

Statutes Amendment Bill

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

2 December 2024

1 Introduction

- 1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the Statutes Amendment Bill (**Bill**).
- 1.2 This short submission addresses Part 30 of the Bill, which proposes amendments to the Oaths and Declarations Act 1957. It has been prepared with feedback from the Law Society's Family Law Section and Property Law Section.
- 1.3 The Law Society does not wish to be heard in relation to this submission, but is available to respond to any questions that the Select Committee may have.

2 Clause 123: Amendments to the Oaths and Declarations Act 1957

Use of audio-link

- 2.1 The Bill proposes to insert new section 2A into the Oaths and Declarations Act, which will enable oaths and affirmations to be administered, and declarations to be taken, by 'audio link' or 'audiovisual link.' Presently, this must be done in the presence of the person taking the oath or making the affirmation or declaration.
- 2.2 The Law Society supports a person being able to take an oath, affirmation or declaration by audiovisual link. In such circumstances, the lawyer can see the individual, can see the document, and can see the individual sign the document. Importantly, the lawyer can also see the person's surroundings and assess whether there may be any pressure or duress for the person to sign the document.
- 2.3 The Law Society does not support inclusion of the term 'audio link' within new section 2A (at subsections (1) and (2)(a)). This would enable the swearing or taking of oaths, affirmations and declarations without the lawyer in fact witnessing the signing of the relevant document. The lawyer would be unable to see the circumstances in which the individual is signing the document. We are unsure how a lawyer could be satisfied that the person taking the oath or making the affirmation or declaration has signed the document, if using only an audio link. Use of audio link would also make it difficult for a lawyer to identify, for example, that an affidavit seeking to discharge a protection order is being sworn by the person who has the protection order in their favour while the person with the protection order against them is standing right beside them and exerting pressure on the protected person to sign the document. It is possible a phone could be muted while a third person in the room with the individual speaks without the lawyer knowing.
- 2.4 We acknowledge that the drafting of new section 2A reflects the temporary changes made during the COVID-19 pandemic, under the Epidemic Preparedness (Oaths and Declarations Act 1957) Immediate Modification Order 2020 (the **IMO**).
- 2.5 While 'audio link' was included under the temporary provisions of the IMO, the Bill proposes permanent changes outside of the pandemic context. It is our understanding that during the pandemic it was primarily audiovisual link that was used to enable the electronic swearing or taking of oaths, affirmations and declarations. It was also common practice to note, when the oath was taken, that the document had been signed (and was seen to be signed) by audiovisual link. This alerted individuals to the fact that a

document had been signed in this manner, and ensured the person taking the oath (i.e. the lawyer) had turned their mind to the relevant statutory requirements.

2.6 The Law Society recommends that the references to 'audio link' are deleted.

Reference to the Contract and Commercial Law Act 2017

2.7 Schedule 5 of the Contract and Commercial Law Act (**CCLA**) sets out circumstances where electronic signatures cannot be used. This includes, but is not limited to:

- (a) Wills, codicils or other testamentary instruments;
- (b) Affidavits;
- (c) Statutory Declarations;
- (d) Other documents that are given on oath or affirmation;
- (e) Powers of Attorney and Enduring Powers of Attorney.

2.8 The electronic swearing or taking of oaths, affirmations and declarations would therefore still require that a hard copy is signed with wet ink, during the audiovisual link. Currently, some documentation (such as Authority and Instruction forms) can be signed and witnessed during an audiovisual link via electronic signature and screen-sharing. This means there is a risk of some confusion, and the prohibition in the CCLA in respect of certain documents may be overlooked.

2.9 We therefore recommend that the Select Committee consider including a cross-reference to the CCLA within new section 2A of the Oaths and Declarations Act.



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