

Regulatory Systems (Courts) Amendment Bill - Amendment Paper 635

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

3 August 2026

1 Introduction

- 1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the Regulatory Systems (Courts) Amendment Bill – Amendment Paper 635 (**AP 635**). AP 635 proposes to amend the Regulatory Systems (Courts) Amendment Bill by adding clauses to:
- (a) Insert a new regulation-making power to the Care of Children Act 2004;
 - (b) Amend the regulation-making power in the Family Court Act 1980;
 - (c) Amend the Protection of Personal and Property Rights Act 1988 to extend jurisdiction for personal and property orders to Family Court Associates;
 - (d) Amend the number of coroners that may be appointed in the Coroners Act 2006;
 - (e) Amend the Criminal Procedure (Mentally Impaired Persons) Act 2003 to reduce the evidence required from two health assessors to one, as to mental impairment;
 - (f) Amend the Senior Courts Act 2016 to reduce the requirement for written material by enabling satisfaction of the requirement to be met by electronic means.
- 1.2 This submission has been prepared with input from the Law Society’s Family Law Section and Criminal Law Committee.¹
- 1.3 The Law Society does not wish to be heard on this submission.

2 Clause 11A and 12A

- 2.1 Clause 11A amends section 147(2)(b) of the Care of Children Act 2004 to provide greater flexibility for prescribing fees payable to approved providers in respect of supervised contact carried out under an order made under section 59(2) of that Act.
- 2.2 Clause 12A repeals section 16D(8) of the Family Court Act 1980 to also provide greater flexibility for prescribing the fees payable to persons who prepare reports for the Family Court.
- 2.3 The Law Society is concerned the amendments to clauses 11A and 12A may further stretch an already strained family justice system, without an evident rationale for the proposed change. If the amendment is used to reduce the cost of the service, by reducing remuneration payable to produce a report, it may make it more difficult to attract and retain suitably qualified professionals willing to undertake the work. In practice, this will likely exacerbate long-standing shortages of report writers for the Family Court and issues of timeliness and resolution of proceedings.
- 2.4 If the amendment is used to reduce the cost of the service, it may also affect the time and resources available to prepare reports, resulting in less comprehensive information being provided to the Court. As a result, it may make it more difficult for Judges to access

¹ More information about the Law Society’s law reform sections and committees is available on the Law Society’s website: <https://www.lawsociety.org.nz/professional-practice/law-reform-and-advocacy/law-reform-committees/>.

the depth and quality of information needed to make fully informed decisions in often complex and highly sensitive matters, risking potential harm to children and others.

- 2.5 To maintain the effectiveness of the specialist reporting regime, it is necessary to consider the practical reality of cost and time required to prepare them with due consideration and quality.
- 2.6 The Law Society recommends that clause 11A and 12A be deleted. If they are not deleted, we recommend there be a requirement to consult on any proposed changes to regulations affecting the preparation and expense of obtaining the specialist reports.

3 [Clause 100A](#)

- 3.1 Clause 100A amends section 8A(1) of the Criminal Procedure (Mentally Impaired Persons) Act 2003 to now only require one health assessor report as to a defendant's mental impairment (when considering their fitness to stand trial) instead of the current mandatory requirement of two reports.
- 3.2 Whilst this amendment may, on the face of it, appear minor and inconsequential, we consider it is likely to significantly impact the individuals who rely on these reports and assessments to determine their fitness to plead, stand trial, and/or participate in a full criminal trial. The significance stems from the fundamental rights of the individuals affected, including the right to a fair trial.
- 3.3 Section 8A currently requires reports from two health assessors. These reports play a critical role in informing judicial decision-making, and both judges and counsel rely heavily on them when determining issues of fitness. The outcome of those determinations can profoundly affect an individual's liberty, treatment, rehabilitation, and engagement with the criminal justice system. Divergence of opinion between health assessors is not uncommon, particularly in relation to the nature, extent, or impact of an individual's mental impairment. Such differences can have significant implications for a defendant's fair trial rights and other fundamental rights, given the serious consequences that flow from a determination of fitness to stand trial.
- 3.4 Practitioners report that where deficiencies, omissions, or errors appear in one report, they are often identified and addressed in the second. The current mandatory requirement for two reports therefore provides an important quality assurance mechanism, enhances confidence in the assessment process, and supports the court in reaching fair and reliable decisions.
- 3.5 Removing this safeguard would increase the risk of decisions being made based on incomplete or flawed evidence, with potentially serious consequences for the rights and interests of defendants.
- 3.6 It is also important to note that reports from health assessors² may be sought and raised by counsel even where doing so is contrary to a client's instructions. This reflects counsel's overriding duty to the court, which takes precedence over duties owed to the client in these circumstances. Given that such reports arise from the discharge of counsel's obligations to the court and are intended to assist the court in determining a

² Commonly referred to as section 38 reports.

matter fundamental to the integrity of the proceedings, the costs of these reports should ordinarily be met by the court rather than by the parties.

- 3.7 If sufficient funding for adequate reports is not maintained, and the responsibility for financing these significant reports rests with legal aid services or defendants themselves, the consequence will be a redistribution of costs and removal of an important procedural safeguard rather than a solution, undermining access to justice for under-resourced defendants.
- 3.8 The Law Society is concerned the proposed clause 100A would remove an important procedural safeguard. Given the significant consequences that may flow from an assessment of a defendant's mental impairment, including rights of access to justice, and to a fair trial, the Law Society considers the current requirement for dual reports should be retained.
- 3.9 We recommend the Select Committee delete clause 100A and retain the current requirement in section 8A of providing two health assessors' reports. Alternatively, we recommend amending clause 100A to maintain a requirement for two health assessor reports, with an exception to only require one where there is agreement between defence and prosecution as to mental impairment. This could occur in situations where there are previous reports to rely upon, addressing a known static disorder, or where issues are settled.



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