

Public Works Amendment Bill 2025

**Submissions on behalf of
The Law Association of New Zealand
by the
Public & Administrative Law Committee**

INTRODUCTION

The Law Association of New Zealand (“TLANZ”) is an independent membership organisation for the New Zealand legal profession with more than 9,000 members. TLANZ maintains expert law committees that support legal review and policy advocacy on important issues.

This submission is made by the Public and Administrative Law Committee on the **Public Works Amendment Bill 2025** (“the Bill”).

EXECUTIVE SUMMARY

The Committee acknowledges the importance of timely and efficient delivery of public infrastructure and accepts that aspects of the Public Works Act 1981 require modernisation. However, the Committee is concerned that the Bill goes well beyond procedural streamlining and introduces substantive changes that significantly affect the exercise, oversight, and accountability of compulsory acquisition powers.

The Bill engages core principles of public and administrative law, including procedural fairness, natural justice, proportionality, the rule of law, access to justice, and the appropriate limits of executive power. In particular, the Committee notes that the Bill:

- Narrows and restructures objection and appeal rights, including limiting the Environment Court’s jurisdiction and, in some circumstances, removing it entirely in favour of submissions to the decision-maker.
- Expands executive discretion, including through emergency recovery powers activated by Order in Council, with reduced negotiation requirements, relaxed notice and information obligations, and reliance on interim or incomplete information.
- Alters the balance between efficiency and independent oversight by prioritising speed of delivery over traditional safeguards in compulsory acquisition processes.
- Extends and reshapes acquisition powers for agencies and State-Owned Enterprises, including Transpower, raising concerns about accountability, delegation, and the exercise of public power by non-ministerial actors.
- Makes significant changes affecting Māori land, including valuation of Māori freehold land as if it were general land and revised consent and compensation frameworks, which raise Te Tiriti-adjacent and public law concerns.
- Introduces mandatory alternative dispute resolution requirements before compensation disputes may be heard by the Land Valuation Tribunal, potentially delaying access to independent adjudication.

Taken cumulatively, these changes represent a material shift in the constitutional balance underpinning compulsory acquisition: away from independent scrutiny and robust procedural safeguards, and towards broader executive discretion.

While the Committee does not oppose reform of the Public Works Act in principle, it considers that the Bill, as currently drafted, does not adequately safeguard against the risks inherent in

expanded compulsory powers. Further clarification, strengthened procedural protections, and enhanced independent oversight are necessary to ensure that the exercise of compulsory acquisition powers remains consistent with fundamental public and administrative law principles.

SUBMISSIONS

1. Introduction

1.1. This submission is made by the Public and Administrative Law Committee in relation to the Public Works Amendment Bill 2025.

1.2. The Committee recognises and supports the importance of efficient and timely delivery of public infrastructure. It also accepts that the Public Works Act 1981 (“PWA”) has not been comprehensively reformed for several decades and that modernisation of processes is, in principle, appropriate. However piecemeal amendments such as the proposed Bill largely reflect Government perceptions of a need for quicker outcomes.

1.3. They do not go far enough to revise a set of laws that are no longer fit for purpose and fail to treat landowners who take a disproportionate share of the burden of the project, fairly.

1.4. The current legislation needs to be repealed in its entirety and replaced with an act containing a range of provisions that, among other things, should include:

- Require the Crown to provide, with any notice of desire or intention to take land, an offer of compensation supported by a valuation report attached to the notice.
- Requiring a generous and liberal compensation regime through payment of the sum assessed in the higher of the 2 valuations, to favour the landowner.
- Setting out clear grounds and reducing the requirements to be met, for an owner to qualify for advance purchase on hardship grounds.
- Payment of all costs incurred by the owner regardless of the amount, provided that such costs incurred are as a direct result of the acquisition and are proximate.
- Place a time limit on Requiring Authorities to agree compensation and settle acquisitions.
- Establish a regime whereby owners impacted by the Construction of the works are fairly compensated for business loss, even if none of their land is being taken for the project.
- Provide for a fair and transparent regime for assessing and paying for business loss and relocation of businesses and reinstatement, on a suitable like for like business location.

1.5. However, compulsory acquisition represents one of the most intrusive exercises of state power. The legitimacy of that power depends on strong procedural safeguards, transparency, and meaningful access to independent oversight. The Committee’s

submission focuses on whether the Bill maintains an appropriate balance between efficiency and those foundational public law protections.

2. General Observations

- 2.1. The Committee is concerned that, taken as a whole, the Bill reflects a clear policy shift towards prioritising speed and delivery over procedural fairness and independent scrutiny. **It fails to address any of the multitude of other issues in legislation now dating back near on 50 years.**
- 2.2. While efficiency is a legitimate legislative objective, the Committee emphasises that public confidence in compulsory acquisition depends on the availability of robust checks on executive decision-making.
- 2.3. Several provisions of the Bill narrow or displace existing safeguards without introducing sufficiently strong alternative protections. In particular, the Bill increasingly relies on ministerial or agency opinion, truncated engagement with landowners, and constrained avenues for challenge. It is clear that the proposal to allow the Central and Local Government Agencies that have designed and promoted the projects, to hear and determine submissions from affected landowners against the project, is a conflict of interest that cannot be overcome.
- 2.4. The Committee is concerned that these changes, cumulatively, risk undermining core public law principles, including natural justice, proportionality, reasonableness, and the rule of law, bias and conflict of interest.

3. Procedural Fairness and Natural Justice

3.1. Restriction of Environment Court oversight

- 3.1.1. The Bill narrows the grounds on which objections may be made to the Environment Court and limits the matters that the Court may consider, particularly where a public work is subject to a designation under the Resource Management Act 1991.
- 3.1.2. Where a designation exists, the Environment Court is expressly prevented from inquiring into the adequacy of consideration of alternative sites, routes, or methods.
- 3.1.3. The Committee is concerned that this approach treats designations as conclusively determinative, despite the fact that many designations may be historic, broad in scope, or removed from the specific impacts of subsequent land acquisition decisions.
- 3.1.4. Removing the Court's ability to examine alternatives risks undermining proportionality and limits the Court's traditional role as an independent check on executive power. Clearly the changes proposed will further increase the hardship of landowners impacted by the designation that cannot sell their property due to the blight of the public work. The Committee submits that the process contained in

section 185 of the Resource Management Act 1991 should be inserted into the Public Works Act 1981, so that Owners subject to a Designation can apply to the Environment Court for an order that the Requiring Authority must acquire their land on hardship grounds.

3.2. *Replacement of objections with submissions in emergency recovery*

3.2.1. Part 2C of the Bill replaces objections to the Environment Court with a submission process directed to the Minister or local authority.

3.2.2. Although emergencies may justify modified procedures, the Committee is concerned that the Bill removes independent merits review at precisely the point where state power is most expansive.

3.2.3. Submissions to the decision-maker, without a right to an oral hearing or independent determination, do not provide an equivalent safeguard to judicial or quasi-judicial oversight.

4. Emergency Powers and Rule of Law Concerns

4.1. The Bill introduces a standing emergency recovery acquisition regime activated by Order in Council, rather than bespoke primary legislation.

4.2. The Committee notes with concern that under this regime:

- negotiation periods are significantly shortened;
- notice and information requirements may be dispensed with where “impracticable”;
- interim cadastral survey datasets may be relied upon; and
- decision-makers are expressly permitted to act on the basis of less information than would ordinarily be required.

4.3. While review and reporting obligations exist, Orders in Council may remain in force for extended periods, with review intervals of up to five years.

4.4. The Committee considers that emergency powers of this breadth require clearer thresholds, tighter temporal limits, and stronger independent oversight to remain consistent with rule of law principles.

5. Expansion of Executive and Agency Powers

5.1. *Transpower acquisition powers*

5.1.1. The Bill enables Transpower New Zealand Limited, a State-Owned Enterprise, to initiate and undertake land acquisition processes traditionally exercised by the Minister.

5.1.2. The Committee is concerned that this blurs traditional lines of constitutional accountability. While Transpower is publicly owned, it does not operate under the same conventions of ministerial responsibility.

5.1.3. The Committee questions whether the Bill provides sufficient safeguards to ensure transparency, consistency, and compliance with public law standards when compulsory powers are exercised by a non-ministerial actor.

5.2. *Combined project regime*

5.2.1. The Bill introduces a regime allowing multiple public works to be authorised as a combined project, with agencies acquiring land on behalf of one another.

5.2.2. Although coordination may improve efficiency, the Committee is concerned that this model risks diffusing responsibility and complicating accountability for affected landowners.

5.2.3. From an administrative law perspective, clarity as to who is the decision-maker and who bears public law obligations is essential.

6. Māori Land and Te Tiriti–Adjacent Issues

6.1. *Valuation of Māori freehold land*

6.1.1. The Bill requires Māori freehold land to be valued as if it were general land for compensation purposes.

6.1.2. The Committee is concerned that this approach does not adequately reflect the cultural, ancestral, and collective significance of Māori land, which may not be captured through market-based valuation methodologies.

6.1.3. The Committee questions whether this change is consistent with principles of active protection and partnership under Te Tiriti o Waitangi.

6.2. *Ministerial consent for taking protected Māori land*

6.2.1. The Bill introduces a requirement for consent from relevant Māori portfolio Ministers before protected Māori land may be taken.

6.2.2. While this safeguard is welcomed, the Bill does not prescribe clear criteria for the exercise of that consent or require consultation with affected owners, hapū, or iwi.

6.2.3. The Committee considers that greater clarity and stronger procedural requirements would better align this provision with public law and Treaty principles.

7. Compensation and Access to Justice

7.1. The Committee acknowledges improvements to compensation settings, including incentive payments and increased home-loss and land-loss payments.

7.2. However, the Bill introduces mandatory alternative dispute resolution requirements before compensation claims may be heard by the Land Valuation Tribunal.

7.3. While ADR can be beneficial, the Committee is concerned that mandatory ADR may delay access to statutory adjudication and disadvantage landowners relative to well-resourced public authorities.

7.4. The Bill does not clearly define what constitutes “all reasonable steps” to resolve a dispute, creating uncertainty and potential procedural barriers.

8. Transparency and Oversight

8.1. The Committee supports the introduction of reporting obligations on the responsible chief executive regarding the operation of the Act.

8.2. However, these reporting mechanisms remain internal to the executive branch and do not provide for independent or parliamentary scrutiny of trends in compulsory acquisition.

8.3. Given the expansion of compulsory powers under the Bill, the Committee considers that enhanced transparency and external oversight mechanisms may be warranted.

CONCLUSION

The Committee acknowledges the policy objective of improving infrastructure delivery but is concerned that the Bill materially shifts the balance between efficiency and the protection of individual and collective rights.

- In particular, the Committee is concerned about:
- the narrowing of objection and appeal rights;
- reduced independent oversight in both ordinary and emergency contexts;
- the breadth of emergency acquisition powers;
- expanded acquisition powers for agencies and State-Owned Enterprises; and the treatment of Māori land and interests.

The Committee respectfully submits that further safeguards, clarification, and independent oversight mechanisms are necessary to ensure that compulsory acquisition powers are exercised consistently with fundamental public and administrative law principles.

Summary of Recommendations

The Committee recommends that the Select Committee consider:

1. Retaining or strengthening Environment Court oversight, particularly in relation to consideration of alternatives.
2. Introducing additional safeguards and independent review mechanisms within the emergency recovery regime.

3. Clarifying accountability and public law obligations where acquisition powers are exercised by Transpower or under combined project arrangements.
4. Reconsidering valuation approaches and procedural protections affecting Māori freehold and protected land.
5. Ensuring that ADR requirements do not impede timely access to independent compensation determination.
6. Enhancing transparency and external oversight of compulsory acquisition.

Thank you for the opportunity to make submissions in respect of the Public Works Amendment Bill 2025.

We are available to discuss our submissions, if required. Should clarification be required with regards to any matters raised, please contact Gandhya Senanayake, the TLANZ Committee Executive at Gandhya.Senanayake@tlanz.nz.

ACKNOWLEDGMENTS

The Public and Administrative Law Committee acknowledges the contribution to submissions by the following member Phil Shannon.

Yours Sincerely,



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