

I have many serious concerns and number of questions about the Public Works (Critical Infrastructure) Amendment Bill

This bill is a threat to private property rights and appears to be an attempt to enhance the ability for governments to take land in a non-consensual fashion by what is effectively executive decree.

Does this bill apply only to those projects which are currently in Schedule 2A, or could it be applied to more projects in the future through further amendments?

If the bill is only intended to be confined to the current Schedule 2A projects, why does it not have a clear ‘sunset’ clause?

Will there be inflation adjustments on the new “*premium*” payments?

These new and capped “*premium*” payments could rapidly become trivial amounts of money in future years due to inflation.

We have had recent cases where landowners were offered ridiculously low offers such as \$1 compensation for taken land using the “*betterment*”-style arguments and the Public Works Act 1981. There could be future cases where these new “*premium*” payments are effectively the only compensation landowners receive. Landowners may be offered “*compensation*” in the form of “*betterment*” which can be more of a speculative assessment rather than real benefits.

Removing the ability for victims of government ‘land taking’ schemes to object to the Environment Court is concerning from the perspective of maintaining well-established rights to due process and natural justice. The bill’s aim of removing the right to an oral hearing through the modification of subsection 25(7) is also concerning for similar reasons.

This change of process and any attempts by government to restrict well-established rights might put governments in breach of Article 14 (1), Article 17, and Article 26 of the International Covenant on Civil and Political Rights. Relevant sections of the International Covenant on Civil and Political Rights are quoted below.

“*1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.*”

First sentence from Article 14(1) of the International Covenant on Civil and Political Rights

“*1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.*

2. Everyone has the right to the protection of the law against such interference or attacks.”

Article 17 of the International Covenant on Civil and Political Rights

“*All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*”

Article 26 of the International Covenant on Civil and Political Rights

In its current form, this bill may also lead to breaches of well-established rights contained in the Constitutional Enactments listed in Schedule 1 of the Imperial Laws Application Act 1988.

The current bill appears to be an attempt to give excessive and unaccountable power to the Executive Branch of central government and to the chief executives operating within local governments.

Is the Minister likely to side against their own political party and support a landowner who could be disenfranchised, dispossessed, or dispossessed for the cause of completing one of the ruling party's 'pet projects'?

Will those who have their land taken have a right of return and to have the title revested, should the project change and the taken land not been utilised for a public work?

The proposed Schedule 2B is a threatening form letter (titled "*Notice of intention to take land for critical infrastructure project*") which could cause significant distress to landowners, residents, occupying parties, and/or tenants. In two different parts of the form letter it only gives the recipient 10 days notice to respond. That is insufficient time to respond to a threat of losing one's home, land, or livelihood in a bureaucratic process.

Section 39AAJ (1C) (c) appears to give arbitrary powers to chief executives of the local authorities in a dubious way with minimal scrutiny. Why does the bill use phrases such as "*need not be under seal*" and "*...may be accepted by the Governor-General as sufficient without making further inquiry*"?

Some projects on the Schedule 2A list are not strictly for the benefit of the public, and some projects could involve more private gains than public works.

Many of the projects are roads in Schedule 2A. However, one project is a residential development. The Carrington residential development is a housing project with various non-government partner entities. Will those entities, rather than the public, be benefiting more from the taking of land using this bill?

With the recent push for tolling more roads and more public-private partnerships, will some of the new roads be used for obtaining private gains (rent seeking activity via tolls and other charging) rather than providing a new public right of way.

Does giving special advantages to the entities involved in public-private partnerships, and using governmental powers to take lands from others for the benefit of those entities, violate rights associated with all persons being "*equal before the law*"?

Section 11 of the bill adds a new section 186(1) of the Resource Management Act 1991.

Is each "*network utility operator*" creating public works or are some mainly operating for private benefit?

"...for any other project or work acquired or taken under Part 2 of the Public Works Act 1981 as if the project or work were a Government work within the meaning of section 2 of that Act and, if the Minister for Land Information agrees, that land may be taken or acquired."

Excerpt from the proposed new section 186(1) of the Resource Management Act 1991 in the current bill.

Much of my concerns with section 186(1) of the Resource Management Act 1991 are concerns with both the current wording and the wording proposed in the bill. The phrase "*...as if the project or work were a Government work...*" sounds like a dubious attempt to use governmental powers to provide unfair benefits to corporate entities while breaching the rights of other landowners.

The current bill, potentially makes this situation worse by promoting a process whereby the possibility of accessing a "*...fair and public hearing by a competent, independent and impartial tribunal*" is replaced by a process where land is rapidly taken by executive decree (on the mere opinion of a minister or chief executive with a potential conflict of interest in the matter).