

13 May 2021

Emma Grigg
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Wellington

By email: [REDACTED]

Dear Emma

Tax system – Remedials Advisory Panel proposal

We are writing in relation to the way remedial tax legislation is currently dealt with by the Inland Revenue policy process and to advocate for a remedials advisory panel to be established as a low cost and effective method of processing and prioritising remedials.

As you will be aware, the New Zealand Law Society | Te Kāhui Ture o Aotearoa has raised the possibility of forming such a panel with Inland Revenue officials on previous occasions.¹ The Law Society considers it is timely to revisit this proposal and to give it serious consideration in terms of the benefits to the Commissioner, to taxpayers, and in terms of the use of parliamentary time and resources. A remedials advisory panel (or a functionally similar entity) would provide a means of assisting the Commissioner and taxpayers to deal with remedial issues in a transparent and accountable way, and ensure internal and external review of issues raised in relation to legislation which may not be achieving the intended legislative objective.

By way of background, as you will be aware, the Law Society sees as a useful starting point for this proposal the Rewrite Advisory Panel. That Panel was initially set up in 1995 to help with the progressive rewrite of New Zealand's income tax law in plain English. In 2004 the Panel's role was extended to help deal with unintended legislative consequences arising from the rewrite process. The Panel operated by triaging issues and disseminating them as identified issues so that the public could provide comment. During the period of its establishment, the Panel completed 176 public submissions on unintended legislative changes, with approximately 80 per cent being recommended for legislative correction. A further 500 minor amendments were also agreed to. The Panel was semi-independent, in that it had an independent chair, and comprised representatives of the New Zealand Institute of Chartered Accountants (now CA ANZ), the Law Society and Inland Revenue.

The way tax legislation remedials are currently considered and processed is not subject to formal external scrutiny, utilises Inland Revenue Policy resources that could be deployed elsewhere

¹ NZLS submission on SOP 193, Taxation (Annual Rates for 2019-20, GST Offshore Supplier Registration, and Remedial Matters) Bill, 27.3.19, at [2.9], available at <https://www.lawsociety.org.nz/assets/Law-Reform-Submissions/0010-133111-SOP-193-Taxation-AR-19-20-GST-Offshore-Supplier-Registration-and-RM-Bill-27-3-19.pdf>; and NZLS letter to Graeme Smail on the Taxation legislation drafting review, 1.9.2020.

(particularly during the government's response to the COVID-19 pandemic, and during a period of rapid implementation of new policy initiatives), and is not, in the Law Society's view, working as well as it could. Significant remedials (which are not new policy matters, but are identified deficiencies in enacted legislation) are being delayed, sometimes for many years. This is undermining taxpayers' (and their advisers') ability to know with certainty how the law applies to them, and is arguably undermining the public perception of the integrity of the tax system.

Ideally, a register of issues/remedials being considered should be available to stakeholders on a continual basis to provide that useful scrutiny (the Rewrite Advisory Panel process included a register). Any information specific to Inland Revenue/Ministerial approval such as cost and allocation of resources could easily be redacted. (Given the subject matter of this committee would be remedials, we anticipate that issues around fiscal costings should be manageable in the context of an external panel). Further consideration might usefully be given to making the register accessible to the main stakeholders and to the public. Otherwise, as we suspect is the case now, a separate, informal and potentially incomplete registry system will likely develop outside Inland Revenue's purview.

We consider the remedials advisory panel would be a best practice solution as it would provide transparency about what remedials are being considered, and would be helpful to the Commissioner in terms of speeding up triaging and processing the ever-growing list of remedials Inland Revenue has to deal with.

A concern raised in the past is that, due to New Zealand being a small community, it is undesirable to appoint members to an advisory committee, due to conflict of interest issues. However, there are many recent examples of non-statutory committees which have provided important advice to the Commissioner, including the Tax Working Group, and the stakeholder meetings held on Fridays to discuss urgent issues relating to the government's COVID-19 response.

We acknowledge Inland Revenue has reservations about the use of a remedial panel. However in circumstances where the normal consultation process is to be abandoned or abridged, Inland Revenue should at least engage in this limited form of consultation. Accordingly, the Law Society continues to support the establishment of an advisory committee/panel, which would provide a measure of objectivity to the process, and is important in terms of taxpayer perceptions of the integrity of the tax system.

It would be important to ensure that panel members are engaged on a paid basis, given the importance of the work (we understand there is a standard government approach towards funding entities of this kind). We anticipate that panel members would be paid on a similar basis to the former Rewrite Advisory Panel.

The Law Society would be pleased to discuss these issues further. The Law Society's Tax Law Convenor, Neil Russ, can be contacted through the Law Society's Law Reform Adviser Emily Sutton ([REDACTED]).

Yours sincerely



Neil Russ
Convenor, NZLS Tax Law Committee

Cc: Stewart Donaldson, Principal Policy Advisor, Policy and Regulatory Stewardship, Inland Revenue
Cc: John Cuthbertson, NZ Tax & Financial Services Leader, CA ANZ