

Departmental Disclosure Statement

New Zealand Infrastructure Commission/Te Waihanga Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Treasury.

The Treasury certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

27 March 2019

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Part One: General Policy Statement

Introduction

This Bill establishes the New Zealand Infrastructure Commission/Te Waihanga (the **Commission**) as an autonomous Crown entity, with the purpose of co-ordinating, developing, and promoting an approach to infrastructure that encourages infrastructure, and services that result from the infrastructure, that improve the well-being of New Zealanders.

Good infrastructure is vital to improving the well-being and living standards of New Zealanders, and delivering a sustainable and inclusive economy. This is particularly the case for infrastructure relating to transport, water, energy, social assets (such as schools and hospitals), and digital networks (such as mobile and broadband network infrastructure).

The Commission will address existing challenges to the way New Zealand plans for and delivers infrastructure, such as poor incentive structures that result in ad hoc and short-term investment decisions that are often focused on the asset solution, rather than the outcome sought. In part, these challenges exist because planning and funding decisions are not linked to an over-arching vision and strategy.

The Commission will focus on promoting infrastructure that improves the well-being of New Zealanders by—

- developing broad public agreement on long-term infrastructure strategy:
- enabling co-ordination of infrastructure planning:
- providing advice and best-practice support to infrastructure projects.

All of the Commission's functions are advisory only and there are no changes to decision-making powers for Ministers or departments that invest in or maintain infrastructure, or to the overall accountability for those decisions. The Commission adds an over-arching strategic perspective to these decisions that does not currently exist.

Functions

The Commission's main function is to co-ordinate, develop, and promote an approach to infrastructure that encourages infrastructure, and services that result from infrastructure, that improve the well-being of New Zealanders.

In addition, the Commission will have 2 groups of functions: strategy and planning, and support for projects.

Strategy and planning functions

The Commission's strategy and planning functions enable the Commission to provide advice in relation to infrastructure. As part of performing these functions, it is expected that the Commission will—

- work with infrastructure owners to gather information and build a picture of the current state of New Zealand's infrastructure. This would highlight any gaps, and provide an evidence base for the Commission's role in developing a strategy for future infrastructure:

- develop a view on priority future infrastructure investments that fit within the strategy, over and above those that have already been committed to by decision makers:
- publish a long-term capital intentions plan, drawing on central and local government long-term plans and private sector data to present a picture of investment intentions over a 10-year horizon.

Strategy report for priorities for next 30 years, and Government response

The Commission is required to publish a strategy report that sets out the Commission's view on priorities for infrastructure for the next 30 years. The Government must make a public statement responding to the report.

The report will be published about every 5 years. The Commission could publish the report more frequently, and could also publish other reports in the lead-up to its next strategy report. The Minister for Infrastructure has 90 days to comment on a draft strategy report. The Commission then has 90 days to finalise the report, and the Government then has 180 days to make its public response.

It is possible that a general election could be called before the Government has provided the Commission with comments on a draft report, or completed its public response to the final report. In that case, the deadline would be extended by the length of the election period (defined as beginning on writ day until 2 months after Parliament is recalled). That 2 months gives a new government more time to work on its comments or public response (as the case may be).

Reports on matters relating to infrastructure

The Minister may direct the Commission to provide a report on any particular matter relating to infrastructure. It is important that the Commission is responsive to the Government's particular needs for advice from time to time. The power to direct a report on any particular matter provides a formal and transparent process for the Minister's requests, and the Government expects this power would only be used for reports on significant matters.

The Commission can produce and publish reports on infrastructure matters on its own initiative, and provide other advice, using its general powers.

Support functions

The Commission is empowered to, and will be expected to, support and promote best-practice infrastructure delivery. As part of performing these functions, it is expected that the Commission will—

- act as a “shop front” for the market: This allows the Commission to identify opportunities to strengthen the New Zealand infrastructure sector and remove barriers to entry for new parties:
- publish pipeline information in relation to infrastructure projects: The Commission will draw together information and data from across central and local government to present a collated and uniform pipeline of infrastructure projects, in order to enable the sector to plan with more certainty, which is likely to lead to a more competitive supply market:
- produce best-practice guidance on infrastructure procurement and delivery.

Support services for central and local government infrastructure projects

The Commission will also provide advisory support services for infrastructure projects and proposed projects, which is intended to support central and local government projects. The Commission will be a centre of expertise to assist infrastructure projects to be delivered efficiently and effectively. It is also expected to provide advice on business cases for proposed projects.

In performing these support services, the Commission can rely on its general powers as a separate legal entity, including the power to enter into contracts and to participate in project governance and working groups. The Commission could embed its staff into agencies to support projects where appropriate, and potentially charge for some of its services by agreement where the cost of those services cannot reasonably be met by the Commission's baseline funding.

Information-gathering powers

The Commission's ability to successfully fulfil its functions depends heavily on its ability to gather information from infrastructure asset owners. It is expected that the Commission will use existing sources of information and will collaborate with infrastructure owners to encourage them to provide information.

However, as the Commission's success depends heavily on its ability to gather information, the Bill includes provisions requiring certain State sector agencies to comply with information requests to enable the Commission to carry out its functions.

Amendments to other Acts

The Bill amends the Crown Entities Act 2004 and the Ombudsmen Act 1975 to include the Commission in relevant lists.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	NO
<p>The Treasury published a Consultation Document 'A New Independent Infrastructure Body' in October 2018. It can be accessed from https://treasury.govt.nz/information-and-services/nz-economy/infrastructure/nz-infrastructure-commission</p> <p>See also the answer to question 3.6 below.</p>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	NO
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Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	NO
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	YES
<p>The size of the potential costs of establishing and operating New Zealand Infrastructure Commission, Te Waihanga are being considered by the Government, including analysis prepared by the Treasury.</p> <p>While there is no quantitative analysis available on the size of the potential benefits, the Treasury has provided advice on the benefits of the Commission.</p> <p>The Treasury's analysis is that there is no potential for any group of persons to suffer a substantial unavoidable loss of income or wealth.</p>	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO
New Zealand Infrastructure Commission, Te Waihanga will not be a regulator.	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
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The Ministry of Foreign Affairs and Trade and the Ministry of Business, Innovation and Employment were consulted.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

The Ministry of Justice was consulted.
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Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	YES
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Advice provided to the Attorney-General by the Ministry of Justice is generally expected to be available on the Ministry of Justice's website at introduction of a bill, and can be accessed at https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
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(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	NO
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(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
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Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO
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The information-gathering power contained in the Bill does not apply to personal information (clause 23(6)(a) of the Bill).

3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES
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The Privacy Commissioner was advised that the information-gathering power contained in the Bill will not apply to personal information as defined in section 2(1) of the Privacy Act 1993.
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External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>In October 2018, the Treasury consulted with the public, infrastructure asset owners, and interested stakeholders on the proposed functions of a new independent infrastructure body. Nearly 130 submissions were received and there were no submissions opposing the establishment of the infrastructure body. Broadly, submissions noted the current failures in how we plan and deliver infrastructure, and viewed the body's establishment as the opportunity to bring about the step-change necessary for New Zealand.</p> <p>The Treasury and the National Infrastructure Advisory Board held consultation sessions in Auckland, Wellington, Christchurch and Sydney to supplement the feedback received through submissions. These sessions were well attended by local government, financiers, construction firms, professional services firms and other interested parties. The Treasury also held a number of one-on-one meetings with capital-intensive government agencies, councils and strategic partners. A session dedicated to the initiative followed each of the Prime Minister's addresses in October 2018 to the Hugo Group of senior business executives in Wellington and Auckland, and the Treasury has briefed the Chair of the Prime Minister's Business Advisory Council.</p> <p>An Expert Review Panel, comprised of senior infrastructure individuals, supported the Treasury throughout the consultation process</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
<p>As well as external consultation discussed in the answer to question 3.6 above, the Treasury has consulted with other government departments and agencies.</p>	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
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Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO
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Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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