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# BILLS DIGEST

Digest No. 1705

## Infrastructure Bill 2009

<b>Date of Introduction:</b>	05 August 2009
<b>Portfolio:</b>	Infrastructure
<b>Select Committee:</b>	As at 25 August, 1st Reading not held.
<b>Published: 25 August 2009</b>  Prepared by <b>John McSoriley</b> BA LL.B, Barrister  Legislative Analyst  P: (04) 471-9626 (Ext. 9626)  F: (04) 471-1250	Caution: This Digest was prepared to assist consideration of the Bill by members of Parliament. It has no official status.  Although every effort has been made to ensure accuracy, it should not be taken as a complete or authoritative guide to the Bill. Other sources should be consulted to determine the subsequent official status of the Bill.

## Purpose

The aim of this Bill is to amend eight Acts and repeal one Act " ... to facilitate infrastructure development by removing unnecessary barriers and improving the consistency of regulatory arrangements"<sup>1</sup>.

## Background

"The development of infrastructure is central to lifting New Zealand's national productivity and improving New Zealand's future economic growth. Improving the consistency of regulatory arrangements for infrastructure development, streamlining governance arrangements, and removing regulatory barriers all contribute to improving the timeliness of infrastructure provision and reducing the cost of infrastructure development"<sup>2</sup>.

<sup>1</sup> Infrastructure Bill, 2009 No 63-1, Explanatory note, General policy statement, p. 1.

<sup>2</sup> Ibid.

## Main Provisions

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### Access by utility operators to transport corridors

What is a utility operator?

The Bill defines the term "utility operator" as:

- in relation to electricity infrastructure, an electricity operator as defined in Section 2(1) of the Electricity Act 1992;
- in relation to gas infrastructure, a gas operator as defined in Section 2(1) of the Gas Act 1992;
- in relation to telecommunications infrastructure, a network operator as defined in Section 5 of the Telecommunications Act 2001;
- in relation to water and wastewater infrastructure, a local authority as defined in Section 5 of the Local Government Act 2002;
- in relation to public letterboxes, a postal operator as defined in Section 2(1) of the Postal Services Act 1998 (*Part 1, Clause 4, defining "utility operator"*).

What is a "corridor manager"?

The Bill defines the term "corridor manager" as:

- in relation to a road (as defined in Section 315(1) of the Local Government Act 1974, and which includes State highways and Government roads), the local authority or other person that has jurisdiction over the road;
- in relation to a motorway (as defined in Section 2(1) of the Government Roding Powers Act 1989), the New Zealand Transport Agency;
- in relation to a railway line (as defined in Section 4(1) of the Railways Act 2005), the person who is the licensed access provider (as that term is used in the Railways Act 2005) for that railway line (*Part 1, Clause 4, defining "corridor manager"*).

The code

The Bill provides for the creation of a national code of practice governing how utility operators and corridor managers co-ordinate their activities. The code may be specifically approved by the Minister and that approval published in the *Gazette* (and it has the status of regulations) or, in the absence of such a document, the code may be provided for by regulations. Utility operators and corridor managers must comply with the Code, unless the parties otherwise agree. A Court may order compliance with the Code, and impose a fine if that court order is not complied with. The processes for preparing and approving a Code are set out. The Code must reflect broad agreement between stakeholders. It must contain the method by which any statutory criteria are to be applied, and operational and dispute resolution processes. Appropriate regulation-making powers are provided for (*Part 1, Clauses 6-18; Clause 5, definition of "Code"*).

### Standard access provisions

The Bill amends the Telecommunications Act 2001, the Electricity Act 1992, the Gas Act 1992, and the Local Government Act 1974 to provide for consistent provisions in those Acts for access to the corridors, allocation of costs when utility operators are required to move assets, and time periods for notification and response. Amendments are also made to the Railways Act 2005 and the Government Roding Powers Act 1989 to provide for time frames for responding to requests for access to rail corridors and motorways, and require controlling authorities to publish criteria on which they will base their decisions to grant access (*Part 2, Clauses 19-40 amending the Telecommunications Act 2001, the Electricity Act 1992, the Gas Act 1992, the Local Government Act 1974, the Railways Act 2005 and the Government Roding Powers Act 1989*).

## New Zealand Railway Corporation

The Bill amends the New Zealand Railways Corporation Act 1981 in relation to the appointment and dismissal of directors (including changing the term "chairman" to "chairperson", enabling the appointment of a deputy chairperson) and other changes relating to the meetings of directors, indemnification and insurance of directors and employees and increasing the capital of the corporation) (*Part 3, Clauses 41-47*).

## Affordable housing

The Affordable Housing: Enabling Territorial Authorities Act 2008 is repealed and Property Law Act 2008 is amended.

The former Act (in Section 30) provides that a covenant over land is void if one of its purposes is to stop the provision of affordable housing or social housing on the land. Without limiting this provision, the following covenants are specifically stated to be void:

- a covenant that the transferee will not directly or indirectly convey the land to Housing New Zealand Corporation, any other central or local government body, or a private body that may facilitate the occupation of housing on the land by persons selected by the corporation or the body;
- a covenant that the transferee will not directly or indirectly convey the land to Housing New Zealand Corporation or a subsidiary company of Housing New Zealand Corporation, any other central or local government body, or a private body that provides housing to tenants on a subsidised basis;
- a covenant that the transferee will not directly or indirectly convey the land to a central or local government body or a private body for the purposes of public or institutional housing.

The Bill carries over this provision (including the three specified void covenants) into the Property Law Act 2007. However, in relation to the general provision, (instead of one of the purposes of the covenant being to stop the provision of "affordable housing" or "social housing" on the land), the Bill provides that a principal purpose of the covenant must be " ... to stop the land being used for housing for:

- "people on low incomes"; or
- "people with special housing needs"; or
- "people whose disabilities mean that they need support or supervision in their housing" (*Part 4, Clauses 49-54, repealing the Affordable Housing: Enabling Territorial Authorities Act 2008 and inserting New Section 277A into the Property Law Act 2008*).

### *Comment*

The import of this change is that covenants (other than the three specified covenants set out above and which are void) are not void if they have a purpose of stopping the land being used for such housing as long as that purpose is not "a principal purpose".

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