
Infrastructure Commission Bill Released

As part of its broader focus on the construction and infrastructure sectors, the Government is proposing a bill which would establish a Crown entity tasked with providing strategic independent advice and oversight on the planning, co-ordination and delivery of public sector-led infrastructure projects in New Zealand.

Summary

The establishment of Te Waihanga – New Zealand Infrastructure Commission as a Crown entity is one of the more significant actions taken by the Government towards addressing the major infrastructure deficit in New Zealand, and the existing challenges with the planning, co-ordinating and delivery of infrastructure projects which have contributed to New Zealand's current position. Taking lead from similar initiatives in Australia, the UK and elsewhere, the Commission will provide strategic oversight and leadership over the way in which infrastructure projects are planned, co-ordinated and procured. Critically, its functions are advisory only. Any decision-making regarding infrastructure projects (including investment in those projects, or the timing for or manner in which they are procured and delivered) will remain with the relevant Ministers/departments.

Specifics

Under the bill, Te Waihanga would be established as an autonomous Crown entity, governed by a board of up to 7 members. The entity will largely take shape from the existing Infrastructure Transactions Unit currently within Treasury which will be incorporated into Te Waihanga once it is established (anticipated for October 2019).

The overarching function of the Commission is to co-ordinate, develop, and promote an approach to infrastructure and resulting services that improve the well-being of New Zealanders. The bill authorises the Commission to carry out that function through two main ways:

1. Strategy and planning through:
 - b. Providing advice on infrastructure including the current state of infrastructure, current and future infrastructure needs, infrastructure priorities, and matters which

may prevent the effective delivery of infrastructure.

- a. Promoting a strategic and coordinated approach to the delivery of infrastructure projects;
- c. Providing support services to those projects, including advice, services or staff to assist in the delivery of a project.

While not specifically included as a provision in the bill, the explanatory note identifies that Te Waihanga would be empowered to, and will be expected to, promote best practice infrastructure delivery as part of its supporting function. To that end, it is expected that the Commission will:

- e. Publish a pipeline identifying existing and upcoming infrastructure projects (the first of these can be accessed on the Treasury website);
- f. Produce best practice guidance on infrastructure procurement and delivery. This function will be part of its role as the “centre of expertise to assist infrastructure projects to be delivered efficiently and effectively”. To that end, where requested by the relevant department/Minister, the Commission will also provide advice on business cases for proposed projects.

In support of its functions (and in addition to its general powers as a Crown entity), the bill both grants powers to, and imposes obligations on, the Commission, including:

- The requirement to publish a strategy report setting out the Commission’s views on the ability for existing infrastructure to meet community expectations over the next 30 years, and the priorities for infrastructure over that same time period. The report (which will be issued at least once every five years) may also include any other matter the Commission considers relevant. The Minister for Infrastructure has the opportunity to comment on the report before it is finalised, but once finalised, the Government will then be required to provide a formal response to it which must be made public.
- The Minister may also direct the Commission to provide a report on any matter relating to infrastructure.
- Where necessary and desirable to enable the performance of its functions, the Commission is also empowered to require the provision of specific information from specified government departments, agencies, statutory entities and the New Zealand Defence Force.

Comment

This proposal has generally received strong support and input from industry and experts within both the public and private sector, and represents a critical step towards a more informed, strategic and coherent approach to infrastructure planning, procurement and delivery. Perhaps the biggest potential shortcoming is the general lack of any strong levers which would at least encourage action/compliance by other government departments with the advice of the Commission. For example, while the Government would be required to issue a response to the Commission’s strategy reports, government departments are not

obliged to consider the findings of the reports in reaching any decisions relating to procurement or planning of capital projects, nor consult with the Commission. Consequently, to successfully effect change at the decision making level, the Commission will need to build a narrative around the positive impacts of sound planning and procurement, and the role that it can play in supporting other departments in achieving those outcomes. Even if it is able to do so, there is still the risk that the Commission could be sidelined.

Among the options to mitigate this risk, there is the opportunity to expand the Commission's mandate to include monitoring and reporting on the Government's progress in addressing New Zealand's infrastructure challenges. While under the current proposal it would be required to provide "state of the nation" assessments, there is no explicit directive to undertake on-going monitoring of how the Government is responding to the findings of the Commission's assessments, including how it is addressing identified constraints on the effective delivery of infrastructure. Expanding the Commission's mandate to include monitoring and reporting on the Government's response to the identified challenges and opportunities (which would also, as a first step, require the development of some form of metric) would strengthen the Commission's ability to keep the Government accountable for effecting improvements in the planning, procurement and delivery of infrastructure.

For further information on the Commission or if you are interested in receiving further updates on this matter, please do not hesitate to contact us.
