New Zealand Law Society
Te Kāhui Ture o Aotearoa

Taxation (Annual Rates for 2025–26, Compliance Simplification, and Remedial Measures) Bill

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

23 October 2025

1 Introduction

1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the Taxation (Annual Rates for 2025–26, Compliance Simplification, and Remedial Measures) Bill (**Bill**). The Bill is an omnibus Bill, proposing amendments to various Acts administered by Inland Revenue (**IRD**).

1.2 This submission, prepared by the Law Society's Tax Law, and Human Rights and Privacy Committees,[1] focuses on the following aspects of the Bill:

(a) income derived by an individual from the residential supply of excess electricity;

(b) the timing of employee share scheme (**ESS**) deductions;

(c) the ESS tax deferral regime;

(d) foreign investment fund (**FIF**) rules and the introduction of the revenue account method (**RAM**);

(e) cryptoasset staking income and portfolio investment entity (**PIE**) eligibility;

(f) the meaning of 'contract activity or service' in relation to non-resident contractors;

(g) provisions relating to non-resident visitors (digital nomads), including tax residence of visitors to New Zaland and permanent establishment considerations;

(h) GST and flow-through joint ventures;

(i) KiwiSaver remedials;

(j) record-keeping requirements for supplies to unregistered persons;

(k) the repeal of section 17GB of the Tax Administration Act 1994 (**TAA**);

(l) information sharing by way of Ministerial agreement; and

(m) trust disclosures and taxpayer information.

1.3 The Law Society does not wish to be heard in relation to this submission but is happy to discuss this submission with the Finance and Expenditure Committee or officials, if that would assist.

2 Income from supply of excess electricity (clause 19)

2.1 The provisions in clause 19, and the related definition in clause 95(8), seek to exempt from income tax amounts that a natural person earns from selling excess electricity generated at a residential property to an electricity retailer. The Law Society supports this proposal.

[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/.

2.2 We agree with officials' observations that individuals may not be aware of any obligation to pay tax on the proceeds of residential electricity sales.[2] Once enacted, this amendment could promote the use of solar power as homeowners may see some additional benefits from excess electricity generated during daylight hours.

2.3 We also note that the Commentary to the Bill, particularly example 46, may create some confusion as it creates an arbitrary outcome and suggests that the treatment will be different depending on if the account holder is an individual in their own name or as a trustee for a family trust.[3] The Law Society would prefer a simpler approach to exempting dwellings owned by individuals or trusts.

3 The timing of ESS deductions (clause 39)

3.1 The Law Society does not support clause 39 of the Bill, which sets out proposed changes to the timing of the ESS deduction under section DV 27 of the Income Tax Act 2007.

3.2 At the time the employer's ESS deduction was introduced, the timing of the deduction arose on the 'ESS deferral date', which was effectively 20 days after the share scheme taxing date. This approach has been widely adopted and is perceived as being practically useful, as it gives employers adequate time to obtain necessary information for reporting to IRD.

3.3 It is particularly relevant during a commercial transaction. The purchase of a company often triggers the section DV 27 tax deduction due to employees selling their shares. In such circumstances, the buyer and the seller must agree on who is able to claim the tax deduction. The parties may agree that the buyer can claim the tax deduction (particularly if they have compensated the employees for the tax cost). It is possible that the amendments in this Bill will cut across such agreements, such as where it has been agreed that a buyer will get the benefit of the DV 27 deduction. This will be particularly problematic where there is a lengthy period between signing and completing these transactions, as is often the case.

3.4 While this change has been presented as a 'clarification',[4] it should be more appropriately described as a change to the law. Referring to this clause as a clarification raises questions as to what was the previously agreed legal position.

3.5 If it is considered necessary to align the date of the section DV 27 deduction with the share scheme taxing date, this should be introduced as a law change with a significantly deferred commencement date.

4 The ESS tax deferral regime (clause 40)

4.1 The Law Society supports the proposed new ESS tax deferral regime provided in clause 40 the Bill. The new regime gives companies and their employees additional flexibility

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2 Inland Revenue *Regulatory Impact Statement: Income derived from residential sale of excess electricity* (2 July 2025) at [18].

3 Inland Revenue *Bill Commentary: Taxation (Annual Rates for 2025–26, Compliance Simplification, and Remedial Measures) Bill* (August 2025) at 90.

4 Explanatory Note of the Bill.

and clarity regarding the timing of when the tax arises on employee share scheme awards.

4.2 It is possible that some New Zealand employers will not see this approach as being sufficiently generous to encourage greater use of employee share schemes in New Zealand. In practice, deferring the share scheme taxing date may result in more tax being paid by employees on gains from the sale of shares (which may have otherwise been treated as capital gains), removing any tax incentive to compensate those employees in start-up businesses for taking the on the risk of not receiving payments in cash.

5 FIF rules and the RAM (clauses 51 and 56)

5.1 A number of provisions in the Bill provide for the introduction of the RAM – a new method for calculating a person's FIF income.[5] The Law Society supports the introduction of the RAM.

Definition of 'extended RAM taxpayer' (clause 51)

5.2 New section EX 46B(8) in clause 51 of the Bill defines the term 'extended RAM taxpayer'. The Explanatory Note of the Bill suggests these RAM provisions are intended to benefit, in particular, United States citizens and Green Card holders who remain subject to US tax on worldwide income even when they are tax residents elsewhere.

5.3 As currently drafted, this definition of 'extended RAM taxpayer' fails to take into account individuals who would have qualified as New Zealand tax residents prior to 1 April 2024 under New Zealand law,[6] but were deemed United States residents under the 'tie-breaker' rules in the United States–New Zealand Double Tax Agreement (**US-NZ DTA**). As a result, this group will not have the option to apply the RAM to qualifying foreign shares, even if they are closely connected to New Zealand.

5.4 We therefore suggest broadening the definition of 'extended RAM taxpayer' to include natural persons who become New Zealand residents under a double tax agreement on or after 1 April 2024. One way of doing so would be to clarify that, for the purposes of subsection (8):

(a) 'New Zealand resident' means a person resident in New Zealand under sections YD 1 to YD 3B (which relate to residence) and resident in New Zealand under the residence tie-breaker provisions of an applicable double tax agreement; and

(b) 'non-resident' refers to an individual who is not a 'New Zealand resident' as defined in paragraph (a) above (noting that, without this clarification, the existing broader definition in section YA 1 of the Income Tax will apply here).

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5 Clauses 6, 12(2), 13, 24, 36, 37(2), 38, 46, 49, 50(1)(b), (2), and (3), 51, 52, 56 to 63, 64(2), (4), and (5), 65, 66, 71, 76, 78, 79, 92, and 95(4), (9), (10), (19), (20), (21), (22), and (23).

6 For example, because they satisfied the '183-day rule', or had a permanent place of abode in New Zealand.

The proposed 30% discount (clause 56)

5.5 The Law Society considers the 30% discount proposed in new section EX 56B(4) in clause 56 may not be sufficient to achieve the underlying objectives of this change.

5.6 If the Bill seems to minimise the tax disincentive for individuals to migrate to New Zealand, and assuming the New Zealand RAM tax is able to be fully credited against US long-term capital gains tax, the New Zealand discount could be set at 45% or 50%, rather than 30%, producing tax rates of 21.45% or 19.5% for a top marginal rate US citizen taxpayer who comes fully into New Zealand's tax net.

5.7 In our view, this discount should at least be increased to 40%. This would make the effective tax rate when applying the top individual marginal tax rate more closely aligned with other comparable jurisdictions such as Australia, which provides a 50% discount on capital gains amounts derived from the sale of assets that have been held for 12 months or more. We envisage that a more competitive rate would result in more revenue to New Zealand because more US individuals could be expected to move to New Zealand than under the proposed 30% discount.

Foreign accruals (clause 56)

5.8 The new RAM does not include capital gains accruals for periods in which the taxpayer is a non-resident. The Law Society supports this approach.

5.9 However, if the intention is for gains accrued during the 4-year transitional residence period to be included within the 'foreign accruals' concession, we recommend more clearly reflecting this in the wording of the Bill by amending subsection (7)(a) to state:

> 'if the period is the period in which the person acquired the interest before first becoming a New Zealand resident but not a transitional resident (the **first residence date**), the market value on the first residence date less the cost of the interest;'

5.10 Subsection (7)(b) would require a similar amendment to reflect this intention.

5.11 We also query whether foreign accruals should arise in circumstances where, although an individual is a United States resident under the tie-breaker rules in the US-NZ DTA, they could be deemed a New Zealand resident under New Zealand law. The Bill could be better aligned with Article 13(7) of the US-NZ DTA if it recognises that foreign accruals arise in such circumstances, and this could be achieved by amending subsection (7) in a similar way to what is proposed at [5.4] above.

6 Cryptoasset staking income and PIE eligibility (clauses 73 and 74)

6.1 The Law Society supports the amendments in clauses 73 and 74 of the Bill, which will ensure neutral tax treatment of investment asset classes. The amendments clarify that income derived from validating cryptoasset transactions is an eligible income type for PIEs, and correct an issue which may have previously meant that funds investing in cryptoassets may have been ineligible for PIE status.

7 The meaning of 'contract activity or service' (clause 95(6))

7.1 The Law Society supports the amendments in clause 95(6) of the Bill. These changes will help clarify that non-resident contractors tax is only applicable to the extent to which a service involves infrastructure or personnel located in New Zealand.

7.2 This clause strikes an appropriate balance between reducing compliance costs for the uptake of these services, and protecting the integrity of the tax base by taxing infrastructure and personnel located in New Zealand.

8 Provisions relating to digital nomads (clauses 95, 97, 98 and 101)

8.1 The Law Society supports the amendments in clauses 95(5), (11), (15), (17) and (25), 97, and 98 of the Bill, which provide greater flexibility for international travellers spending time in New Zealand.

8.2 These amendments will enable a non-resident individual to visit and work in New Zealand for up to 275 days in any 18-month period without becoming subject to New Zealand income tax. The 'non-resident visitor rule' is subject to several conditions, including a requirement that the individual does not work for a New Zealand employer (or the New Zealand branch of a foreign employer).

8.3 The Law Society also supports the proposed change to section YD 4B of the Income Tax Act in clause 101 of the Bill. It is clear that the intention of this change is that the activities of the non-resident visitor will be disregarded when determining whether a non-resident enterprise has a permanent establishment. To achieve this objective, it would also be helpful to clarify that the non-resident visitor's activities are disregarded for the purposes of sections YD 4(2), (3) and (17C) of the Income Tax Act.

9 Flow-through joint ventures (Part 3 of the Bill)

9.1 The Law Society supports the proposed 'flow-through' treatment of joint ventures for GST purposes.

10 KiwiSaver remedials (clauses 103 and 187(2))

10.1 The Law Society supports the amendments in clauses 103 and 187(2) of the Bill as they align complying superannuation funds with the increase to the minimum contribution of KiwiSaver rates. These changes are likely to encourage long-term savings and recognise the number of different options available to New Zealand savers.

11 Record-keeping requirements for supplies to unregistered persons (clause 118)

11.1 The Law Society supports the underlying intent of clause 118, which amends section 19E(2)(a)(ii) of the Goods and Services Tax Act 1985, but considers that the drafting could be improved to reduce uncertainty for retailers.

11.2 We recommend amending the wording of clause 118 from "if the recipient is a registered person" to "if the recipient confirms they are a registered person". This is because the Bill, as drafted, does not clarify which party has the obligation to inform or query whether the recipient of the supply is in fact a registered person. As valid taxable supply

information must be provided by the supplier upon a recipient's request, it would naturally flow that the recipient should be the party with the obligation to confirm they are GST registered, and provide further details to ensure the taxable supply information is valid, so they can legally claim GST input deductions from valid taxable supply information.

12 Repeal of section 17GB of the TAA (clause 141)

12.1 The Law Society supports clause 141, which repeals section 17GB of the TAA.

12.2 Section 17GB was incorporated into the TAA after the passing of the Taxation (Income Tax Rate and Other Amendments) Act 2020 (**Taxation Act 2020**). This section was enacted without following the Generic Tax Policy Process and without the opportunity for submissions to the Select Committee.

12.3 When the changes were first introduced in December 2020, the Law Society wrote to the Minister of Revenue and Attorney-General at the time to express significant concerns about the provisions being enacted under urgency, without notification to stakeholders, and without public consultation.[7] The Law Society's letter noted the provisions were potentially far-reaching, and raised rule of law, rights, privacy and legislative quality concerns.

12.4 Putting aside the concerns raised at the time about the legislative process by which the provision came to be, section 17GB was not enacted with appropriate taxpayer protections as regards the use of information gathered. The Law Society remains of the view that it is inappropriate for IRD to have a coercive power, with requisite criminal sanction, to compel the provision of information for the purposes of policy development. We therefore agree repeal is the most appropriate outcome.

13 Information sharing by way of Ministerial agreement (clause 143)

Overview

13.1 Clause 143 of the Bill proposes to insert a new section in the TAA. New section 18HB would allow the Minister of Revenue and the Minister of another government agency to enter a "Ministerial agreement". Under such an agreement, IRD could disclose information received by it for tax purposes to the other government agency on an ongoing basis, to help the second agency:

(a) determine entitlement to or eligibility for government assistance;

(b) detect, investigate, prosecute or punish suspected or committed crimes punishable by terms of imprisonment of 2 years or more; or

(c) remove the financial benefit of crime.

13.2 According to the Bill's explanatory note, the confidentiality provisions in tax legislation limit IRD in its ability to disclose information to other agencies "in a timely manner to

[7] See letter to the Minister of Revenue, dated 23 December 2020: https://www.lawsociety.org.nz/assets/news-files/l-Minister-Parker-tax-information-provisions-23-12-20.pdf.

address Government priorities". Present mechanisms (principally, authority to share information between agencies under Approved Information Sharing Agreements (**AISAs**)), are considered to take too long to implement.[8] Ministerial agreements would be used "when Ministers consider that disclosure is within the social licence and warranted for the benefit of New Zealanders", such as combating serious crime or to verify benefit entitlements.

13.3 Proposed limitations or safeguards on the new powers would include:

(a) Requiring the relevant Ministers to be satisfied about certain matters before entering into a Ministerial agreement, and requirements for what the agreements must contain. Ministers must be satisfied, for example, that the disclosure is reasonable, will not undermine the integrity of the tax system, and that adequate safeguards are in place (for example, to protect individuals' privacy and commercially confidential information).

(b) Requiring the Minister of Revenue to consult with the Office of the Privacy Commissioner on any proposed Ministerial agreement, and "consider any comments received". The requirement to consult with the Privacy Commissioner is a positive feature of the Bill that the Law Society supports. However, the proposed consultation is insufficient on its own to guarantee that the agreements will operate in a proportionate and justifiable manner. The Commissioner has no power of veto,[9] and there is no specific requirement for he or she to report on such arrangements either to the Minister, or publicly.

(c) Requiring details of Ministerial agreements to be published on IRD's website, including the parties to the agreement, the purpose of the agreement, and the classes of information that will be disclosed under the agreement.

(d) Information obtained by compulsion under section 17I (Commissioner may conduct inquiries) or section 17J (Commissioner may apply for District Court judge to conduct inquiries) of the TAA cannot be disclosed under an agreement made under this section.[10] This represents some partial safeguard against self-incrimination. However, as we discuss further below, incriminating information compulsorily obtained by the Commissioner under other information-gathering provisions of the Act may still be shared.

(e) IRD will provide information on the ongoing performance of the agreement in its annual report.

General comment on clause 143

13.4 According to its Regulatory Impact Statement (**RIS**), the proposal was designed quickly. Due to compressed timeframes and Ministerial direction, "[n]o public, stakeholder or other agency consultation has taken place". The RIS concludes that:[11]

8 Privacy Act 2020, pt 7 and sch 2.
9 Compare Tax Administration Act 1994, s 18E(3)(b), discussed further below.
10 See also Tax Administration Act 1994, s 17K(3).
11 Inland Revenue "Regulatory Impact Statement: Ministerial agreements for the disclosure of information" (9 July 2025) at 2–3.

> This proposal is significantly limited by the lack of consultation. The Office of the Privacy Commissioner was the only stakeholder involved in consultation … This proposal was also subject to significant time constraints, and this has constrained our ability to produce an evidence-based option analysis.

13.5 The Law Society has made previous submissions on other similar proposals. We note that some of the transparency measures and rights-safeguarding measures in the Bill are broadly consistent with some of our earlier recommendations, such as:

(a) The requirements for IRD to report regularly on the ongoing operation of an information sharing agreement, and publish certain information about the agreement online.[12]

(b) The exclusion of sections 17I and 17J from the scope of the information-sharing proposal.[13]

13.6 However, the safeguards proposed are not sufficient. We note that the Privacy Commissioner has also criticised the proposal. In his view, the proposal is both unnecessary and disproportionate, as existing mechanisms under both the TAA and Privacy Act are sufficient to enable the types of information sharing that IRD is seeking:[14]

> … the Privacy Act and its existing mechanisms should only be overridden through primary legislation when a clear use case justifying it has been made out … Insufficient evidence of the problem that would justify providing for an additional information sharing mechanism was provided to OPC.

13.7 We acknowledge that Ministerial agreements are already provided for in legislation, in the Customs and Excise Act 2018.[15] The Law Society submitted on what is now section 315 of the Customs and Excise Act at the time that reform proceeded, expressing its concerns about departing from the use of AISAs and advising that the proposal required further safeguards.[16]

13.8 In tax legislation, the reasons for limiting provision of information sharing to rare exceptions and providing strict safeguards are stronger than for Customs. As section 6 of the TAA recognises, the right of taxpayers to have their individual affairs kept confidential is essential to the integrity of the tax system.[17] The RIS for this Bill repeats the point:[18]

> The confidentiality of a taxpayer's affairs is seen as a critical component of maintaining the integrity of the tax system and compliance with tax obligations.

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12 Clause 143, new section 18HB(6) and (7); New Zealand Law Society "Customs and Excise Bill" (13 February 2017) at [4.15]; Letter, Law Society to IRD Deputy Commissioner, Policy and Strategy (24 May 2013), responding to proposals in the Government's discussion document: *Targeting serious crime: A government discussion document about the sharing of tax information to prevent serious crime* (April 2013) at 7.

13 Law Society, 2013, above n 12 at 5.

14 RIS at 3 and [15]; Henry Cooke "Government quietly pushing through law to let IRD share tax details" (20 September 2025) *The Post* <www.thepost.co.nz>.

15 Customs and Excise Act 2018, s 315 (direct access to information).

16 Law Society, 2017 above n 12.

17 Tax Administration Act 1994, s 6(2)(a), (c) and (e).

18 RIS at [4].

> This would be placed in jeopardy if taxpayer information was not kept confidential.

13.9 IRD relies significantly on voluntary tax compliance, which hinges in turn on people's confidence in fully disclosing their information, knowing that its use is tightly confined. The information that section 18HB contemplates will be shared may be intended to benefit people in some circumstances (such as streamlining processes when applying for government assistance). At other times, it could be highly prejudicial and/or punitive, and this engages not only privacy but human rights concerns.

13.10 We expand below on these concerns, and consider that:

(a) AISAs are the appropriate information sharing mechanism.

(b) If new section 18HB does proceed, it should include several additional privacy-focused protections.

(c) To assist with justification of the proposal under the New Zealand Bill of Rights Act 1990 (**Bill of Rights Act**), taxpayers should be proactively advised under sections 17 and 17B of the TAA that information disclosed by them or discovered by IRD may be shared to assist other agencies. This will enable them, if needed, to challenge the exercise of the Commissioner's information-gathering powers on grounds of privilege, where there is a parallel criminal investigation.

(d) In new section 18HB(3) and (4), there may be a need to check the consistency of some of the drafting against terminology in the Privacy Act.

AISAs will not cause undue delay and have comparative advantages

13.11 One of the rationales for proposing new section 18HB is that AISAs can take too long to implement. Compared to the approximate 18-month process involved in implementing an AISA, the new power could enable Ministerial information sharing agreements to be operative within 3–6 months.[19]

13.12 The RIS also notes, however, that IRD already has AISAs in place with the Ministry for Social Development; Police, Customs and the Serious Fraud Office for serious crime detection; and the 12 agencies that are signatory to the Gang Intelligence Centre AISA.[20] In other words, existing AISAs, and/or statutory exceptions already provided in the Act relating to proceeds of crime,[21] directly address the purposes for which the new powers are now proposed. The serious crime-related AISA allows information to be shared about offending with a punishment of imprisonment of four years or more (compared to the threshold of two years or more that the Bill proposes).[22] According to the RIS, to make any changes to this AISA would take at least 12 months.

13.13 In the Law Society's view, for the following reasons, AISAs are a preferable mechanism. Amending the existing serious crime AISA may take a little longer than a Ministerial

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19 RIS at [36].

20 RIS at [6] and [13]; see Inland Revenue "Approved information sharing agreements"; and compare new section 18HB(1)(a) and (b).

21 Tax Administration Act 1994, sch 7, pt A, cl 6.

22 Clause 143, new section 18HB(1)(b).

agreement to achieve. However, it would be a better approach if lowering the offending threshold is considered to be justified. AISAs offer a balanced framework and contain essential safeguards to ensure appropriate levels of protection of personal information. Compared to AISAs, the Bill raises several inter-related concerns for the Law Society about inadequate safeguards and scrutiny:

(a) Unlike an AISA, the process set out in the Bill does not require Cabinet approval or an Order in Council. Nor would it be subject to Parliamentary scrutiny by the Regulations Review Committee. The usual important levels of oversight and transparency are therefore absent. In the Law Society's view, placing these key responsibilities in the hands solely of individual Ministers, without involving Cabinet, sets a concerning precedent, particularly given the broad public interest and collective Ministerial interests in upholding the public confidence in and integrity of the tax system. In the Law Society's view, it is not sufficient answer to this concern to make "not undermin[ing] the integrity of the tax system" a Ministerial decision-making consideration.[23] Providing for new information-sharing agreements may involve a range of considerations for Cabinet, including ongoing oversight of how many such agreements are being put in place. These concerns are heightened when there will be no check on Ministerial action in the form of public consultation.

(b) The additional streamlining promised by the proposal comes at the cost of dispensing with public consultation. The public consultation element of the AISA framework may extend the time involved in setting these agreements in place by perhaps a few months. However, consultation contributes to other objectives such as transparency, public confidence, external scrutiny, and enabling refinement of the proposal through receiving external feedback. This step should not be done away with to speed up information sharing. Instead, it may assist with verifying relevant matters, such as what is reasonable and not likely to be detrimental to tax administration objectives. The explanatory note to the Bill also talks about disclosure needing to be within the 'social licence'. This language, repeated in the RIS,[24] is unusual and, in the Law Society's view, inappropriate even in the explanatory part of the legislation. Although the phrase is not present in the provision itself, the integrity of the tax system should not be contingent on public tolerance for how much it can be weakened. In any event, even if 'social licence' were a proper and relevant matter, the processes proposed in the Bill do not allow it to be properly assessed.[25] In practice, we have observed that the sometimes lengthy delays associated with AISAs are most likely to be operational; that is, reliant on the operational capacity and resourcing of the relevant agencies and priorities at the time, not an inherent fault of the

23 Clause 143, new section 18HB(3)(a)(ii).

24 See the RIS at [5]: "The AISA process can take at least 18 months to finalise but enables the Government to test the sharing proposal with the public to see whether it has the social license to proceed."

25 The regime proposed in the Bill includes consultation with OPC, but determining whether 'social licence' exists is not the Privacy Commissioner's function. The OPC can advise on privacy considerations, but they are not the arbiters of the public's attitude towards information sharing.

mechanism. It follows that if undue delays are a concern, other steps could be taken to correct them.

(c) For AISAs, the provision enabling the Privacy Commissioner to have input is more robust than that proposed in new section 18HB.[26] The Bill proposes a requirement only for Ministers to "consider any comments received" from the Privacy Commissioner. This contrasts with existing section 18E of the Act: "the Commissioner has consulted the Privacy Commissioner on the terms of the agreement, *and the Privacy Commissioner agrees that the disclosure is appropriate*" (our emphasis).

(d) The Bill does propose some steps to allow a degree of transparency. However, the mechanisms that are proposed (e.g. reporting annually on agreements, and publication of the fact that an agreement exists and some of its details) will be ex post facto. In the Law Society's view, checks as part of the process of establishing the agreement are essential, as set out in (a) and (b) above. These are achieved by the AISA process.

Strengthening privacy requirements if the change proceeds

13.14 In light of these concerns, the Law Society urges several amendments to the Bill. We reiterate that there is a justification for protections of tax information to be stronger than those provided for Ministerial agreements in Customs legislation, for the reasons we have explained. We recommend, if new section 18HB proceeds, it is amended to strengthen privacy safeguards by:

(a) Requiring public consultation on an agreement before finalising it.

(b) Requiring a privacy impact assessment to be completed and consulted on together with the draft agreement.

(c) Specifying three further matters that an agreement must contain, including information about complaints processes and available remedies if an agency breaches the agreement.

(d) Clarifying the intended interaction of new section 18HB with the Privacy Act.

(e) Specifying the matters on which IRD is to publicly report.

(f) Providing for review by the Privacy Commissioner, either regularly or at the Commissioner's discretion, of the operation of agreements that have been implemented.

(a) Require public consultation on an agreement before finalising it

13.15 Requiring a short period of public consultation on a proposed Ministerial agreement before finalising it will not delay the process unduly. As discussed, it is important for legitimacy and will assist in providing Ministers with information relevant to their decision. If, in some cases, the agreement affects a smaller group of people than the

26 Tax Administration Act 1994, s 18E(3)(b).

general public, there should at a minimum be targeted consultation with those likely to be affected, and/or organisations who may represent affected groups.

(b) Provide a privacy impact assessment together with the draft agreement

13.16 If the disclosure involves or is likely to involve personal information (as we anticipate it generally will), a privacy impact assessment should be completed and provided together with the draft agreement, to facilitate the public consultation and ensure that any risks and appropriate mitigations are properly identified. A privacy impact assessment strengthens the requirement for structured, privacy-focused analysis, and will help in determining that the safeguards proposed are sufficient and appropriate. It is consistent with and supports the proposed requirement in new section 18HB(4)(g) for "the safeguards for protecting personal or commercially sensitive information" that must be set out in the agreement itself. We do not consider the proposal to consult with the Privacy Commissioner a substitute for this requirement. It would, if added, perform a different function of publicly providing the necessary analysis, and may support the OPC consultation by requiring that the agency has undertaken some preparatory work.

(c) Require three further things to be included in the Ministerial agreement

13.17 New section 18HB(4) states minimum requirements for matters that a Ministerial agreement must contain. We suggest there should be three additions to the list, requiring each agreement to set out:

(a) what complaints process people can use;

(b) what remedies are available if an agency breaches the agreement; and

(c) what steps will be taken before adverse action is taken against a person, as a result of their information being shared.

(d) Expressly clarify the interaction between the proposed provision and the Privacy Act

13.18 The Customs and Excise Act provides in section 303(2) that "[n]othing in the information privacy principles in section 22 of the Privacy Act 2020 limits the use or disclosure of personal information by Customs in the carrying out of its functions under this Act." If it is similarly the intention of this Bill that the agreements are intended to override the normal protections in the Privacy Act,[27] the legislation should make this clear. We recommend inserting a comparable subclause (10) (or other appropriate number) in new section 18HB.

(e) Specify reporting requirements

13.19 New section 18HB(7) requires IRD to publish information in the department's annual report on the ongoing performance of the Ministerial agreement. However, there is no further stipulation about what IRD needs to report on. In the Law Society's view, the statute should set out minimum reporting criteria, requiring specific matters to be addressed if they are applicable.

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27 Indicated in the RIS at [15]. The Privacy Commissioner's statement refers to "the disapplication of principles 10 and 11 of the Privacy Act in the proposal".

(f) Provide for ongoing regular review by the Privacy Commissioner

13.20 There is no provision for the Privacy Commissioner to formally review the operation of Ministerial agreements, only an ability under new section HB(8) to "raise concerns". The Law Society is concerned that, in the absence of a formal review mechanism, it will be more difficult for the Commissioner to systematically identify concerns. We recommend empowering the Privacy Commissioner to review the operation of a Ministerial agreement and publicly report on findings, with any appropriate recommendations. This could occur either at regular intervals (for example, every three years) or in the Commissioner's discretion, as occurs for AISAs.[28]

Rights issues relating to compelled disclosure and self-incrimination

13.21 One of the proposed criteria for permitting disclosure of sensitive revenue information on an ongoing basis to the chief executive of a government agency under new section 18HB(1) is to assist the detection, investigation, prosecution, or punishment of suspected or committed crimes punishable by terms of imprisonment of 2 years or more.[29] The Law Society considers that this could raise Bill of Rights concerns. We differ on this point from the advice that has been provided on the Bill by the Ministry of Justice.[30]

13.22 In 2013, when consulted by IRD on sharing tax information to support law enforcement, the Law Society had a number of concerns about the potential of such a proposal to both breach fundamental rights and risk undermining the integrity of the tax system. It provided IRD with its opinion that sharing tax information with other government agencies, even for the purpose of preventing serious crime, was not a justified limitation on rights protected by the Bill of Rights:[31]

> The Law Society's essential concern [was] that the information-sharing proposals in the discussion document would unjustifiably limit taxpayers' rights against unreasonable search or seizure and taxpayers' privilege against self-incrimination. The proposals would effectively allow other government agencies to "piggyback" on the Commissioner's far-reaching information-gathering powers where they could not otherwise lawfully obtain the information in question.

13.23 As the Law Society at that time observed, tax information is obtained, and unusually broad powers are provided to IRD, exclusively for tax purposes. The tax justifications for such powers are unique and entail a restriction on the non-tax purposes to which information obtained may be justifiably put. The Law Society doubted the proper legal justification for Inland Revenue to share tax information with other government agencies, even for the purpose of preventing serious crime.

13.24 Bill of Rights advice provided by the Ministry of Justice puts weight on the fact that the powers proposed are to provide for the maintenance of the law: a sufficiently important objective that is "broadly aligned" with Information Privacy Principle 11 under the

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28 Privacy Act 2020, s 158.
29 Clause 143, new section 18HB(1)(b).
30 Ministry of Justice "Consistency with the New Zealand Bill of Rights Act 1990: Taxation (Annual Rates for 2025-26, Compliance Simplification, and Remedial Measures) Bill" (14 August 2025).
31 Law Society, 2013, above n 12 at 1–2.

Privacy Act (which permits the disclosure of personal information if it is necessary for the maintenance of the law).[32] The Law Society is, however, concerned that the Ministry's advice has not addressed section 25(d) of the Bill of Rights Act, which we consider is engaged by the present proposals. The section 25(d) right not to be compelled to be a witness or to confess guilt is closely associated with the privilege against self-incrimination.[33] The essence of the privilege is that "[w]e cannot be required by the State to provide information which may expose us to criminal liability".[34] In the Law Society's view, it would be triggered by information sharing, as proposed, for the purpose of detection, investigation, prosecution or punishment. The proposition that sharing the information is reasonably justified because it supports enforcement of the law is tautologous.

13.25 The Bill proposes, properly, to exclude sections 17I and 17J from its ambit. However, taxpayer information obtained by way of a section 17 search (Commissioner may obtain information by accessing property or documents) or 17B request (Commissioner may require information or production of documents) pertaining to alleged serious crime may be shared. To assist in partly mitigating these concerns, we consider that IRD should be required to notify the taxpayer under sections 17 and 17B that documents or information obtained by IRD under those sections may be shared with other agencies and used against them in criminal proceedings under new section 18HB. Notification should be provided in writing, and repeated orally (if applicable). This will enable the taxpayer, if they choose, to challenge the exercise of the Commissioner's information-gathering powers, consistent with section 25(d) of the Bill of Rights and section 60 of the Evidence Act 2020 (privilege against self-incrimination). We acknowledge that if this approach hinders investigations, it may itself be seen as jeopardising the integrity of the tax system. This only serves to illustrate the tensions involved in the proposed new powers. To be regarded as reasonable, the heightened powers that are proposed will require additional safeguards.

Consistency of terminology with the Privacy Act

13.26 A final concern with new section 18HB is the inconsistent use of terminology. Some of the proposed terminology in subclauses (3) and (4) does not fully align with drafting language in the Privacy Act 2020 and Information Privacy Principles (IPPs) in section 22 of that Act. The reasons for the disparity are unclear.

(a) **18HB(1)(b):** The AISAs set out in the Privacy Act refer to "prevention, detection, investigation, and prosecution", but 18HB(1)(b) refers to "detection, investigation, prosecution, or punishment" — in other words, omitting 'prevention' and adding 'punishment'. Both of the words 'punishment' and 'prevention' do appear in the IPPs in the Privacy Act. However, the Law Society considers there is a potential distinction to be drawn in an information-sharing context, whereby punishment should not be part of the reason for disclosure.

32 Ministry of Justice, above n 30 at [8]–[9]; Privacy Act 2020, s 22.
33 Evidence Act 2006, s 60.
34 New Zealand Law Commission *The Privilege Against Self-Incrimination* (NZLC PP 25, September 1996) at [1].

Punishment is something a recipient agency with appropriate powers might use the information for following receipt, but it is not why the information is disclosed. We recommend omitting 'punishment' and including 'prevention', consistent with the approach taken in AISAs.

(b) **18HB(3)(a)(i):** New section 18HB(3)(a)(i) refers to disclosure that is "reasonable and practical". 'Practical' does not appear in the Privacy Act or IPPs. The term 'practicable' is in the IPPs, although not in the context of allowing disclosure. The Committee may wish to seek the advice of officials as to whether 'practical' is intended to differ at all from 'practicable' as presently used in the Privacy Act; and if not, whether consistent language would be preferable. There is also a question of for whom the disclosure must be either practicable or practical. Presumably, the intended answer is for the two agencies concerned. This would be desirable to clarify.

(c) **18HB(3)(a)(iv):** Under new section 18HB(3)(a)(iv), there must be "adequate safeguards" for the "retention" of the information. In the Privacy Act, IPP5 is about reasonable security safeguards for the storage of the information (in other words, there is discrepancy between the words 'storage' and 'retention'). It is also unclear who determines the 'adequacy' of safeguards (as compared to the Privacy Act language of reasonableness).

(d) **18HB(4)(h):** New section 18HB(4)(h) refers to requirements for "storage and disposal"; however, under subclause (3), as discussed above, the draft refers to 'retention' (not 'storage'). This is not only internally inconsistent: in the Privacy Act, storage and retention are not the same thing (whereas storage is holding information safely, retention is having a lawful basis to keep it).

13.27 We recommend reviewing and correcting these drafting details, so that the new section aligns as closely as possible with the Privacy Act's established and well-understood terms.

Recommendations

13.28 The Law Society recommends:

(a) Amending clause 143, new section 18HB to strengthen privacy safeguards by:

(i) Requiring public consultation on an agreement before finalising it

(ii) Requiring a privacy impact assessment to be completed, and consulted on together with the draft agreement

(iii) Specifying three further matters that an agreement must contain, including complaints processes and available remedies if an agency breaches the agreement

(iv) Clarifying the intended interaction of new section 18HB with the Privacy Act.

(v) Specifying the minimum required reporting matters relating to Ministerial agreements.

(vi) Providing for ongoing regular review of the operation of agreements by the Privacy Commissioner, either at regular intervals or in the Commissioner's discretion (as occurs for AISAs).

(b) Requiring IRD to proactively advise taxpayers at the point of a section 17 TAA search or 17B request that information disclosed by them or discovered by IRD may be shared under new section 18HB to assist other agencies.

(c) Reviewing and amending the terminology used in new section 18HB(1), (3) and (4), to ensure that it is consistent with the Privacy Act.

14 Trust disclosures and taxpayer information (clauses 152 and 153)

14.1 The Law Society supports clauses 152 and 153 of the Bill, which will repeal sections 59BA and 59BAB of the TAA, and reduce the compliance burdens on New Zealand taxpayers.

14.2 Sections 59BA and 59BAB of the TAA were introduced and enacted via the Taxation Act 2020, which, as discussed above, gave rise to various concerns. At the time, the Law Society expressed concerns that the introduction of section 59BA imposed significant requirements that should have been subject to careful consideration and consultation, and should not have been enacted under urgency.[35] Those changes resulted in an increased compliance burden and costs for domestic trusts and, in some cases, unrealistic reporting requirements.

14.3 In addition, the change granted the Commissioner of Inland Revenue a discretionary power to request information in a way that was far-reaching and retrospective, which we noted would affect the rights of taxpayers in a fundamental way. The Law Society therefore welcomes the repeal of these provisions.

Nāku noa, nā

Mark Sherry
Vice President

35 Above n 7.