



# Barriers to Business Performance

## Overview

Some of our laws, fees and regulations make it harder for new businesses to get a start in the Cook Islands, resulting in lower levels of competition, higher prices and less diversification.

The goal of this programme is to ensure our business laws provide an enabling environment for all types of business including e-commerce and 'gig-work'. Another goal is to identify, and reduce or remove fees, laws and regulations that make it harder for new small to medium sized businesses to conduct more business.

## Context

### ***The business sector has told us about some burdensome fees, laws and regulations***

A list of 16 potential 'Barriers to Business' were identified by the Cook Islands business community in 2021 and provided to MFEM. Other government-imposed 'barriers' have been identified subsequently in emails and in conversations with our business community. These known barriers are reflected in the workstreams underpinning this programme.

### ***We need to modernise our business laws***

The most time intensive workstream for this project will be a policy exploration of our e-commerce settings, which requires a whole-of-system policy development approach. The Cook Islands' existing data laws, regulations and codes will be explored as part of this approach. For example, the Cook Islands has law and rules in relation to electronic banking transactions, but the (Cook Islands) Privacy Act 1988 may need a review with digital policy in mind.

E-commerce legislation typically consists of data protection and privacy legislation that is designed to protect consumers who submit information to online or app-based companies. Data portability rules are sometimes also included. These rules help when a consumer wants to use their information elsewhere (for example, if they change health provider or move countries). These laws establish clear property rights to data. As a result they support online selling, gig-work, outsourcing and the digital app economy.

At least 128 countries around the world have adopted some form of e-commerce legislation. Of the Small Island Developing States (SIDS) (29 countries), 10 have legislation and 5 have draft

legislation. Aside from Fiji, none of those who do are in the Pacific Islands. Fiji has a specific law to allow for electronic contracts to be recognised in law.

### ***We need a baseline so we can monitor our progress***

One workstream of this programme establishes metrics for monitoring and evaluation. We need to use both formal and informal processes to identify high-cost, low-benefit regulations ('red tape' or 'loopy rules'). We will combine consultation with the private sector with formal research. To measure our costs to business – and our own progress at reducing these costs - we will apply the World Bank's Doing Business framework, or an approximation of it.

We need to be able to assess whether our business laws are working well for Small-Medium Enterprise (SME) entities like store owners, plumbers, mechanics, or new business owners who don't complain publicly but nevertheless experience costs. We would like to be able to measure how well our laws are doing, and provide a basis for measuring improvements over time.

### ***Expanding the remit of the Competition and Regulatory Authority to other monopolies***

Electricity and water utility services in the Cook Islands are provided by Government-owned monopoly service providers. As monopolies, these service providers are not subject to normal competitive forces, nor are they subject at present to formal independent economic regulation.

Having recently established an independent economic regulator for the telecommunications industry – the Competition and Regulatory Authority, we are now in a favourable position to bring regulation of the electricity and water & sewerage sectors under one roof, together with regulation of telecommunications services.

The primary objective of this Utilities Policy is to ensure that electricity and water & sewerage public utility services are provided efficiently, safely and reliably for the long-term benefit of all end-users including businesses.

This particular work is a continuation of a pre-existing work programme started prior to the lockdown period and is a standalone programme that was substantially delayed but has now been incorporated with the ERR.

### ***Other barriers to business***

The other possible barriers to business that we aim to look at are those that might be able to be addressed by small changes in practice or process, rather than legislative or policy changes. They include: processes for businesses making small claims, transport licensing and registration, and building approvals. While other barriers to business and competition most certainly exist, these either have activities of their own, or are more complex and resource-intensive to resolve than can be accommodated as part of the wider ERR program.

For example, there are ERR work streams to address many of these issues (such as Reducing the Cost of Borrowing, Infrastructure Investment, Growing the Labour Force and Attracting Foreign Investment work streams). But some of the suggested areas for attention, like land valuations, changes to tax laws, changes to bankruptcy laws or changes to the investment code go beyond the scope of this ERR project. We have included monitoring of business costs in order to proactively identify high-cost laws and regulations in the future.

## Project

The goal of this programme is to ensure a selection of our business laws are modernised to ensure that we provide an enabling environment for all types of business including e-commerce and gig-work, and to identify processes, fees, laws and regulations that make it harder for new small to medium sized businesses to conduct more economic activity. This may be achieved through the following non-exhaustive focus areas (in no particular order):

1. Monitoring: Baseline business cost research
2. Commerce 1: Whole-of-system policy review (and policy development) for e-commerce
3. Commerce 2: Business small claims processes and practice
4. Regulation 1: Utility regulation
5. Transport 1: Motor vehicle registration processes, fees and charges
6. Transport 2: Licensing processes and fees
7. Transport 3: Warrant of Fitness vehicle processes
8. Environment 1: Building approvals processes

## Engagement

This project will be led by the Economic Planning Division (EPD) of the Ministry of Finance and Economic Management.

The e-commerce work will involve the Financial Supervisory Commission, Ministry of Justice, , Cook Islands Financial Intelligence Unit and others.

The business small claims work will involve the Ministry of Justice and the legal community (including mediators and arbitrators).

The transport licensing and registrations and WoF sub-stream will involve the Ministry of Transport's Director of Land Transport, and the Deputy Police Commissioner.

The work on building approvals processes will involve the National Environment Service.

The baseline research stream will involve a range of non-government entities. Because of the focus on legal and regulatory arrangements, most of the respondents used for the research are legal professionals such as accountants, lawyers, judges or notaries. Freight forwarders, accountants, architects, engineers and other professionals may be asked to answer questionnaires related to trading across borders, taxes and construction permits. Certain public officials (such as registrars from the commercial or property registry) also provide information that is incorporated into the indicators.

No public communications strategy is presently planned, however it is likely that the e-commerce and business small-claims streams will require extensive public engagement as policy options become apparent.

## Estimated Cost

This is expected to have minimal direct costs beyond government Business as Usual (BAU), but any administrative or unanticipated costs will be funded through the Economic Response Roadmap administered payment managed by MFEM. MFEM may seek TA support for the e-commerce and business small-claims streams from the ADB.

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