

Rail Network Bill

Government Bill

As reported from the Government Administration
Committee

Commentary

Recommendation

The Government Administration Committee has examined the Rail Network Bill and recommends that it be passed with the amendments shown.

Introduction

The bill provides the New Zealand Railways Corporation, now trading as ONTRACK, with the capability to run and maintain the rail infrastructure, and aligns its objectives and functions with the New Zealand Transport Strategy. The bill also repeals the Railways Corporation Act 1981 and the New Zealand Railways Corporation Restructuring Act 1990, carrying over provisions that are still relevant, such as those pertaining to the acquisition, management and disposal of rail network land and the closure of railway lines.

The majority of the amendments to the bill are minor and technical in nature. Our commentary covers the substantive issues raised during our examination.

Clause 4—Interpretation

It was submitted that the current definition of “railway operator” in clause 4 of the bill should be amended to make it consistent with that of a “rail operator” under the Railways Act 2005. As markedly different rights and obligations are associated with these definitions,

we do not agree these two roles should be made synonymous. We note that the bill carries over the present situation and it would go beyond current policy to extend the definition of “railway operator” to include “rail operator”. However, we accept that the current definition of “railway operator” may cause confusion, and recommend that the bill be amended by deleting “railway operator” wherever it appears and substituting a more specific term, “railway body corporate”.

Clause 7—Objective of the bill

Under clause 7(1) of the bill, the entity must undertake its functions with the aim of achieving an integrated, safe, responsive and sustainable transport system. We recommend that the phrase “the aim of achieving” in subclause (1) be deleted so that the entity’s objective would then mirror that of Transit New Zealand in section 77 of the Land Transport Management Act 2003.

Cost recovery

Subclause (3) requires that in meeting its objective, the entity must aim to recover the direct and indirect costs of operating the rail network. Submitters were concerned that the full-cost-recovery model is not appropriate for the New Zealand rail industry and has been unsuccessful in the United Kingdom and Australia. It was also suggested that subclause (3) is not appropriate given the bill’s objective of achieving a sustainable rail system, and the Government’s objective of increasing the use of rail transport.

The requirement in subclause (3) reflects the Government’s expectation that the entity should operate commercially and not subsidise rail operators’ business, but we are concerned that it also gives an inappropriate message about the entity’s costs; and, in view of overseas experience, we are concerned that a full-cost recovery model could undermine the sustainability of the rail network and rail operations. We consider a more balanced approach would be to remove the implication, and recommend that subclause (3) be deleted.

Clause 8—Functions of entity

Clause 8 sets out the various functions of the entity. Under clause 8(1)(c) ONTRACK will have the responsibility of preparing and maintaining industry codes and standards to the extent reasonable

and necessary for the purpose of operating the rail network. Submitters expressed concerns that clause 8(1)(c) could potentially empower ONTRACK to make unilateral decisions and take on a regulatory role regarding rail industry standards, which would be inconsistent with the National Rail Systems Standards Framework.

We agree that an inference could be drawn from the current wording of clause 8(1)(c) that the entity is to exercise a regulatory function, which is not the policy of the rail safety regime under the Railways Act 2005. Therefore we recommend that clause 8(1)(c) and, by association, clause 8(4), be deleted.

Clauses 9 and 10—Powers of entity

Clauses 9 and 10 set out the general powers of the entity and give it the power to grant leases and other rights. Under clause 9(1)(c) the entity may receive income, and grant leases, licences, easements and permits or rights of any kind in respect to rail network land. Submitters expressed concern that it is unclear how the broad powers in clause 9(1)(c) for the entity to grant leases and licences over rail network land relate to the power defined in clause 10 to grant the same rights to a “railway operator”. In particular, it was argued the bill should clarify whether leases and licences in relation to the rail network may be granted to “railway operators” only, or whether the entity has the more general right to grant leases or licences over the rail network to any person. We agree that the relationship between these two clauses should be clarified and recommend that the provision relating to clause 9(1)(c) should be incorporated into clause 10(1) to clarify that the provisions relating to railway operators are a subset of the general powers to grant leases and other rights.

Clause 11—Certificate of title for rail network land

We recommend that the phrase “a person having the necessary authority” in clause 11(3) should be replaced with the words “the chief executive of the entity” as the current definition is unclear who that person might be. We also recommend that a new subclause be inserted to ensure that the person whom the chief executive has authorised to execute the instrument may not delegate the authority to do so.

Clause 32—Treatment of assets on land

Clause 32 concerns the law of fixtures on land. Normally fixtures such as railway sidings form part of the underlying land, but the New Zealand Railways Corporation Restructuring Act 1990 provided (in the disposal of the rail assets) for the Crown or a transferee company to own structures separate from the ownership of land used for the purposes of rail transport. Clause 32 is a carry-over from section 6 of the 1990 Act, which dealt with the vesting of assets.

We requested clarification of the treatment of assets on land if the land is subsequently sold and the new owner does not want the assets. The assets are the personal property (as distinct from real property) of the entity. This means a landowner could not treat the assets as his or her own. Whether the land owner could arrange for the removal of the assets depends on the circumstances of each asset. In practical terms, this means that where the assets are still being used (for example, through a contract or licence with the landowner) the landowner will not be able to come to an arrangement with the entity for the assets to be removed, depending on the underlying legal arrangements. These issues will almost certainly have been addressed at the time of sale of the land. We recommend that clause 32 be amended to clarify that the Crown or the entity may hold assets that are fixed to, or placed under or over, any land.

Clause 36—Closure of railway lines

Clause 36 provides that no railway line that is for the time being under the control of the entity may be permanently closed without the prior written consent of the Minister. The entity is also required to notify the Minister if it intends to close a railway line to traffic.

Passenger services

Given recent media reports that Toll is searching for a buyer for its two South Island passenger operations, we agree with submitters that it is appropriate for the entity to be required to consult before a line is permanently closed, or permanently closed to passenger traffic, or when closing a locomotive facility permanently. We therefore recommend that subclause (1) be amended by inserting a phrase to the respect that no railway line should be permitted to become unsuitable for passenger carriage without the prior written consent of the Minister. We also recommend that subclause (2) be substituted so that the entity is required to consult with any local authority

and rail participant affected by a rail closure, in addition to notifying the Minister.

We requested clarification of subclause (1)(b) that requires the Minister's prior written consent to manage a line "in a manner that permanently prohibits passenger railway carriage". We were concerned that this requirement could place pressure on the Government to maintain little used lines, at considerable cost, so that they remain open to passenger traffic. However, we note that subclause (1)(b), while requiring the Minister's written consent, also enables the responsible Minister to decide whether lines should remain open to passenger operations, thereby allowing the Minister to preserve options for the future.

Closure of sidings and turning facilities

We also sought clarification of the meaning of "siding" in subclause (3)(a) and "crossing loop" in subclause (3)(b). Concerns were expressed that the reference to a siding might include access to turntables and turning triangles, and loss of these facilities could limit use of the network for other rail operators. One submitter noted that its members often used sections of lines or sidings with turning facilities to avoid running steam locomotives tender-first for long distances on the return journey. As some sidings include turning facilities used by heritage operators who would be affected by permanent closure, we agree that subclause (2) be amended so that the entity will be required to consult with local authorities before closing any such section of line.

Regulation-making powers

On the advice of the Regulations Review Committee we recommend that the reference to "national development plans" in clause 37(a) should be amended to "rail network development plan" to be consistent with clause 12.

We note that the regulation-making power in clause 37(a) is intended for use only if problems emerge with the approach specified in clause 12(1), which directs the entity to prepare a rail network development plan for each financial year in accordance with a process approved by the Minister.

Other issues

Government Superannuation Fund Act 1956

Clause 13 of the bill sets out the application of the Government Superannuation Fund Act 1956 to the entity's employees. As this clause is concerned primarily with transitional and staff-related matters, we recommend it be moved to Schedule 2 of the bill.

Existing leases

Although clause 38 repeals both the New Zealand Railways Corporation Act 1981 and the New Zealand Railways Corporation Restructuring Act 1990, we recommend that a new clause 15A be inserted in Schedule 2 to clarify that an existing lease granted under either of those Acts continues in effect as if it were granted under clause 10 of the bill.

Appendix

Committee process

The Rail Network Bill was referred to the committee on 12 April 2005. The closing date for submissions was 13 May 2005. We received and considered 8 submissions from interested groups and individuals. We heard 7 submissions. We received advice from the Ministry of Transport and a representative from ONTRACK.

Committee membership

Shane Ardern (Chairperson)

HV Ross Robertson (Deputy Chairperson)

Brian Connell

Russell Fairbrother

Sandra Goudie

Hon Dover Samuels

Key to symbols used in reprinted bill

As reported from a select committee

Struck out (unanimous)

Subject to this Act,

Text struck out unanimously

New (unanimous)

Subject to this Act,

Text inserted unanimously

(Subject to this Act,)

Words struck out unanimously

Subject to this Act,

Words inserted unanimously

Hon Annette King

Rail Network Bill

Government Bill

Contents

		Page
1	Title	2
2	Commencement	3
Part 1		
Preliminary provisions		
3	Purpose	3
4	Interpretation	3
5	Act binds the Crown	6
Part 2		
Rail network		
Subpart 1—Entity responsible for operating rail network		
<i>Key governance provisions</i>		
6	New Zealand Railways Corporation continues in existence	6
7	Objective	7
8	Functions	7
<i>Powers of entity</i>		
9	General powers of entity	9
10	Powers to grant leases and other rights	9
11	Certificates of title for rail network land	10
<i>Planning</i>		
12	Rail network development plan	12
<i>Application of other Acts to entity</i>		
14	Application of Inland Revenue Acts	13
15	Application of Public Works Act 1981	13
16	Application of Resource Management Act 1991	14
17	Application of certain land transport Acts to entity	14
Subpart 2—Disposal of affected rail network land		
<i>Procedure for disposal by entity</i>		
18	Offer to former owner or former owner's successor	15
19	Sale to owner of adjacent land	15
20	Determination of current market value	15
21	Sale to other persons	16

	<i>Disposal of former Maori land</i>	
22	Disposal of former Maori land	16
	<i>Transfer of affected rail network land</i>	
23	Transfer of affected rail network land	16
	<i>Subdivisions relating to disposal of affected rail network land</i>	
24	Application of Resource Management Act 1991	17
25	Conditions	17
26	Consultation with Registrar-General of Land	17
27	Conditions to be endorsed on survey plan	18
28	Condition under section 25(a)	18
29	Covenant under section 25(b)	18
30	Cancellation of condition or covenant	19
31	Consequences of amalgamation	19
	Subpart 3—Miscellaneous provisions	
32	Treatment of assets on land	20
33	Certificate by entity to be evidence of certain facts	21
34	Railway bodies corporate	21
35	Authority for railway bodies corporate	21
36	Closure of railway lines or turning facilities controlled by entity	21
	<i>Regulation-making powers</i>	
37	Regulations	23
	<i>Repeals, consequential amendments, revocations, and transitional and savings provisions</i>	
38	Repeals	23
39	Consequential amendments	23
40	Revocations	23
41	Transitional and savings provisions	23
	<i>Miscellaneous</i>	
42	Declaration	24
	Schedule 1	25
	Enactments amended and regulations revoked	
	Schedule 2	31
	Transitional and savings provisions	

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Rail Network Act **2005**.

2 Commencement

This Act (*except section 14*) comes into force on **1 July (2005) 2006**.

Struck out (unanimous)

(2) **Section 14** is deemed to have come into force on **1 July 2004**.

**Part 1
Preliminary provisions**

5

3 Purpose

The purpose of this Act is to—

- (a) contribute to the aim of achieving an integrated, safe, responsive, and sustainable transport system; and 10
- (b) reform the entity; and
- (c) amend and consolidate railways legislation.

4 Interpretation

In this Act, unless the context otherwise requires,—

affected rail network land means rail network land held under the Public Works Act 1981 by the Crown or the entity for a public work, other than land acquired after 31 January 1982 and before 31 March 1987 for a public work that was not an essential work, and which is held by the entity, or by the Crown, for *(railways)* railway purposes 15 20

agreement—

- (a) includes a deed, a contract, an agreement, an arrangement, and an understanding, whether oral or written, express or implied, and whether or not enforceable at law; and 25
- (b) without limiting **paragraph (a)**, includes a contract of service and a deed, contract, agreement, or arrangement creating or evidencing a trust

allotment in **subpart 2 of Part 2** has the same meaning as in section 218 of the Resource Management Act 1991 30

amalgamated in **subpart 2 of Part 2** means amalgamated pursuant to a condition under **section 25**

assets—

- (a) means any real or personal property of any kind, whether or not subject to rights; and 35

- (b) without limiting **paragraph (a)** includes—
- (i) any estate or interest in any land, including all rights of occupation of land or buildings:
 - (ii) all buildings, vehicles, plant, equipment, and machinery, and any rights in them: 5
 - (iii) all securities within the meaning of the Securities Act 1978:
 - (iv) all rights of any kind, including rights under Acts and agreements, and all applications, objections, submissions, and appeals relating to such rights: 10
 - (v) all patents, trade marks, designs, copyright, plant variety rights, and other intellectual property rights of any kind whether enforceable by Act or rule of law:
 - (vi) goodwill, and any business undertaking: 15
 - (vii) interests of any kind in any of the property specified in **subparagraphs (i) to (vi)**
- employee** has the same meaning as in section 6 of the Employment Relations Act 2000
- entity** means the New Zealand Railways Corporation (a corporation that uses or has used the trading name ONTRACK) 20
- land** includes—
- (a) subsoil, airspace, and water and marine areas; and
 - (b) interests in or over land
- Land Valuation Tribunal** has the same meaning as in section 2 of the Land Valuation Proceedings Act 1948 25
- level crossing** has the same meaning as in section 4(1) of the Railways Act 2005
- light rail vehicle** has the same meaning as in section 4(1) of the Railways Act 2005 30
- local authority** has the same meaning as in section 5(1) of the Local Government Act 2002
- Minister** or **responsible Minister** means a Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act or a provision of this Act 35
- operate**, in relation to the entity and the rail network, means that the entity administers, manages, operates, controls, controls access to, controls operations on, maintains, or develops the rail network 40

rail network means the network of railway lines, and the infrastructure that facilitates the network of railway lines, that is for the time being under the control of the entity

rail network land means land that is held by the Crown or the entity for railway purposes

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rail vehicle has the same meaning as in section 4(1) of the Railways Act 2005

New (unanimous)

railway body corporate means a body corporate declared under—

- (a) **section 34** to be a railway body corporate for the purposes of this Act or a provision of this Act; or
- (b) section 2(1) of the New Zealand Railways Corporation Restructuring Act 1990 to be a railway operator for the purposes of that Act or a provision of that Act

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railway line has the same meaning as in section 4(1) of the Railways Act 2005

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Struck out (unanimous)

railway operator means a body corporate declared under—

- (a) **section 34** to be a railway operator for the purposes of this Act or a provision of this Act; or
- (b) section 2(1) of the New Zealand Railways Corporation Restructuring Act 1990

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registered valuer means a valuer for the time being registered under the Valuers Act 1948

road has the same meaning as in section 315 of the Local Government Act 1974; and—

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- (a) includes—
 - (i) a road under the jurisdiction of a local authority; and
 - (ii) a State highway within the meaning of section 2(1) of the Transit New Zealand Act 1989; but
- (b) does not include—

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- (i) a footpath or private road within the meaning of section 315 of the Local Government Act 1974; or
 - (ii) a motorway within the meaning of section 2(1) of the Transit New Zealand Act 1989; or 5
 - (iii) a roadway laid out by order of the Maori Land Court under Part 27 of the Maori Affairs Act 1953 (repealed) or any former Act, unless—
 - (A) that order has been cancelled; or
 - (B) the roadway has been declared to be a road 10
 - under section 421 of the Maori Affairs Act 1953 (repealed); or
 - (iv) a level crossing
- successor**, in relation to any person,—
- (a) means the person who would have been entitled to the land under the will or intestacy of that person had he or she owned the land at the date of his or her death; and 15
 - (b) if part of a person's land was acquired or taken, includes the successor in title of that person
- territorial authority** has the same meaning as in section 5(1) 20
of the Local Government Act 2002.

5 Act binds the Crown
This Act binds the Crown.

Part 2
Rail network 25

Subpart 1—Entity responsible for operating rail network

Key governance provisions

- 6 New Zealand Railways Corporation continues in existence**
- (1) The New Zealand Railways Corporation— 30
 - (a) continues in existence; and
 - (b) continues to be an instrument of the Executive Government of New Zealand; and
 - (c) is a Crown entity for the purposes of section 7 of the Crown Entities Act 2004. 35

- (2) The Crown Entities Act 2004 applies to the New Zealand Railways Corporation except to the extent that this Act expressly provides otherwise.
- (3) The entity’s board must have at least 5, but no more than 8, board members. 5
- (4) No person may be incorporated or registered, or operate or carry on activities, under a name that contains the words New Zealand Railways Corporation or under any name that, in the opinion of the Registrar of Companies, or the appropriate registering authority within the meaning of section 2 of the Flags, Emblems, and Names Protection Act 1981, so resembles a name containing those words that it is likely to deceive. 10
- (5) Nothing in **subsection (4)** applies to the entity or to any person who is appropriately authorised by the entity.

7 Objective 15

- (1) The objective of the entity is to undertake its functions in a way that contributes to *(the aim of achieving)* an integrated, safe, responsive, and sustainable transport system.
- (2) In meeting its objective, the entity must exhibit a sense of social and environmental responsibility, which includes avoiding, to the extent reasonable in the circumstances, adverse effects on the environment. 20

Struck out (unanimous)

- (3) In meeting its objective, the entity must aim to recover its direct and indirect costs of operating the rail network.

8 Functions 25

- (1) The entity has the functions of—
 - (a) operating the rail network; and
 - (b) operating rail vehicles to the extent reasonable and necessary for the purpose of carrying out its function referred to in **paragraph (a)**; and 30

Struck out (unanimous)

- (c) preparing and maintaining industry codes and standards to the extent reasonable and necessary for the purpose of carrying out its function referred to in **paragraph (a)**; and
- (d) acquiring, administering, managing, controlling, maintaining, developing, leasing, and disposing of rail network land in accordance with this Act; and 5
- (e) co-operating with, or providing other transport advice and assistance to, any government agency or local government agency when requested to do so by the Minister, but only if the Minister and the entity are satisfied that the performance of the rail functions and duties of the entity will not be compromised; and 10
- (f) providing the Minister with any advice relating to the entity's functions that the Minister may request; and 15
- (g) carrying out any other functions and duties conferred on it by this Act or any other enactment; and
- (h) carrying out any other functions relating to rail transport that the Minister directs in accordance with section 112 of the Crown Entities Act 2004; and 20
- (i) carrying out any functions that are incidental and related to, or consequential on, its functions set out in **paragraphs (a) to (h)**.
- (2) In performing its functions, the entity must— 25
- (a) act consistently with its objective; and
- (b) act efficiently and effectively and in a manner consistent with the spirit of service to the public; and
- (c) operate in a financially responsible manner and, for this purpose,— 30
- (i) prudently manage its assets and liabilities; and
- (ii) endeavour to ensure its long-term financial viability; and
- (iii) endeavour to ensure that it acts as a successful going concern.
- (3) **Subsection (2)** does not limit any of the duties of the entity's board under sections 49 to 51 of the Crown Entities Act 2004. 35

Struck out (unanimous)

- (4) Neither a code nor a standard prepared or maintained under **subsection (1)(c)** is to be treated as a regulation for the purposes of—
 - (a) the Regulations (Disallowance) Act 1989;
 - (b) the Acts and Regulations Publication Act 1989. 5

Powers of entity

9 General powers of entity

- (1) Subject to this Act, the entity may do all or any of the following things:
 - (a) acquire any land (whether by or on behalf of the Crown, or on its own behalf): 10
 - (b) occupy, use, and manage any rail network land:

Struck out (unanimous)

- (c) grant leases, licences, easements, and permits or rights of any kind in respect of, and receive income from, any rail network land: 15
- (d) dispose of any rail network land, and receive the proceeds of the disposal of that rail network land, without any authority other than this paragraph:
- (e) subdivide any rail network land (whether by or on behalf of the Crown, or on its own behalf). 20
- (2) Nothing in **subsection (1)(d)** applies to the disposal of any public reserve within the meaning of the Reserves Act 1977.
- (3) No rail network land may be sold under **subsection (1)(d)** without the prior written consent of the Minister, who must have due regard to the future development of the rail network. 25
- (4) **Subsection (1)** does not limit sections 16 and 17 of the Crown Entities Act 2004.

Compare: 1981 No 119 s 24; 1990 No 105 s 20(a)

10 Powers to grant leases and other rights (to railway operators) 30

- (1) The entity may—

Struck out (unanimous)

- (a) grant to a railway operator leases, licences, easements, and permits or rights of any kind in respect of rail network land on any terms and conditions that the responsible Minister or the entity (as the case may be) may agree with the railway operator:

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New (unanimous)

- (a) grant leases, licences, easements, and permits or rights of any kind to any person (including, but not limited to, any railway body corporate) in respect of, and receive income from, any rail network land:

- (b) accept the total or partial surrender of any lease, licence, easement, or permit or right of any kind in respect of rail network land.

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- (2) Section 11(1) of the Resource Management Act 1991 does not apply in respect of—

- (a) the granting of a lease to a railway (*operator*) body corporate under **subsection (1)** unless the land in respect of which the lease is granted is used, or is intended to be used, solely or principally for—

15

- (i) car parking; or
 (ii) administration or residential purposes; or
 (iii) any purpose that is not connected with railway operations:

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- (b) the total or partial surrender of any lease that was granted to a railway (*operator*) body corporate under **subsection (1)**:

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- (c) the variation of any lease that was granted to a railway (*operator*) body corporate under **subsection (1)**.

Compare: 1990 No 105 s 12

11 Certificates of title for rail network land

- (1) If any land has become vested in the Crown or the entity for railway purposes so that the fee simple estate and all other estates and interests in the land of any person other than the Crown are extinguished,—

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- (a) the Registrar-General of Land, on the completion of such surveys (if any) as may be necessary, must, at the request of the entity, issue a certificate of title for the estate in the land or part of the land specified in the request in the name of either the Crown or the entity; and 5
- (b) that certificate of title must include a reference to the purposes for which the land is held.
- (2) The entity must not, without the prior consent of the Minister, request the Registrar-General of Land to issue a certificate of title in the name of the entity for land vested in the Crown for railway purposes. 10
- (3) An instrument that relates to the land in any such certificate of title and is duly executed by *(a person having the necessary authority under this Act)* the chief executive of the entity, or a person that the chief executive has authorised to execute the instrument, may be registered in accordance with the Land Transfer Act 1952. 15

New (unanimous)

- (3A) A person that the chief executive has authorised to execute an instrument may not delegate the power to execute the instrument. 20
- (4) A certificate of title issued before the commencement of this section in the name of the Crown and any instrument *(which)* that is duly executed by a person having the necessary authority (under this Act or) under the corresponding provisions of any former Act and which relates to the land in any such certificate of title is deemed to have been lawfully issued or executed. 25
- (5) Any land declared by section 26 of the Public Works Act 1981 to be vested in the Crown in fee simple is for the purposes of this section deemed to be vested in the Crown so that the fee simple in the land is extinguished. 30

Compare: 1981 No 119 s 32; 1990 No 105 s 20(b)

*Planning***12 Rail network development plan**

- (1) For each financial year, commencing with the **(2006/2007)** **2007/2008** financial year, the entity must, in accordance with a process approved by the Minister, prepare a rail network development plan, to be included in its Statement of Intent, which includes the following: 5
- (a) a statement of its priorities in relation to the rail network for the current financial year and the 9 following financial years: 10
- (b) a forecast of its proposed capital expenditure in relation to the rail network for the current financial year and the 9 following financial years.
- (2) The entity must, in preparing its rail network development plan, take into account any current national land transport strategy, the National Energy Efficiency and Conservation Strategy, and any relevant regional land transport strategies. 15

*Application of other Acts to entity***Struck out (unanimous)****13 Application of Government Superannuation Fund Act 1956** 20

- (1) Despite anything in any other Act, a person who, immediately before becoming an employee of the entity, is a contributor to the Government Superannuation Fund under Part 2 or Part 2A of the Government Superannuation Fund Act 1956 is, for the purposes of that Act, deemed to be employed in the Government service so long as that person continues to be an employee of the entity. 25
- (2) The Government Superannuation Fund Act 1956 applies to that person in all respects as if that person's service as an employee of the entity is Government service. 30
- (3) Nothing in **subsections (1) and (2)** entitles any person to become a contributor to the Government Superannuation Fund after that person has once ceased to be a contributor.

Struck out (unanimous)

- | | |
|--|---|
| <p>(4) For the purposes of applying the Government Superannuation Fund Act 1956, in accordance with this section, to all employees of the entity who are contributors to the Government Superannuation Fund, controlling authority, in relation to those employees, means the entity's board.</p> | 5 |
|--|---|

14 Application of Inland Revenue Acts

- | | |
|--|----|
| <p>(1) For the purposes of section 169 of the Crown Entities Act 2004, the entity is not a public authority for the purpose of the Inland Revenue Acts (as that term is defined in the Tax Administration Act 1994).</p> | 10 |
| <p>(2) Subsection (1) applies to amounts of income derived by the entity on and after 1 July (2004) <u>2006</u>.</p> <p><small>Compare: 2004 No 115 s 169</small></p> | |

15 Application of Public Works Act 1981

- | | |
|--|--------------|
| <p>(1) The powers and duties conferred and imposed on the Minister of Lands in respect of the compulsory acquisition of land by the Public Works Act 1981 are, so far as they are applicable, and with any necessary modifications, conferred and imposed on the Minister in respect of all matters and works under the control of, or being carried out by, the entity.</p> | 15

20 |
| <p>(2) The powers and duties conferred and imposed on the following persons are conferred and imposed on the entity in respect of all matters and works under the control of, or being carried out by, the entity:</p> | |
| <p>(a) the Minister of Lands under any provision of the Public Works Act 1981 (other than the powers and duties conferred and imposed on that Minister in respect of the compulsory acquisition of land):</p> | 25 |
| <p>(b) the Minister of Transport under any provision of that Act (other than the powers and duties conferred and imposed on that Minister in respect of motorways and limited access roads):</p> | 30 |
| <p>(c) any Minister of the Crown under any provision of that Act:</p> | |
| <p>(d) any chief executive under any provision of that Act.</p> | 35 |

- (3) Despite **subsections (1) and (2)**, nothing in sections 40 to 42 of the Public Works Act 1981 applies to affected rail network land.
- (4) The powers and duties conferred and imposed on the Minister and the entity by this section do not in any way limit or interfere with the powers and duties conferred on any Minister of the Crown or on any chief executive under the Public Works Act 1981. 5
- Compare: 1981 No 119 s 30
- 16 Application of Resource Management Act 1991** 10
- Despite **section (6(2)(b)) (6)(1)(b)**, the entity is not an instrument of the Executive Government of New Zealand for the purposes of the Resource Management Act 1991.
- Compare: 1981 No 119 s 3A
- 17 Application of certain land transport Acts to entity** 15
- Despite **section (6(2)(b)) 6(1)(b)**, or any other enactment or rule of law, proceedings for any offence committed on or after 1 November 1989 against any of the following Acts, or any regulations or bylaws made under any of those Acts, may be brought against the entity as if the entity were not an instrument of the Executive Government of New Zealand for the purposes of those Acts: 20
- (a) Land Transport Act 1998:
- (b) Land Transport Management Act 2003:
- New (unanimous)**
- (ba) Railways Act 2005:
- (c) Road User Charges Act 1977: 25
- (d) Transport Act 1962:
- (e) Transport Services Licensing Act 1989:
- (f) Transport (Vehicle and Driver Registration and Licensing) Act 1986.
- Compare: 1981 No 119 s 119A 30

Subpart 2—Disposal of affected rail network land

*Procedure for disposal by entity***18 Offer to former owner or former owner’s successor**

- (1) If the entity proposes to sell any affected rail network land, it must offer to sell the land by private contract to the person from whom it was acquired by the Crown or the entity, or to the successor of that person, at the current market value of the land determined by a valuation carried out by a registered valuer appointed by the entity. 5
- (2) **Subsection (1)** does not apply if— 10
- (a) the entity considers that it would be impracticable, unreasonable, or unfair to do so; or
 - (b) there has been a significant change in the character of the land for the purposes of, or in connection with, the public work or other activities for which it was acquired or is held; or 15
 - (c) the person from whom it was acquired, or the successor of that person, was, or is, a local authority.

Compare: 1990 No 105 s 23(1)

19 Sale to owner of adjacent land 20

Despite anything in **section 18**, if the entity believes on reasonable grounds that, because of the size, shape, or situation of the land it could not expect to sell the land to any person who did not own land adjacent to the land to be sold, the land may be sold to an owner of adjacent land at a price negotiated between the parties. 25

Compare: 1990 No 105 s 23(4)

20 Determination of current market value

- (1) The person to whom an offer is made under **section 18** may, within 20 working days after receipt of the offer, give notice to the entity that the person requires the current market value of the land to be determined by the Land Valuation Tribunal. 30
- (2) The entity must, on receipt of the notice, refer the matter to that Tribunal for determination. 35

Compare: 1990 No 105 s 23(2)

21 Sale to other persons

The entity may sell or otherwise dispose of the affected rail network land to any person on any terms and conditions that it thinks fit if—

- (a) an offer under **section 18** is not accepted within 40 working days after the making of the offer or, if an application is made to the Land Valuation Tribunal, within 20 working days after the determination of the Tribunal, whichever is later, and the parties have not agreed on other terms for the sale of the land; or 5
10
- (b) **section 18(2)** applies. 10

Compare: 1990 No 105 s 23(3)

*Disposal of former Maori land***22 Disposal of former Maori land**

The entity may, instead of making an offer under **section 18**, apply to the Maori Land Court for an order under section 134 of Te Ture Whenua Maori Act 1993 if the affected rail network land was, immediately before it became affected rail network land,— 15

- (a) Maori freehold land or general land owned by Maori (as those terms are defined in section 4 of Te Ture Whenua Maori Act 1993); and 20
- (b) beneficially owned by more than 4 persons; and
- (c) not vested in any trustee or trustees. 25

Compare: 1990 No 105 s 26

*Transfer of affected rail network land***23 Transfer of affected rail network land**

- (1) Any affected rail network land that is disposed of under this subpart (except **section 22**) may be transferred by a memorandum of transfer under the Land Transfer Act 1952. 30
- (2) The transfer may state that the land being transferred is to be amalgamated with any other land in an existing certificate of title; and that statement is sufficient authority to the Registrar-General of Land to amend the certificate of title accordingly, without fee. 35
- (3) On the amendment of the certificate of title, the land transferred becomes subject to and, if applicable, receives the

benefit of all encumbrances, easements, and other interests noted on the certificate of title.

Compare: 1990 No 105 s 25

Subdivisions relating to disposal of affected rail network land

5

24 Application of Resource Management Act 1991

Section 11 and Part 10 of the Resource Management Act 1991 do not apply to any subdivision undertaken by the entity to give effect to a transfer or disposal of affected rail network land under this subpart if that transfer or disposal (of all or part of an allotment) is to an owner of adjoining land.

10

Compare: 1990 No 105 s 25A(1)

25 Conditions

Every transfer or other disposition to which **section 24** applies, is deemed to be subject to a condition that—

15

- (a) the land being transferred or disposed of is held in 1 certificate of title with the owner's adjoining land; or
- (b) if **section 26(2)** applies, a covenant must be entered into between the owner of the adjoining land and the territorial authority that the land being transferred or disposed of must not, otherwise than in accordance with a subdivision consent under the Resource Management Act 1991, be transferred, leased, or otherwise disposed of except in conjunction with the owner's adjoining land.

20

Compare: 1990 No 105 s 25A(2)

25

26 Consultation with Registrar-General of Land

- (1) The entity must consult with the Registrar-General of Land as to the practicality of a condition of a kind referred to in **section 25(a)**.
- (2) If the Registrar-General of Land advises the entity that a condition of a kind referred to in **section 25(a)** is not practical, then any transfer or disposal of land to which **section 24** applies is deemed to be subject to a condition of a kind referred to in **section 25(b)**.

30

Compare: 1990 No 105 s 25A(3), (4)

35

27 Conditions to be endorsed on survey plan

- (1) Every condition of a kind referred to in **section 25(a) or (b)** is to be endorsed on the survey plan giving effect to the subdivision to which **section 24** applies.
- (2) The Registrar-General of Land must not deposit that survey plan unless—
- (a) he or she is satisfied that any condition of the kind referred to in **section 25(a)** has been complied with as fully as may be possible in an office of the Registrar-General of Land; or
 - (b) a covenant of a kind referred to in **section 25(b)** has been lodged for registration.

5

10

Compare: 1990 No 105 s 25A(5)

28 Condition under section 25(a)

If a condition of a kind referred to in **section 25(a)** has been complied with—

15

- (a) the separate parcels of land included in the certificate of title in accordance with the condition are not capable of being disposed of individually or being held under separate certificates of title, otherwise than in accordance with a subdivision consent under the Resource Management Act 1991; and
- (b) on the issue of a certificate of title, the Registrar-General of Land must enter on the certificate of title a memorandum that the land is subject to this section.

20

25

Compare: 1990 No 105 s 25A(6)

29 Covenant under section 25(b)

Every covenant of a kind referred to in **section 25(b)**—

- (a) must be in writing; and
- (b) must be signed by the owner of the adjoining land; and

30

Struck out (unanimous)

- (c) must have affixed to it the common seal of the territorial authority; and

New (unanimous)

(c) must be signed by a duly authorised officer of the territorial authority; and

(d) is deemed to be an instrument capable of registration under the Land Transfer Act 1952, and, when so registered, to create in favour of the territorial authority an interest in the land, in respect of which it is registered, within the meaning of section 62 of that Act; and 5

(e) is deemed to run with the land and bind subsequent owners.

Compare: 1990 No 105 s 25A(7) 10

30 Cancellation of condition or covenant

(1) The territorial authority may, at any time, after a survey plan giving effect to a subdivision to which **section 24** applies has been deposited in the Land Registry Office, cancel in whole or in part— 15

(a) any condition of a kind referred to in **section 25(a)**; or

(b) any covenant of a kind referred to in **section 25(b)**.

(2) If a territorial authority cancels, in whole or in part, a condition or covenant in accordance with **subsection (1)**, the territorial authority must forward an authenticated copy of the resolution of the territorial authority cancelling or partially cancelling that condition or covenant to the Registrar-General of Land, who must note the records accordingly. 20

Compare: 1990 No 105 s 25A(8), (9)

31 Consequences of amalgamation 25

(1) The consequences specified in **subsection (2)** apply if—

(a) for the purpose of complying with conditions of a kind referred to in **section 25**—

(i) a covenant of a kind referred to in **section 25(b)** is registered in accordance with this section; or 30

(ii) the land being transferred or disposed of is amalgamated in 1 certificate of title with adjoining land in accordance with this subpart; and

(b) the adjoining land is already subject to a registered instrument under which a power to sell, a right of 35

- renewal, or a right or obligation of purchase is lawfully conferred or imposed; and
- (c) that power, right, or obligation becomes exercisable but is not able to be exercised or fully exercised because of **section 27 or section 28.** 5
- (2) The consequences are—
- (a) the land being transferred or disposed of is deemed to be and always to have been part of the adjoining land that is subject to that instrument; and
- (b) all rights and obligations in respect of, and encumbrances on, that adjoining land are deemed to be rights and obligations in respect of, or encumbrances on, the land being transferred or disposed of; and 10
- (c) the Registrar-General of Land must enter on all relevant certificates of title a memorandum to the effect that the land in those certificates of title is subject to **subsection (1).** 15
- (3) If any instrument to which **subsection (1)** applies is a mortgage, charge, or lien, it is deemed to have priority over any mortgage, charge, or lien against the land being transferred or disposed of which is registered after the issue of the certificate of title under **section 28**, or the registration of a covenant entered into under **sections 27 and 29**, as the case may be. 20
- (4) The Registrar-General of Land must enter on all relevant certificates of title a memorandum to the effect that the land in those certificates of title is subject to **subsection (3).** 25

Compare: 1990 No 105 s 25A(10), (11)

Subpart 3—Miscellaneous provisions

32 Treatment of assets on land

- (Assets that have been)* The Crown or the entity may hold assets that are fixed to, or placed under or over, any land (may vest in the Crown or the entity) even though no interest in the land *(also vests)* is vested in the Crown or in the entity (as the case may be), and in any such case— 30
- (a) the assets and the land are to be treated as separate assets each capable of separate ownership; and 35
- (b) for the purposes of this Act and any other enactment or rule of law, the assets are to be treated as personal

property, and not as land or an interest in land, even though the assets are affixed to, or under or over, land.

Compare: 1990 No 105 s 6(8)

- 33 Certificate by entity to be evidence of certain facts** 5
 A certificate by the entity of any of the following matters is sufficient evidence of the matter certified unless the contrary is proved:
- (a) any specified land belonging to either the Crown or to the entity or forming part of a public reserve, or any specified fixed or movable property belonging to the entity, is part of a railway or the rail network: 10
 - (b) a railway is open (*for traffic*):
 - (c) the specified distance between any 2 points on a railway or on the rail network. 15
- Compare: 1981 No 119 s 117
- 34 Railway (*operators*) bodies corporate**
 The Governor-General may, by Order in Council, declare a body corporate to be a railway (*operator*) body corporate for the purposes of this Act or a provision of this Act.
- 35 Authority for railway (*operators*) bodies corporate** 20
 Railway operations carried on by a railway (*operator*) body corporate or the entity are deemed for the purposes of the law of nuisance to be authorised by Act of Parliament.
- Compare: 1990 No 105 s 29
- 36 Closure of railway lines or turning facilities controlled by entity** 25

Struck out (unanimous)

- (1) No railway line that is for the time being under the control of the entity may be permanently closed without the prior written consent of the Minister.
- (2) The entity must notify the Minister if it intends to close a railway line to traffic. 30

New (unanimous)

- | | | |
|-----|--|----|
| (1) | No railway line or turning facility that is for the time being under the control of the entity may, without the prior written consent of the Minister, be— | |
| | (a) permanently closed; or | |
| | (b) managed in a manner that permanently prohibits passenger railway carriage. | 5 |
| (2) | If the entity intends to close a railway line or turning facility, or permanently prohibit passenger railway carriage, the entity must— | |
| | (a) notify the Minister; and | 10 |
| | (b) consult with— | |
| | (i) any local authority affected by the closure or prohibition; and | |
| | (ii) any rail participant affected by the closure or prohibition. | 15 |
| (3) | Subsections (1) and (2) do not apply to any of the following: | |
| | (a) a siding; | |
| | (b) a crossing loop; | |
| | (c) a marshalling yard; | |
| | (d) a railway line that— | 20 |
| | (i) was <u>permanently closed (to traffic), or managed in a manner that permanently prohibited passenger railway carriage, before the commencement of this Act</u> ; or | |
| | (ii) is temporarily closed (to traffic) on or after the commencement of this Act for— | 25 |
| | (A) rail safety purposes; or | |
| | (B) carrying out repairs. | |
| (4) | If the Minister withholds consent under subsection (1) , the entity may enter into an agreement with the Minister with respect to the recovery of direct and indirect costs associated with retaining the railway line. | 30 |

New (unanimous)

- | | |
|-----|---|
| (5) | For the purposes of this section, rail participant has same meaning as in section 4(1) of the Railways Act 2005. |
|-----|---|

*Regulation-making powers***Struck out (unanimous)****37 Regulations**

The Governor-General may, by Order in Council, make regulations providing for any other matters contemplated by this Act or necessary for its administration or necessary for giving it full effect. 5

Compare: 2004 No 115 s 173(1)(l)

New (unanimous)**37 Regulations**

The Governor-General may, by Order in Council, make regulations providing— 10

- (a) a process for preparing rail network development plans:
- (b) for any other matters contemplated by this Act or necessary for its administration or necessary for giving it full effect.

Compare: 2004 No 115 s 173(1)(l) 15

*Repeals, consequential amendments, revocations, and transitional and savings provisions***38 Repeals**

The following Acts are repealed:

- (a) New Zealand Railways Corporation Act 1981: 20
- (b) New Zealand Railways Corporation Restructuring Act 1990.

39 Consequential amendments

The Acts specified in **Part 1 of Schedule 1** are amended in the manner set out in that Part. 25

40 Revocations

The regulations specified in **Part 2 of Schedule 1** are revoked.

41 Transitional and savings provisions

This Act is subject to the transitional and savings provisions set out in **Schedule 2**. 30

*Miscellaneous***42 Declaration**

It is hereby declared that section 11(1) of the Resource Management Act 1991 does not apply, and has never applied, to any partial surrender by New Zealand Rail Limited or its successors with respect to the lease dated 20 December 1991 between the Minister of Finance, the Minister for State-Owned Enterprises, and New Zealand Railways Corporation as lessors and New Zealand Rail Limited as lessee.

5

Schedule 1 ss 39, 40

Enactments amended and regulations revoked

Part 1 Enactments amended

Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16)	5
Schedule 1: repeal so much as relates to the New Zealand Railways Corporation Restructuring Act 1990.	
Conservation Act 1987 (1987 No 65)	10
Section 24(9)(c) to (e): repeal and substitute:	
“(c) the grant of a lease or licence of any land under section 10 of the Rail Network Act 2005 :	
“(d) the sale or other disposition of land held by the New Zealand Railways Corporation to any person.”	
New (unanimous)	
Heading to section 24K: omit “ vested under New Zealand Railways Corporation Restructuring Act 1990 ” and substitute “ disposed of under Rail Network Act 2006 ”.	15
Section 24K(1): repeal and substitute:	
“(1) In this section and in section 24L—	
“ entity has the same meaning as in section 4 of the Rail Network Act 2006	20
“ railway body corporate has the same meaning as in section 4 of the Rail Network Act 2006 .”	
Section 24K(2): repeal.	
Section 24K(6): omit “District Land Registrar of the land registration district affected” and substitute “Registrar-General of Land”.	25
Section 24K(7)(b): omit “railway operator” and substitute “railway body corporate or the entity”.	
Section 24K(8): omit “sections 30 and 31 of the New Zealand Railways Corporation Act 1981 or section 31 of the New Zealand Railways Corporation Restructuring Act 1990” and substitute “ section 15 of the Rail Network Act 2006 ”.	30
Section 24L: omit “railway operator” and substitute “railway body corporate and the entity”.	

Part 1—*continued***Crown Entities Act 2004 (2004 No 115)**

Part 1 of Schedule 1: insert the following item in its appropriate alphabetical order:

New Zealand Railways Corporation

Crown Minerals Act 1991 (1991 No 70)

5

Definition of **railway** in section 2(1): repeal and substitute:

“**railway** has the same meaning as in section 2 of the Public Works Act 1981”.

Crown Organisations (Criminal Liability) Act 2002 (2002 No 37)

10

Paragraph (d) of the definition of **government-related organisation** in section 4: repeal.

Electricity Act 1992 (1992 No 122)

Schedule 4: repeal so much as relates to the New Zealand Railways Corporation Act 1981.

15

Fencing Act 1978 (1978 No 50)

Section 3(1)(c) and (ca): repeal and substitute:

“(c) land held for the purposes of the rail network or railway purposes other than for the accommodation of employees by the Crown or the New Zealand Railways Corporation:

20

“(ca) land held or occupied for the operation of a railway by a **railway (operator) body corporate** within the meaning of **section 4** of the **Rail Network Act 2005** other than land used principally for car parking, the storage of freight, materials, and ancillary equipment, or administration or residential purposes:”.

25

Finance Act 1990 (1990 No 20)

Part 2: repeal.

Holidays Act 2003 (2003 No 129)

30

Schedule 2: repeal so much as relates to the New Zealand Railways Corporation Restructuring Act 1990.

Human Rights Amendment Act 2001 (2001 No 96)

Schedule 2: repeal so much as relates to the New Zealand Railways Corporation Act 1981.

35

Part 1—*continued***Land Transport Act 1998 (1998 No 110)**

Schedule 3: repeal so much as relates to the New Zealand Railways Corporation Act 1981.

Land Transport Management Act 2003 (2003 No 118)

Schedule 6: repeal so much as relates to the New Zealand Railways Corporation Act 1981. 5

Local Government Act 2002 (2002 No 84)

Schedule 16: repeal so much as relates to the New Zealand Railways Corporation Act 1981 and to the New Zealand Railways Corporation Restructuring Act 1990. 10

Local Government (Rating) Act 2002 (2002 No 6)**New (unanimous)**

Clause 19 of Part 1 of Schedule 1: omit “railway operator” and substitute “railway body corporate”.

Definition of **railway operator** in clause 1 of the Notes to Schedule 1: repeal and substitute: 15

“**railway (operator) body corporate** has the same meaning as in **section 4** of the **Rail Network Act 2005**”.

Maori Housing Amendment Act 1938 (1938 No 17)

Section 4A(3): omit “New Zealand Railways Corporation Act 1981” and substitute “**Rail Network Act 2005**”. 20

Minimum Wage Act 1983 (1983 No 115)

Section 9(b): omit “the New Zealand Railways Corporation Act 1981,”.

Minors’ Contracts Act 1969 (1969 No 41)

Section 5(4)(c): omit “section 82 of the New Zealand Railways Corporation Act 1981,”. 25

Ngai Tahu Claims Settlement Act 1998 (1998 No 97)

Section 50(c)(ii): repeal and substitute:

“(ii) **section 18(1)** of the **Rail Network Act 2005**; or”.

Section 54(b): repeal and substitute: 30

“(b) **section 18(1)** of the **Rail Network Act 2005**; or”.

Section 463(b) and (e): repeal.

Part 1—*continued***Ngati Ruanui Claims Settlement Act 2003 (2003 No 20)**

Section 17(2)(a): omit “sections 8A to 8HJ” and substitute “sections 8A to 8HI”.

Section 17(2)(e): repeal.

Ngati Tama Claims Settlement Act 2003 (2003 No 126)

5

Section 14(2)(a): omit “sections 8A to 8HJ” and substitute “sections 8A to 8HI”.

Section 14(2)(e): repeal.

**Ngati Turangitukua Claims Settlement Act 1999
(1999 No 118)**

10

Section 11(1)(b) and (e): repeal.

Pouakani Claims Settlement Act 2000 (2000 No 90)

Section 14(2)(b) and (e): repeal.

Property Law Act 1952 (1952 No 51)

Section 129B(13)(c): repeal and substitute:

15

“(c) any railway line within the meaning of the **Rail Network Act 2005**.”

Public Finance Act 1989 (1989 No 44)

Schedule 1: repeal so much as relates to the New Zealand Railways Corporation Act 1981.

20

Schedule 4: omit the item “*(Every transferee company) Transferee companies* under the New Zealand Railways Corporation Restructuring Act 1990 in which the Crown holds 50% or more of the issued ordinary shares”.

Public Finance Amendment Act 1992 (1992 No 142)

25

Schedule 2: repeal so much as relates to the New Zealand Railways Corporation Restructuring Act 1990.

Reserves Act 1977 (1977 No 66)

Section 22(5): omit “New Zealand Railways Corporation Act 1981” and substitute “**Rail Network Act 2005**”.

30

Section 113(6); omit “New Zealand Railways Corporation Act 1981” and substitute “**Rail Network Act 2005**”.

Section 114(4): omit “New Zealand Railways Corporation Act 1981” and substitute “**Rail Network Act 2005**”.

Section 115(5): omit “New Zealand Railways Corporation Act 1981” and substitute “**Rail Network Act 2005**”.

35

Part 1—*continued***Resource Management Act 1991 (1991 No 69)**

Schedule 8: repeal so much as relates to the New Zealand Railways Corporation Act 1981 and to the New Zealand Railways Corporation Restructuring Act 1990.

Sale of Liquor Act 1989 (1989 No 63)

5

Section 233: repeal.

Schedule 1: repeal so much as relates to the New Zealand Railways Corporation Act 1981.

State-Owned Enterprises Act 1986 (1986 No 124)

Item relating to The New Zealand Railways Corporation in Schedule 1: repeal. 10

Schedule 3: repeal so much as relates to the New Zealand Railways Corporation Act 1981.

Taxation Review Authorities Act 1994 (1994 No 165)

Section 10: omit “the New Zealand Railways Corporation Act 1981,”. 15

Te Uri o Hau Claims Settlement Act 2002 (2002 No 36)

Section 19(2)(a): omit “sections 8A to 8HJ” and substitute “sections 8A to 8HI”.

Section 19(2)(e): repeal. 20

Struck out (unanimous)**Transport Services Licensing Act 1989 (1989 No 74)**

Repeal the definition of **rail service operator** in section 2(1) and substitute:

“**rail service operator**—

“(a) means any holder of a rail service licence granted under section 8 of this Act; and 25

“(b) includes a railway operator within the meaning of **section 4** of the **Rail Network Act 2005**”.

Treaty of Waitangi Act 1975 (1975 No 114)

Section 5(1)(ad): repeal. 30

Section 8HJ and the heading above that section: repeal.

Waikato Raupatu Claims Settlement Act 1995 (1995 No 58)

Section 11(1)(b)(ii): repeal and substitute:

“(ii) **section 18(1)** of the **Rail Network Act 2005**; or”.

Part 1—*continued***Waikato Raupatu Claims Settlement Act 1995 (1995 No 58)—
*continued***

Section 14(1)(c) and (d): repeal.

Part 2

Regulations revoked

Cityline (NZ) Limited Vesting Order 1992 (SR 1992/243)	
New Zealand Rail Limited Vesting Order 1990 (SR 1990/313)	
New Zealand Rail Limited Vesting Order 1991 (SR 1991/204)	5
New Zealand Railways Corporation (Capital of the Corporation) Order 1982 (SR 1982/150)	
New Zealand Railways Corporation (General) Regulations 1982 (SR 1982/47)	
New Zealand Railways Corporation (General) Regulations Application Order 1990 (SR 1990/314)	10
New Zealand Railways Corporation Restructuring Order 1993 (SR 1993/350)	
New Zealand Railways Corporation (Staff) Regulations 1982 (SR 1982/46)	15
North City Bus Limited Vesting Order 1991 (SR 1991/105)	
Speedlink Carriers Limited Vesting Order 1991 (SR 1991/71)	

Schedule 2 Transitional and savings provisions

s 41

Members

- 1 Existing members exempt from qualification requirements** 5
- Every member of the entity in office immediately before the commencement of this clause may continue in office for the remainder of his or her current term of office as if section 30 of the Crown Entities Act 2004 had not been enacted.
- Compare: 2004 No 115 s 182 10
- 2 Term of office of existing members**
- Every member of the entity in office immediately before the commencement of this clause may continue in office for the remainder of his or her current term of office as if section 32(1) of the Crown Entities Act 2004 had not been enacted. 15
- Compare: 2004 No 115 s 183
- 3 Term of office of existing chairperson and deputy chairperson**
- Every chairperson and deputy chairperson of the entity in office immediately before the commencement of this clause is not affected by any change in the method of appointment of the person under this Act. 20
- Compare: 2004 No 115 s 185

Delegations

- 4 Existing delegations** 25
- Delegations in effect under section 10 of the New Zealand Railways Corporation Act 1981 immediately before the commencement of this clause continue to have effect as delegations under section 73 of the Crown Entities Act 2004.
- Compare: 2003 No 118 s 102 30

Directions

- 5 Existing ministerial directions**
- Ministerial directions in effect under section 10A of the New Zealand Railways Corporation Act 1981 immediately before the commencement of this clause continue to have effect as if 35

they were directions given under section 103 of the Crown Entities Act 2004.

Compare: 2003 No 118 s 101

Employees

- 6 Continuation of existing employment** 5
- A person who is, immediately before the commencement of this clause, an employee of the entity, does not cease to be an employee because of the coming into force of this Act.
- Compare: 2004 No 115 s 187
- Government Superannuation Fund* 10
- 7 Existing rights under Government Superannuation Fund Act 1956 unaffected**
- This Act does not affect any entitlement of a member, employee, or office holder of the entity under the Government Superannuation Fund Act 1956. 15
- Compare: 2004 No 115 s 191

New (unanimous)

- 7A Application of Government Superannuation Fund Act 1956**
- (1) Despite anything in any other Act, a person who, immediately before becoming an employee of the entity, is a contributor to the Government Superannuation Fund under Part 2 or 2A of the Government Superannuation Fund Act 1956 is, for the purposes of that Act, deemed to be employed in the Government service so long as that person continues to be an employee of the entity. 20
- (2) The Government Superannuation Fund Act 1956 applies to that person in all respects as if that person's service as an employee of the entity is Government service. 25
- (3) Nothing in **subsections (1) and (2)** entitles any person to become a contributor to the Government Superannuation Fund after that person has ceased to be a contributor. 30

New (unanimous)

- (4) For the purposes of applying the Government Superannuation Fund Act 1956, in accordance with this section, to all employees of the entity who are contributors to the Government Superannuation Fund, **controlling authority**, in relation to those employees, means the entity's board.

5

Protection from liability

8 Existing compensation provision

- (1) This clause applies to a member of the entity who is entitled, immediately before the commencement of this clause under any contract or arrangement, to any compensation or other payment or benefit relating to his or her ceasing for any reason to hold office as a member.
- (2) The entitlement is not affected by the enactment of this Act.
- (3) However, the entitlement is cancelled on the date of reappointment of the member to the entity.

10

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Compare: 2004 No 115 s 188

9 Existing protection from liability provisions

- (1) This clause applies to a member, office holder, or employee of the entity who is entitled, immediately before the commencement of this clause, to be indemnified by the entity in respect of any proceedings for any liability or costs arising from any act or omission as a member, office holder, or employee that occurred before that commencement.
- (2) This Act does not affect the member, office holder, or employee's entitlement to an indemnity if that entitlement is, in its overall effect, as favourable to that person as, or more favourable to that person than, the entitlement provided for in this Act.

20

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Compare: 2004 No 115 s 189

10 Existing insurance cover

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- (1) This clause applies to a member, office holder, or employee of the entity who has insurance cover immediately before the commencement of this clause in respect of any liability or

costs arising from any act or omission as a member, office holder, or employee.

- (2) The insurance cover is not affected by the enactment of this Act.
- (3) However, if the insurance cover expires, or the member, office holder, or employee is reappointed or re-employed, the insurance can be renewed or effected only if permitted by this Act.

5

Compare: 2004 No 115 s 190

Planning

- 11 Existing statement of corporate intent** 10
- The statement of corporate intent for the entity that was in effect under the State-Owned Enterprises Act 1986 immediately before the commencement of this clause continues to have effect as if it had been a statement of intent prepared under section 140 of the Crown Entities Act 2004. 15
- 12 Existing capital works expenditure programme**
- A capital works expenditure programme in effect under section 40 of the New Zealand Railways Corporation Act 1981 immediately before the commencement of this clause continues to have effect as part of a rail network development plan under **section 12** of this Act. 20

Financial provisions

- 13 Capital works expenditure programme** 25
- Consents of the Minister of Railways and determinations of the Minister of Finance under section 40 of the New Zealand Railways Corporation Act 1981 in effect immediately before the commencement of this clause continue to have effect.
- 14 Existing investments, borrowing, guarantees, indemnities, and derivatives**
- (1) This clause applies to any investment, borrowing, guarantee, indemnity, or derivative transaction of the entity that existed immediately before the commencement of this clause that the entity would be restricted from having, acquiring, giving, or entering into under this Act. 30
- (2) The investment, borrowing, guarantee, indemnity, or derivative transaction is not affected by the enactment of this Act. 35

- (3) However, the terms of the investment, borrowing, guarantee, indemnity, or derivatives may be amended, or any options resulting from the investment, borrowing, or derivatives may be taken up, only if permitted by the Minister of Finance.
 - (4) This clause does not apply to an indemnity in respect of a member, office holder, employee, or committee member of the entity. 5
Compare: 2004 No 115 s 197
- 15 Existing loan and swap obligations of entity guaranteed by the Crown** 10
- (1) This clause applies to any loan or swap transaction raised or entered into by the entity under the New Zealand Railways Corporation Act 1981 (whether before or after the commencement of this clause)—
 - (a) that was guaranteed in accordance with section 10 of the Finance Act 1990; and 15
 - (b) for which that guarantee was in force immediately before the commencement of this clause.
 - (2) The loan or swap transaction to which this clause applies is not affected by the enactment of this Act, and section 10 of the Finance Act 1990 continues to apply to the loan or swap transaction as if that section had not been repealed by **section 39** of this Act. 20

New (unanimous)

Leases

- 15A Existing leases** 25
- Despite the repeal of the New Zealand Railways Corporation Act 1981 and the New Zealand Railways Corporation Restructuring Act 1990 under **section 38** of this Act, an existing lease granted under either of those Acts before the commencement of this clause continues in effect as if it were granted under **section 10** of this Act. 30

Reporting obligations

- 16 Reporting obligations in respect of current financial year**
- (1) The reporting requirements and provisions that would have applied if this Act had not been enacted continue to apply, in 35

respect of the financial year that is current when this clause comes into force, to the entity, rather than the reporting requirements and provisions enacted by this Act.

- (2) Therefore, for example, the entity must comply with the requirements relating to annual financial statements, annual reports, and audit that applied to the entity immediately before the commencement of this clause.

Compare: 2004 No 115 s 198

General

- 17 Other existing things protected** 10
 The commencement of this Act does not affect the completion of a matter or thing, or the bringing or completion of proceedings, that relate to an existing right, interest, title, immunity, or duty.
 Compare: 2004 No 115 s 193 15
- 18 Orders in Council for existing railway (*operators*) bodies corporate**
 Every Order in Council declaring, under section 2(1) of the New Zealand Railways Corporation Restructuring Act 1990, a body corporate to be a railway (*operator*) body corporate for the purposes of that Act, and in force immediately before the commencement of this clause, continues in force as if the Order in Council had been made under **section 36** of this Act. 20
- 19 Savings for certain reclamation land** 25
 Despite anything in any other Act and despite their repeal by **section 38** of this Act, section 119 and Schedule 3 of the New Zealand Railways Corporation Act 1981 continue in force, as if—
- (a) they had not been repealed; and
 - (b) the Harbours Act 1950 had not been repealed by section 10 of the Local Government Amendment Act (No 2) 1999. 30

Rail Network

Legislative history

15 March 2005

Introduction (Bill 251—1)

12 April 2005

First reading and referral to Government Administration Committee
