

Annexure 6: COVID-19

Law Society feedback on:	Key concerns
<p>Inquiry into the Government's response to Covid-19 Link to come</p>	<p>In April 2020, the Law Society made the following key recommendations to the Epidemic Response Select Committee, which was established to consider and report to the House on matters relating to the Government's management of COVID-19:</p> <ul style="list-style-type: none"> • The Government should identify the legal foundations for the various responses by the Government to Covid-19, as the rule of law requires the law to be clear, clearly enforceable, and able to be easily accessed and understood by all to whom it applies. • As far as possible, there should be an ongoing attempt to replicate the normal policy and law-making process (which allows for opportunities to for consultation on proposed reforms). • Henry VIII powers should be carefully tailored to provide for public consultation where possible, and should be subject to approval or disallowance through the Parliamentary process.
<p>Compliance activities and processes of Immigration New Zealand (INZ) Link to come</p>	<p>The Law Society sought clarification on a number of matters which would affect individuals who may have become unlawful as a result of COVID-19 (i.e., closed borders and the unavailability of international flights):</p> <ul style="list-style-type: none"> • whether scheduled deportations had been postponed or cancelled: INZ subsequently clarified it has suspended routine, non-priority deportations, but would continue to execute deportations where it was in the public interest to do so. • whether individuals who were detained under a warrant of commitment could instead be directed to reside at a specified place where they may have family or an acceptable place in which to self-isolate: the detention status of some (but not all) of these individuals was adjusted to allow these individuals to be released into the community on reporting conditions. • Whether visa application processes would be updated to allow relevant documents to be filed electronically: These processes were not updated, adversely impacting applicants' access to justice, and their ability to fully participate in the visa application process.
<p>Immigration (COVID-19)</p>	<p>In its submission to the Epidemic Response Select</p>

Response) Amendment Bill 2020	<p>Committee, the Law Society raised concerns regarding the proposal to allow the Minister to exercise, by special direction, very broad powers which apply to <i>classes</i> of individuals. The submission recommended that these powers should be exercisable by regulations or Orders in Council and not by special direction. Although some additional safeguards around the exercise of this power were subsequently included in the Bill, the ability to issue special directions in respect of classes was retained.</p>
Immigration (COVID-19 Response) Amendment Bill 2021	<p>The Law Society submitted that this Bill should be amended to reduce the proposed extension to the repeal date for the Minister’s special direction powers from two years to one year, and recommended that the special direction powers be made subject to a default 28-day commencement to ensure adequate public notice of a special direction. Unfortunately, neither of these recommendations were accepted, and the Bill was passed without amendment.</p>
COVID-19 Response (Further Management Measures) Legislation Bill	<p>In a submission to the Epidemic Response Select Committee, the Law Society noted significant concerns about the proposal to allow the use of audio-links as an alternative to audio-visual links, when conducting Corrections disciplinary hearings and criminal hearings. Most of these provisions were retained, notwithstanding the concerns raised by the Law Society about how this impacts prisoners’ ability to effectively participate in such hearings.¹</p>
COVID-19 Public Health Response Act 2020	<p>The Law Society made submissions on the Bill and the Act. Key concerns raised included:</p> <ol style="list-style-type: none"> 1. Passing the Bill under urgency, with no opportunity for public and select committee scrutiny before the Bill was passed; 2. The low threshold for making orders under s 11 of the Act, which can impose restrictions on rights and freedoms of individuals;² 3. The risk threshold for the exercise of a broad warrantless power of entry, and the need to strike a better balance between the need to take enforcement action to prevent the spread of COVID-19, and the rights of citizens to be free from unreasonable searches.³ <p>No amendments were made to the Bill in respect of points 1 and 2 above.</p>

¹ Section 25 of the Bill of Rights affirms the right to be present at the trial and to present a defence.

² Section 11 orders may, for example, require a person to self-isolate, to take specified actions, refrain from taking specified actions, or comply with specified measures or conditions, or wear a mask.

³ Guaranteed by s 21 of the New Zealand Bill of Rights Act 1990.

<p>COVID-19 Response (Vaccinations) Legislation Act 2021</p> <p>Link to come</p>	<p>This was a significant piece of legislation which implemented vaccine mandates, and as a result, substantially impacted on fundamental rights and freedoms. The Act did not specify any decision-making principles or criteria relating to the implementation of vaccination requirements. Instead, these matters were left to be determined through the drafting of Orders, which would be made with little or no democratic scrutiny. The Bill providing for these powers passed through the House in 24 hours, with no opportunity for public scrutiny and input.</p>
<p>COVID-19 Response (Courts Safety) Legislation Bill 2022</p>	<p>Some provisions in this legislation allow the heads of bench to make protocols setting out various requirements relating to jurors and jury services, which become secondary legislation. Although the protocols are deemed to be secondary legislation, the effect of the legislation is that the protocols made by the judiciary may nonetheless amend primary legislation. The Law Society raised concerns about how this impacts the separation of powers, and about the consequences of establishing the judiciary as law-makers. These provisions were not removed or modified at select committee because the committee believed this was justified response to COVID-19 pandemic, and the proposed power was appropriately limited.</p>