

26 November 2021

Hon Chris Hipkins
Minister for COVID-19 Response
By email: c.hipkins@ministers.govt.nz

E te Minita, tēnā koe

COVID-19 Response (Vaccinations) Legislation Act 2021

I am writing to express the New Zealand Law Society | Te Kāhui Ture o Aotearoa's concern at the process used for passage of the COVID-19 Response (Vaccinations) Legislation Act 2021.

The Act is perhaps the most significant piece of amendment legislation since passage of the principal Act—the COVID-19 Public Health Response Act 2020. The amendments broaden prospective COVID-19 Orders to enable the 'traffic light' system and the implementation of vaccine mandates. The amendments do not specify any decision-making principles or criteria in relation to the implementation of requirements for vaccinations and testing. Instead, the legislation leaves this to be determined through the drafting of the Orders. As such, the amendments confer expansive powers that may be exercised with little or no democratic scrutiny. The Bill providing for these powers passed through the House in 24 hours.

In June last year, the Law Society expressed concerns about the passage of the COVID-19 Public Health Response Act.¹ At that time, the Law Society had been afforded a very brief opportunity to review the Bill prior to introduction in the House.

No consultation occurred with the Law Society on the COVID-19 Response (Vaccinations) legislation. While reference has been made to consultation with 'relevant individuals', it is not known who those individuals are. Unlike the COVID-19 Public Health Response Act, there is to be no retrospective consideration of the amendment legislation by select committee.

The absence of any measures for public scrutiny and input into a statute of this kind is constitutionally unsound. The rule of law is harmed and public confidence in the law and our democracy is undermined when legislation which substantially impacts on fundamental rights and freedoms is enacted without any public consultation or any form of post-implementation review. It can also result in legislation which is not trusted by the community and, therefore, is unworkable or fails to deliver on its aims.

The Law Society acknowledges the difficulties and pressures associated with responding to COVID-19, and the myriad of legislative and administrative actions required to do this. However, the traffic-light system was announced a month ago, on 22 October 2021. It is not clear why the

1 <https://www.lawsociety.org.nz/assets/Law-Reform-Submissions/l-FEC-COVID-19-Public-Health-Response-Act-2020-5-6-20.pdf>

COVID-19 Response (Vaccinations) legislation needed to be introduced and passed through the House so urgently such that no opportunity for consultation was provided.

This is an area where a careful balancing exercise is required for the social, economic, political and constitutional factors that are in play. The need for this balancing exercise will continue as the new COVID-19 Orders are drafted. The Law Society urges wider consultation during this process. We understand that consultation processes might need to be truncated, but this is essential to ensure that the rights of New Zealanders are respected, and the terms of the Orders are workable for those who will be affected by or required to implement the new measures. I take this opportunity to reiterate that the Law Society is available and willing to contribute in this context.

Finally, this situation has clearly highlighted the lack of safeguards and oversight for the use of urgency. The Law Society suggests that Parliament consider an amendment to Standing Orders, so that all bills passed under urgency are automatically referred to select committee for consideration post-enactment. The Law Society will raise this again when the Standing Orders Select Committee comes to conduct its next review.

Nāku noa, nā

A handwritten signature in black ink, appearing to read 'Tiana Epati', written in a cursive style.

Tiana Epati
President