submission process proposed in new sections 39AAH (notice of intention to take land) and 39AAI (submission process) in Part 2A of the Bill are tight. To ensure no time is lost, the Law Society recommends requiring any notice served on a landowner by the Minister or local authority under Part 2A to be personal or electronic only. This will require updating the address for service procedures in section 4 of the PWA for Part 2A processes.

A proactive obligation to provide information, together with the initial notice

3.6 Under clause 5 of the Bill, if the Minister or local authority receives new information in response to a submission from the responsible department, Crown body or local authority, then this information must be made available to the submitter.[5] The submitter

[4] Modified section 24(3)(a)(ii) and (3)(b)(ii) in clause 5, new section 39AAI.
[5] Modified section 25 in clause 5, new section 39AAI.

then has a right to respond. The Law Society recommends that this obligation should be enhanced.

3.7 In the Law Society's view, the streamlined process could be made fairer if there was:

(a) an initial obligation when serving the notice of intention to take land for critical infrastructure to give a detailed account of the reasons currently set out in paragraph [4] of the draft notice (Schedule 2B); and

(b) a proactive obligation for the notice to be accompanied by all relevant information held by the responsible department or local authority on the proposed taking, so that the submitter has this at the start of the submissions process.

3.8 These changes to the Bill would assist prospective submitters to be appropriately informed about the basis for taking their land so they can engage in the submission process effectively.

Extension of time to make submission requiring expert evidence

3.9 In some cases, and particularly where expert reports are required, 20 working days (or 30 in total, from the point of being served notice) may not be enough time for landowners to prepare a comprehensive submission. Because the Bill proposes that objections are dealt with "on the papers" (that is, without a hearing), it will be important to prepare adequate, complete materials.

3.10 The Law Society suggests that, to facilitate this, the process proposed in the Bill could be slightly modified to include the following further steps:

(a) Allowing the registered landowner or person with an interest in land to explain:

(i) the nature of their opposition; and

(ii) why expert advice or further documentation provision is required to support their submission; and

(iii) why longer than 20 working days is required to obtain such advice or obtain the documentation.

(b) Providing for the Minister or local authority, if requested by the submitter on the grounds above, to allow an extension of the timeframe to make their submission of up to a further 20 working days; and

(c) Requiring the Minister or local authority to accept or reject any such request that has been made in writing within 3 working days.

4 Other clarification matters

4.1 Two further changes to the Bill would assist in making its proposed provisions clear and more compatible with natural justice.

More guidance on Ministerial discretion as to whether compensation is payable

4.2 The Bill provides in both clause 5 (new section 39AAL(3) and (4), relating to general land taken under Part 2A) and clause 7 (new section 72G(3) and (4), enabling additional compensation to be paid for Māori land)[6] that compensation must not be paid unless conditions are met. Compensation must not be paid "unless the owner is a willing party to the acquisition *principally* because the Minister or local authority, as the case may be, sought agreement with them to acquire the land". The Law Society has concerns regarding the convoluted drafting in these clauses and their unclear underlying policy.

4.3 Taking, for example, new section 39AAL(3) (the language of which is mirrored in other provisions): compensation "must *not* be paid to an owner of land … *unless* the owner is *not* a willing party to the acquisition of the land; or is a willing party to the acquisition principally …". The drafting composition involves a triple negative. The Law Society queries whether it would be better to choose a simpler construction.

4.4 More generally, the clauses are hard to reconcile with their stated purpose. As drafted, a landowner who is immediately willing to dispose of their land (regardless of the Minister seeking their agreement) is not eligible for the 'critical infrastructure' component of the compensation, which differs from the further premium component compensating for non-compulsory acquisition. For both types of payment, this appears to unfairly disadvantage those (presumably, those whose properties may already be on the market) who would be immediately ready to relinquish their interest. In addition, the reasons underlying the requirement to establish landowners' "principal" motivation in these clauses are unclear. The evaluative nature of that test leaves the responsible Minister or local authority with room to exercise a discretion, and requires them to second-guess motives on a matter that in many cases will be of ultimate importance to landowners, and where most will lack any legal means to challenge arbitrary decisions (if such decisions were made).

4.5 In the Law Society's view:

(a) rewording of the Bill in the places where "principally" presently appears would be desirable;

(b) removing the triple negative would be desirable; and

(c) whether or not the word "principally" is retained, the Law Society strongly recommends setting out with more specificity what matters may guide the Minister's or local authority's determination that a willing party is eligible (or not eligible) to receive compensation, to optimise transparency and minimise the risk of arbitrariness.

Making changes by Order in Council to critical infrastructure project descriptions

4.6 New section 39AAN of the Bill provides for an Order in Council procedure by which the descriptions of critical infrastructure projects in new Schedule 2A may be amended. The Minister must not recommend the making of an Order in Council under this section

6 Māori land is otherwise excluded from the new Part 2A process: clause 5, new section 39AAD.

unless satisfied that the scope of each project to which the order relates will not be substantially different as a result of the amendment.

4.7 The Law Society notes that the project descriptions in Schedule 2A are already very broad.[7] In the Law Society's view, in the interests of certainty and fairness to landowners, there should be a time limit on revision of them. It would be appropriate, for example, to provide, as a minimum, that such changes cannot be made subsequent to the issue of any notice to a landowner under section 23.

5 Recommendations

5.1 The Law Society recommends modifications to the Bill, to:

(a) Update address for service procedures in section 4 of the PWA, to provide that notice served under Part 2A must be personal or electronic.

(b) Require a notice of intention to take land served under Part 2A to include detailed reasons, and be accompanied by all relevant information held by the responsible department or local authority on the proposed taking.

(c) Amend the Part 2A submission process, to provide a process for:

(i) requesting (with reasons) a short extension of time to make a submission where expert advice or further documentation is required to support a submission; and

(ii) requiring the Minister or local authority to grant or decline the request within 3 working days.

(d) Review the wording of new sections 39AAL(3) and (4) and 72G(3) and (4) in clauses 5 and 7, either to avoid the word "principally" or clarify relevant considerations.

(e) Insert a time limit under new section 39AAN by which an Order in Council to change the description of a project or location description can be made.

Nāku noa, nā

Jesse Savage
Vice President

[7] Presumably, the provision is to enable changes such as substituting "Replace the existing one-way bridge and footpath bridge with a new bridge" with (for example) "Upgrade the existing one-way bridge to include [x and y new requirements]".