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## Picking up the pace on public works

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The Government has moved a step closer to updating the Public Works Act 1981 (PWA) after half a century of little reform. Driven by a goal to remove the current barriers to infrastructure development, Chris Penk, the Minister for Land Information, has recently announced that a Public Works Amendment Bill will be introduced to Parliament in mid-2025.

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A Government-appointed panel reviewed the PWA last year and found that there is unnecessary duplication in the current system, issues with outdated negotiation processes and disjointed government agency practices, all of which are contributing towards significant delays in the delivery of public works projects.

The outcome of the PWA review is to make changes to the PWA. The recently-announced changes include the following:

### **Shifting some of the decision making from LINZ to government agencies**

While the Minister for Land Information will retain responsibility for decisions relating to the compulsory acquisition of land by the Crown, government agencies such as the New Zealand Transport Agency will be empowered to enter into voluntary land acquisition agreements with landowners on behalf of the Crown. Currently, Land Information New Zealand (**LINZ**) has the sole power to enter into agreements for the Crown.

It remains to be seen which government agencies will be granted this power, but we would expect that the government agencies with larger landholding portfolios and active programmes will be considered first.

The change will not affect local authorities, who can already enter into agreements under the PWA for local public works without LINZ approval.

### **Improved collaboration between government agencies**

Where there are connected public projects, the Government seeks to encourage coordination of the acquisition of land.

Under the current PWA, the Government and local authorities can (but rarely do) collaborate on works of combined national and local importance, but agencies are otherwise required to act

separately. The current distinction between national and local works is arbitrary and archaic. We

hope the collaboration powers are drafted to include all overlapping public works, regardless of which agencies undertake them, to allow efficiencies to be gained by working together.

### **Enabling infrastructure relocation**

It is proposed to expand the power to acquire land under the PWA to include land required for infrastructure owned by a third party, where that infrastructure needs to be moved to make way for a public work.

This change will address the limitations that were introduced by the Supreme Court in *Seaton v Minister for Land Information* in 2013, which held that the Crown was unable to acquire an easement from an affected landowner under the PWA when the easement is intended to be transferred to a third party. In that case, easements could not be acquired to allow electricity lines owned by a local lines company to be moved out of the way of a highway-widening project.

The breadth of this change will be interesting. We would like to see easements able to be acquired and provided to other private landowners, not just to infrastructure providers. Acquiring a right of way for the benefit of a private landowner might well be the best solution when their existing access is cut off by a new motorway.

### **Refining the role of the Environment Court**

The Environment Court acts as an independent check on land acquisitions for public works, particularly in considering and making determinations on landowner objections to the compulsory acquisition of land. An objection to the Environment Court can substantially delay a land acquisition.

The Government proposes to refine the role of the Environment Court in this process by clarifying the factors the Court can consider when reviewing objections. Minister Penk has announced that the renewed focus will be on “individual property rights, removing the overlap with the Resource Management Act”; an objective clearly intended to reduce the scope of objections made by landowners under the PWA.

### **Alternative dispute resolution before the Land Valuation Tribunal**

The Government proposes requiring that disputes over compensation are attempted to be resolved through mediation and alternative dispute resolution forums, before a claim is made to the Land Valuation Tribunal. Currently, claims for compensation (if compensation is not already agreed) are filed at the Land Valuation Tribunal at an early stage.

Mediation cannot force the parties to reach agreement and will, in some cases, be a fruitless step. In other cases, however, the less-formal process and setting may encourage agreement on compensation issues.

### **New powers for Transpower**

The Government proposes allowing Transpower, the State-Owned Enterprise managing New Zealand’s national electricity grid, to acquire land by agreement under the PWA.

Currently, if network utility operators – be they privately-owned or owned by the Government – need land for a project, they can apply to the Minister for Land Information under section 186 of the Resource Management Act to acquire land for that project on their behalf. This is a backstop provision, recognising the importance of network utility operations even if privately-owned.

The proposal seems to apply only to Transpower, presumably due to the scale and cost of its projects and its public ownership. It appears the Government’s intention that any compulsory acquisition of land for Transpower would be dealt with by LINZ in the current way.

### **Next steps**

The above discussion addresses just some of the changes proposed. The Government has previously announced changes to the valuation of Māori freehold land when it is acquired for a public work, and to require that any compulsory acquisition of Māori land is approved by two Ministers. Further policy changes may also be announced.

It is too early to take a view on whether the incremental changes announced so far will achieve the Government's intention of "going for growth". Further policy announcements and the wording of the draft Public Works Amendment Bill due to be released mid-year will be telling, but so far it seems that there is a real drive for a more efficient PWA regime to improve the timely delivery of large infrastructure projects in New Zealand. For more information on the PWA changes, please contact our [public law team](#).

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