

New Zealand Infrastructure Commission/Te Waihanga Bill

Government Bill

As reported from the Finance and Expenditure Committee

Commentary

Recommendation

The Finance and Expenditure Committee has examined the New Zealand Infrastructure Commission/Te Waihanga Bill and recommends that it be passed with the amendments shown.

Introduction

This bill seeks to establish the New Zealand Infrastructure Commission/Te Waihanga as an autonomous Crown entity. This new body would be tasked with co-ordinating, developing, and promoting infrastructure strategies that improve the well-being of New Zealanders.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

Information-gathering powers

Clause 23 would empower the Infrastructure Commission to request information from government departments and Crown entities. These requests could be made for information that is “necessary or desirable to enable the Commission to perform its functions”. Central government bodies (excluding the Government Communications Security Bureau and the New Zealand Security Intelligence Service) would need to comply with these requests in all circumstances save those specified in clause 24.

We recommend the following amendments to strengthen and clarify the proposed powers of the Infrastructure Commission to gather information from government bodies.

Extending privacy protections for personal information

We recommend amendments to clause 24 to strengthen the bill's privacy protections.

Clause 23(6)(a) would exclude personal information (as defined in section 2(1) of the Privacy Act 1993) from the information-gathering provisions. However, we note that some information may not meet the definition of personal information under the Privacy Act, but it is possible that its use by the Commission still may interfere with a person's privacy.

We do not believe clause 23 intends to interfere with a person's privacy. We therefore recommend the insertion of new clause 24(1)(aa). This would strengthen the protections in clause 24 by allowing entities to refuse information requests when it is necessary to protect a person's privacy. This would apply even when that information does not meet the definition of personal information in the Privacy Act.

Application to local government

We recommend amendments to clauses 23 and 24 to include local government in the scope of the Infrastructure Commission's information-gathering powers.

Both central and local government own and operate a large amount of New Zealand's infrastructure. However, in the bill as introduced, the Commission's power to obtain information would only apply to central government bodies. This could potentially result in the Commission's access to information about local government infrastructure being limited to information that is publicly accessible. This could mean that the Commission was not able to address local government infrastructure to the same extent as central government infrastructure.

We therefore propose amendments to clauses 23 and 24 to include local authorities, council-controlled organisations, and Auckland Transport in the scope of the information-gathering provisions.

We recognise that including local government bodies in the information-gathering provisions could impose a significant compliance burden on those bodies. To balance these concerns, we recommend introducing two withholding provisions specifically for local government bodies in clause 24A. This would allow them to refuse information requests when the information is commercially sensitive. (However, under our proposed clause 23(4A), they could not refuse a request if the information could not be withheld under the Local Government Official Information and Meetings Act 1987). Entities would also be able to refuse requests when substantial research would be necessary to provide the information. They would need to consider consulting with the Commission when refusing requests on that basis.

Appendix

Committee process

The New Zealand Infrastructure Commission/Te Waihanga Bill was referred to the committee on 11 April 2019. The closing date for submissions was 17 May 2019. We received and considered 41 submissions from interested groups and individuals. We heard oral evidence from 15 submitters.

We received advice from the Treasury.

Committee membership

Dr Deborah Russell (Chairperson, from 24 July 2019)

Michael Wood (Chairperson until 23 July 2019, member until 24 July 2019)

Hon Amy Adams (until 24 July 2019)

Kiritapu Allan

Andrew Bayly

Rt Hon David Carter

Tamati Coffey

Hon Judith Collins

Hon Paul Goldsmith (from 24 July 2019)

Ian McKelvie

Greg O'Connor (from 24 July 2019)

Willow-Jean Prime

David Seymour

Fletcher Tabuteau

Dr Duncan Webb

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Shane Jones

New Zealand Infrastructure Commission/Te Waihanga Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1	Title	
	This Act is the New Zealand Infrastructure Commission/Te Waihangā Act 2019 .	
2	Commencement	5
	This Act comes into force on the day after the date on which it receives the Royal assent.	
	Part 1	
	Preliminary provisions	
3	Interpretation	10
	In this Act, unless the context otherwise requires,—	
	Commission means the New Zealand Infrastructure Commission/Te Waihangā, established under section 6	
	community expectations —	
	(a) means the expectations of the communities that use, or will use, the infrastructure or the services that result from the infrastructure; and	15

- (b) includes expectations in relation to—
- (i) benefits and other outcomes that result from the infrastructure or services; and
 - (ii) how the services are delivered; and
 - (iii) the quality of the services; and
 - (iv) how the infrastructure is built and maintained

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election period means the period—

- (a) beginning with writ day for a general election; and
- (b) ending with the day that is 2 months after the day of commencement of the next session of Parliament

10

infrastructure means physical infrastructure that is in New Zealand or that results in services in New Zealand

infrastructure project includes—

- (a) the creation of new infrastructure; and
- (b) the maintenance, upgrading, replacement, decommissioning, or removal of existing infrastructure

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Minister or **responsible Minister** means the Minister who, under the authority of any warrant or with the authority of the Prime Minister, is the person for the time being responsible for the administration of this Act

support services are services that support the delivery of an infrastructure project (or a proposed project), and include—

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- (a) providing advice in relation to a proposed project; and
- (b) providing services or staff to assist with the delivery of a project

writ day has the meaning given to it by section 3(1) of the Electoral Act 1993.

4 **Transitional, savings, and related provisions**

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The transitional, savings, and related provisions set out in **Schedule 1** have effect according to their terms.

5 **Act binds the Crown**

This Act binds the Crown.

Part 2

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New Zealand Infrastructure Commission/Te Waihanga

Subpart 1—Establishment of Commission

6 **New Zealand Infrastructure Commission/Te Waihanga established**

The New Zealand Infrastructure Commission/Te Waihanga is established.

7 Commission is Crown entity

- (1) The Commission is a Crown entity for the purposes of the Crown Entities Act 2004.
- (2) The Crown Entities Act 2004 applies to the Commission except to the extent that this Act expressly provides otherwise. 5

8 Members of Commission

- (1) The Commission must have no fewer than 3, and not more than 7, members.
- (2) ~~Members~~ The members of the Commission are a board for the purposes of the Crown Entities Act 2004.

Subpart 2—Functions of Commission 10

9 Main function of Commission

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

10 Additional functions of Commission 15

The Commission has the following additional functions:

Strategy and planning functions

- (a) to develop broad public agreement on the approach under **section 9** and the strategy reports provided under **subpart 3**:
- (b) to provide advice in relation to infrastructure, including (without limitation) advice in relation to— 20
 - (i) the ability of existing infrastructure to meet community expectations; and
 - (ii) current and future infrastructure needs; and
 - (iii) the priorities for infrastructure; and 25
 - (iv) matters that prevent, limit, or promote the efficient and effective delivery of infrastructure, and services that result from the infrastructure:
- (c) to provide reports in accordance with **subparts 3 and 4**:

Support functions 30

- (d) to promote a strategic and co-ordinated approach to the delivery of current and proposed infrastructure projects:
- (e) to provide and co-ordinate information about current and proposed infrastructure projects:
- (f) to provide support services to current and proposed infrastructure projects. 35

11 Infrastructure needs and priorities for infrastructure

When identifying or advising on current and future infrastructure needs, or the priorities for infrastructure, the Commission—

- (a) must provide advice with the objective of achieving infrastructure, and services that result from the infrastructure, that improve the well-being of New Zealanders; and 5
- (b) must have regard to long-term trends that impact on, or are impacted by, infrastructure, including (but not limited to)—
 - (i) changes to demographics; and
 - (ii) the emergence and availability of new technology; and 10
 - (iii) matters relating to the mitigation of the effects of climate change (including through reducing emissions of greenhouse gases) and adapting to the effects of climate change; and
- (c) may have regard to any other matters the Commission considers relevant. 15

Subpart 3—Strategy reports

12 Strategy reports required

The Commission must provide strategy reports to the responsible Minister in accordance with this subpart.

13 Content of strategy report

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- (1) A strategy report must—
 - (a) include a statement as to the ability of existing infrastructure to meet community expectations for the next 30 years; and
 - (b) identify the priorities for infrastructure for the next 30 years.
- (2) A strategy report may include any other matters the Commission considers relevant. 25

14 Commission must provide draft to Minister

- (1) Before finalising a strategy report, the Commission must provide a draft to the responsible Minister.
- (2) A draft of the first strategy report prepared under this Act must be provided not later than the day that is 2 years after the day on which this Act comes into force. 30
- (3) Thereafter, a draft must be provided not later than the day that is 4 years and 6 months after the day on which the last strategy report was provided to the Minister under **section 16**. 35

- 15 Commission must have regard to Minister’s comments on draft**
- (1) The Minister may provide comments on the draft to the Commission.
 - (2) Any comments must be provided—
 - (a) in writing; and
 - (b) not later than the day that is 90 days after the day on which the Minister receives the draft. 5
 - (3) The Commission must have regard to the Minister’s comments (if any) when finalising the strategy report.
- 16 Commission must finalise and provide report to Minister**
- (1) The Commission must finalise the strategy report and provide it to the responsible Minister. 10
 - (2) The report must be provided not later than the day that is 90 days after—
 - (a) the day of receipt of any Minister’s comments under **section 15**; or
 - (b) if no comments are received within the period set out in **section 15(2)(b)**, the last day of the period under **section 15(2)(b)**. 15
- 17 Report must be presented to House and published**
- (1) The responsible Minister must present a copy of the strategy report to the House of Representatives as soon as practicable after receiving the report.
 - (2) The Commission must publish the report on an Internet site maintained by or on behalf of the Commission as soon as practicable after the report is presented to the House. 20
- 18 Statement of Government’s response must be presented to House**
- The responsible Minister must present a statement of the Government’s response to the strategy report to the House of Representatives not later than the day that is 180 days after the day on which the report is provided to the Minister. 25
- 19 Election period disregarded for purposes of calculating deadlines**
- Any days that fall within an election period must be disregarded for the purposes of calculating the periods under **sections 15(2)(b) and 18**.
- Subpart 4—Directions to provide report 30
- 20 Minister may give direction to provide report**
- (1) The responsible Minister may direct the Commission to provide a report to the Minister on any matter relating to infrastructure.
 - (2) The terms of the direction may specify 1 or more of the following:
 - (a) the scope of the matter to be reported on: 35

- (b) requirements relating to consultation with the Minister or any other person:
- (c) the date by which the Commission must provide its report.

21 Process for giving direction to provide report

- (1) A direction under **section 20** is a direction for the purposes of section 114 of the Crown Entities Act 2004, and—
 - (a) the Commission must give effect to the direction in accordance with section 114 of that Act; and
 - (b) ~~the provisions of sections 114 and 115 of that Act (but not section 115A)~~ apply to the direction.
- (2) In deciding whether to give the direction, and in specifying the terms of that direction, the Minister must have regard to the impact that the direction will or is likely to have on the Commission's ability to manage its functions and operations, having regard to the Commission's available resources.

22 Commission must publish report

The Commission must publish every report that is provided to the Minister under this subpart on an Internet site maintained by or on behalf of the Commission as soon as practicable after providing the report to the Minister.

Subpart 5—Power to obtain information

23 Power of Commission to obtain information

- (1) The Commission may request an entity specified in **subsection (5)** to supply to the Commission any information that is necessary or desirable to enable the Commission to perform its functions.
- (2) A request—
 - (a) must be in writing; and
 - (b) may state the date by which, and the manner in which, the information requested must be provided.
- (3) If a date is specified under **subsection (2)(b)**, that date must be reasonable.
- (4) An entity to ~~which~~ ~~whom~~ the request is made must comply with the request, subject to **sections 24 and 24A** (which set out reasons for refusing a request for information).
- (4A) However, the information cannot be withheld other than for the reasons in **sections 24 and 24A**, and cannot be withheld at all if it could not properly be withheld under the Official Information Act 1982 or the Local Government Official Information and Meetings Act 1987, as the case may be.
- (5) A request may be made to 1 or more of the following entities:

- (a) a department named in Schedule 1 of the State Sector Act 1988, other than—
- (i) the Government Communications Security Bureau; and
- (ii) the New Zealand Security Intelligence Service:
- (b) a departmental agency named in Schedule 1A of the State Sector Act 1988: 5
- (c) a statutory entity named in Schedule 1 of the Crown Entities Act 2004:
- (d) the New Zealand Defence Force;
- (e) a local authority, as defined in section 5(1) of the Local Government Act 2002: 10
- (f) a council-controlled organisation, as defined in section 6 of the Local Government Act 2002 (but disregarding subsection (4) of that section):
- (g) Auckland Transport, as defined in section 4(1) of the Local Government (Auckland Council) Act 2009.
- (6) In **subsection (1), information** does not include— 15
- (a) personal information as defined in section 2(1) of the Privacy Act 1993; or
- (b) information held by the Government Statistician that was collected under the Statistics Act 1975; or
- (c) information that a revenue officer must keep confidential under section 18(1) of the Tax Administration Act 1994. 20

Compare: 1989 No 44 s 19

24 Reasons for refusing to supply requested information

- (1) Despite ~~section 23(4)~~, a A request for information may be refused if—
- (aa) withholding the information is necessary to protect the privacy of a person (whether or not the person is a natural person or a deceased person); 25
or
- (a) withholding the information is necessary to maintain legal professional privilege; or
- (b) the supply of the information would limit the ability of the entity, or of any of its employees, members, or office holders, to act judicially, or to carry out the statutorily independent functions of the entity, in relation to a particular matter; or 30
- (c) the supply of the information would be likely to result in the outcomes described in section 6(a) or (b) of the Official Information Act 1982. 35

- (2) ~~The information cannot be withheld other than for the reasons in **subsection (1)**, and cannot be withheld at all if it could not properly be withheld under the Official Information Act 1982.~~

Compare: 2004 No 115 s 134

24A Additional reasons for refusal by local government entities 5

- (1) ~~In addition to the reasons set out in **section 24**, an entity specified in **section 23(5)(e), (f), or (g)** may refuse a request for information if—~~

(a) ~~the withholding of the information is necessary to protect information where the making available of the information—~~

(i) ~~would disclose a trade secret; or~~ 10

(ii) ~~would be likely unreasonably to prejudice the commercial position of the entity, or the person who supplied the information, or the person who is the subject of the information; or~~

(b) ~~the information requested cannot be made available without substantial research.~~ 15

- (2) ~~If a request is likely to be refused under **subsection (1)(b)**, the entity must, before that request is refused, consider whether consulting with the Commission would assist the Commission to make the request in a form that would remove the reason for the refusal.~~

Compare: 1987 No 174 ss 7, 17, 17B 20

25 Publication or disclosure of information to other persons

The Commission must not publish or disclose any information obtained under **section 23** unless 1 or more of the following applies:

(a) the information is available to the public under any enactment or is otherwise publicly available: 25

(b) the information is in a statistical or summary form:

(c) the publication or disclosure is with the consent of the person to whom the information relates or of the person to whom the information is confidential:

(d) the publication or disclosure is required by law. 30

Compare: 2011 No 5 s 59(3)

Subpart 6—Amendments to other enactments

26 Amendments to other enactments

Amend the enactments specified in **Schedule 2** as set out in that schedule.

Schedule 1

Transitional, savings, and related provisions

s 4

Part 1

Provisions relating to this Act as enacted

5

1 Offer of position to Treasury employees

- (1) The chief executive of the Treasury must identify the employees of the Treasury—
- (a) whose duties are, overall, more closely connected with the functions of the Commission; and 10
 - (b) whose positions will, as a result of the establishment of the Commission, cease to exist within the Treasury.
- (2) An employee who is identified under **subclause (1)** must be offered an alternative position ~~with~~ by the Commission.
- (3) In this clause, **alternative position** means a position with the Commission that satisfies the requirements set out in section 61A(1)(b)(i) to (v) of the State Sector Act 1988. 15

Compare: 2012 No 94 s 17

2 Employment of transferred employee to be treated as continuous employment

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- (1) This clause applies to an employee who is transferred to the Commission as a result of the employee accepting an offer made under **clause 1(2)**.
- (2) The employment of a transferred employee is to be treated as continuous employment for the purposes of any enactment.

Compare: 2013 No 94 s 12

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3 Government Superannuation Fund

- (1) Any person who, immediately before becoming an employee of the Commission, was a contributor to the Government Superannuation Fund under Part 2 or 2A of the Government Superannuation Fund Act 1956 is deemed, for the purpose of that Act, to be employed in the Government service as long as the person continues to be an employee of the Commission. 30
- (2) The Government Superannuation Fund Act 1956 applies to the person in all respects as if the person's service as an employee of the Commission were Government service.
- (3) **Subclause (1)** does not entitle a person to become a contributor to the Government Superannuation Fund if the person has ceased to be a contributor. 35

- (4) For the purpose of applying the Government Superannuation Fund Act 1956, the Commission is the controlling authority.

Compare: 2013 No 94 s 14

4 Transfer of contracts to Commission

- (1) This clause applies to a contract (other than an employment contract) that— 5
- (a) was made between the Treasury and another person; and
 - (b) is identified by the chief executive of the Treasury; and
 - (c) was entered into by the Treasury in contemplation of this Act.
- (2) On and after the commencement of this Act,—
- (a) the contract must be treated as if the Commission were the party to the contract instead of the Treasury; and 10
 - (b) unless the context otherwise requires, every reference in the contract to the Treasury is to be read as a reference to the Commission.
- (3) In this clause, **the Treasury** includes—
- (a) the chief executive of the Treasury; and 15
 - (b) the Sovereign in right of New Zealand acting by and through the Secretary to the Treasury.

Compare: 2013 No 94 s 15

Schedule 2

Amendments to other enactments

s 26

Crown Entities Act 2004 (2004 No 115)

In Schedule 1, Part 2, insert in its appropriate alphabetical order:

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New Zealand Infrastructure
Commission/Te Waihanga**Ombudsmen Act 1975 (1975 No 9)**

In Schedule 1, Part 2, insert in its appropriate alphabetical order:

New Zealand Infrastructure Commission/Te Waihanga

Legislative history8 April 2019
11 April 2019Introduction (Bill 130–1)
First reading and referral to Finance and Expenditure Committee