



PARLIAMENT OF THE COOK ISLANDS

PARLIAMENT PAPER NO. 15

Rarotonga.

Deputy Speaker,

I have the honour to present the Infrastructure Bill Select Committee, June 2019.

I have the honour to be,

Sir

Hon. Robert Tapaitau
Chairman

The **HON. R. TAPAITAU**, Minister of Infrastructure Cook Islands



PARLIAMENT OF THE COOK ISLANDS

4 June 2019

Honourable Speaker
Office of the Speaker of Parliament
Parliament of the Cook Islands
Nikao, Rarotonga
COOK ISLANDS

Kia Orana Honourable Speaker,

RE: INFRASTRUCTURE BILL SELECT COMMITTEE REPORT, JUNE 2019

Pursuant to the Terms of Reference of the Infrastructure Bill Select Committee established by Parliament on 10 April 2019 *to conduct public consultations on the Bill and report on its findings at the next sitting of Parliament.*

It is my honour and privilege as Chair of the Select Committee to present to you this final report on the work of the Committee, for tabling in the House at the upcoming sitting of Parliament.

Please accept, Honourable Speaker, the assurances of my highest consideration.

A blue ink signature, likely of Hon. Robert Taimoe Tapaitau, written in a stylized, cursive script.

Hon. Robert Taimoe Tapaitau
Chairman - Infrastructure Bill Select Committee 2019



PARLIAMENT OF THE COOK ISLANDS

REPORT OF THE INFRASTRUCTURE BILL SELECT COMMITTEE, JUNE 2019

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1. Recommendation

The Infrastructure Bill 2019 Select Committee has examined and consulted widely throughout the Cook Islands on the Infrastructure Bill 2019 and recommends that:

- ✓ **The Infrastructure Bill 2019 be passed with the amendments adopted by the Committee as outlined in Section 7 of this report.**

2. Background to the Infrastructure Bill 2019

The Infrastructure Bill 2019 deals with certain classes of infrastructure, specifically those that;

- a) comprise networks providing a reticulated service;
- b) comprise roads and other accessways;
- c) support shipping and aviation transport networks in the Pa Enua;
- d) support appropriate land use and management.

These classes of infrastructure are grouped together in this Bill because all of them involve dealings between the general public as property owners and those who manage that infrastructure. The Bill, in a comprehensive way, addresses the resulting relationships and provides for the balancing of public and private interests.

Roading, ports, airports, the provision of fresh water, power, telecommunications, and the disposal of both waste water and storm water are all essential facilities and public services. Together, they make up much of the network of infrastructure on which our health, safety, and enjoyment of life depends.

This is a time of increasing pressure on the country's network infrastructure with ongoing development in our country. In the future we will see fresh challenges in meeting the transport, communications, and service delivery expectations of our people. This Infrastructure Bill is our way of future proofing our island communities in the future and for future generations to come.

There are a number of reasons for this including;

1. the increasing numbers of overseas visitors that drive the country's tourism-based economy adding pressure on our infrastructure;
2. changing land use patterns that see increasing residential and commercial development all over and people are developing the hills;
3. technological advances that call for the upgrade of infrastructure;
4. rising living standards and expectations of both residents and visitors as to the quality of our infrastructure;
5. the need for environmental sustainability
6. the need to address climate change adaptation and resilience issues.

In other countries, zoning, resource management, and associated planning legislation all have an important role in accommodating infrastructure needs. Those tools are not well suited to features of our land tenure. Instead, over the years, those who manage infrastructure have learned to work with landowners and other stakeholders in a more informal way.

The success of those informal methods has seen established operators such as Te Aponga Uira (TAU) and Bluesky deliver increasingly sophisticated services using networks laid over, under, and on both public and private land. Those operators have enjoyed good co-operation with landowners and occupiers.

Established infrastructure managers have learned the importance of seeking agreement with

affected owners and occupiers prior to undertaking infrastructure development on their lands. The Crown too has traditionally been slow to take land by warrant. Instead, there has been a long practice of seeking to reach agreement with landowners where land is affected by developments that are for the public good.

Recent experience with Te Mato Vai Stage 2 has further emphasised the real benefits of seeking agreement and co-operation with affected stakeholders. The upcoming challenges of waste water collection and treatment will also be best addressed by using the tools of consultation, negotiation, and agreement wherever possible.

At present, infrastructure law and practice is fragmented. This Bill addresses that issue in a comprehensive way. The Bill takes the lessons learned over recent decades and puts in place a simple, straightforward, multi-disciplinary approach to network infrastructure. The Bill aims to strike the right balance between the public interest in having good infrastructure, and the constitutionally protected property rights of owners and occupiers who are affected by network infrastructure.

Infrastructure delivery can be a complex process. This Bill aims to simplify that process in a way that is easily understandable. Its approach can be summarised this way:

- a) Under existing law, all land in the Cook Islands is available as needed for infrastructure purposes. However, in line with actual practice, the Bill recognises that land that is being used for access to infrastructure already should be the preferred location for infrastructure, leaving owners and occupiers to use and enjoy the balance of their land without inconvenience;
- b) The Bill recognises that some “accessways” are formal and others are informal. It does this by creating a distinction between a “road”—an accessway for which the Crown has management responsibility—and other accessways that are owned and managed by others. It recognises the role and rights of those who manage roads and more informal accessways as “accessway managers”;
- c) The Bill recognises ports and airports as essential parts of networks for shipping and airline services. The Bill does, though, make a distinction between “reticulated infrastructure” (in practical terms, reticulated service delivery systems for power, water, telecommunications, etc) and “stand alone” infrastructure;
- d) The Bill treats roads (but not other accessways) as infrastructure. It deals with roads, stand-alone infrastructure, and reticulated infrastructure and holds all infrastructure managers, both public and private, to the same standards and applies the same procedures in their dealings with those affected by their activities. This greatly simplifies the current range of differing standards and practices that are found in existing statutes;
- e) The Bill encourages open consultation and dialogue between and among all stakeholders whenever there is significant work to be done in constructing, altering, or maintaining infrastructure;
- f) The Bill formalises the existing, successful, approach of having infrastructure managers seek to negotiate and agree matters with affected owners and occupiers of land and with other infrastructure managers or accessway managers;
- g) The Bill gives both owners and occupiers and infrastructure managers access to the High Court (**the Court**) if that is needed. It gives the Court the ability to call a meeting of assembled owners as one means of reaching agreement where matters are in dispute or where the number of landowners makes it impractical to have all sign an agreement; and
- h) With due regard to the constitution, the Bill gives guidance to the Court on principles to be applied to decide when and how compensation should be payable in any case of dispute.

3. Select Committee Establishment and Terms of Reference

The Infrastructure Bill Select Committee was established by motion in Parliament on 10 April 2019 to:

- conduct public consultations on the Infrastructure Bill 2019; and to
- report on its findings at the next sitting of Parliament.

4. Membership of the Committee

The Committee comprised of the following members:

1. Chairperson:	Hon. Robert Tapaitau	-	Member for Penrhyn
2. Vice Chairperson:	MP Tamaiva Tuavera	-	Member for Ngatangia
3. Member:	MP Tingika Elikana	-	Member for Pukapuka-Nassau
4. Member:	MP Albert Nicholas	-	Member for Avatiu-Ruatonga
5. Member:	MP Patrick Arioka	-	Member for Murienua
6. Member:	MP Agnes Armstrong	-	Member for Ivirua
7. Member:	MP Tina Browne	-	Member for Rakahanga

5. Committee Services

5.1 Secretariat

The Clerk of Parliament, Mr Tangata Vainerere, managed the public liaison and administrative requirements of the Committee as well as the production of the Committee's final report to Parliament while the Deputy Clerk of Parliament, Mrs Helen Maunga, in close cooperation with the Executive Officers of the Pa Enea handled the logistical arrangements for the Committee's consultation work in the Pa Enea.

5.2 Technical Support

The Secretary of Infrastructure Cook Islands (ICI) Mrs Diane Charlie-Puna conducted the public presentations on the Bill throughout the Pa Enea consultations and Vaka Te Au o Tonga public meeting, while ICI Policy Advisor Mr Alex Henry conducted the presentations for Vaka Puaikura and Takitumu. One of the legal drafters of the Bill, Lawyer Tim Arnold and Committee Member, MP Tina Browne also assisted with the presentations and responses to questions in the Southern Group Islands.

Senior ICI Officials including Director of Corporate Services Mr Felix Matapuku and Director of Outer Islands Coordination Mr Otheniel Tangianau, Civil Engineer Mr Gareth Clayton, and To Tatou Vai Chief Executive Officer, Mr Brent Manning provided technical support and guidance to the Committee where required during the consultations.

The Cook Islands Crown Law Office in cooperation with the Parliamentary Counsel Office of the New Zealand Parliament in particular Ms Catherine Yates and Mr Bill Moore coordinated the drafting of the Infrastructure Bill. Cook Islands Lawyers including Mr Tim Arnold, Mrs Tina Browne, Ms Catherine Evans, Mr Brian Mason, Mr Lloyd Miles and Ms Rebecca Puni provided the required legal assistance to the Committee. In addition to her early contributions to developing the underlying policy for the Bill and assisting with forming legislation and the drafting process, ICI Volunteer Services Abroad (VSA) Planning and Policy Adviser Ms Annika Lane also supported the Committee throughout its consultation in Rarotonga, Nga-Pu-Toru and Mangaia and with the production of the recommendations for the Committee's Report to Parliament.

The Office of the Editor of Debates of Parliament led by Editor of Debates Mrs Tai Manavaroa and her team of translators Mr Sonny Williams, Mr Papatua Papatua and Ms Kimiora Vogel, and

technician Mr Teui Ahiao provided the translation, communications and editorial support to the Committee. MP Patrick Arioka also handled the minutes writing and record keeping during the consultations in the Pa Enua.

The Corporate Services Division of Parliament under the leadership of Corporate Services Manager Mrs Ina Pierre assisted by Snr Administration Officer Sarah Takairangi, Finance Manager Mrs Tangi Mataio, Legislation Officer Mrs Tapaeru Thompson and Hygiene Officer Ms Nan Arapari provided the administrative and financial services support to the Committee.

The Ministerial Office Support Staff of the Office of the Minister for Infrastructure Cook Islands, Mrs Frances Wigmore-Valoa and Mr Toka Hagai provided additional liaison and back-up support to the committee and in relations to the Minister's logistics and availability.

The travel arrangements of the Committee Members and Officials for the Pa Enua consultations were efficiently managed by Air Rarotonga General Manager Mr Teariki Numanga.

6. The Committee Process

6.1 Public consultations around Rarotonga

The consultations on Rarotonga were ably led by Select Committee Chairman Hon. Robert Tapaitau supported by Vice-Chairman MP Tamaiva Tuavera. To fulfil its Terms of Reference, a series of public consultation meetings were held in:

- Puaikura – Tuesday 23rd April, at the Calvary Hall, Arorangi – 6pm to 8pm
- Takitumu – Wednesday 24th April, at the Muri Meeting House, Ngatangia – 6pm to 8pm
- Te-Au-O-Tonga – Tuesday 30th April, at the Sinai Hall, Avarua – 6pm to 8pm.

Numerous verbal feedback and several recommendations were received by the Committee during these consultations. Copies of the minutes for each meeting are available as separate documents on request to the Clerk of Parliament.

The Bill was made available for download by the general public and interested internet readers from the ICI website. <http://ici.gov.ck/news/infrastructure-bill-2019-consultation>

Printed copies of the Bill were also made available for members of the general public to read at the following stores:

- Oasis, Nikao
- Super Brown, Nikao
- Friendly Mart, Akaoa
- CITC Shop, Kavera
- Wigmores Superstore, Vaimaanga
- Kano Store, Titikaveka
- Muti Outlet, Muri
- Convenience Store, Muri
- Kaps Store, Matavera
- Super Brown, Tupapa

6.2 Public consultations in the Pa Enuā

a) Te Pae Tokerau

The first series of Pa Enuā consultations took place in the Pae Tokerau (Northern Groups) as follows:

1. Pukapuka – Monday 29th April 2019
2. Penrhyn (Omoka) – Tuesday 30th April 2019
3. Penrhyn (Tetautua) – Wednesday 1st May 2019
4. Manihiki (Tauhunu) – Thursday 2nd May 2019
5. Rakahanga – Friday 3rd May 2019

These were joint consultations on the Infrastructure Bill 2019 and the Crimes Bill 2019. The Travelling Team comprised of:

1. Hon. Robert Tapaitau, Minister for Infrastructure Cook Islands and Chairman of the Parliament Select Committee for Infrastructure Bill;
2. MP Tamaiva Tuavera, Deputy Chairman of the Infrastructure Bills Committee
3. MP Tingika Elikana, Chairman of the Crimes Bill Committee & Member of the Infrastructure Bills Committee;
4. MP Patrick Arioka, Member of the Crimes Bills Committee and Infrastructure Bills Committee
5. Mrs Selina Napa, Member of the Crimes Bills Committee
6. Mr Tangata Vainerere, Clerk of Parliament
7. Mrs Diane Charlie-Puna, Secretary of Infrastructure Cook Islands [ICI]

The summary Hansard reports for the meetings in the Pae Tokerau are available by request to the Clerk of Parliament or by direct downloading from the Parliament website.

b) Te Pae Tonga

The second series of Pa Enuā consultations took place in Aitutaki as follows:

1. Country (Vaipae) – Thursday 9th May 2019
2. Town (Arutanga) – Thursday 9th May 2019

These consultations focused solely on the Infrastructure Bill 2019 and the Travelling Team comprised of:

1. Hon. Robert Tapaitau, Minister for Infrastructure Cook Islands and Chairman of the Parliament Select Committee for Infrastructure Bill;
2. MP Tamaiva Tuavera, Deputy Chairman of the Infrastructure Bills Committee
3. MP Agnes Armstrong, Member of the Infrastructure Bills Committee;
4. MP Patrick Arioka, Member of the Crimes Bills Committee and Infrastructure Bills Committee
5. Mr Tim Arnold, a co-drafter of the Infrastructure Bill 2019
6. Mr Tangata Vainerere, Clerk of Parliament
7. Mrs Diane Charlie-Puna, Secretary of Infrastructure Cook Islands [ICI]
8. Mr Felix Matapuku, Director of Corporate Services [ICI]

The summary Hansard reports for the Aitutaki meetings are available by request to the Clerk of Parliament or by direct downloading from the Parliament website.

The third series of Pa Enuā consultations took place in Nga-Pu-Toru as follows:

1. Mitiaro – Tuesday 21st May 2019

2. Mauke – Tuesday 21st May 2019
3. Atiu (with Council) – Wednesday 22nd May 2019 (11 am)
4. Atiu (Public Meeting) – Wednesday 22nd May 2019 (3 pm)

These consultations focused solely on the Infrastructure Bill 2019 and the Travelling Team comprised of:

1. Hon. Robert Tapaitau, Minister for Infrastructure Cook Islands and Chairman of the Parliament Select Committee for Infrastructure Bill;
2. MP Tamaiva Tuavera, Deputy Chairman of the Infrastructure Bills Committee
3. MP Tina Browne, Member of the Infrastructure Bills Committee;
4. MP Patrick Arioka, Member of the Crimes Bills Committee and Infrastructure Bills Committee
5. Mr Tim Arnold, Drafter of the Infrastructure Bill 2019
6. Ms Annika Lane, Drafter of the Infrastructure Bill 2019
7. Mr Tangata Vainerere, Clerk of Parliament
8. Mrs Diane Charlie-Puna, Secretary of Infrastructure Cook Islands [ICI]
9. Mr Felix Matapuku, Director of Corporate Services [ICI]
10. Mr Otheniel Tangianau, Director of Pa Enea Coordination [ICI]

The summary Hansard reports for the Nga-Pu-Toru meetings are available by request to the Clerk of Parliament or by direct downloading from the Parliament website.

The fourth series of Pa Enea consultations took place in Mangaia as follows:

1. Oneroa (with the Mangaia Island Council) – Wednesday 29th May 2019
2. Tamarua – Wednesday 29th May 2019
3. Oneroa (Public Meeting) – Thursday 30th May 2019 (10-12 pm)
4. Ivirua (Public Meeting) – Thursday 30th May 2019 (5-7 pm)

These consultations focused solely on the Infrastructure Bill 2019 and the Travelling Team comprised of:

1. Hon. Robert Tapaitau, Minister for Infrastructure Cook Islands and Chairman of the Parliament Select Committee for Infrastructure Bill;
2. MP Tamaiva Tuavera, Deputy Chairman of the Infrastructure Bills Committee
3. MP Tina Browne, Member of the Infrastructure Bills Committee
4. MP Agnes Armstrong, Member of the Infrastructure Bills Committee
5. MP Patrick Arioka, Member of the Crimes Bills Committee and Infrastructure Bills Committee
6. MP Tingika Elikana, Member of the Infrastructure Bills Committee
7. Ms Annika Lane, Drafter of the Infrastructure Bill 2019
8. Mr Tangata Vainerere, Clerk of Parliament
9. Mrs Diane Charlie-Puna, Secretary of Infrastructure Cook Islands [ICI]
10. Mr Felix Matapuku, Director of Corporate Services [ICI]
11. Mr Otheniel Tangianau, Director of Pa Enea Coordination [ICI]

The summary Hansard reports for the Mangaia meetings are available by request to the Clerk of Parliament or by direct downloading from the Parliament website.

6.3 Written submission

The Committee also received and addressed a written submission by the Secretary of Justice Mr Tamatoa Jonassen. A copy of this submission and the Committee's response is available by request to the Clerk of Parliament or by direct downloading from the Parliament website.

6.4 Final Committee deliberations

The Committee held its final meeting to formally adopt its recommendations and final report at Babes Hotel, Mangaia, on Thursday 30th May 2019.

7. Committee Recommendation for Amendments to the Bill

Based on the submissions made to the Committee by members of the public during the consultations, the Committee recommends amendments to the Infrastructure Bill 2019 as follows:

7.1 Section 6 Meaning of “Court”

Issue:

The current form of the Bill defines Court as the High Court of the Cook Islands. However the question was raised as to which division of the High Court will hear matters arising under the Bill where the Land Court has no jurisdiction (i.e. on a number of islands). As proceedings before the Court will be essentially between those deemed to be owners of “interests in land” for the purposes of the Bill and infrastructure managers, it is proposed that the civil division would be a better option, unless the Chief Justice believes a land division hearing is more appropriate.

Recommendation: Change the meaning of “Court” to:

Court means (subject to any contrary direction of the Chief Justice) the civil division of the High Court of the Cook Islands.

7.2 Section 6 Meaning of “network”

Issue:

The current form of the Bill defines network as follows:

network, in relation to reticulated infrastructure, means a physical system of network infrastructure that is—

- (a) located on, under, or over land or water; and
- (b) used to provide a reticulated service

In recent years there has been litigation in the High Court in which the argument has been made that a network connotes something more than a single link between two nodes. Since that is exactly what the Manatua cable, as managed by Avaroa Cable will be, this definition needs to be amended to ensure there is no misinterpretation.

Recommendation:

This issue has been addressed in the telecommunications sphere with two definitions that can be replicated in the Bill.

network means a physical system comprising of one or more links that collectively make up network infrastructure that is used to convey reticulated services on, under, or over land or water

link means a pipe, wire, cable, or any other conduit through which a reticulated service is conveyed

7.3 Section 7 Meaning of owner of interests in land

Issue:

Section 7(1) (b) effectively means that an infrastructure manager may deal with the lessee of land without reference to underlying lessors where there is more than 15 years to run (including rights of renewal). This potentially goes against constitutional rights set out in section 53 to compensation of underlying freehold owners where there is a “taking” of land. For example if a lessee waives compensation in respect of infrastructure that is permanently placed, then the lessee, in effect, bargains away the underlying freehold owners’ rights to compensation.

Recommendation:

That section 53 be amended by adding four additional subsections as follows to preserve the rights of underlying owners to reflect their inalienable rights under Article 40 and their possible rights, in some cases under Article 64, for some sort of permanent but partial loss of enjoyment.

- (3) *Without limiting subsection (1) nothing in section 7(1)(b), or in any enduring agreement that is entered into between a lessee and an infrastructure manager, affects the right to compensation of native freehold owners where land has been compulsorily acquired,*
- (4) *Without limiting subsection (2) nothing in section 7(1)(b), or in any enduring agreement that is entered into between a lessee and an infrastructure manager, affects the right of native freehold owners to claim compensation that is attributable to damage or loss of a sort that will continue beyond the expiry of the lease.*
- (5) *If the infrastructure manager and the lessee make an enduring agreement, they must account to the native freehold owners for the owners’ entitlement (if any) to compensation that the infrastructure manager pays to the lessee.*
- (6) *For the purposes of this section unless all parties otherwise agree, the Court must, where there are multiple interests held in the land subject of the application by an applicant, apportion compensation between the respective interest holders proportionate to the value of their interests in that land.”:*

7.4 Section 21 Right of Access

Issue:

All public meetings have been told that infrastructure managers will need to seek prior consent before coming onto land except in the case of emergency. However it has been pointed out, that contrary to those assurances, section 21(1)(a) gives far wider powers.

This is partly oversight and partly a drafting issue. The issue raised in the consultation is that there can be very intrusive access in the terms of this paragraph. It was accepted that meter readers need to come and go, as do those who are accessing existing infrastructure. Elsewhere in the Bill the provisions with regarding new infrastructure require agreement of the owner. However, the Committee has made it clear that section 21(1)(a) needs to be revised.

Recommendation:

That Section 21 be re-drafted as follows to address the potential of disturbance to occupiers in addition to land and vegetation.

Temporary right of access to land by an infrastructure manager

- (1) An infrastructure manager has a right of access to any land for the purposes of—
 - (a) investigating possible new infrastructure or alterations to existing infrastructure;*
 - (b) altering existing infrastructure;*
 - (c) (provided it complies with section 44) constructing or installing new infrastructure;*
 - (d) maintaining infrastructure;*
 - (e) for any other prescribed purpose.**
- (2) The right of access conferred by subsection (1) may be exercised
 - (a) without prior notice to the occupier or owner of the land, as long as the access does not disturb the occupier, the land or vegetation on it in more than a minor way; and*
 - (b) with prior reasonable notice to the occupier or owner of the land, if the access will require disturbance to occupier, the land or vegetation on it in more than a minor way**
- (3) The infrastructure manager has a right of access to associated land for the purpose of carrying out the construction or installation of new infrastructure, alterations to existing infrastructure, and maintaining any infrastructure, but must give prior reasonable notice to the occupier.*
- (4) Notice required under this section may be given in the way set out in section 62.*

7.5 Section 24 Island Government as Infrastructure Manager**Issue:**

The Bill defines the infrastructure manager for each island in the Pa Enua to be the Island Government. However it does not clarify who takes on the responsibility for practical purposes.

For Infrastructure Cook Islands it is the Secretary and for the State Owned Enterprises it is assumed it would be the Chief Executive Officer.

The Committee has agreed that it in the case of the Island Governments it should be the Executive Officer.

Recommendation:

That Section 6, definition of Infrastructure Manager be amended to specify that the infrastructure manager representing the Island Governments be the Executive Officer.

7.6 Section 44 Acquiring Land**Issue:**

This section provides for the infrastructure manager to acquire land or an interest in land for the purposes of constructing new or altering existing infrastructure. Agreement must be sought from owner or owners, but where attempts to do so fail, the infrastructure manager may apply to the Court.

A question has been raised that the use of the word “acquire” implies that infrastructure managers can “acquire” freehold; it does, but there is a need to prevent freehold falling into private hands.

Recommendation:

Add the following subsection to reflect the Cook Islands Act 1915 restriction on alienating freehold.

(4) Nothing in this section entitles a person other than the Crown, for public purposes, to acquire native freehold land for an estate in fee simple or for any other freehold interest, whether legal or equitable.

7.7 Section 55 Rights and obligations where land is used for infrastructure purposes – discretionary compensation

Issue:

At the Arutanga meeting it was noted that there appears to be a direct contradiction between the naming of clause 55 and the words immediately following, i.e. the rest of the section goes on to describe where an applicant is not entitled to compensation.

55 *When compensation is discretionary*

(1) An applicant is not entitled to compensation in respect of the following.....

Section 52 of the Bill sets out the overarching principle when determining issues of compensation is that because the provision of infrastructure is for the public good and benefit, individuals must necessarily accept some uncompensated loss or damage to their property and interference with enjoyment of their property rights. Sections 53 – 55 set out the circumstances where compensation is or is not payable.

Counsel suggests that this issue might be resolved by inserting the word “automatically” before the word “entitled” in Section 55(1).

Recommendation:

That this is a drafting matter and should be referred to the New Zealand Parliamentary Counsel Office to determine the appropriate language.

7.8 Part 6 – Rights and obligations where land is used for infrastructure purposes – mediation

Issue:

There are no mediation provisions in the Bill. A number of clauses within Part 6 of the Bill address a range of situations in which a matter may have to come to Court for various reasons.

A strong and consistent theme arising from public consultations is the need for an intermediate step between negotiations and litigation. Members of the public have expressed concern that while the emphasis is on discussions leading to agreement, in the absence of agreement, matters go straight to Court. Those making submissions have contrasted the financial power of the infrastructure manager with that of the individual and have asked why the Bill contains no provision for mediation, prior to issuing proceedings.

The Committee agreed with the inclusion of a section relating to mediation and that this option should be voluntary rather than compulsory and that the costs of mediation should be borne by the Infrastructure Manager.

For the Pa Enua, the customary dispute resolution processes should be articulated by the Aronga Mana of each island including Rarotonga and put into the regulations. So in effect there may be two or more different processes if custom is included. In Rarotonga there is the Western model (qualified mediator, disclosure of relevant documents, legal representation etc) then there may be the custom model as articulated by the Aronga Mana. The Island Governments with customary dispute resolution processes need to provide an outline of what these processes are so that they can be documented in the regulations. Specifically for the islands of Mangaia, Mitiaro, Pukapuka, Nassau and Palmerston.

Recommendation:

That a provision is added to the Bill which says that the parties must first attempt to reach agreement by mediation before anyone files any proceedings.

The Bill and regulations should also include provisions relating to the customary dispute resolution processes for Mitiaro, Mangaia, Pukapuka, Palmerston and Nassau. These processes are to be documented and provided by the Island Governments of Mitiaro, Mangaia, Pukapuka, Palmerston and Nassau for inclusion in the regulations.

The Committee further recommends that where proceedings are filed the Judge can stay those proceedings pending the outcome of mediation.

Costs of mediation are to be borne by the Infrastructure Managers.

7.9 Section 64(4) Regulations making power – application to individual islands

Issue:

Consultation in Mitiaro highlighted concern that the Bill may erode or prejudice local customary law in some way. A related concern is that the procedures under the Act might be inconsistent with, or not incorporate that local or customary law. The request from Mitiaro was to ensure that the two systems of law are complementary.

Recommendation:

That a further subsection be added to clause 64 to address this issue, the language to be in broad permissive terms. For example:

1 *Without affecting subsection 4(b), in order to give full effect to the spirit and intent of this Act, regulations relating to infrastructure may be made that incorporate, in respect of the following islands, the local law and custom of those islands:*

- (i) *Mitiaro:*
- (ii) *Mangaia:*
- (iii) *Nassau:*
- (iv) *Palmerston:*
- (v) *Pukapuka:*

7.10 Section 67 Numbering Error

A stray reference to “section 78” should be amended to read, appropriately, to the repeals clause (currently numbered 69).

7.11 Section 66 Transitional arrangements for Atiu Airport

Issue:

Section 66 provides for transitional arrangements where there are agreements or proceedings relating to infrastructure.

It was noted at the Atiu consultation that negotiations are ongoing with regard to a possible lease of the Atiu airport and that the current definition of infrastructure manager implies that the Island Government of Atiu is the infrastructure manager of the airport. Counsel have suggested that transitional provisions specific to Atiu be added to clause 66.

Recommendation:

That a further subsection be added to clause 66, along the following lines.

- (1) *Nothing in this Act constitutes the Island Government of Atiu as the infrastructure manager of the Atiu airport until such time as either—*
 - (a) *the land on which that airport is situated is leased to the Crown; or*
 - (b) *the native freehold owners agree, by way of enduring agreement, to constitute the Island Government as the infrastructure manager of that airport.*

7.12 Consequential amendments – Te Aponga Uira (TAU) of Tumu te Varovaro Act 1991

Issue:

Under the current draft, it is proposed to leave the first three subsections of section 21 of the 1991 Act as they are and simply to add a fourth subsection where TAU may exercise the powers conferred by sections 37 to 41 of the Infrastructure Act 2019 which relate to the trimming and removal of vegetation.

This gives the unintended impression that there are *concurrent powers* under the 1991 Act and the Bill; that is not intended.

There is a similar issue with regard to section 22.

The need to single out vegetation clearing powers is unnecessary and undesirable – as TAU has *all* the rights conferred under the Bill. The TAU Act only needs a simple “signpost” to the Bill.

Recommendation:

That sections 21 and 22 of the TAU Act be replaced in their entirety. An example is provided below.

Replace section 21 with:

“21 Authority’s rights as infrastructure manager

“The Authority, as an infrastructure manager under the Infrastructure Act 2019, has the rights of access conferred by that Act and the provisions of that Act apply accordingly.”

Repeal section 22.

7.13 Consequential amendments – Telecommunications Act 1989

Issue:

The purpose of the Bill is to supersede the powers currently contained in sections 11 to 23 of the Telecommunications Act 1989 in their entirety, yet the current form of the Bill implies that they will be retained.

Consultation with Bluesky confirmed that the purpose of the Bill is understood and accepted. With assistance from the Solicitor-General, counsel has made contact with the draftsman of the proposed replacement telecommunications legislation and, as with Bluesky, the purpose of the Bill, as cross-cutting legislation that will apply in place of sections 11 to 23 is accepted and further drafting work on the proposed replacement telecommunications legislation will proceed on that basis.

Recommendation:

That sections 11 to 23, inclusive be repealed and replaced with a simple, one section clause that directs readers to the Bill.

For example:

Replace section 11 with:

“11 Company’s rights as infrastructure manager

“The Company, as an infrastructure manager under the Infrastructure Act 2019, has all the rights conferred by that Act and the provisions of that Act apply accordingly.”

Repeal sections 12 to 23 (inclusive).

7.14 Other Matters

Issue – Relationship between To Tatou Vai and Infrastructure Acts.

Ben Marshall (one of a number of local practitioners who has reviewed the draft) has noted that there are apparent inconsistencies between section 22 and the current To Tatou Vai (TTV) Bill (specifically current sections 15(7) and 15(8)) which provide that approval of the catchment committee will be required for anything beyond routine maintenance. He has proposed that a section be inserted into the Infrastructure Bill or to the TTV Bill (whichever is the more appropriate) to the effect that the two Acts be applied having regard to the principles of the other or should there be any inconsistency the provisions of the TTV Act will prevail. He asks a similar question in respect of section 42 which deals with emergencies.

Recommendation:

Considerable effort has now gone into making the Bill cross-cutting and it would be unfortunate if the TTV Bill were to erode that unnecessarily. The terms of the TTV Bill should be framed in a way that is not inconsistent with the current legislation.

Issue – Matters raised by the Secretary of Justice

The Secretary of Justice has submitted that the proposed amendments to the Cook Islands Act will:

- Encumber the Court’s ability to make court orders relating to right of way and partitions and requests that the language used be permissive rather than obligatory on the Courts.
- Effectively remove or encumber the Ministry’s powers and duties relating to roads, access and place substantial control with Infrastructure Managers.

- Increase the burden on the Ministry of Justice, particularly the Chief Surveyor and the Courts.

He further submits that the proposed amendments to the Land (Facilitation of Dealings Act 1970) which allows the use of the Ministry's powers to use meetings of assembled owners to streamline approval of infrastructure projects, will effectively increase the burden on the Ministry of Justice and potentially add another layer of fees and costs to be borne by landowners.

Other parts of his submission relate to particular legal interpretations of the language as drafted in the Bill.

The Committee has met with the Secretary and Crown Counsel and have resolved most of the matters raised in his submission. Many of the issues raised relate to procedural and operational matters to be resolved during the development of regulations and the need for increased capacity and capability within the Ministry.

Recommendation:

1. That the language relating to the Court's ability to make court orders relating to right of way and partitions be changed to be permissive rather than obligatory on the courts.
2. That the Infrastructure Managers work closely with the Ministry of Justice to ensure that processes and procedures contemplated are streamlined across the agencies to mitigate impacts on the agencies and on the public.

8. CONCLUSION

The Committee sincerely acknowledges the invaluable contributions by members of the public who attended the consultations in Rarotonga, and the Pa Enua as well as those who submitted written submissions. The Committee also extend a sincere appreciation for the kind hospitality received whilst visiting the Pa Enua, very much appreciated. Meitaki poria kia kotou katoatoa.

Kia Manuia Te Atua te aroa.



Hon. Robert Taimoe Tapaitau
Chairman - Infrastructure Bill 2019 Select Committee

9. ANNEXES

- Annex 1 The Infrastructure Bill 2019 (with amendments).
- Annex 2 Explanatory Note - The Infrastructure Bill 2019.



PARLIAMENT OF THE COOK ISLANDS

INFRASTRUCTURE BILL 2019

EXPLANATORY NOTE

This explanatory note is not part of the Bill. It is intended to indicate its general effect.

General explanation

This Bill deals with certain classes of infrastructure, specifically those that—

- (a) comprise networks providing a reticulated service:
- (b) comprise roads and other accessways:
- (c) support shipping and aviation transport networks in the Pa Enua:
- (d) support appropriate land use and management.

These classes of infrastructure are grouped together in this Bill because all of them involve dealings between the general public as property owners and those who manage that infrastructure. The Bill, in a comprehensive way, addresses the resulting relationships and provides for the balancing of public and private interests.

Roading, ports, airports, the provision of fresh water, power, telecommunications, and the disposal of both waste water and storm water are all essential facilities and services. Together, they make up much of the network of infrastructure on which our health, safety, and enjoyment of life depend.

This is a time of increasing pressure on the country's network infrastructure. In the future we will see fresh challenges in meeting the transport, communications, and service delivery expectations of our people.

There are a number of reasons for this including,—

- the increasing numbers of overseas visitors that drive the country's tourism-based economy:
- changing land use patterns that see increasing residential and commercial development:
- technological advances that call for the upgrade of infrastructure:

- rising living standards and expectations of both residents and visitors as to the quality of our infrastructure:
- the need for environmental sustainability:
- the need to address climate change adaptation and resilience issues.

In other countries, zoning, resource management, and associated planning legislation all have an important role in accommodating infrastructure needs. Those tools are not well suited to features of our land tenure. Instead, over the years, those who manage infrastructure have learned to work with landowners and other stakeholders in a more informal way.

The success of those informal methods has seen established operators such as TAU and Telecom/Bluesky deliver increasingly sophisticated services using networks laid over, under, and on both public and private land. Those operators have enjoyed good co-operation with landowners and occupiers.

Established infrastructure managers have learned the importance of seeking agreement with affected owners and occupiers. The Crown too has traditionally been slow to take land by warrant. Instead, there has been a long practice of seeking to reach agreement with landowners where land is affected by developments that are for the public good.

Recent experience with Te Mato Vai Stage 2 has further emphasised the real benefits of seeking agreement and co-operation with affected stakeholders. The upcoming challenges of waste water collection and treatment will also be best addressed by using the tools of consultation, negotiation, and agreement wherever possible.

At present, infrastructure law and practice is fragmented. This Bill addresses that issue in a comprehensive way. The Bill takes the lessons learned over recent decades and puts in place a simple, straightforward, multi-disciplinary approach to network infrastructure.

The Bill aims to strike the right balance between the public interest in having good infrastructure, and the constitutionally protected property rights of owners and occupiers who are affected by network infrastructure.

Infrastructure delivery can be a complex process. This Bill aims to simplify that process in a way that is easily understandable. It's approach can be summarised this way:

- (e) under existing law, all land in the Cook Islands is available as needed for infrastructure purposes. However, in line with actual practice, the Bill recognises that land that is being used for access to infrastructure already should be the preferred location for infrastructure, leaving owners and occupiers to use and enjoy the balance of their land without inconvenience:
- (f) the Bill recognises that some “accessways” are formal and others are informal. It does this by creating a distinction between a “road”—an accessway for which the Crown has management responsibility—and other accessways that are owned and managed by others. It recognises the role and rights of those who manage roads and more informal accessways as “accessway managers”:

- (g) the Bill recognises ports and airports as essential parts of networks for shipping and airline services. The Bill does, though, make a distinction between “reticulated infrastructure” (in practical terms, reticulated service delivery systems for power, water, telecommunications, etc) and “stand alone” infrastructure:
- (h) the Bill treats roads (but not other accessways) as infrastructure. It deals with roads, stand-alone infrastructure, and reticulated infrastructure and holds all infrastructure managers, both public and private, to the same standards and applies the same procedures in their dealings with those affected by their activities. This greatly simplifies the current range of differing standards and practices that are found in existing statutes:
- (i) the Bill encourages open consultation and dialogue between and among all stakeholders whenever there is significant work to be done in constructing, altering, or maintaining infrastructure:
- (j) the Bill formalises the existing, successful, approach of having infrastructure managers seek to negotiate and agree matters with affected owners and occupiers of land and with other infrastructure managers or accessway managers:
- (k) the Bill gives both owners and occupiers and infrastructure managers access to the High Court (**the Court**) if that is needed. It gives the Court the ability to call a meeting of assembled owners as one means of reaching agreement where matters are in dispute or where the number of landowners makes it impractical to have all sign an agreement:
- (l) with due regard to the constitution, the Bill gives guidance to the Court on principles to be applied to decide when and how compensation should be payable in any case of dispute.

The Bill

- Clause 1** sets out the Title of the Bill.
- Clause 2** provides that the Bill comes into force on 1 July 2019.

Part 1

Preliminary matters

- Clause 3** sets out the main purpose of the Bill, namely, providing for the planning, delivery, and management of infrastructure and, in particular, dealing with issues affecting the rights of owners and occupiers of land and of infrastructure managers, when those activities require those parties to interact.

Clause 4 sets out the underlying principles that apply. The provision emphasises the need for proper standards of construction to meet present and future challenges. It promotes a co-operative approach between all affected infrastructure managers and between those managers and the affected owners and occupiers. It emphasises the objective of managing disputes in a fair, transparent, and accountable way.

Clause 4 (1)(h) recognises the important point that we all enjoy infrastructure and put up with the inconvenience that comes with its presence on land we either own or occupy and with the added inconvenience of its construction, alteration, and repair. Inconvenience and interference with our ownership or occupation of land (for example, having a view that includes a line of power poles, or needing to queue while our right of way is dug up to lay a cable for a neighbour's property) should not ordinarily give us a right to compensation. In a modern society, all of us must put up with some measure of inconvenience.

This principle finds full effect in clause 52. However, in some cases compensation is payable. Constitutional principles are appropriately recognised and given effect in clauses 52 to 55 of the Bill.

Clause 5 makes it clear that the Act binds the Crown. For instance, Infrastructure Cook Islands (**ICI**) and Te Aponga Uira o Tumutevarovaro are each, as infrastructure managers, held to the same standards as private operators such as Bluesky.

Clause 6 defines terms used in the Bill. Some definitions are key to understanding the legislation:

- **accessway:** this is any land, whether or not a formal road or right of way, that people use to get from one place to another. This definition is important because, ideally, reticulated infrastructure is placed on, under, or above accessways to minimise inconvenience to owners and occupiers in their use and enjoyment of land:
- **accessway manager:** a definition that recognises important stakeholders, and means the Secretary of ICI for Rarotonga roads, Island Governments for other roads, and in the case of privately owned accessways, the relevant owners or users of those accessways:
- **associated land:** the Bill recognises that temporary access may be needed, in some cases, to infrastructure that is located on other land. Land used for this kind of temporary purpose is called "associated land":
- **end point:** the Bill defines reticulated infrastructure and provides guidance as to where a network is considered to end, for the purposes of the legislation:
- **infrastructure:** the definition covers a wide range of engineered infrastructure. Certain elements of drainage, storm water, and waste water assets are treated as infrastructure to be actively managed in the same way as other services:

- **infrastructure manager:** this term is defined broadly, taking into account both public and private sector managers, and the arrangements for governance in the outer islands:
- **occupier:** this is defined and used in the Bill, recognising that even if a person does not have an interest in land, that person's occupation of the land may be disturbed or interfered with as the result of the activities of an infrastructure manager. Occupiers therefore have the rights and obligations set out in the Bill:
- **reticulated infrastructure:** this includes all physical elements of a network:
- **reticulated service:** this term is defined to allow the Bill to draw a distinction between stand-alone kinds of infrastructure that provide a service to the public, and those other kinds of infrastructure that do so as part of a large network of interconnected physical elements:
- **road:** this is defined to draw a clear distinction between roads for which the Crown takes responsibility (as either roads under the Cook Islands Act 1915 or as listed in a roads schedule in regulations made under the Bill), and other accessways. Given the new focus on proper design and engineering of roads and associated drainage, the term "road" is broadly defined:
- **road drainage:** this term is used in the Bill in a way that underscores the need for roads to be proclaimed, designed, and built in a sensible way and takes into account the need for effective drainage to avoid the common and worsening flooding problems following heavy rains:
- **start point:** the Bill defines reticulated infrastructure and provides guidance as to where a network is considered to begin, for the purposes of this legislation:
- **storm water drain:** the Bill will apply to a range of storm water infrastructure, some taking the form of a network (as at Te Puka for instance) and some comprising stand-alone storm water drainage. The Bill allows for selective uptake, by ICI, of responsibility for different storm water drains by including those drains in a list of storm water drains that will be set out in regulations.

As a result of the deliberation of the Bills Committee a definition of **Court** has been inserted, which makes it clear that civil proceedings are heard in the Civil division of the High Court of the Cook Islands, subject to any overriding direction by the Chief Justice.

The definition of **network** has been replaced to make the wording of the definition more consistent with that in the Telecommunications Act 1989. A definition of **link** has been inserted as that term is used in the new definition of network.

The definition of **Infrastructure Manager** has been amended to clarify that in the Pa Enua the Manager is the executive officer of each Island Government.

- Clause 7** defines who is to be treated as having an interest in land. The definition takes account of the intention of the Bill to encourage co-operation and dialogue between infrastructure managers and those who own interests in land. This clause also recognises the status of lessees, with a 15-year period stipulated so that in the case of short leases or those with only a short term remaining, the rights of underlying owners are appropriately recognised. The clause also addresses the issue of customary ownership.
- Clause 8** formalises the existing practice of those network operators who deal with owners by negotiation and agreement. That practice is now made compulsory and applies to all infrastructure managers.

Part 2 Roads

Subpart 1—Proclamation and closing of roads

Proclamation of roads

- Clause 9** re-enacts the ability to proclaim or dedicate a road that is currently set out in section 606 & 607 of the Cook Islands Act 1915. In repealing the old provisions, the new drafting uses updated language and ties these processes to the scheme of this Bill.
- Clause 10** retains the substantive effect of section 608 of the Cook Islands Act 1915, which states that when land becomes a road by proclamation or dedication, that does not vest its underlying land in the Crown.
- Clause 11** repeats section 610 of the Cook Islands Act 1915 to make it clear that orders of the Land Division of the High Court do not affect roads.
- Clause 12** recognises that because accessways may, in the future, become roads, and will in any case be the preferred location for reticulated infrastructure, the Land Division of the High Court should make sure that where access is ordered, it is compliant with the requirements of this Bill. In practical terms, it will be the job of the Chief Surveyor to make sure, and certify, that accessways meet those requirements.
- Clause 13** (which is modelled on sections 606 and 607 of the Cook Islands Act 1915) recognises that an accessway may, over time, become used in a way or to an extent that makes it appropriate that it become a road. This provision allows for that to happen. Under the Cook Islands Act 1915, compensation is not payable in such a case. Under the new law, it is recognised that road engineering needs may result in the road being enlarged, and that questions of compensation may arise if that happens. *Clause 13* also allows an owner to offer up land for a road. That offer may carry with it the need for expenditure of public funds to upgrade the road, so this clause allows for the relevant infrastructure manager to decide whether that offer should be accepted.

- Clause 14** allows for closing roads. It is modelled on section 613 of the Cook Islands Act 1915 with updated language that is consistent with the rest of this Bill.
- Clause 15** updates section 614 of the Cook Islands Act 1915 and deals with the form of a warrant for roading.

Subpart 2—Roles and functions of Secretary and Island Governments with regard
to roads

- Clause 16** identifies who is responsible for roads and sets out what those responsibilities are. Under *Part 4*, an Island Government may seek assistance from ICI, but in line with the principles of devolution and the provisions of the Island Government Act 2012, the Bill recognises that prime responsibility for roads in the Pa Enua rests with each Island Government. Road accidents do cause death and injury, and this clause contains a provision that is designed to limit the Crown's liability. The underlying principle is that while the Crown will aim to have safe roads, those who choose to use public roads do so at their own risk.

Right of access to roads and associated land

- Clause 17** provides for an infrastructure manager who needs to access land on a temporary basis for purposes associated with roading to do so, using the procedures set out here. This clause reflects existing, informal, practice for the temporary stockpiling of roading materials, off-road parking for road construction equipment, and similar uses of private land. The clause requires notice be given to an owner or occupier before access is exercised if access will require disturbance to the land or vegetation on it in more than a minor way.

Maintenance

- Clause 18** As the temporary access rights set out in *clause 17* will typically be used most commonly for maintenance purposes, this clause sets out exactly what is meant by maintaining a road, for the purposes of exercising those temporary access rights.
- Clause 19** allows the infrastructure manager responsible for a road to remove an obstruction in the circumstances set out in this clause.

Part 3
Infrastructure (other than roads)

- Clause 20** provides that this Part of the Bill deals with infrastructure other than roads.

Right of access to infrastructure and associated land

- Clause 21** in the Bill as introduced allowed all infrastructure managers to exercise temporary rights of access for limited purposes—the provision reflects the current practice of service providers such as Te Aponga and Bluesky. The clause required notice to be given to an owner or occupier before access is exercised if access would require disturbance to the land or vegetation on it in more than a minor way.

As a result of the Select Committee's deliberation following consultation clause 21 has been amended to require notice to be given to the occupier of land if—

- the disturbance to the occupier (as well as the land and the vegetation is more than minor):
- the access required is to associated land

- Clause 22** As the temporary access rights set out in *clause 21* will typically be used most commonly for maintenance purposes, this clause sets out exactly what is meant by maintaining infrastructure, for the purposes of exercising those temporary access rights.

Network connections

- Clause 23** codifies existing practice, as routinely used in the case of power and telecommunications providers, to allow for connections to be isolated or cut off for technical reasons, and extends those detailed provisions so they apply to all reticulated infrastructure. Notice must be given to customers, except in the case of emergency.

Part 4
The Pa Enuu

- Clause 24** gives statutory recognition to the role of an Island Government as the infrastructure manager of its island, while recognising the ability of the Island Government to delegate that responsibility.
- Clause 25** deals with capital works in the Pa Enuu. The clause acknowledges the role of an Island Government while providing checks and balances to make sure the fiscal risks facing the Crown are appropriately managed by ensuring appropriate project management.
- Clause 26** continues the role of ICI as a provider of advice and technical support to Island Governments in those areas of infrastructure in which ICI has particular expertise. The drafting recognises the role that the Airport Authority and Ports Authority play in the case of Aitutaki infrastructure.

Part 5 General rights and obligations

Right of access

- Clause 27** sets out in some detail what is included in the rights of access conferred by *clauses 17 and 21* of the Bill and the purposes for which that access can be exercised. Subject to the other provisions of this Act, the right of access includes the right to place and leave infrastructure on, under, or above the relevant land or accessway. A right of access may be exercised by the infrastructure manager and by its workers and contractors, but it can only be exercised for purposes that relate directly to the relevant infrastructure.
- Clause 28** requires those exercising rights of access to carry evidence to establish the identity of the infrastructure manager they are working for.

Right to leave infrastructure in place

- Clause 29** makes it clear that once infrastructure is constructed or installed there is a right to leave it in place indefinitely, subject only to the terms of an enduring agreement (that may, for instance, allow for temporary placement of infrastructure) or an order of the Court. *Clause 29* also preserves the position of all existing infrastructure.

General obligations and rights of infrastructure managers

- Clause 30** imposes positive obligations on an infrastructure manager to take into account the fact that its activities affect others. The clause sets out a positive obligation on every manager to publicise intended activities and to consult with accessway managers, other infrastructure managers, and affected owners and occupiers. These obligations apply in all circumstances except where temporary access for limited purposes is needed (see, for example, the provisions of *clauses 17 and 21* which provide for temporary access) and in the case of emergency (*clause 42*). *Clause 30(5)* mandates the “dig once” principle that infrastructure managers seek to follow both for working economies and to minimise inconvenience to others.
- Clause 31** imposes an obligation on an infrastructure manager to restore land where damage of any sort is caused (unless an enduring agreement provides otherwise).
- Clause 32** imposes an obligation on an infrastructure manager to make sure that infrastructure does not interfere with navigation in any navigable waters.

Clause 33 imposes a general obligation on every person whose activities might materially affect the condition of, or access to, infrastructure or any related service. The obligation is one of advising the relevant infrastructure manager of what is proposed, seeking permission for what is proposed, and of complying with any conditions that are imposed. *Clause 33* recognises that while accessways may take many different forms, an accessway should not be connected to a road without the agency responsible for that road first giving permission. The reason for this is that connection may have implications for drainage and other matters affecting the use and condition of the road.

Clause 34 sets out the procedural requirements that the infrastructure manager must follow, and gives recourse to a person who may be dissatisfied with the decision of the infrastructure manager.

Use of accessways and roads for infrastructure purposes

Clause 35 sets out obligations on an infrastructure manager that wishes to dig up or otherwise carry out work that affects any road or sealed accessway. The infrastructure manager must obtain prior permission. If the permission is not granted or the conditions are unsatisfactory, the infrastructure manager may apply to the Court for permission or different conditions.

Clause 36 sets out requirements aimed at making sure that the engineered surface of the road or accessway is fully restored and that both during the work and after its completion, obstruction, hazards, and interference to normal traffic are minimised.

Vegetation

Clause 37 defines terms used in *clauses 38 to 41* that deal with the issues posed by vegetation that affects infrastructure.

Clause 38 deals with vegetation that is growing on, over, or under an accessway and allows an affected infrastructure manager to trim and remove the vegetation (with the permission of the responsible person) or to request the responsible person do that work instead. The clause also gives rights to affected persons to object to the work being undertaken, if necessary by seeking a court order.

Clause 39 deals with vegetation that is on, under, or above land other than an accessway. The clause allows an affected infrastructure manager to trim and remove the vegetation (with the permission of the responsible person) or to request the responsible person to do the work instead. *Clause 39* also gives rights to affected persons to object to the work being undertaken, if necessary by seeking a court order.

- Clause 40** allows an infrastructure manager who is refused permission to trim or remove vegetation to seek a court order allowing that. To discourage unreasonable refusals of permission, the clause provides that if the Court makes the order allowing the work then, unless the Court orders otherwise, the person responsible must pay for the costs of that work.
- Clause 41** addresses the issue of how much vegetation may be trimmed and removed by updating existing law that applies to Te Aponga Uira and Bluesky and applying it generally. The experience of network operators has identified best practice in this area, and the provision sets out that best practice as a requirement.

Emergency and other powers

- Clause 42** sets out powers that an infrastructure manager may exercise in emergency situations. Those situations are set out in the clause, which then allows for that manager to take urgent steps while making provision for oral notice to those affected, where that is possible in the circumstances.
- Clause 43** addresses the common problem of an urgent need to clear drains in flooding and heavy rain situations and also imposes obligations on occupiers and owners of land that hosts a storm water drain of any sort.

Part 6

Rights and obligations where land is used for infrastructure purposes

Infrastructure Manager's role when needing land

- Clause 44** addresses the situation where an infrastructure manager needs to acquire land or an interest in land, as opposed simply to exercising statutory rights to place and leave infrastructure (as may be needed, for example, to fence off land). While preserving the right of the Crown to take land by warrant as a last resort, *clause 44* requires the infrastructure manager first to seek either an enduring agreement or, failing that, a court order.

Following Select Committee deliberations a new subclause 3(b) has been added to clarify that the clause does not permit any person (other than the Crown acting for public purposes) to acquire native freehold land for an estate in fee simple or any freehold interest, whether legal or equitable

When road can be formed or new infrastructure constructed or installed

- Clause 45** protects the position of owners and occupiers of land (other than land already in use as an accessway) by requiring that if a road is to be built or some other new infrastructure is to be installed on that land, it must be done only by agreement or by order of the Court. The provision does not apply where infrastructure is new simply because it replaces existing infrastructure at that location.

Infrastructure manager may apply to Court for order concerning land

- Clause 46** sets out the procedure to be followed if it is not possible to obtain an enduring agreement with owners for any reason, in effect giving an infrastructure manager the ability to have the Court rule on the matter. *Clause 46* recognises that in some cases there may be active opposition while in other cases there may be practical difficulties in obtaining agreement due to the number of owners, absent owners, etc.
- Clause 46** also allows the Court to request the Registrar to convene a meeting of assembled owners under the Land (Facilitation of Dealings) Act 1970. This is a procedure with which both owners and court officials are familiar, and is therefore an effective tool for addressing issues of owner consent where there is a large number of owners.
- Clause 47** sets out the Court's jurisdiction to make an order in a matter brought before it under any of *clauses 44, 45, and 46*.

Liability for damage to infrastructure

- Clause 48** confirms the common law position that a person who damages infrastructure, either intentionally or negligently, must pay for the cost of repairs. The clause illustrates examples of negligence.

Rights of owners, occupiers, and accessway managers

- Clause 49** recognises that those whose property hosts infrastructure may have a legitimate reason for requesting its relocation. This clause sets out the rights and obligations of the parties to a request of that kind and provides a right of redress to the Court.
- Clause 50** sets out who may object to the exercise, by an infrastructure manager, of certain rights by way of an application to the Court. They are—
- an accessway manager, infrastructure manager, or occupier or owner of land affected by the exercise, or proposed exercise, by an infrastructure manager of rights of access under *clause 17 or 21*;
 - a person responsible for vegetation or an occupier or owner of adjoining land who is affected by an infrastructure manager's exercise of rights under *clause 38 or 39*;
 - an occupier or owner of land on which there is road drainage or storm water drainage, affected by an infrastructure manager's direction under *clause 43*.

- Clause 50** also sets out the procedure that will apply if an application is made to the Court, to protect the objector's rights until the Court has determined the position. The right to apply to the Court under *clause 50* extends to infrastructure managers because, for example, there may be concerns that repair work on one underground network such as water, power, and telecommunications may affect another of those underground networks.
- Clause 51** sets out the jurisdiction of the Court to make orders on a hearing of an objection of the sort referred to in *clause 50*.

Compensation

- Clause 52** sets out the principle to be applied by the Court in determining applications for compensation under the Bill.
- Clause 53** first draws attention to the obligations mandated on both the Crown and the Court by Article 40 of the constitution (which deals with the acquisition or taking of property). It goes on to confer an entitlement on an affected person to claim, and a jurisdiction on the Court to grant, compensation under this Act in addition to the jurisdiction of processes under article 40 of the constitution.

As a result of Select Committee deliberations this clause has been substantially amended—

- to clarify that neither the Act nor any enduring agreement affects the right to compensation of native freehold owners if land is compulsorily acquired or the right of native freehold owners to claim compensation for damage or loss of a kind that continues beyond the expiry of the lease:
- to introduce a requirement for parties to an enduring agreement to account to the freehold owners of the land:
- for the owner's entitlement to compensation paid under the enduring agreement:
- to introduce a requirement for the Court, where it orders compensation under the clause to apportion compensation between the respective interest holders in the land in a way that is proportionate to the size of their interests:
- the Court is not obliged to do this where it is impracticable to do so or the Court considers for any reason that it would be contrary to the interests of justice to do so.

Clause 54 sets out the circumstances in which there is an entitlement to compensation.

Clause 55 sets out a range of cases in which there is no entitlement to compensation, reserving, however, a discretion on the part of the Court if substantial loss or damage is caused in circumstances that satisfy the Court that compensation should be paid.

The drafting of this section has been altered slightly as a consequence of the Select Committee's recommendations.

Part 7

General and miscellaneous provisions

Protection of roads and other infrastructure

- Clause 56** deals with the situation in which someone interferes with a road or other infrastructure or is breaching an agreement made with regard to infrastructure, and it allows the affected infrastructure manager to require that person to stop what is complained of. If that person does not take the required action, the infrastructure manager may do so itself and recover the cost of doing so. This clause does not affect criminal liability of the person interfering (see below).

Offences

- Clause 57** creates a criminal offence of interfering with infrastructure. This clause is modelled on existing provisions. It creates a single offence applicable to all infrastructure and defines what is meant by "interfering" in the particular context of this offence.
- Clause 58** creates a criminal offence for the particular protection of service workers who are obstructed from carrying out authorised work under the Act.

Delegation

- Clause 59** reflects the practice of infrastructure managers using employees, contractors, and other delegates to undertake work. The clause gives a broad power of delegation to those managers.

Civil proceedings

- Clause 60** as introduced, provided for civil proceedings falling for consideration by the Court to be heard in the Civil Division, but given the land issues that may fall for consideration, allowed for a matter to be heard in the Land Division if the Solicitor-General thinks that is a more appropriate forum.

After deliberation by the Select Committee this section has been replaced. The subject matter of this clause has been replaced with the new definition of Courts in *clause 6*.

A *new clause 60* has been inserted requiring parties to disputes to attempt mediation or other form of dispute resolution before making certain applications or appeals to the Court. The types of mediation available includes resolution according to the laws and customs of the relevant Island.

If an infrastructure manager is a party to the disputes resolution process that manager will bear the costs of the mediation. Furthermore, if an infrastructure manager or any other person begins relevant proceedings without attempting to resolve the dispute, the Court may adjourn the proceedings until the disputes resolution process is completed.

Role of CIIC

- Clause 61** clarifies the interrelationship between the Cook Islands Investment Corporation (CIIC) and those agencies of the Crown that are infrastructure managers, with the aim of providing for prudent management of the fiscal risks facing the Crown in terms of enduring agreements that a Crown agency may enter into. The clause also recognises, in effect, that CIIC, through CIGPC, owns government assets and before land becomes a government asset CIIC must be involved in the process of acquiring that land.

Notice under this Act

- Clause 62** makes it clear that an infrastructure manager may satisfy a requirement to give notice to the owners of land by giving notice to any one of those owners who live in the Cook Islands or has left an overseas address for service with the High Court in Rarotonga.

Relationship with other legislation

- Clause 63** gives the provisions of legislation relating to civil aviation primacy over the provisions of the Bill.

Regulations

- Clause 64** confers a broad power to make regulations to deal with the necessarily complex detail of infrastructure related matters.

Transitional and savings provisions

- Clause 65** affirms the continuing effect of existing concluded agreements between infrastructure managers and third parties.
- Clause 66** makes provision as to the effect of agreements between infrastructure managers and third parties that are in the course of negotiation at the time the Act comes into force.

- Clause 67** deals specifically with Te Mato Vai issues, in effect preserving the procedures agreed between the Crown, landowners, and the Court for bringing Stage 2 to completion under the existing Rarotonga Waterworks Ordinance regime. This is in recognition that proceedings under the Ordinance remain in the High Court.
- Clause 68** is a savings provision that affirms the current and ongoing status of existing infrastructure.

Repeals and amendments

- Clause 69** repeals the Ministry of Supportive Services Act 1973-74.
- Clause 70** provides for a range of related amendments to other legislation.

As a result of Select Committee deliberation amendments have been made in the Schedule to the Te Aponga Uira o Tumu Te Varavaro Act 1991 and the Telecommunications Act 1989 to provide that the respective Authority and company created under each of those Acts can only exercise the set of powers conferred on them as Infrastructure Managers in the Infrastructure Act 2019, and that the enforcement powers in those 2 Acts are no longer available for use.

Hon. Robert Tapaitau

[Placeholder for Crest]

Infrastructure Bill 2019

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Schedule

Amendments to Acts

An Act to—

- (a) provide for the planning, delivery, and management of infrastructure;
and
- (b) provide for the construction, installation, and maintenance of infrastructure; and
- (c) set out the rights and obligations of infrastructure managers and occupiers and owners of land when installing, operating, and maintaining infrastructure.

The Parliament of the Cook Islands enacts as follows—

1 Title

This Act is the Infrastructure Act 2019.

2 Commencement

This Act comes into force on 1 July 2019.

Part 1
Preliminary matters

3 Purpose

(1) The purpose of this Act is to—

- (a) provide for the planning, delivery, and management of those classes of infrastructure with which this Act deals; and
- (b) set out the rights of the infrastructure managers, and owners and occupiers of land, in relation to access to land for the purposes of the construction, installation, and maintenance of infrastructure; and
- (c) set out the rights of owners and occupiers of land whose land is affected by the construction, installation, operation, or maintenance of infrastructure.

(2) This Act deals with the certain classes of infrastructure, in particular those that—

- (a) comprise networks providing a reticulated service;
- (b) comprise roads and other accessways;
- (c) support shipping and aviation transport networks in the Pa Enua;
- (d) support appropriate land use, management, and utilisation.

4 Principles

(1) In performing functions and duties, making decisions, and exercising rights and powers under this Act, all persons must have regard to the following principles:

- (a) all infrastructure should be constructed or installed to an appropriate standard to ensure that it is sufficiently resilient to resist the impacts of climate change and the pressures of land use development;
- (b) infrastructure managers should collaborate to ensure that infrastructure is built or installed efficiently and co-operatively;

- (c) infrastructure managers should avoid having to build or install infrastructure more than once by taking account of other developments affecting the infrastructure so that installation or construction takes place once in a co-ordinated way;
- (d) the interests of members of the public must be taken into account when considering the impacts of private and public development on infrastructure;
- (e) when infrastructure is constructed or installed or maintained, the safety of the public (and in particular vulnerable members of the public) should be promoted through appropriate design and management practices;
- (f) infrastructure should be managed effectively, efficiently, and in an environmentally sound manner;
- (g) it is desirable to have fair, transparent, and accountable processes for managing disputes between—
 - (i) the Government and owners:
 - (ii) different owners:
- (h) it is reasonable to require individuals to accept some uncompensated loss of property and enjoyment of their property rights in order to ensure roads and other infrastructure of a high quality is provided for the general public in an efficient and cost-effective way.

5 Act binds the Crown

This Act binds the Crown.

6 Interpretation

In this Act, unless the context otherwise requires,—

accessway means—

- (a) any road; and
- (b) any path, route, or way that is or has been habitually or customarily used by people to get from one place to another

accessway manager means—

- (a) in relation to a road on Rarotonga, the Secretary;
- (b) in relation to a road in the Pa Enua, the Island Government of the relevant island;
- (c) in relation to any other accessway, the person who habitually or customarily maintains the accessway or, if it is not clear who that is, the main user of the accessway

alteration means,—

- (a) in relation to an existing road, the widening or realignment of the road so that the road occupies more land than it did before or different land;
- (b) in relation to other infrastructure, the enlargement or alteration of the shape of the infrastructure in such a way that the visual or environmental impact of the infrastructure is significantly changed

associated land, in relation to a road or other infrastructure, means land to which temporary access is needed by the infrastructure manager for purposes associated with the construction, alteration, or maintenance of the road or other infrastructure, where the land itself does not form part of, or underlie, the road or other infrastructure

CIIC means the Cook Islands Investment Corporation

constitution means the constitution of the Cook Islands

construct, in relation to forming new or altering existing infrastructure, includes all other steps reasonably necessary to plan for, design, and construct the infrastructure and any associated necessary structures and earthworks

Court means the High Court of the Cook Islands and a reference in any provision of this Act to the Court is, subject to any contrary direction of the Chief Justice in a particular case, a reference to,—

- (a) the civil division of that Court, in the case of civil proceedings:
- (b) the criminal division of that Court, in the case of criminal proceedings

emergency has the meaning given in section 42

end point,—

- (a) in the case of electricity, telecommunications, and water supply, means a point, determined by the infrastructure manager, at which the amenity arrives at or enters a customer's property or premises (as the case requires):
- (b) in the case of waste water and storm water, means the point at which the waste or storm water is no longer contained in pipes or other conduits

enduring, in relation to an agreement between an infrastructure manager and an owner of land, means an agreement described in section 8

form, in relation to a road, means to construct the road over land that was not previously a road

ICI means the government department known as Infrastructure Cook Islands

ICI's website means an Internet site operated by or on behalf of ICI that is freely available to members of the public

infrastructure—

- (a) includes—
 - (i) all physical assets owned by the Crown but managed by an infrastructure manager for the benefit of the public that are—
 - (A) road drainage:
 - (B) waste water networks:
 - (C) water networks:
 - (D) inland and coastal flood and erosion protection works (for example, foreshore protection, rock revetments, groynes, and retaining walls):
 - (E) wharves, harbours, and airports in the Pa Enea:
 - (F) solid and hazardous waste facilities:
 - (G) power generation equipment:
 - (H) telecommunications and data cabling; and
 - (ii) all roads; and
 - (iii) all reticulated infrastructure; and
 - (iv) hydro-electric storage and generation; and

- (v) storm water drains; and
- (vi) storm water networks; but
- (b) does not include—
 - (i) public buildings such as schools, hospitals, other government buildings, and community halls (other than reticulated infrastructure outside or inside those buildings);
 - (ii) ports and airports in Rarotonga;
 - (iii) airports in Aitutaki

infrastructure manager means,—

- (a) in the case of reticulated infrastructure (for example, infrastructure that provides water, power, and telecommunications) that is either owned or managed by a State Owned Enterprise or other Crown owned company (other than the Cook Islands Government Property Corporation or the Cook Islands Investment Corporation) or by another person that is not an instrument of the Crown,—
 - (i) the Crown owned company; or
 - (ii) the other person who owns or manages the reticulated infrastructure;
- (b) in the case of other infrastructure of the following kinds on Rarotonga, the Secretary:
 - (i) roads;
 - (ii) road drainage;
 - (iii) storm water drains;
 - (iv) inland and coastal flood and erosion protection works;
 - (v) solid and hazardous waste facilities;
- (c) in the case of infrastructure on any island in the Pa Enua that is managed for the public benefit, for example, (ports and airports), the executive officer of the Island Government acting as the infrastructure manager under section 24

install, in relation to infrastructure (other than roads), includes all steps (including planning and designing) reasonably necessary—

- (a) to install or construct new infrastructure; or
- (b) to replace or upgrade existing infrastructure, but only if the replacement or upgrade is either significantly larger than, or has a physical footprint significantly different from, the infrastructure it replaces or upgrades

Island Government means an Island Government established under the Island Government Act 2012-2013

link means a pipe, wire cable, or other conduit through which a reticulated service is conveyed

maintaining,—

- (a) in relation to a road, has the meaning set out in section 18;
- (b) in relation to other infrastructure, has the meaning set out in section 22

Minister means the Minister who, with the approval of the Prime Minister, is the Minister for the time being responsible for the administration of this Act

network means a physical system comprised of 1 or more links that collectively comprise the network infrastructure that is used to convey reticulated services on, under, or over land or water

occupier, in relation to land, means the person in physical occupation of the land, and,—

- (a) if there is more than 1 such person, the occupier is—
 - (i) the head of the household that occupies that land; or
 - (ii) the person who is or claims to be the senior occupier; and
- (b) if the occupier is evidently a short-term occupier only, the occupier is the person who allowed that short-term occupation

owner means an owner of interests in land

owner of interests in land has the meaning given in section 7

Pa Enua means the outer islands (administered by Island Governments of the Cook Islands)

permit includes a consent or any other form of authorisation

public holiday means a public holiday under the Public Holidays Act 1999

regulations means regulations made under this Act

reticulated infrastructure means each and all of the physical components between the start point of a network and the end point of the network and—

- (a) includes, without limitation,—
 - (i) all pipes, drains, wires, cables, or other conduits through which the amenity flows or is transmitted; and
 - (ii) all structures and fittings used in connection with the conduits, such as poles, manholes, and substations; but
- (b) does not include—
 - (i) the start point of the network or anything before it; or
 - (ii) anything beyond the end point of the network; or
 - (iii) in the case of storm water, streams, rivers, or lakes

reticulated service means the provision (either directly or indirectly) of any of the following amenities to the general public by means of reticulated infrastructure:

- (a) electricity;
- (b) telecommunications (including data), but only if provided via wires, cables, or other physical conduits;
- (c) water supply;
- (d) waste water;
- (e) storm water drainage

right of access means a right of a kind described in sections 17 and 21

road—

- (a) means—
 - (i) any road existing or proclaimed under the Cook Islands Act 1915 or section 9 of this Act as a road; and

- (ii) any road named in a list of roads in regulations and designated by those regulations as a road for the purposes of this subparagraph; and
- (b) includes (within the road boundary)—
 - (i) the berm alongside the road; and
 - (ii) any pavement alongside the road; and
 - (iii) any public parking spaces, whether formed or not, alongside the road; and
 - (iv) any bridges, ferries, and fords that form part of the road; and
 - (v) any retaining walls, culverts, drainage works, and associated structures and earthworks necessary for the structural integrity of the road; and
 - (vi) the public rights of way associated with the land that comprises the road

road drainage means the gully traps, drains, culverts, and drainage systems, and also created soak pits and storm water runoff necessary to ensure that a road drains effectively

roads schedule means a list of roads set out in regulations and designated by those regulations as roads for the purposes of paragraph(a)(ii) of the definition of road

Secretary means the head of ICI

standards means—

- (a) standards applied, incorporated by reference, or prescribed in regulations that relate to the construction or maintenance of roads or other public infrastructure;
- (b) standards issued or adopted by an accessway manager or public infrastructure manager that—
 - (i) are authorised by regulations; and
 - (ii) relate to the construction, alteration, or maintenance of roads or other infrastructure

start point, in relation to reticulated infrastructure,—

- (a) in the case of electricity, telecommunications, and water supply, means a facility, structure, or piece of equipment located on an island that the relevant infrastructure manager determines is, for that island, the place from which reticulation to the public begins;
- (b) in the case of waste water, means the point at which the waste water from a customer's property first mingles with waste water or storm water from another person's property;
- (c) in the case of storm water, means the point at which storm water first enters a storm water drain that is named or shown as forming part of a storm water network

storm water drain—

- (a) means any drain, watercourse or other natural or engineered route that drains (or is intended to drain) storm water (whether or not forming part of a storm water network) and that is named in a list or shown on a map set out in the regulations; and

- (b) includes every pipe, swale, weir, drain, culvert, or constructed drain that is named in that list or shown on that map as forming part of the storm water drain

vegetation means any part of a plant, including its foliage, branches, trunk, and roots

working day means any time between 8 am and 4 pm on any day of the week other than—

- (a) a Saturday, Sunday, or public holiday; or
- (b) a day in the period commencing on 20 December in any year and ending on 10 January in the following year.

7 Meaning of owner of interests in land

- (1) For the purposes of this Act, an **owner of interests in land** or **owner** is any of the following:

- (a) in the case of land that has been investigated and is not subject to a lease with a remaining term of more than 15 years (including rights of renewal),—
 - (i) if the land is subject to an occupation right, the holder of the occupation right;
 - (ii) if the land is subject to a vesting order, the holder of the vesting order;
 - (iii) if the land is not subject to an occupation order or to a vesting order, the native freehold owner;
- (b) in the case of land that has been investigated and is subject to a lease with a remaining term of more than 15 years (including rights of renewal), the holder of that lease;
- (c) in the case of land on any of the following islands that has not been investigated, the customary owners:
 - (i) Mitiaro;
 - (ii) Mangaia;
 - (iii) Nassau;
 - (iv) Palmerston;
 - (v) Pukapuka;
- (d) in the case of land that has not been investigated and is on any island other than those listed in paragraph (c), the landowner determined by the court;
- (e) in the case of Crown land, the Crown;
- (f) in the case of freehold land other than native freehold land, the owner of that land.

- (2) If, for any particular land, there is more than 1 owner as described in subsection (1), every reference in this Act to an owner must be taken to be a reference to—
 - (a) each of those owners; or
 - (b) each and any person authorised by the Court or any owners to represent some or all of the owners.
- (3) Subsection (1)(b) is subject to section 53(3) (which relates to the rights of owners of land).

8 Enduring agreements

- (1) An agreement, or part of an agreement, about land is **enduring** if—
- (a) it is between an owner and an infrastructure manager; and
 - (b) it is about any of the following:
 - (i) the location of—
 - (A) a road constructed or to be constructed on the land;
 - (B) any other infrastructure installed or to be installed on the land;
 - (ii) compensation payable to the owner in respect of that construction or installation;
 - (iii) conditions relating to the construction or installation or maintenance of infrastructure; and
 - (c) if entered into after this Act comes into force, it is in writing and signed by all parties.
- (2) Except as provided in the agreement itself, an agreement that is enduring runs with the land described in it, and is therefore not affected by—
- (a) the sale, transfer, or other dealing with the land (whether of legal or customary effect); or
 - (b) the expiration or termination of any lease over the land; or
 - (c) the cancellation or expiry of any occupation right or vesting order relating to the land; or
 - (d) the death of any signatory; or
 - (e) a change in the name or ownership of the infrastructure manager.
- (3) If the Court makes an order under section 47, that order is to be treated as if it were an enduring agreement, unless or until, and only to the extent that, it is subsequently varied by agreement between the parties or by the Court.

**Part 2
Roads**

Subpart 1—Proclamation and closing of roads

Proclamation of roads

9 Power to proclaim roads

- (1) The Queen's Representative may, by warrant, proclaim any land as a road.
- (2) The Queen's Representative must not make a proclamation unless—
- (a) the survey plan of the road details all necessary road drainage and land needed for that road drainage; and
 - (b) the Secretary has certified to the Queen's Representative that the road, so far as is reasonably practicable, meets the requirements of this Part.
- (3) Every owner who suffers loss or damage by reason of that proclamation is entitled to compensation for that loss or damage in the manner set out in Part 6.

Compare: 1915 No 40 s 606 & 607

10 Roads do not vest in the Crown

- (1) A road is not, because of its proclamation, vested in the Crown, but—
 - (a) is in the possession of the Crown; and
 - (b) continues to be owned by the owners of the underlying land as if no public right of way existed in respect of the road.
- (2) This section does not take away any title to any road acquired by the Crown before the coming into force of this Act.

Compare: 1915 No 40 s 608

11 Effect of certain court orders

An order of the Land Division of the High Court in respect of land does not affect the existence of any road existing on that land at the date of the order.

12 Compare: 1915 No 40 s 610 Court orders affecting accessways

- (1) This section applies to any of the following orders of the Court:
 - (a) any order on investigation of title;
 - (b) any partition order;
 - (c) any order granting a right of way.
- (2) The Court may lay out an accessway only if that accessway is first certified by the Chief Surveyor as complying with the requirements of this Act.
- (3) Subject to subsection (2), the Court may lay out an accessway as it thinks will allow best occupation and use of the land served by that accessway.

13 Proclaiming accessway as a road

- (1) The Queen's Representative may by warrant proclaim any accessway as a road.
- (2) Compensation is not payable in respect of that proclamation except to the extent that its footprint, as proclaimed, is significantly larger than, or has a physical footprint significantly different from, the accessway it replaces or upgrades.
- (3) Until and unless the Queen's Representative has proclaimed an accessway as a road, the Court may cancel or modify any order by which that accessway has been laid out.
- (4) Any owner may dedicate a road, subject to the approval of,—
 - (a) in the case of Rarotonga, the Secretary;
 - (b) in the case of any other island, its Island Government.
- (5) A dedication under subsection (4) is not an alienation of land for the purposes of the Cook Islands Act 1915.

Compare: 1915 No 40 s 612

14 Closing of roads

- (1) The Queen's Representative may by warrant close, in whole or in part, any road.
- (2) The Queen's Representative may not close a road if to do so would leave any land without any immediate access to either a road or an accessway.
- (3) When a road is closed, that closure does not affect—
 - (a) the legal status of any infrastructure under, on, or above that road; or
 - (b) the rights of any infrastructure manager under this Act.

Compare: 1915 No 40 s 613

15 Warrants about roads to be gazetted

- (1) A warrant of the Queen's Representative under this Part must be—
 - (a) issued under the Seal of the Cook Islands; and
 - (b) published in the *Gazette*.
- (2) A warrant takes effect according to its terms upon its publication in the *Gazette* or any later date specified in the warrant.

Compare: 1915 No 40 s 614

**Subpart 2—Roles and functions of Secretary and Island Governments
with regard to roads**

16 Responsibility for roads

- (1) The following are responsible for exercising the Crown's functions of forming, altering, maintaining, and repairing roads:
 - (a) on Rarotonga, the Secretary;
 - (b) on each island of the Pa Enua, the Island Government of that island.
- (2) A person having responsibility for a road under this section must—
 - (a) manage the physical condition of that road; and
 - (b) ensure that any new road is formed and any existing road is maintained, in each case,—
 - (i) in accordance with this Act and regulations made under this Act; and
 - (ii) in compliance, so far as is reasonably practicable, with all relevant standards.
- (3) Neither the Crown nor any person having responsibility for a road under this section is liable in civil proceedings for harm arising from a failure to maintain a road or to consider maintenance of a road.
- (4) The Secretary must—
 - (a) develop protocols with the Commissioner under section 3 of the Transport Act 1966 about the operation of roads in Rarotonga and share those protocols with Island Governments for application in the Pa Enua (with or without modifications);
 - (b) plan for changes to roading in both Rarotonga and (whenever asked to do so by an Island Government) the relevant Island in the Pa Enua.

Right of access to roads and associated land

17 Temporary right of access to associated land by Secretary, Island Government, or other infrastructure manager

- (1) This section applies only to—
 - (a) the Secretary, in the case of Rarotonga; and
 - (b) the Island Government of each island of the Pa Enua, in the case of that island; and

- (c) another infrastructure manager who needs to have access to land to carry out the infrastructure manager's functions.
- (2) For the purpose of investigating possible new roads or alterations to existing roads, and for any other prescribed purpose, the Secretary, Island Government, or other infrastructure manager has a right of access to any land—
 - (a) without prior notice to the occupier or owner, as long as the access does not disturb the land or vegetation on it in more than a minor way; and
 - (b) with prior reasonable notice to the occupier or owner, if the access will require disturbance to the land or vegetation on it in more than minor way.
- (3) The Secretary, Island Government, or other infrastructure manager has a right of access to associated land for the purpose of forming new roads, making alterations to existing roads, and maintaining any road, but must give prior reasonable notice to the owner or occupier.
- (4) Notice required under this section may be given in the way set out in section 62.

Maintenance

18 Maintenance of roads

- (1) A reference in this Act to **maintaining** a road includes—
 - (a) grading, sealing, resealing, repairing, or cleaning the road; and
 - (b) replacing or repairing any markings, signs, or barriers on the road; and
 - (c) trimming or removing any vegetation that is on the berm, or is damaging or threatening to damage the road, or overhanging or threatening to overhang the road so as to obscure visibility; and
 - (d) making minor improvements such as adding markings and reflective markers (for example, cat's eyes).
- (2) All trimming and removal of vegetation under this section must be done as required by sections 37 to 41.

Removal of obstructions

19 Obstructions on roads

The Secretary or the relevant Island Government, as the case requires, may remove any thing, without notice to, or the consent of, the owner of the thing, from the road or land adjoining that road (including privately owned land) that—

- (a) obstructs traffic or otherwise creates a safety hazard (for example, an advertising hoarding that obstructs the vision of drivers); or
- (b) may cause or contribute to flooding or otherwise create a risk of damage to the road.

Part 3

Infrastructure (other than roads)

20 Application of this Part

This Part applies in respect of all infrastructure other than roads.

Right of access to infrastructure and associated land

21 Temporary right of access of infrastructure managers to infrastructure and associated land

- (1) For the purposes set out in subsection (2)—
- (a) a right of access to any land—
 - (i) without prior notice to the occupier or owner of the land, as long as the access does not disturb the occupier or the land or vegetation on it in more than a minor way; and
 - (ii) with prior reasonable notice to the occupier or owner of the land, if the access will require disturbance to the occupier or the land or vegetation on it in more than a minor way;
 - (b) a right of access to associated land, with prior reasonable notice to the occupier or owner of the land.
- (2) The purposes are—
- (a) investigating possible new infrastructure or alterations to existing infrastructure;
 - (b) constructing or installing new infrastructure;
 - (c) altering existing infrastructure;
 - (d) maintaining existing infrastructure;
 - (e) any other prescribed purpose.
- (3) Notice required under this section may be given in the way set out in section 62.
- (4) To avoid doubt, this section does not confer any right or interest in land in the infrastructure manager.

Maintenance

22 Maintenance of infrastructure

- (1) A reference in this Act to **maintaining** infrastructure includes doing any of the following:
- (a) maintaining or repairing the infrastructure;
 - (b) changing, replacing, or upgrading the infrastructure in any way;
 - (c) trimming or removing any vegetation (including vegetation on adjacent land);
 - (d) removing the infrastructure;
 - (e) removing any thing that is likely to damage or impair the operation of the infrastructure.
- (2) All trimming and removal of vegetation under this section must be done as required by sections 37 to 41.

Network connections

23 Right of infrastructure manager to isolate or cut off connections

- (1) An infrastructure manager who owns or operates a network may isolate or cut off a particular connection from the rest of its network if it believes on reasonable grounds that—

- (a) any conduit or equipment beyond the end point (or start point, as the case may be) of the network is dysfunctional to a material degree in any of the following ways:
 - (i) it, or the service provided, leaks;
 - (ii) in the case of electricity, it grounds in a dysfunctional way or short-circuits;
 - (iii) it poses a risk of damage or injury to persons, property, or the environment; or
 - (b) the connection is adversely affecting, or is likely to adversely affect, the service provided by the network to other customers; or
 - (c) a person using the network at or beyond the end point (or start point as the case may be) is using it unlawfully or for an unlawful purpose; or it is necessary or desirable to isolate or cut off the connection to protect—
 - (i) the rest of that, or any other, reticulated infrastructure; or
 - (ii) the delivery of that, or any other, reticulated service.
- (2) Before isolating a connection under this section, the infrastructure manager must (except in an emergency) give written notice to the person who the infrastructure manager believes to be the customer using the connection that,—
- (a) if the problem is capable of being remedied by the customer, sets out the steps that the customer must take to avoid the connection being isolated; and
 - (b) sets out the date and time when the connection will be isolated if the problem is not remedied earlier.
- (3) A notice required by this section may be given in the way set out in section 62.

Part 4

The Pa Enua

24 Infrastructure manager in relation to Pa Enua

- (1) Each Island Government is the infrastructure manager in relation to its island.
- (2) However, this does not affect the ability of each Island Government to delegate its responsibilities as infrastructure manager.
- (3) This section is subject to section 25.

25 Pa Enua capital works

- (1) If Parliament appropriates money to be spent on capital works in the Pa Enua, then, as a condition of the release of that money for those purposes, the relevant Island Government must—
 - (a) enter into a service contract with another infrastructure manager under section 63(1)(b) of the Island Government Act 2012-2013 under which that infrastructure manager has overall project control and management (those services to be provided without cost to the Island Government); or

- (2) enter into a project management contract with a project manager with international experience and qualifications reasonably acceptable to the Financial Secretary, acting on the advice of the Secretary and any third party donor or stakeholder in the project (with the Island Government assuming responsibility for the payment for those services). The terms of any contract referred to in subsection (1) and the manner in which that contract is performed by the Island Government must enable the prudent management of the fiscal risks facing the Crown in the design, construction, installation, and future maintenance of those capital works.

26 Functions of the Secretary in relation to Pa Enua

- (1) The Secretary must, on request by an Island Government, provide that Government with—
 - (a) planning, design, and technical support in relation to—
 - (i) any existing or proposed reticulated service; and
 - (ii) the construction, installation, maintenance, or alteration of infrastructure;
 - (b) asset management and infrastructure planning support in Pa Enua.
- (2) Subsection (1) does not apply in relation to the port and airport services and facilities in Aitutaki.

Part 5 General rights and obligations

Right of access

27 Nature of right of access

- (1) If an infrastructure manager has a **right of access** in relation to infrastructure located on, under, or over land or an accessway, the infrastructure manager may, at any reasonable time,—
 - (a) enter and re-enter the land or accessway on foot, in a vehicle, by boat, or by aircraft or drone; and
 - (b) bring on and, if necessary, leave any equipment, appliances, or machinery needed to do the work on the land or accessway; and
 - (c) do whatever is necessary to do the work, including taking steps to prepare for the work and to remediate the land or accessway following completion of the work.
- (2) A right of access under this Act must be exercised solely for the purpose for which the right is given (that is, for constructing, installing, or maintaining infrastructure, or trimming and removing vegetation that creates a risk to infrastructure).
- (3) Every right of access under this Act must be exercised in accordance with—
 - (a) the requirements of this Act; and
 - (b) any applicable conditions in an agreement between the accessway manager or occupier or owner of the land, as the case may be, and the infrastructure manager; and
 - (c) if the right is granted by the Court, any conditions imposed by the Court.

- (4) A right of access may be exercised by any employee, contractor, subcontractor of a contractor, or other agent of the infrastructure manager who has the right, but only if each person is acting within his or her scope of authority.
- (5) A right of access under this Act is not an alienation of land for the purposes of the Cook Islands Act 1915.

28 Identification requirements when exercising rights of access

- (1) Any person who works for an infrastructure manager must, while exercising access rights under this Act on behalf of the infrastructure manager,—
 - (a) carry evidence identifying the infrastructure manager for whom the person is working; and
 - (b) produce that evidence to any person claiming to be, or authorised to act for, the landowner, occupier, or accessway manager (as the case requires).
- (2) However, a person is not required to comply with subsection (1) while he or she is working under the immediate control of a person who—
 - (a) is present on the land or accessway; and
 - (b) complies with subsection (1).
- (3) However, before beginning work, the infrastructure manager must give reasonable notice, by hand-delivery,—
 - (a) with respect to the accessway itself, to the accessway manager;
 - (b) with respect to any associated land, to the occupier of the land.
- (4) This section is subject to section 62 (which relates to notice).

Right to leave infrastructure in place

29 Right to leave infrastructure in place

- (1) An infrastructure manager has a right to leave its infrastructure in place indefinitely if the infrastructure is located on, under, or over an accessway or land and—
 - (a) has been installed before the date on which this Act comes into force; or
 - (b) is installed in accordance with this Act on or after the day when this Act comes into force.
- (2) Despite subsection (1), the right to leave infrastructure in place may be extinguished by and is subject to—
 - (a) the terms of an enduring agreement;
 - (b) an order of the Court.

General obligations and rights of infrastructure managers

30 Consultation with affected parties

- (1) An infrastructure manager must take into account the consideration that the rights and interests of other people are affected by the construction, installation, and maintenance of infrastructure.
- (2) When exercising rights under this Act relating to land or accessways, an infrastructure manager must take all reasonable steps to reach agreement with the occupiers and owners of land and accessway managers about the manner in which those rights are exercised.

- (3) Subsection (2) is subject to sections 17 and 21 (relating to temporary access).
- (4) Before undertaking substantial work involving infrastructure, an infrastructure manager must make reasonable inquiries (if necessary by public notice) of people within the Cook Islands to find out what concerns or objections there might be to the proposed work from—
 - (a) any owners or occupiers of land and accessway managers who may be affected by the work; and
 - (b) other infrastructure managers; and
 - (c) the general public.
- (5) Infrastructure managers must co-operate with each other and with accessway managers to ensure that land and accessways are disturbed as infrequently and as little as possible.

31 Obligation to restore land

If, during the exercise of its powers under this Act, an infrastructure manager causes damage to any land, then unless an enduring agreement provides otherwise the manager must restore the land—

- (a) in the manner set out in any relevant project permit or consent issued under the Environment Act 2003; and
- (b) in the manner set out in any specific clauses in any relevant environmental impact assessment document relevant to that project permit; and
- (c) as reasonably required by the owner.

32 Obligations in relation to navigable waters

If an infrastructure manager places infrastructure on, under, or over any navigable waters, the infrastructure manager must—

- (a) ensure that the infrastructure does not interfere with navigation in any way; and
- (b) carry out any installation or maintenance work in connection with that infrastructure at a time and in a way that minimises interference with navigation.

33 General obligation to obtain permission of affected infrastructure manager before undertaking certain works

- (1) This section applies to a person who—
 - (a) wishes to do anything that will or may materially affect—
 - (i) the condition of a road or its use; or
 - (ii) access to a road; or
 - (iii) the condition of other infrastructure or its use; or
 - (iv) access to that infrastructure or the service it provides;
 - (b) wishes to construct, alter, or maintain any road or other infrastructure;
 - (c) wishes to connect any accessway to any road.
- (2) That person must advise the relevant infrastructure manager of the proposed activity and request permission to do that thing.
- (3) The infrastructure manager may impose conditions on that person under this section,—

- (a) in the case of any road, for the purpose of safeguarding or improving—
 - (i) the future use of the road; or
 - (ii) the condition of the road; or
 - (iii) access to the road; or
 - (iv) the safety of road users:
- (b) in the case of any other infrastructure, for the purposes of safeguarding or improving—
 - (i) access to existing infrastructure; or
 - (ii) anticipated access for future infrastructure; or
 - (iii) the proper operation of infrastructure; or
 - (iv) the use and enjoyment of infrastructure by users of it or the service provided by it.
- (4) If the proposed activity requires a permit under any other enactment, the infrastructure manager may, either generally or in the circumstances of any particular case,—
 - (a) make arrangements with the relevant permitting agency to ensure all matters requiring consideration under this section are communicated to that agency for consideration in its decision-making process:
 - (b) make submissions to that agency as to the matters required to be considered under this section and the conditions that should be imposed under any permit that agency may grant.
- (5) Without limiting subsections (1) to (4), a person must not connect any accessway to a road without the prior written permission of—
 - (a) the Secretary, in respect of any road on Rarotonga:
 - (b) the relevant Island Government, in respect of any road in the Pa Enua.

34 Procedural requirements where permission sought

- (1) An infrastructure manager who receives a request under section 33—
 - (a) must deal with the matter promptly, and in any case within 20 working days after receipt of the request; and
 - (b) may, by notice to the person seeking permission,—
 - (i) grant permission, with or without conditions (including conditions as to security for reinstatement costs); or
 - (ii) request further information, in which case the time period for dealing with the request for approval is extended to 20 working days after receipt of the request for further information; or
 - (iii) refuse permission, in which case the infrastructure manager must set out the reasons for the refusal.
- (2) If the infrastructure manager does not respond to a request within 20 days after receipt of the request, that person is entitled to—
 - (a) assume that permission has been granted, with no conditions imposed; and
 - (b) start work immediately, while complying with the requirements of all other enactments.

- (3) If the infrastructure manager refuses permission, or grants permission only with conditions that are not acceptable to that person, and dispute resolution under section 60 is unsuccessful, the person may apply to the Court for an order under this section.
- (4) After considering the application, the Court may—
 - (a) make an order giving the permission sought, with or without conditions specified by the Court; or
 - (b) refer the matter back to the infrastructure manager for further consideration; or
 - (c) deny the application.

Use of accessways and roads for infrastructure purposes

35 Permission to dig up roads and sealed accessways

- (1) Despite section 36(1)(c), an infrastructure manager must ask permission from the relevant manager before digging up any road or accessway that is formed with an engineered surface (eg, a surface of chipseal, concrete, tar, or another bituminous product).
- (2) A relevant manager who receives a request under this section—
 - (a) must deal with the matter promptly, and in any case within 20 working days after receipt of the request; and
 - (b) may, by notice to the infrastructure manager,—
 - (i) grant permission, with or without conditions (including conditions as to security for reinstatement costs); or
 - (ii) refuse permission, in which case the accessway manager must set out the reasons for the refusal.
- (3) If the relevant manager does not respond to a request within 20 days after receipt of the request, the infrastructure manager is entitled to—
 - (a) assume that permission has been granted, with no conditions imposed; and
 - (b) start work immediately.
- (4) If the relevant manager refuses permission, or grants permission only with conditions that are not acceptable to the infrastructure manager, and dispute resolution under section 60 is unsuccessful, the infrastructure manager may apply to the Court for an order under this section.
- (5) After considering the application, the Court may—
 - (a) make an order allowing the infrastructure manager to dig up the accessway, with or without conditions specified by the Court; or
 - (b) refer the matter back to the accessway manager for further consideration; or
 - (c) deny the application.
- (6) In this section, **relevant manager** means,—
 - (a) in the case of a road, the infrastructure manager who is responsible for the road;
 - (b) in the case of an accessway, the accessway manager who is responsible for the accessway.

36 Obligations of infrastructure managers in relation to roads and sealed accessways

- (1) When an infrastructure manager exercises rights of access in relation to a road or an accessway, or a right to dig up a sealed road or accessway, the infrastructure manager must—
 - (a) take all reasonable steps to minimise obstruction and interference to both vehicular traffic and foot traffic; and
 - (b) take all reasonable steps to mark obstructions and minimise hazards caused by the work; and
 - (c) not start to dig up or disturb the surface of any formed accessway without having the means and materials to fully restore the surface to at least as good a condition as the surface was in before the work started; and
 - (d) restore the accessway to at least as good a condition as it was in before the work started; and
 - (e) monitor all restoration work for at least 90 days after the work is finished, and carry out any further restoration work needed for any reason (such as for subsidence); and
 - (f) comply with all conditions relating to access or the right to dig up the accessway.
- (2) An infrastructure manager must ensure that its permanent infrastructure on or over an accessway does not interfere with normal traffic along the accessway.

Vegetation

37 Definitions relating to dealing with vegetation

- (1) The right to trim and remove vegetation under this Act—
 - (a) is the right to, at any reasonable time, trim, cut, or dig up any vegetation and to remove it; and
 - (b) includes a right of access to any accessway or open land required for that purpose.
- (2) Vegetation **creates a risk** to infrastructure if—
 - (a) the vegetation damages, obstructs, or interferes with all or any part of the infrastructure; or
 - (b) the relevant infrastructure manager believes on reasonable grounds that the vegetation is likely, either immediately or shortly, to damage, obstruct, or interfere with all or any part of the infrastructure.
- (3) The **person responsible** for vegetation is,—
 - (a) in relation to vegetation that has been intentionally placed on, or incorporated in, any part of an accessway by an accessway manager, that accessway manager; and
 - (b) in relation to any other vegetation that intrudes on, under, or over any part of an accessway from adjoining land, the occupier of that adjoining land;
 - (c) in relation to vegetation affecting infrastructure on land, the occupier of the land.

38 Vegetation on accessways

- (1) If vegetation that creates a risk to infrastructure is located on, under, or over an accessway, the infrastructure manager—
 - (a) has a right to trim and remove the vegetation at its own cost; but
 - (b) may instead ask, under section 39(1)(b), the person responsible to trim and remove the vegetation, in which case section 39 applies.
- (2) The person responsible for the vegetation and any occupier of associated land may, if dispute resolution under section 60 is unsuccessful, apply under section 50 for an order under section 51—
 - (a) preventing the infrastructure manager from exercising its right to trim and remove the vegetation under this section; or
 - (b) requiring the infrastructure manager to exercise its right only in accordance with any conditions relating to the way in which the work is to be undertaken that were agreed with the person responsible or imposed by the Court.

39 Vegetation on other land

- (1) If vegetation that creates a risk to a road or other infrastructure is located on, under, or over land that is not an accessway, the infrastructure manager may—
 - (a) ask the person responsible for the vegetation to trim and remove it at the person's own cost; or
 - (b) seek permission from the person responsible to exercise the right to trim and remove it.
- (2) If, within 7 days after making a request under subsection (1), the person responsible indicates that he or she does not want the vegetation trimmed or removed, or wants to impose conditions that the infrastructure manager does not agree to, the manager may seek an order under section 40.
- (3) If, within 7 days after making a request under subsection (1), the person responsible has not trimmed and removed the vegetation but has either agreed to, or not responded to, the request, the infrastructure manager may exercise its right to trim and remove the vegetation, at its own cost.
- (4) The person responsible for the vegetation and any occupier of associated land may, if dispute resolution under section 60 is unsuccessful, apply under section 50 for an order under section 51—
 - (a) preventing the infrastructure manager from exercising its right to trim and remove vegetation; or
 - (b) requiring the infrastructure manager to exercise its right only in accordance with any conditions relating to the way in which the work is to be undertaken that were agreed with the person responsible or imposed by the Court.

40 Order permitting trimming and removal of vegetation

- (1) If a person responsible for vegetation refuses to give an infrastructure manager the right to trim or remove it, the infrastructure manager may, if dispute resolution under section 60 is unsuccessful, apply to the Court for an order giving it the right to trim and remove specified vegetation.
- (2) The Court may make the order, with or without conditions, after considering—

- (a) the extent of the risk to the infrastructure that the vegetation poses; and
 - (b) the reasons that the person responsible gives for not wanting the vegetation trimmed or removed, or for any conditions the person wants placed on any trimming and removal.
- (3) If the Court makes an order under this section, the person responsible for the vegetation must pay the infrastructure manager's reasonable costs for doing the work unless the Court orders otherwise.
- (4) If the person responsible for the vegetation disputes the amount of the infrastructure manager's costs, the costs may be fixed,—
 - (a) if the amount in dispute is less than \$3,000, by the Registrar; or
 - (b) Otherwise, by the Court.

41 How much vegetation to trim and remove

- (1) If an infrastructure manager trims and removes vegetation during the construction, maintenance, or installation of infrastructure, or when the vegetation is creating or is likely to create a risk to infrastructure, the infrastructure manager is entitled to remove the vegetation beyond the footprint of the existing or proposed infrastructure to a distance of—
 - (a) 2 metres on flat terrain; and
 - (b) 3 metres on hilly terrain.
- (2) However, in all cases the infrastructure manager must be reasonably satisfied that no more vegetation is removed than is necessary to prevent the vegetation creating a risk to the infrastructure.
- (3) In making a judgement about how much vegetation to trim and remove, an infrastructure manager must take into account the expected rates of growth and other characteristics of the vegetation.
- (4) When trimming and removing established and mature trees, an infrastructure manager must apply best arborist and environmental practice.
- (5) An infrastructure manager must dispose of all trimmed and removed vegetation in an environmentally responsible way.

Emergency and other powers

42 Emergency powers

- (1) This section applies in each of the following situations (an **emergency**), and overrides anything else in this Act:
 - (a) one or more people have suffered, or are at imminent risk of suffering, serious injury from an unexpected event or situation involving a road or other infrastructure:
 - (b) material damage to property has occurred, or is at imminent risk of occurring, from an unexpected event or situation involving a road or other infrastructure:
 - (c) there is a risk to public health or safety created by a road or other infrastructure:
 - (d) an event has happened, or is imminent, that has caused or is likely to cause significant disruption to any service provided by the road or other infrastructure.

- (2) In an emergency, an infrastructure manager has a right of access to any accessway or land, without giving notice to or obtaining consent from any person, if the access is urgently required for the purpose of doing any work necessary to—
- (a) protect any person from injury; or
 - (b) protect property from material damage; or
 - (c) protect public health or safety; or
 - (d) protect or restore infrastructure; or
 - (e) prevent environmental damage; or
 - (f) protect against the loss of resources.
- (3) However, if the work is necessary only to protect or restore infrastructure, the infrastructure manager must give at least oral notice to the occupier of the land or the accessway manager if that is reasonably possible in the circumstances.

43 Directions to occupiers or owners of land to clear or rectify road drainage or storm water drains

- (1) An infrastructure manager may direct an occupier or owner of land on which there is road drainage or storm water drainage to clear a specified drain if the infrastructure manager believes that the drain is presenting or may present a risk of flooding or other damage to the infrastructure.
- (2) An infrastructure manager may direct an occupier or owner of land to rectify a specified drain, if the infrastructure manager believes on reasonable grounds that the occupier or owner has altered the drain in a way that presents or may present a risk of flooding or other damage to infrastructure.
- (3) The occupier or owner of land must clear or rectify the drain within 30 days of receiving a direction under subsection (1) or (2).
- (4) However, the occupier or owner may apply to the Court under section 50 for an order under section 51 that the occupier or owner is not required to clear or rectify the drain.

Part 6

Rights and obligations where land is used for infrastructure purposes

Infrastructure manager's role when needing land

44 Acquiring land and interests in land

- (1) If an infrastructure manager needs to acquire land, or an interest in land, for the purpose of constructing new infrastructure, or altering existing infrastructure, the infrastructure manager must seek the agreement of the owner or owners of the land.
- (2) If reasonable attempts by the infrastructure manager to obtain an enduring agreement with those owners have failed, the infrastructure manager may, if dispute resolution under section 60 is unsuccessful, apply to the Court, using the procedures set out in section 46, and seek an order to—
- (a) confirm that the infrastructure manager may construct that new infrastructure or alter that existing infrastructure; and

- (b) grant the infrastructure manager whatever right or interest in the land the Court is satisfied is appropriate and reasonable in the circumstances; and
 - (c) direct the length of term and other terms and conditions (including financial terms and conditions) on which that right or interest is to be granted; and
 - (d) determine any other appropriate compensation.
- (3) Nothing in this section—
- (a) affects the powers of the Crown under Part 10 of the Cook Islands Act 1915 in any case where an infrastructure manager has been unsuccessful in obtaining both an enduring agreement and a Court order; or
 - (b) permits a person (other than the Crown acting for public purposes) to acquire native freehold land for an estate in fee simple or for any other freehold interest, whether legal or equitable.

When road can be formed as new infrastructure constructed or installed

- 45 Forming road and constructing or installing new infrastructure on land**
- (1) This section applies to land that is not an accessway.
- (2) After this Act comes into force, an infrastructure manager may form a road or install other new infrastructure on land only—
- (a) in accordance with an enduring agreement entered into with the owner or owners of the land; or
 - (b) under an order of the Court made under section 47.
- (3) For the purposes of this section, infrastructure that is installed to replace existing infrastructure at the same location and has physical dimensions and characteristics that are no more intrusive than that existing infrastructure, is not new infrastructure.

Infrastructure manager may apply to Court for order concerning land

- 46 Application for order if owner agreement not obtained**
- (1) An infrastructure manager may apply to the Court for an order under section 47 if the infrastructure manager is unable to enter into an enduring agreement concerning land for any reason, including because—
- (a) one or more owners are unable or unwilling to enter into negotiations and dispute resolution under section 60 is unsuccessful; or
 - (b) negotiations between the parties have broken down or there are unreasonably long delays in progressing negotiations and dispute resolution under section 60 is either unsuccessful or inappropriate; or
 - (c) agreement has been reached with some owners but it is necessary or desirable to commit all owners and dispute resolution under section 60 is either unsuccessful or inappropriate.
- (2) If an application under this section is filed by an infrastructure manager, it must be served as direction by the Court.
- (3) Without limiting subsection (2), the Court may request the Registrar to convene and conduct a meeting of owners in the same way as for a meeting of assembled owners under the Land (Facilitation of Dealings) Act 1970. The provisions of Part II of that Act apply to that meeting.

- (4) The Court is entitled to make an order under this Act regardless of the outcome of that meeting, but it must, in considering the application, treat any resolution as representing the agreed position of the owners of the land.
- (5) At the hearing of an application under this section, the following may give evidence and address the Court in support of, or opposition to, the application:
 - (a) the applicant;
 - (b) every person served with notice of the application;
 - (c) any person who satisfies the Court that the person would be affected by the proposed work to a greater degree than a member of the public generally;
 - (d) any incorporated society or other recognised body that advocates on environmental matters and seeks to be heard on issues of that sort.
- (6) This section does not limit—
 - (a) any other power or discretion of the Court;
 - (b) the power of the Court to direct further meetings with owners.

47 Orders as to infrastructure

- (1) The Court may make an order under this section if the Court is satisfied that,—
 - (a) in the case of forming a road or constructing or installing other new infrastructure,—
 - (i) forming of the road or the construction or installation of the other new infrastructure is reasonably necessary; and
 - (ii) any alternative land that could be used for the infrastructure manager's purposes would involve that manager in unreasonable costs or technical difficulties;
 - (b) in the case of an application made under section 46, it is reasonable and appropriate in the circumstances that the Court make the order requested;
 - (c) in each case,—
 - (i) the infrastructure manager has taken all reasonable steps to obtain the consent of all owners required to be served; and
 - (ii) the infrastructure manager has complied with other relevant requirements of this Act; and
 - (iii) the conditions of the order are fair and reasonable to all parties.
- (2) An order made under this section—
 - (a) is to be treated for all purposes as if it were an enduring agreement between the parties named in it; and
 - (b) may be subject to any conditions the Court thinks fair and reasonable, including the following:
 - (i) conditions relating to the exercise of the rights of access to the land and any associated land;
 - (ii) how and when specific work may or must be done;
 - (iii) whether compensation is payable to any person and, if so, how much; and
 - (c) may specify who is to be served with the order and how service is to be effected.

- (3) An infrastructure manager acting under the authority of an order made under this section must not exercise any right of access under section 17 or 21 until at least 3 working days after the order has been served on all parties required to be served with it.
- (4) Subject to any direction of the Court to the contrary, notice required under this section may be given in the way set out in section 62.

Liability for damage to infrastructure

48 Liability for damage to infrastructure

- (1) A person who damages any infrastructure is liable to the infrastructure manager for the cost of all necessary repairs to or replacement of the infrastructure if the person caused the damage—
 - (a) intentionally; or
 - (b) through negligence.
- (2) In subsection (1), **negligence** includes—
 - (a) a failure to check the precise location of infrastructure when a reasonable person might suspect that infrastructure could be located in or near a place; and
 - (b) a failure to take reasonable care when engaged in activities close to a road or other infrastructure.

Rights of owners, occupiers, and accessway managers

49 Application to relocate infrastructure

- (1) The following applicants may apply in writing to an infrastructure manager to remove or relocate any specified infrastructure:
 - (a) in relation to infrastructure located on an accessway, the accessway manager;
 - (b) in relation to infrastructure located on open land,—
 - (i) the owner; or
 - (ii) any occupier of the land who is authorised by the owner to apply under this section.
- (2) An infrastructure manager that receives an application under this section must promptly consider it, and in any case must provide a response to the applicant within 20 working days—
 - (a) agreeing to the application, with or without conditions, including conditions requiring the applicant to meet some or all of the reasonable costs of doing the work; or
 - (b) declining the application, in which case the infrastructure manager must set out the reasons.
- (3) An applicant may, if dispute resolution under section 60 is unsuccessful, appeal to the Court against a decision to decline an application or, if the application is agreed, against any conditions imposed.
- (4) On appeal, the Court may—
 - (a) require the infrastructure manager to agree to the applicant's application, in which case the Court must specify the conditions that apply; or

- (b) refer the matter back to the infrastructure manager for further consideration; or
- (c) confirm the infrastructure manager's decision to decline the applicant's application.

50 Application for order to prevent work or enforce conditions

- (1) Any of the following may, if dispute resolution under section 60 is unsuccessful, apply for an order under section 51 to prevent temporary access or to impose conditions on that access, to prevent work or enforce conditions, or for a declaration that work is unnecessary:
 - (a) an accessway manager, infrastructure manager, or owner of land affected by the exercise or proposed exercise of rights of access under section 17 or 21;
 - (b) a person responsible for vegetation, or an occupier or owner of associated land, affected by the exercise or proposed exercise of rights under section 38 or 39;
 - (c) an occupier or owner of land, under section 43.
- (2) When an application is set down for hearing, it must immediately be served by the applicant on the relevant infrastructure manager.
- (3) An infrastructure manager who is served with an application under this section must not start, or must immediately stop, the work referred to in the application.
- (4) The infrastructure manager must not commence or recommence the work except in accordance with any order of the Court made under section 51.
- (5) An infrastructure manager commits an offence and is liable on conviction to a fine not exceeding \$10,000, if the infrastructure manager commences or recommences work after being served with an application under this section, when not authorised by an order under section 51.
- (6) Proceedings for an offence against subsection (5) may not be commenced against any person or body that is an instrument of the Crown, without the prior consent of the Attorney-General.

51 Order to prevent work or enforce conditions or declare work unnecessary

- (1) On an application under section 50, the Court may make an order to prevent or impose conditions on access or work or enforce conditions or declare work unnecessary, being an order that does any one or more the following:
 - (a) prevents the exercise of a right of access under section 17 or 21 or imposes conditions on that right of access;
 - (b) requires the infrastructure manager to stop, or not start, particular work;
 - (c) permits an infrastructure manager to continue or start the work only in compliance with conditions relating to the work that are—
 - (i) contained in an enduring agreement, or any other binding agreement applying to the infrastructure manager; or
 - (ii) imposed by the Court as part of the order;
 - (d) modifies the application of section 50(4) so that the prohibition in that provision applies only to particular aspects of the work, or applies only until a specified date or for a specified period, or both:

- (e) sets aside the direction of an infrastructure manager under section 43 for an owner or occupier of land to clear or rectify road drainage or a storm water drain.
- (2) If the Court makes an order to prevent access or impose conditions of access or enforce conditions, it may at the same time remove or modify (either permanently or for a particular period or in particular circumstances) any conditions of an agreement, or impose any new conditions it thinks fit, including, without limitation, conditions relating to—
 - (a) how and when land or an accessway may be accessed; and
 - (b) how and when specific work may or must be done; and
 - (c) whether compensation is payable and, if so, how much; and
 - (d) who is to be served with the order, and how service is to be effected.
- (3) If the Court is satisfied that an application by an affected party lacks all merit, the Court may award costs against the affected party.

Compensation

52 Overarching principle when determining issues of compensation

The overarching principle to be observed by any Court or person in deciding issues of compensation relating to the construction, installation, or maintenance of infrastructure is that because the provision of infrastructure is work for the public good and benefit, individuals must necessarily accept some uncompensated loss or damage to their property and interference with enjoyment of their property rights.

53 Applying for compensation

- (1) Nothing in this Act affects or limits the right in Article 40 of the constitution to claim compensation in respect of any right over or interest in property acquired compulsorily.
- (2) In respect of anything other than compensation claimed under Article 40 of the constitution, the Court may order compensation to be paid by an infrastructure manager to an occupier or owner of land or an accessway manager (in this section and sections 54 and 55 referred to as an **applicant**)—
 - (a) on an application for compensation by the applicant; or
 - (b) as a condition of any order made under section 51.
- (3) An application for compensation may not be made under subsection (2)(b) unless dispute resolution under section 60 is unsuccessful.
- (4) Without limiting subsection (1), nothing in section 7(1)(b) or in any enduring agreement that is entered into between a lessee and an infrastructure manager affects—
 - (a) the right to compensation of native freehold owners if land is compulsorily acquired; or
 - (b) the right of native freehold owners to claim compensation for damage or loss of a kind that continues beyond the expiry of the lease.

- (5) If the infrastructure manager and the lessee enter into an enduring agreement they must account to the native freehold owners for the owner's entitlement (if any) to part or all of the compensation paid by the infrastructure manager to the lessee.
- (6) If the Court makes an order under this section and there are multiple interests held in the land that is the subject of the application, the Court must, unless the Court considers that it would be contrary to the interests of justice or is unable for any reason to do so, apportion compensation between the respective interest holders in the land in a way that is proportionate to the value of their respective interests.

54 When compensation payable

- (1) An applicant is entitled to compensation from an infrastructure manager in the following circumstances:
 - (a) in exercising a right under this Act, the infrastructure manager has materially damaged or destroyed the applicant's property, or materially affected the applicant's use or enjoyment of the property;
 - (b) in exercising a right under this Act, the infrastructure manager has, in effect, taken possession of the applicant's property within the meaning of Article 40 of the constitution;
 - (c) the infrastructure manager has infrastructure below land, and the applicant now wishes to place a permanent structure on that land, but the infrastructure manager neither—
 - (i) consents to relocate the infrastructure outside the footprint of the proposed structure; nor
 - (ii) consents to the applicant placing the proposed structure over the infrastructure;
 - (d) in exercising a right under this Act the infrastructure manager has damaged or destroyed vegetation, and the damage or destruction—
 - (i) is to growing crops of commercial value or to plants that yield crops of commercial value; or
 - (ii) breaches the terms of any project permit granted under the Environment Act 2003; or
 - (iii) breaches the terms of any agreement concerning the infrastructure or any conditions imposed by the Court;
 - (e) land has been compulsorily taken from an owner under section 45 or 46.
- (2) The Court may take into account any other matters, not inconsistent with this Act, in determining the amount of compensation.

55 When compensation is discretionary

- (1) An applicant is not entitled as of right to compensation in respect of the following:
 - (a) damage to property that is repaired by the infrastructure manager within a reasonable time;
 - (b) permanent but minimal alteration to the features of land;
 - (c) disruption of enjoyment of property where the disruption is reasonable and temporary;

- (d) installation of infrastructure under the surface of the land, if—
 - (i) the infrastructure is placed at least 200 millimetres below the surface (other than at places where it rises to the surface to join with other components of network infrastructure); and
 - (ii) all manholes, access covers, inspection points, and similar infrastructure components are installed flush with, or otherwise landscaped in a way complementary to, the existing surface of the land;
 - (e) placement of infrastructure over the land where the owner's or occupier's use and enjoyment of the land is not affected to any substantial degree, having regard to generally accepted standards in the Cook Islands;
 - (f) location of the infrastructure on land where the infrastructure is less than 3 square metres in area and no higher than 1 metre above the ground.
- (2) However, the Court may grant compensation if—
- (a) any of paragraphs (a) to (f) of subsection (1) apply; and
 - (b) the Court is satisfied that the applicant has suffered substantial loss or damage in such circumstances that there are special circumstances justifying the award of compensation.

Part 7

General and miscellaneous provisions

Protection of roads and other infrastructure

56 Power to require remedial action

- (1) This section applies if an infrastructure manager believes on reasonable grounds that a person has breached or is breaching this Act by—
- (a) interfering with any road, road drain, other drain of any kind that drains storm water, or other infrastructure; or
 - (b) failing to comply with a condition relating to infrastructure contained in an agreement with the infrastructure manager or included in an order of the Court.
- (2) When this section applies, the infrastructure manager may require the person, in writing,—
- (a) to stop doing whatever is breaching the Act; and
 - (b) to take specified remedial action.
- (3) If the person refuses to comply with the request, the infrastructure manager may, without affecting any of its other rights under this Act,—
- (a) take the specified, or any other, remedial action; and
 - (b) seek recovery of the cost of doing so from the person, as a debt due to the infrastructure manager.
- (4) A recovery under subsection (3)(b) does not affect any penalty or other order that the Court may impose for an offence against this Act.

Offences

57 Offence to interfere with infrastructure

- (1) A person who, without reasonable excuse or lawful authority, interferes with any infrastructure commits an offence and is liable on conviction,—
- (a) in the case of an individual, to all or any of the following:
 - (i) a fine not exceeding \$5,000;
 - (ii) imprisonment for a term not exceeding 5 years;
 - (iii) a fine not exceeding \$500 for each day that the unlawful interference continues;
 - (b) in any other case, to a fine not exceeding \$100,000 and a fine not exceeding \$500 for each day that the unlawful interference continues.
- (2) For the purposes of this section, a person interferes with network infrastructure if the person does any of the following:
- (a) manipulates, turns on, turns off, or in any other way tampers with any of the following on or associated with the network:
 - (i) any valve, switch, fitting, or meter;
 - (ii) any control system;
 - (iii) any associated energy supply;
 - (b) in relation to a reticulated gas or water network, inserts or removes anything that has the effect of doing any of the following:
 - (i) restricting its pressure;
 - (ii) restricting its volume;
 - (iii) diverting its flow;
 - (iv) altering any of its other service characteristics;
 - (c) in relation to a reticulated electricity network, inserts or removes anything that has the effect of doing any of the following:
 - (i) altering its current characteristics in any way;
 - (ii) altering any of its other service characteristics;
 - (d) in relation to telecommunications or data services, inserts or removes anything that alters the speed or quality of data that is transmitted or received through the network;
 - (e) in relation to any part of any reticulated infrastructure, does any of the following:
 - (i) modifies, adds to, or removes, or damages any of it;
 - (ii) contaminates or compromises any part of the network or the service provided through it;
 - (f) fails to seek prior permission under section 33 for an activity, act, or omission that causes damage to the infrastructure.
- (3) Each of the following, if proved to the satisfaction of the Court on the balance of probabilities, must be treated as aggravating matters for offences under this section:
- (a) an intention to alter the flow, supply, or service characteristics for the benefit of the offender;
 - (b) an intention to stop or alter the way in which a meter records usage;

- (c) an intention to falsify the usage recorded by a meter.
- (4) A customer of an infrastructure manager does not commit an offence under this section if the customer, or a person authorised by the customer,—
 - (a) operates any stop valve fitted by the infrastructure manager to the customer's connection; and
 - (b) does so for the purpose of maintenance, repair, or reasonable operational purposes.

58 Offences against personnel

A person who wilfully obstructs an employee, a contractor, or any other agent of an infrastructure manager while that employee, contractor or other agent is performing work for the infrastructure manager under this Act commits an offence and is liable on conviction,—

- (a) in the case of an individual, to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 1 year, or both;
- (b) in any other case, to a fine not exceeding \$10,000.

Delegation

59 Delegation

An infrastructure manager may delegate to another infrastructure manager, Ministry, or agency or to any other person—

- (a) any of its functions, powers, or duties in relation to the maintenance, management, alteration, and construction or installation of infrastructure; and
- (b) any of its functions or powers under section 42 (which relates to emergencies).

60 Dispute resolution

- (1) Before an infrastructure manager or other person applies to the Court under section 34(3), 35(4), 38(2), 39(4), 40(1), 44(2), 46(1), 49(3), 50(1) or 53(2) for an order or appeals to the Court under section 49(3) the person must seek to reach agreement on the issue in dispute with the other party by using mediation or another form of dispute resolution process (which may include customary dispute resolution).
- (2) If an application is made to the Court, or an appeal is filed with the Court and the applicant or appellant has not complied with subsection (1) the Court may adjourn the proceedings until the appellant has complied with subsection (1).
- (3) If an infrastructure manager is a party to a dispute resolution process under subsection (1) the cost of that mediation including the costs incurred by the other party must be met by the infrastructure manager.
- (4) Regulations may be made under section 64 to give effect to this section and may, without limitation,—
 - (a) set out procedures and timetables to be followed by the parties;
 - (b) set out procedures to be followed by the mediator or other person or persons engaged in dispute resolution:

- (c) recognise, set out, or incorporate provisions used in customary dispute resolution in a specified Island in the Cook Islands for use, in dispute resolution on that Island;
- (d) regulate the cost of dispute resolution or prescribe fees and allowances to be paid to a person conducting dispute resolution or a method of calculating those fees and allowances.

Role of CIIC

61 Relationship between government departments and agencies and CIIC

- (1) Before entering into any enduring agreement, negotiating the acquisition of land, offering compensation, or taking any other action that would or might involve significant expenditure to the Crown, a government department or other government agency must first obtain the permission of CIIC, unless that expenditure is within the amount permitted by guidelines issued by CIIC.
- (2) CIIC may negotiate protocols with the Secretary, other government departments, and other government agencies, setting out the circumstances when permission must be obtained under subsection (1).

Notices under this Act

62 Notice

A requirement under any provision of this Act to give notice to any occupier or owner of land is satisfied by giving notice to any of those persons who—

- (a) live in the Cook Islands; or
- (b) have left an overseas address for service with the High Court in Rarotonga.

Relationship with other legislation

63 Relationship with other legislation

This Act does not authorise any infrastructure manager to take any action that is inconsistent with—

- (a) the Civil Aviation Act 2002;
- (b) the Civil Aviation Rules.

Regulations

64 Regulations

- (1) The Queen's Representative may, by Order in Executive Council, make regulations providing for any other matters contemplated by this Act, necessary for its full administration, or desirable for giving it full effect.
- (2) Without limiting the generality of subsection (1), regulations may be made under that subsection—

- (a) applying, incorporating by reference, or prescribing, or authorising an infrastructure manager to apply or prescribe, standards that must be complied with for the construction, alteration, and maintenance of infrastructure, including standards relating to—
 - (i) drainage; and
 - (ii) engineering requirements; and
 - (iii) environmental impacts; and
 - (iv) the impacts of climate change; and
 - (v) signage; and
 - (vi) street lighting; and
 - (vii) materials; and
 - (viii) methods of construction, repair, or maintenance of infrastructure; and
 - (ix) any other matter affecting infrastructure:
- (b) prescribing requirements relating to—
 - (i) the planning of roads by the Secretary; and
 - (ii) the planning of other infrastructure in relation to other infrastructure:
- (c) prescribing procedures to give full effect to section 33(4) in respect of permits issued by government departments or other agencies under other enactments:
- (d) prescribing, or authorising an infrastructure manager to prescribe, guidance, which must not be inconsistent with this Act or any regulations, relating to the construction and maintenance of roads and other infrastructure:
- (e) setting or authorising the setting of standards for how the construction or installation and maintenance of infrastructure must be carried out:
- (f) providing procedures for consultation between infrastructure managers and occupiers or owners of land:
- (g) providing templates for enduring agreements and any notices required or provided for in this Act:
- (h) providing for the identification of accessways that are not roads:
- (i) creating offences for non-compliance with the regulations, and for penalties not exceeding \$10,000 for any such offence:
- (j) prescribing, or authorising an infrastructure manager to prescribe, requirements relating to—
 - (i) the giving of public notice of draft plans, and notice to occupiers or owners, or other persons of draft infrastructure plans:
 - (ii) the ability for members of the public, owners, and other persons to make submissions on draft infrastructure plans:
- (k) declaring roads over which the public right of way is annulled or restricted:
- (l) listing roads for the purposes of paragraph (a)(ii) of the definition of road in section 6:
- (m) listing or setting out maps of bridges or culverts for the purposes of the definition of storm water drain in section 6:
- (n) prescribing forms to be used for the purposes of this Act or the regulations:

- (o) prescribing matters for which fees are payable under this Act or the regulations and the amounts of, or method of calculating, those fees;
 - (p) prescribing grounds for an exemption from fees, in whole or in part;
 - (q) providing for transitional matters.
- (3) Regulations may incorporate by reference any standard, code, or similar instrument issued by another agency in the Cook Islands or by an agency in another country if—
- (a) the regulations clearly identify the instrument, including its version or date of issue; and
 - (b) copies of that instrument are readily available, at no more than a reasonable cost, either in hard copy or electronically, in the Cook Islands.
- (4) Regulations may relate to—
- (a) infrastructure generally, or to any class of infrastructure (for example, roads), or to any particular kind or location of the infrastructure or class of infrastructure;
 - (b) all or any specified part of the Cook Islands or location within the Cook Islands;
 - (c) all persons or organisations that are infrastructure managers, or any specified persons or organisations that are infrastructure managers;
 - (d) any combination of the matters described in paragraphs (a) to (c).
- (5) Without limiting subsection (4)(b) and to give effect to the purpose of this Act, regulations about infrastructure may be made that incorporate in relation to each island the local law and customs of that island (as determined by the relevant Aronga Mana).

Transitional and savings provisions

65 Transitional provisions applying where work not commenced

- (1) Subsection (2) applies where, on the date this Act comes into force,—
- (a) agreements have been entered into, or orders have been made by the Court, concerning—
 - (i) the location of infrastructure or any class of infrastructure to be installed on land; or
 - (ii) compensation payable; or
 - (iii) conditions relating to the installation of particular infrastructure; or
 - (iv) conditions relating to the future maintenance of particular infrastructure; but
 - (b) construction of the infrastructure (that is, more than initial surveying) has not commenced.
- (2) If subsection (1) applies, the agreements or orders are not affected by the coming into force of this Act, but this Act applies as if the agreements had been entered properly into under it.

66 Transitional provisions applying where agreements or proceedings not concluded

- (1) Subsection (2) applies where, before this Act comes into force, negotiations for agreements relating to the installation of infrastructure or a class of infrastructure have started but agreements have not been entered into.
- (2) If subsection (1) applies,—
 - (a) any agreements entered into after this Act comes into force must be entered into in accordance with this Act; but
 - (b) any steps already taken in the negotiations must be treated as if they had been taken in accordance with this Act.
- (3) Subsection (4) applies if any Court proceedings have been commenced, but not concluded, relating to the infrastructure or any class of infrastructure on land.
- (4) If subsection (3) applies,—
 - (a) the proceedings must be completed as if this Act was not in force; but
 - (b) any order has effect, as far as practicable, as if it were an order of the Court made under this Act.
- (5) The Island Government of Atiu is not to be treated as the infrastructure manager of the Atiu airport until—
 - (a) the land on which the airport is situated is leased to the Crown; or
 - (b) the native freehold owners of the land enter into an enduring agreement making the Island Government of Atiu the infrastructure manager of the airport.

67 Transitional provisions relating to Stage 2 Te Mato Vai

- (1) Despite section 70 and the Schedule, all negotiations and proceedings commenced under the Rarotonga Waterworks Ordinance 1960 in connection with Stage 2 of Te Mato Vai must be continued and completed under that Ordinance, as it was before its amendment by this Act, and not under this Act.
- (2) However, once the proceedings are complete, this Act applies to any waterworks subsequently installed, as if any agreements or orders had been made under this Act, and this Act applies accordingly.

68 Savings provisions

To avoid doubt, it is declared that, as at the date on which this Act comes into force,—

- (a) all network infrastructure that is owned or managed by an infrastructure manager and is located on, under, or over land (including any accessway) not owned by the infrastructure manager—
 - (i) is deemed to be lawfully installed on, under, or over that land; and
 - (ii) may remain in place until the infrastructure manager decides or agrees otherwise; and
- (b) no person other than the infrastructure manager has any interest in the infrastructure by reason only of having an interest in the land on, under, or over which it is located.

69 Repeals

The Ministry of Supportive Services Act 1973-74 is repealed.

70 Amendments to other Acts

The Acts set out in the Schedule are amended in the manner described in the Schedule.

Schedule Amendments to Acts

Amendments to Cook Islands Act 1915

Replace section 395 with:

- “(1) An application for the partition of any Native land must not be heard or determined by the Court until all previous freehold or partition orders made with respect to the same land have been duly drawn up, sealed, and signed.
- “(2) The Court must not seal and sign a partition order unless there is attached to it a survey plan and a list of the landowners for each of the titles created by that order.”

After section 409A(2), insert:

- “(3) The Court must not make an order laying out or varying a right of way until—
 - “(a) the draft form of the order with a survey plan marking the right of way attached is served on every infrastructure manager on the island on which the land subject to the proposed right of way is located; and
 - “(b) 20 working days have elapsed from the date of service of the last infrastructure manager to be served; and
 - “(c) the Court has taken into account any written submissions filed by any infrastructure manager; and
 - “(d) the Court has given any infrastructure manager who wishes to be heard an opportunity to present oral submissions to the Court; and
 - “(e) the Court is satisfied it is not contrary to the public interest to grant the order.”

After section 437, insert:

437A Procedure before partition

If the Court makes a partition order it may not make that order until—

- “(a) the survey plans setting out the titles intended to be created by that order and identifying particulars of improvements, alienations, encumbrances, rights of way, or other easements on the record or known to the applicant are served by the applicant (or such other person as the Court may order) on every infrastructure manager on the island on which the land to be partitioned is located; and
- “(b) 20 working days have elapsed from the date of service of the last infrastructure manager to be served; and
- “(c) the Court has taken into account any written submissions filed by any infrastructure manager; and
- “(d) the Court has given any infrastructure manager who wishes to be heard an opportunity to present oral submissions to the Court.”

Repeal sections 606 to 615.

Amendments to Cook Islands Investment Corporation Act 1998

Replace section 5 with:

“5 Functions of Corporation

“(1) The functions of the Corporation are—

- “(a) to administer and manage Crown assets and shareholding interests; and
- “(b) to control and manage the undertakings of statutory corporations; and
- “(c) to negotiate and facilitate the disposal of assets and any property or undertaking of a statutory corporation.

“(2) Subsection (1)(a) is subject to any other enactment that enables a Ministry or other organisation to manage Crown assets.”

Amendments to Environment Act 2003

In section 2, after the definition of **Aronga Mana**, insert:

“**bank** means—

- “(a) in respect of any natural inland waters, the whole area of land extending away from the stream, river or lake, measured at right angles to a distance of 5 metres from the edge of that stream, river and lake; and
- “(b) in respect of any storm water drain, the whole area of land extending away from any ordinarily exposed part of that drainage, measured at right angles to a distance of 5 metres from the edge of that drainage.”

Replace the definition of **inland waters** with:

“**inland waters** means—

- “(a) the waters and banks of any stream, river or lake, together with its bed, whether dry or not; and
- “(b) any storm water drain, as that expression is defined in the Infrastructure Act 2019.”

After the heading to Part 5, insert:

“35A Provisions about grant of project permits

The provisions of this Part relating to applications for, and the grant of, project permits are subject to section 33(4) of the Infrastructure Act 2019.

After section 50(2), insert:

“(2A) This section is subject to section 33(4) of the Infrastructure Act 2019.”

Replace section 52 with:

52 Power to order remedial action

“(1) This section applies if permitting authority considers that a person has acted in breach of any of sections 50, 51, 57, and 58.

“(2) The permitting authority may—

- “(a) require the person to stop acting in breach of the Act and to take remedial action that the permitting authority considers necessary to make good the loss or damage caused by that person; or
- “(b) notify the circumstances of the breach to any other Crown agency or government department having authority in the matter of the breach, with a view to settling a joint approach to—
 - “(i) stopping the breach:

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- “(ii) assessing loss or damage:
 - “(iii) requiring that person to carry out any necessary remedial action:
 - “(iv) carrying out that remedial action at (in the first instance government expense) if for any reason that person does not do so.
- “(3) If the person fails or refuses to take remedial action as directed either by the permitting authority or the other Crown agency or government department requires, then one or more of the following may take that remedial action:
 - “(a) the Service:
 - “(b) the permitting authority:
 - “(c) the other Crown agency or government department having authority in the matter of the breach.”
- “(4) If remedial action is taken at the cost of the Government, the cost of that remedial action is a debt due from the person to the Government.
- “(5) In this section the expressions **Crown agency** and **Government department** have the same mean as in the Cook Islands Investment Corporation Act 1998.
- “(6) This section does not affect—
 - “(a) any power to impose a penalty or make any other order for an offence committed under this Act; or
 - “(b) the provisions of any other Act.”

After section 57(2), insert:

“(2A) This section is subject to section 33(4) of the Infrastructure Act 2019.”

After section 58(2), insert:

“(2A) This section is subject to section 38(4) of the Infrastructure Act 2019.”

Amendments to the Land (Facilitation of Dealings) Act 1970

After section 5(e), insert:

- “(f) to accept service, give any approval or consent, enter into enduring agreements, and exercise any other powers, rights, duties, and responsibilities of an owner under the Infrastructure Act 2019:”

After section 51(1)(f), insert:

- “(g) that the assembled owners, on behalf of all owners, give any approval or consent required to be obtained by any person from the owners under the Infrastructure Act 2019:
- “(h) that an enduring agreement as provided for by the Infrastructure Act 2019 be agreed to.”

In section 58(1), after “conditions of any lease” insert “or for the making of any enduring agreement as provided by the Infrastructure Act 2019,”.

Amendments to Rarotonga Waterworks Ordinance 1960

Repeal section 3(4).

Replace section 4(1) with:

“(1) After the Minister gives notice under section 3 of an intention to use water, the Infrastructure Act 2019 applies to the installation and maintenance of any waterworks relating to that notice; and for the purpose of applying that Act,—

“(a) the Minister is an infrastructure manager; and

“(b) the waterworks are network infrastructure.

Repeal section 4(2) and (3).

Repeal section 5.

In section 10, replace all the words before paragraph (a) with:

“(1) A person who does any of the following commits an offence and is liable on conviction to the penalty in subsection (2):”

Repeal section 10(a), (b), (e), (f), (h), and (i).

Insert as section 10(2):

“(2) The penalty for an offence under this section or any other provision of this ordinance is,—

“(a) for an individual, any or all of the following:

“(i) a fine not exceeding \$2,000:

“(ii) imprisonment for a term not exceeding 1 year:

“(iii) a fine not exceeding \$250 for each day that the conduct constituting the offence continues; and

“(b) in any other case, either or both of the following:

“(i) a fine not exceeding \$10,000:

“(ii) a fine not exceeding \$800 for each day that the conduct constituting the offence continues.”

Amendments to Te Aponga Uira o Tumu-Te-Varovaro Act 1991

Replace sections 21 and 22 with:

“21 Authority’s rights as infrastructure manager

The Authority—

“(a) is an infrastructure manager under the Infrastructure Act 2019; and

“(b) has all the powers and duties of an infrastructure manager; and

“(c) the provisions of the Infrastructure Act 2019 apply accordingly.

Amendments to Telecommunications Act 1989

In section 2, replace the definition of “**network**” with:

“**network**—

“(a) means a system comprised of telecommunication links designed to permit telecommunications (other than a system used solely for broadcasting (as defined in the Broadcasting Act 1989)); and

“(b) includes in relation to a system to which paragraph (a) applies, its network (within the meaning of section 6 of the Infrastructure Act 2019).

Replace sections 11 to 23 with:

11 Company’s rights as Infrastructure Manager

The Company is an infrastructure manager for the purposes of—

“(a) the Infrastructure Act 2019; and

“(b) has all the powers and duties of an infrastructure manager; and

“(c) the provisions of the Infrastructure Act 2019 apply accordingly.

Amendments to Transport Act 1966

In section 2, repeal the following definitions:

- (a) **Chief of Police:**
- (b) **controlling authority:**
- (c) **department:**
- (d) **erecting authority:**
- (e) **High Commissioner.**

In section 2, insert the following definitions in their appropriate alphabetical order:

“**erecting authority**, in relation to all classes of traffic signs, means the road manager

“**ICI** means the government department known as Infrastructure Cook Islands

“**Secretary** means the head of ICI”.

In section 2, replace the definition of **road** with:

“**road**—

“(a) means—

“(i) any road existing or proclaimed under the Cook Islands Act 1915 or section 9 of the Infrastructure Act 2019 as a road; and

“(ii) means any road within the meaning of the Infrastructure Act 2019 and designated by regulations made under that Act as a road for the purposes of that Act; and

“(b) includes any place to which the public have access, whether as of right or not.”

In section 2, definition of **traffic sign**, replace “the Erecting Authority” with “an erecting authority”.

Replace section 3 with:

“3 Relationship between Commissioner and infrastructure manager

“(1) The Commissioner is responsible for the administration of this Act, except to the extent that this Act relates to the responsibilities of under the Infrastructure Act 2019.

“(2) The Secretary is responsible, under the Infrastructure Act 2019, for the physical condition of roads, and nothing in this Act limits that responsibility.

“(3) The Commissioner and the Secretary must consult together and develop protocols relating, either generally or specifically, to—

“(a) the construction and maintenance of roads; and

“(b) the marking of roads; and

“(c) the placing and erection of traffic control measures on roads; and

“(d) the erection and removal of traffic signs; and

“(e) parking.”

In section 41, replace “the controlling authority” with “the Secretary”.

In section 48, replace “Chief of Police” with “the Secretary”.

In section 50(2)(d), replace “a controlling authority” with “the Secretary”.

In section 63(1), replace “any controlling authority” with “the Secretary”.

In section 63(1), replace “the controlling authority” with “the Secretary”.

Replace section 63(2) and (3) with:

“(2) The powers conferred by the Secretary under subsection (1) must be exercised in accordance with a protocol entered into under section 3(3).

“(3) The Minister may at any time direct the Secretary to remove any signs erected under subsection (1).”

Repeal section 64A.

In section 81(f), after “electricity”, insert “; or”.

After section 81(f), insert:

“(g) exceed the prescribed maximum axle or another weight for a vehicle in its class or the maximum prescribed load for a vehicle in its class.”

In section 81, insert as subsection (2):

“(2) For the purposes of enforcing subsection (1)(g), a police officer may require—

“(a) the driver of a vehicle to stop the vehicle and allow the vehicle and, where applicable, its load to be weighed (which may include requiring the driver to drive the vehicle onto a weighing machine):

“(b) the driver or owner of a vehicle parked on the road to allow the vehicle to be weighed (which may include requiring the driver or owner to drive the vehicle onto a weighing machine).”

Repeal section 99(4).

Repeal section 100.

Repeal section 101.

Replace section 108 with:

“108 Special provisions relating to heavy traffic

“(1) No person may drive a heavy motor vehicle for the carriage of goods or persons that exceeds the weight—

“(a) specified in the certificate of annual licence:

“(b) specified in the regulations in relation to a vehicle of that type or class as the maximum permissible weight for a vehicle of that type or class or in relation to a component of that vehicle (for example, the axle):

“(c) calculated in accordance with a formula set out or referred to in the regulations as the maximum permissible weight for a vehicle of that type or class or any component of that vehicle (for example, an axle).

“(2) No person may drive a heavy motor vehicle for the carriage of goods or persons if the weight of the load exceeds the weight—

“(a) specified in the regulations in relation to a vehicle of that type or class, as the maximum permissible load for a vehicle of that type or class or in relation to a component of that vehicle (eg, the axle):

- “(b) calculated in accordance with a formula set out or referred to in the regulations as the maximum permissible load for a vehicle of that type or class, or any component of that vehicle (for example an axle).”

Repeal sections 110 to 113.

Replace section 114 with:

“114 Erection of traffic signs

The Secretary must prescribe standards for road signs and publish them in the *Gazette*.”

In section 115, replace “Erecting Authority” with “secretary”.

Repeal section 121.

In the following provisions, replace “Chief of Police” with “Commissioner” in each place:

- (a) section 2, definition of **Constable**:
- (b) section 35(2)(a):
- (c) section 72(2)(a):
- (d) section 76 heading and section 76(1) and (3):
- (e) section 84:
- (f) section 93:
- (g) section 100:
- (h) section 101:
- (i) section 117.

After section 126(1), insert:

“(1A) Without limiting subsection (1), regulations may be made for—

- “(a) the purposes of section 108:
- “(b) prescribing or setting out a way of calculating fees payable by persons acting in breach of section 108.”

In section 126(2), replace “fifty pounds” with “\$10,000”.

In the Second Schedule, replace “Chief Officer of Police” with “Commissioner”.

Repeal the Third Schedule.

In the following sections, replace “High Commissioner” with “Queen’s Representative”:

- (a) section 125(2):
- (b) section 126(1).

This Act is administered by Infrastructure Cook Islands.

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