

BOILERS, LIFTS, AND CRANES AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill is largely the Bill introduced in 1983 as the Funicular Tramways Bill, as proposed to be amended by Supplementary Order Paper No. 38 of 1983, but in addition incorporating certain amendments that the Commerce and Energy Select Committee intended to recommend. The Bill has 5 broad effects: it extends the definition of the expression "lift" to cover chairlifts, mountain gondolas, and the like; inserts into the principal Act a limited safety regime for funicular tramways and for ski-tows and similar surface passenger mechanisms; amends the Machinery Act 1950 to provide for the control and safety of museum tramways by regulations made under that Act; retains the Tramways Amendment Act 1910 and its amendments, and provides for the administration of those Acts by the Ministry of Transport; and repeals the Tramways Act 1908 and its amendments (other than the Tramways Amendment Act 1910 and its amendments).

Clause 1 relates to the Short Title and commencement.

Clause 2 relates to interpretation. Various categories of device are defined, and the definition of "lift" is extended to include "aerial ropeways".

Clause 3 inserts into the principal Act new *sections 30B to 30F* relating to funicular tramways and passenger ropeways ("devices").

Section 30B requires the owner of a device to have a manager of that device, and to inform the Secretary for Transport whenever a new manager is appointed.

Section 30C requires the owner of a device to have it properly and safely equipped, and to have the equipment inspected and maintained.

Section 30D provides for the Secretary to issue Codes of Practice relating to devices. A Code of Practice is to have no effect until approved by the Minister of Transport; and the Minister is required, before giving approval, to be satisfied that the Secretary has carried out proper consultation, and to consider any comments made to the Minister by the persons consulted by the Secretary or persons who feel they should have been consulted.

Section 30F requires the manager of a device to make a record of all inspections, maintenance, and works, carried out in respect of that device, retain that record, and report to the owner of that device describing the inspections, maintenance, and works carried out each year; and requires the owner to supply a copy of the report to the Secretary.

Section 30F requires the drivers of funicular tramways and the operators of passenger ropeways to be adequately trained.

Clause 4 amends section 55 (2) of the principal Act so as to provide a fine of up to \$100 per day for continuing offences.

Clause 5 relates to amendments, repeals, and revocations.

Hon. Richard Prebble

BOILERS, LIFTS, AND CRANES AMENDMENT

ANALYSIS

Title	<i>Funicular Tramways and Passenger Ropeways</i>
1. Short Title and commencement	30B. Owner to appoint manager
2. Interpretation	30C. Devices to be provided with proper equipment, etc.
3. New provisions inserted relating to funicular tramways and surface ropeways	30D. Codes of practice
	30E. Annual report by manager
	30F. Drivers and operators to be adequately trained
	4. General penalty
	5. Consequential amendments, repeals, and revocations
	Schedules

A BILL INTITULED

An Act to amend the Boilers, Lifts, and Cranes Act 1950

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title and commencement—(1) This Act may be cited as the Boilers, Lifts, and Cranes Amendment Act 1984, and shall be read together with and deemed part of the Boilers, Lifts, and Cranes Act 1950* (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 1st day of April 1985.

*R.S. Vol. 1, p. 377
Amendment: 1980, No. 101

2. Interpretation—(1) Section 2 (1) of the principal Act is hereby amended by inserting, in the appropriate alphabetical order, the following definitions:

“ ‘Aerial ropeway’ means a passenger ropeway that carries passengers in chairs, or enclosed cars,— 5

“ (a) Attached to and supported by a moving rope or cable; or

“ (b) Attached to a moving rope or cable but supported by a standing rope or cable, or other overhead structure: 10

“ ‘Code of practice’ means a recommendation issued under **section 30D (1)** of this Act; and includes any amendment or revocation of any such recommendation:

“ ‘Device’ means a funicular tramway or passenger ropeway: 15

“ ‘Funicular tramway’ means a tramway comprising stationary winding machinery and controls, and 2 carriages operating on an incline on rails whose propulsion is by means of a pulley-driven connecting rope fixed permanently to each carriage, and in whose operation the weight of one carriage is offset against the weight of the other: 20

“ ‘Passenger ropeway’ means a ropeway or cableway to which the motion of a prime mover is transmitted, and which is used, or designed or intended to be used, for the conveyance of passengers; and includes the prime mover and any transmission machinery, supporting structure, and equipment, used or intended to be used in connection with that ropeway or cableway: 25 30

“ ‘Surface ropeway’ means a passenger ropeway that is not an aerial ropeway.”:

(2) The said section 2 (1) is hereby further amended—

(a) By adding to the definition of the term “lift” the words “and includes an aerial ropeway”: 35

(b) By inserting in the definition of the term “owner”, after the word “boiler”, in both places where it appears, the word “, device,”:

(c) By inserting in the definition of the term “premises”, after the word “boiler”, the word “, device,”. 40

(3) The principal Act is hereby consequentially amended—

(a) By inserting in sections 4 (1) (b), 6, 16, 20, 31, 33, 34 (2), 35 (1), and 53 after the word “boiler”, wherever it appears, the word “, device,”: 45

(b) By inserting in sections 3, 4, and 53, after the word “boilers”, wherever it appears, the word “, devices,”:

- (c) By inserting in subsections (1) and (2) (a) of section 27, before the word “machinery”, wherever it appears, the words “device or”;
- 5 (d) By inserting in section 27 (2) (b), before the word “machinery”, the word “device,”;
- (e) By inserting in section 34 (1)—
 - (i) Before the word “machinery”, where it first appears, the words “any device or”;
 - 10 (ii) After the word “boiler”, where it secondly appears, the word “, device,”.

3. New provisions inserted relating to funicular tramways and surface ropeways—The principal Act is hereby amended by inserting, after section 30A (as inserted by section 9 of the Boilers, Lifts, and Cranes Amendment Act 1966), the
15 following heading and sections:

“Funicular Tramways and Passenger Ropeways

“30B. Owner to appoint manager—The owner of a device shall take all reasonable steps to ensure that—

- 20 “(a) There is at all times a manager appointed in respect of that device; and
- “(b) Whenever a manager is appointed in respect of that device, the name of that manager is forthwith notified in writing to the Secretary.

“30C. Devices to be provided with proper equipment, etc.—The owner of a device shall take all reasonable steps to ensure that—

- 30 “(a) That device and, in the case of a device that is a funicular tramway, every carriage on that device, is at all times provided with all such equipment, appliances, and furnishings as are sufficient to ensure the safety of the owner’s employees, of passengers on that device, and of the general public; and
- 35 “(b) That device, that equipment, and those appliances and furnishings are at all times properly maintained and repaired; and
- 40 “(c) There are regularly carried out all such inspections, maintenance, and works, and at such intervals, as will ensure the safety of the owner’s employees, of passengers on that device, and of the general public, and the safe operation of that device generally.

“30D. **Codes of practice**—(1) The Secretary may from time to time issue recommendations as to all or any of the following matters (whether in relation to all devices or in relation to devices of one or more classes only):

“(a) The equipment, appliances, and furnishings with which devices, and (in the case of devices that are funicular tramways) the carriages on devices, should be provided: 5

“(b) The inspection, maintenance, and repair of devices, and of any such equipment, appliances, and furnishings;— 10

and may at any time amend or revoke any such recommendation.

“(2) Without limiting the generality of **subsection (1)** of this section, a code of practice may include a description of any commodity, phenomenon, process, or practice, by reference to its nature, quality, strength, purity, composition, quantity, dimension, weight, grade, durability, origin, age, intensity, duration, or other characteristic whatsoever, or any 2 or more of them, and may also include a glossary of terms, definitions, or symbols, or any of them. 15 20

“(3) Subject to **subsection (6)** of this section, no code of practice shall have any force or effect until it has been approved by the Minister.

“(4) The Minister shall not approve any code of practice unless— 25

“(a) Not less than one month has elapsed since the publication in the *Gazette* of a notice of the intention of the Secretary to apply for approval; and

“(b) The Minister is satisfied that the Secretary has consulted such persons as the Secretary considers will be affected by the code of practice, or representatives of those persons, as he thinks appropriate, and that they have had the opportunity to consider its possible effects and comment on those effects to the Minister; and 30 35

“(c) The Minister has considered any comments made to him concerning those effects.

“(5) When the Minister approves a code of practice, he shall—

“(a) Publish a notice of his approval in the *Gazette*; and 40

“(b) Cause that code of practice to be promulgated in such manner as he thinks fit.

“(6) The fact that the Minister has published in the *Gazette* a notice under **subsection (5) (a)** of this section shall be conclusive proof that the requirements of this section have been complied with in respect of the approval specified in the notice.

5 “(7) Where any person is charged with an offence in respect of a failure to comply with **section 30c** of this Act, and it is proved that there was in existence at the time of the alleged failure a code of practice relating to matters of the kind to which the alleged offence relates,—

10 “(a) Evidence that that code of practice was in all relevant respects complied with shall be rebuttable evidence that that person complied with that section; and

“ (b) Evidence that that code of practice was in one or more relevant respects not complied with shall be
15 rebuttable evidence that that person failed to comply with that section.

“(8) Without affecting any other method of proof, the production in any proceedings of any code of practice purporting to be issued by the Secretary shall, in the absence
20 of proof to the contrary, be sufficient evidence that it has been issued under the authority of, and approved by the Minister under, this section.

“**30E. Annual report by manager**—(1) The manager for the time being of every device shall—

25 “(a) Make a written record of all inspections, maintenance, and works carried out in respect of that device; and

“ (b) Retain every such record made in respect of that device.

“(2) Not later than the 1st day of March in every year, the manager for the time being of every device shall supply to the
30 owner of that device a written report describing the inspections, maintenance, and works, carried out in respect of that device during the year that ended with the preceding 31st day of December; and that owner shall retain every such report, and supply a copy of it to the Secretary.

35 “**30F. Drivers and operators to be adequately trained**—

(1) The manager of a funicular tramway shall ensure that no person drives any carriage of that tramway unless that manager is satisfied that that person has been adequately trained in the driving of carriages of its type and is a suitable person to drive
40 such carriages.

“(2) The manager of a passenger ropeway shall ensure that no person operates that ropeway unless that manager is satisfied that that person has been adequately trained in the operation of ropeways of its type and is a suitable person to operate such a ropeway.”

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4. General penalty—Section 55 (2) of the principal Act is hereby amended by adding the words “and, where the offence is a continuing one, to a further fine not exceeding \$100 for every day upon which the offence has continued”.

5. Consequential amendments, repeals, and revocations—(1) The enactments specified in the first column of the **First Schedule** to this Act are hereby consequentially amended in the manner indicated in the second column of that schedule. 10

(2) The enactments specified in the **Second Schedule** to this Act are hereby consequentially repealed. 15

(3) Section 4 (3) of the principal Act is hereby consequentially amended by omitting the words “or the powers of inspection and regulation of machinery, air cylinders, and braking systems of tramways contained in the Tramways Act 1908”. 20

(4) The Tramway Carriage Regulations 1979* are hereby amended in the manner indicated in the **Third Schedule** to this Act, and (as so amended) are hereby deemed to have been made pursuant to **section 21AA** of the Machinery Act 1950 (as inserted by **subsection (1)** of this section), and to be capable of being amended or revoked accordingly. 25

(5) The Tram Drivers Regulations 1947† are hereby revoked.

*S.R. 1979/6

†S.R. 1947/22

SCHEDULES

FIRST SCHEDULE
ENACTMENTS AMENDED

Section 5 (1)

Enactment	Amendment
1910, No. 74—The Tramways Amendment Act 1910 (R.S. Vol. 11, p. 671)	<p>By omitting from the Title the words “amend the Tramways Act 1908”, and substituting the words “provide for appeals to Appeal Boards by tramway employees”.</p> <p>By omitting from section 1 (1) the words “, and shall form part of and be read together with the Tramways Act 1908 (hereinafter referred to as the principal Act)”.</p> <p>By omitting from section 6 (3) the words “reported to the Minister and shall be”.</p> <p>By repealing section 6 (4) (as added by section 74 of the Statutes Amendment Act 1946).</p>
1950, No. 52—The Machinery Act 1950 (Reprinted 1972, Vol. 3, p. 2543)	<p>By inserting in section 2, in the appropriate alphabetical order, the following definitions:</p> <p>“‘Funicular tramway’ has the meaning assigned to that term by section 2 of the Boilers, Lifts, and Cranes Act 1950:</p> <p>“‘Surface ropeway’ has the meaning assigned to that term by section 2 of the Boilers, Lifts, and Cranes Act 1950:”.</p> <p>By inserting in paragraph (a) of section 3 (1) (as substituted by section 3 (1) of the Machinery Amendment Act 1970), after the word “engine,”, where it first appears, the words “funicular tramway, surface ropeway,”.</p> <p>By omitting from paragraph (e) of the said section 3 (1) the word “Any”, and substituting the words “Except to the extent provided in section 21AA of this Act, or in any regulations made under that section, any”.</p> <p>By inserting, after section 21A, the following section:</p> <p>“21AA. Museum tramways—(1) In this section, unless the context otherwise requires,—</p> <p>“‘Component’ means a museum tramway carriage, tramway electrical installation, or tramway track:</p>

FIRST SCHEDULE—*continued*ENACTMENTS AMENDED—*continued*

Enactment	Amendment
<p>1950, No. 52—The Machinery Act 1950 (Reprinted 1972, Vol. 3, p. 2543—<i>continued</i>)</p>	<p>“ ‘Museum tramway carriage’ means any item of tramway rolling stock used or intended to be used (otherwise than as a permanently immobile installation) as part of or in connection with a tramway museum or historic display or demonstration:</p> <p>“ ‘Tramway electrical installation’ means the electrical installation (if any) used or intended to be used in connection with a museum tramway carriage:</p> <p>“ ‘Tramway track’ means the track used or intended to be used in connection with a museum tramway carriage.</p> <p>“(2) Every person commits an offence against this Act who operates any museum tramway carriage, unless—</p> <p>“(a) It, and the tramway track and any tramway electrical installation used in connection with it, are each registered under this section; and</p> <p>“(b) A certificate of registration under this section is in force in respect of each of them.</p> <p>“(3) Application for the registration under this section of any component shall be made in the prescribed form to the Inspector by or on behalf of its owner, and shall be accompanied by documentary evidence—</p> <p>“(a) If it is a museum tramway carriage, that it can be used; and</p> <p>“(b) If it is a tramway electrical installation or tramway track, that a carriage can be used in connection with it,—</p> <p>without danger to the driver of that carriage, passengers carried on it, or persons in its vicinity.</p> <p>“(4) If the Inspector is of the opinion that an application is in order, he shall issue to the applicant, either unconditionally or subject to such conditions as are specified in it, a certificate of registration in the prescribed form.</p> <p>“(5) Unless sooner revoked under regulations made under this Act, every certificate of registration shall expire either 2 years, or such lesser period as is specified in it, after the date of its issue.</p>

FIRST SCHEDULE—*continued*ENACTMENTS AMENDED—*continued*

Enactment	Amendment
<p>1950, No. 52—The Machinery Act 1950 (Reprinted 1972, Vol. 3, p. 2543—<i>continued</i>)</p>	<p>“(6) Any Inspector may cancel a certificate of registration if—</p> <p>“(a) The owner of the component concerned is convicted of an offence against this section; or</p> <p>“(b) That Inspector is satisfied that that component can no longer be operated safely.</p> <p>“(7) Where a registered component is materially altered or is repaired after suffering damage necessitating repair by welding or by the replacement of a load-bearing part other than a bolt, the owner shall notify the Inspector, who may require the owner, before using the component, to produce evidence that the component can be safely used.</p> <p>“(8) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:</p> <p>“(a) Prescribing fees payable in respect of the issue or renewal of registration certificates under this section:</p> <p>“(b) Prescribing the form and nature of evidence required to accompany applications for such certificates:</p> <p>“(c) Prescribing conditions to which such certificates shall be subject:</p> <p>“(d) Prescribing duties in respect of the owners and operators of components:</p> <p>“(e) Prescribing minimum ages for drivers of museum tramway carriages:</p> <p>“(f) Requiring changes of ownership of components to be notified:</p> <p>“(g) Prescribing circumstances in which components are to be inspected or examined:</p> <p>“(h) Requiring the owners of components to inspect or examine them in specified circumstances and keep records of each inspection or examination:</p> <p>“(i) Imposing general duties on owners or operators of components or both of them:</p>

FIRST SCHEDULE—*continued*ENACTMENTS AMENDED—*continued*

Enactment	Amendment
1950, No. 52—The Machinery Act 1950 (Reprinted 1972, Vol. 3, p. 2543— <i>continued</i>)	“(j) Providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this section.”
1959, No. 83—The Tramways Amendment Act 1959 (R.S. Vol. 11, p. 690)	By omitting from the Title the words “Act 1908”, and substituting the words “Amendment Act 1910”. By omitting from section 1 the words “Act 1908”, and substituting the words “Amendment Act 1910”.
1968, No. 39—The Ministry of Transport Act 1968	By inserting in the First Schedule (as substituted by section 3 (1) of the Ministry of Transport Act 1973), before the item “1920, No. 33—The Westport Harbour Act 1920.”, the item “1910, No. 74—The Tramways Amendment Act 1910.”
1979, No. 114—The Tramways Amendment Act 1979 (R.S. Vol. 11, p. 692)	By omitting from the Title the words “Act 1908”, and substituting the words “Amendment Act 1910”. By omitting from section 1 the words “Act 1908 (hereinafter referred to as the principal Act)”, and substituting the words “Amendment Act 1910”.
1981, No. 35—The Public Works Act 1981	By omitting from the definition of the term “local railway” in section 176 the words “and all tramways”. By omitting the reference in the Seventh Schedule to the Tramways Act 1908.

SECOND SCHEDULE

Section 5 (2)

ENACTMENTS REPEALED

- 1908, No. 199—The Tramways Act 1908 (R.S. Vol. 11, p. 639).
1910, No. 74—The Tramways Amendment Act 1910: Sections 2 to 4, paragraphs (a) to (f), and paragraph (h), of section 5 (1), section 5 (2), sections 7 to 14 (R.S. Vol. 11, p. 671).
1911, No. 22—The Tramways Amendment Act 1911 (R.S. Vol. 11, p. 680).
1913, No. 64—The Tramways Amendment Act 1913 (R.S. Vol. 11, p. 682).
1915, No. 19—The Tramways Amendment Act 1915 (R.S. Vol. 11, p. 684).
1920, No. 81—The Tramways Amendment Act 1920 (R.S. Vol. 11, p. 685).
1930, No. 28—The Tramways Amendment Act 1930 (R.S. Vol. 11, p. 685).
1944, No. 25—The Statutes Amendment Act 1944: Section 66 (Reprinted 1976, Vol. 5, p. 4477).
1946, No. 40—The Statutes Amendment Act 1946: Sections 73 to 75 (Reprinted 1976, Vol. 5, p. 4480).
1969, No. 109—The Tramways Amendment Act 1969 (R.S. Vol. 11, p. 690).
1973, No. 96—The Tramways Amendment Act 1973 (R.S. Vol. 11, p. 691).
1976, No. 125—The Tramways Amendment Act 1976 (R.S. Vol. 11, p. 691).
1978, No. 128—The Tramways Amendment Act 1978 (R.S. Vol. 11, p. 692).
1979, No. 59—The Local Government Amendment Act 1979: So much of Part III of the Third Schedule as relates to the Tramways Act 1908. (R.S. Vol. 5, p. 683).
1979, No. 147—The National Development Act 1979: So much of the Schedule as relates to the Tramways Act 1908, the Tramways Amendment Act 1910, or the Tramways Amendment Act 1911.
1981, No. 35—The Public Works Act 1981: Section 180 (1) (e).
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Section 5 (4)

THIRD SCHEDULE

AMENDMENTS TO TRAMWAY CARRIAGE REGULATIONS 1979

Regulation	Amendment
Regulation 2	<p>To omit the definition of the term "carriage", and substitute the following definition: " 'Carriage' means a museum tramway carriage:":</p> <p>To revoke the definitions of the terms "funicular tramway" and "inspector", and substitute the following definition: " 'Inspector' means an Inspector of Machinery:":</p> <p>To omit the definitions of the terms "manager" and "Minister", and substitute the following definition: " 'Manager', in relation to any tramway, means the persons who have the management or control of that tramway:":</p> <p>To omit the definition of the terms "tramway" and "tramway system", and substitute the following definition: " 'Tramway', and 'tramway system', mean any tramway track; and include the tramway installation, and all museum tramway carriages, used or associated with that track."</p>
Regulation 38	To revoke subclause (2).
Regulation 39	To revoke that regulation.