

9 September 2024

Parliamentary Counsel Office
Wellington

By email: contact@pco.govt.nz

Exposure draft of Valuers Bill and associated Amendment Paper

1. The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to provide feedback on the exposure draft of the Valuers Bill, and the associated Amendment Paper, the latter of which seeks to make improvements to the Valuers Act which cannot be made under section 96 of the Legislation Act 2019.
2. This submission has been prepared with input from the Law Society’s Public Law Committee, and provides feedback on the question of whether the new Valuers Act should bind the Crown (noting the Valuers Act 1948 does not presently contain such a provision).

General comments

3. The Law Society agrees with the analysis in the consultation material about whether, and when, Acts should bind the Crown.¹ We also note that *Cabinet Office Circular CO (02) 4*, which is briefly referenced in the consultation material,² provides useful guidance on this topic, and includes criteria for determining whether an Act should bind the Crown:³
 - a. Acts which set out powers and obligations of the Crown should bind the Crown (at [12.1]).
 - b. The Crown should be bound by Acts unless the application of a particular Act to the Crown would impair the efficient functioning of Government (at [16]).
 - c. Factors for and against an Act binding the Crown include (at [18-19]):
 - i. the desirability of equal application of the law to the Crown as well as to general citizens;
 - ii. the risk of unfair benefits or burdens to the Crown;
 - iii. whether any operations or activities of the Government would be hindered by making the Crown subject to the Act; and

¹ See Parliamentary Counsel Office and Toitū Te Whenua | Land Information New Zealand “Valuers Bill Exposure Draft: Request for Submissions and Explanatory Material” (2024) at pages 8-10.

² At page 9.

³ Cabinet Office Circular “Acts Binding the Crown: Procedures for Cabinet Decision” (13 March 2002) CO (02) 4.

- iv. the financial costs of making the Crown subject to the Act.

Can an intention to bind the Crown be implied (Q6)?

4. The Valuers Act refers to “the Crown” only once, in section 2. That section defines “Minister” as the “Minister of the Crown” who is responsible for the administration of the Act. The Act then proceeds to give various responsibilities to the Minister under the Act, including:
 - a. the appointment of valuers to the Valuers Registration Board, and their removal from office (section 3);
 - b. approval of rules (section 16); and
 - c. the presentation of regulations to the House (section 44).
5. While accepting that a “Minister of the Crown” is not “the Crown”, it could perhaps be argued the Valuers Act intended to bind the Crown because one of the Crown’s Ministers is given a variety of substantive and procedural responsibilities under the Act.
6. However, we note section 22 of the Legislation Act provides an Act does not bind the Crown unless it expressly states so.⁴ None of the express provisions of the Valuers Act suggest the Act is intended to bind the Crown. It is also unclear whether the objectives of the Valuers Act would be defeated unless the Crown were bound by the Act. Therefore, we do not think an intention to bind the Crown can be implied in this instance.

Is it desirable for the new Valuers Act to bind the Crown (Q7)?

7. Yes. As the consultation material notes,⁵ the general presumption in New Zealand is for an Act to bind the Crown. The guidance in *Cabinet Office Circular CO (02) 4* also supports the Valuers Act binding the Crown:
 - a. The Valuers Act sets out the powers and obligations of a Minister of the Crown, and therefore, it is appropriate for the Act to bind the Crown.
 - b. Binding the Crown to the Valuers Act does not appear to impair the efficient functioning of Government. Rather, it would be consistent with good administration for the Act to bind the Crown, given the Minister is responsible for administering the Act and for various decision-making under the Act.
 - c. There does not appear to be a risk of unfair benefit or burden to the Crown if the Act binds the Crown. The Crown is more likely to *appropriately* benefit from being bound by the Act because it would enable the Crown to be treated on the same

⁴ We note the predecessor to the Legislation Act, which was in force at the time the Valuers Act was passed, contained a comparable provision (see section 5(k) of the Acts Interpretation Act 1924, which states “no provision or enactment in any Act shall in any manner affect the rights of His Majesty, his heirs or successors, unless it is expressly stated therein that His Majesty shall be bound thereby”).

⁵ At page 9.

footing, and with the same protections, as the general public when engaging with valuers.

Should this amendment be made under section 96 of the Legislation Act, or via an Amendment Paper (Q8)?

8. In the absence of any provisions which expressly state the Valuers Act binds the Crown, and for the reasons given in the consultation material,⁶ we agree it would not be appropriate to make this amendment via the section 96 revision process. An Amendment Paper would be the appropriate mechanism for such an amendment.
9. We hope this feedback is helpful. Please do not hesitate to get in touch with me via the Law Society's Senior Law Reform & Advocacy Advisor, Nilu Ariyaratne (Nilu.Ariyaratne@lawsociety.org.nz), if you have any questions, or wish to discuss this feedback with us.

Nāku noa, nā



Jesse Savage
Vice-President

⁶ At page 9.