

House of Representatives

Supplementary Order Paper

Wednesday, 24 June 2020

Land Transport (Rail) Legislation Bill

Proposed amendments for the consideration of the Committee of the whole House

Key:

- **this is inserted text**
- **~~this is deleted text~~**

Note: This Supplementary Order Paper shows amendments to the Bill that are being proposed by the Minister for the purposes of consideration in Committee of the whole House. This document does—

- **NOT have official status in terms of unamended text**
- **NOT have the status of an as-reported version of the Bill.**

Explanatory note

This Supplementary Order Paper amends the Land Transport (Rail) Legislation Bill to make the following amendments to *Part 1* of the Bill (which relates to the Land Transport Management Act 2003):

- *new section 22DA* is inserted into *clause 11* and requires the New Zealand Transport Agency (the **Agency**) and KiwiRail to make available on their Internet sites each rail network investment programme that the Minister approves under *new section 22B*:
- *new section 22E*, inserted by *clause 11*, is amended to clarify that the section applies to decisions of the Minister not only to approve but also to not approve funding of rail activities or combinations of rail activities from the national land transport fund:
- *new section 22F(1)(e)*, inserted by *clause 11*, is deleted as the Agency is able to address these matters under *subsection (1)(f)*:
- *new section 22G(2)(b)*, inserted by *clause 11*, is amended to revise the requirements of the procurement procedure KiwiRail is required to use when delivering rail activities or combinations of rail activities funded from the national land transport fund:
- *clause 11A* is replaced in order for the amendment (conferring a new function on the Agency in relation to KiwiRail) to be inserted directly into the Act, irrespective of the amendments to be made to the Act by the Land Transport (NZTA) Legislation Amendment Bill, currently also before the House. The amendment clarifies the nature of the function and confers a further function on the Agency that reflects its new monitoring role under *new clause 102A*, as inserted by *clause 12*:
- *new section 102A* itself is also amended to broaden the requirements of the section:
- *new sections 22C(1)(b)(i)*, *22E(2)(b) and (3)*, *22F(2)*, and *22G(4)* are amended to ensure consistency in approach across the Act or the provisions inserted by *clause 11*.

Departmental disclosure statement

The Ministry of Transport considers that a departmental disclosure statement is not required to be prepared for this Supplementary Order Paper.

The Honourable Phil Twyford, in Committee, to propose the amendments shown in the following document.

Hon Phil Twyford

Land Transport (Rail) Legislation Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Land Transport (Rail) Legislation Act **2019**.

2 Commencement

This Act comes into force on **1 July 2020**.

Part 1 Amendments to Land Transport Management Act 2003

3 Amendments to Land Transport Management Act 2003

This Part amends the Land Transport Management Act 2003.

4 Section 5 amended (Interpretation)

- (1) In section 5(1), insert in their appropriate alphabetical order:

KiwiRail means KiwiRail Holdings Limited or any subsidiary of, or successor to, that company

rail activity has the meaning set out in **section 5A**

rail network investment programme means a rail network investment programme—

- (a) prepared by KiwiRail under **section 22A**; and
- (b) approved by the Minister under **section 22B** (and **section 22D**, if any variations are included)

region has the same meaning as in section 5(1) of the Local Government Act 2002

shareholding Ministers has the same meaning as in section 2 of the State-Owned Enterprises Act 1986

- (1A) In section 5(1), replace the definition of **procurement procedure** with:

procurement procedure means a procurement procedure—

- (a) approved by the Agency under section 25, in relation to money spent by the Agency or an approved organisation;
- (b) approved by KiwiRail under **section 22G**, in relation to the delivery of rail activities and combinations of rail activities funded under **section 10(3)(aa)**

5 New section 5A inserted (Meaning of rail activity)

After section 5, insert:

5A Meaning of rail activity

- (1) In this Act, unless the context otherwise requires, **rail activity**—

- (a) means—
 - (i) any activity provided by KiwiRail (whether itself or on its behalf) that relates to railway infrastructure, railway premises, or rail maintenance vehicles (whether or not self-propelled); and
 - (ii) any combinations of activities described in **subparagraph (i)**; and

- (iii) any activity or combinations of activities specified as a rail activity in regulations made under **subsection (3)**; but
- (b) excludes any activity or combinations of activities specified as not a rail activity in regulations made under **subsection (3)**.
- (2) For the purposes of **subsection (1)**, **railway infrastructure** and **railway premises** have the meanings given in section 4(1) of the Railways Act 2005.
- (3) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for the purposes of **subsection (1)(a)(iii) and (b)**.

6 Section 6 amended (Meaning of land transport revenue)

In section 6(c), replace “Part 1 of the Transport (Vehicle and Driver Registration and Licensing) Act 1986” with “Part 11”.

7 Section 9 amended (The Crown’s authority to incur certain land transport expenses and capital expenditure)

- (1) After section 9(2)(a), insert:
 - (aa) rail activities or combinations of rail activities up to the amount approved by the Minister under **section 22E**:
- (2) After section 9(2)(b), insert:
 - (c) investment strategy and policy activities (up to the amount approved by the Minister and the Minister of Finance) that—
 - (i) are carried out by the Ministry; and
 - (ii) relate to matters that could have a significant impact on the national land transport fund.

8 Section 10 amended (National land transport fund)

After section 10(3)(a), insert:

- (aa) rail activities or combinations of rail activities approved under **section 22E**:

9 Section 16 amended (Form and content of regional land transport plans)

- (1) After section 16(6)(g), insert:
 - (ga) in the case of the plan for Auckland, a list of any significant rail activities or combinations of rail activities proposed by KiwiRail for Auckland; and
 - (gb) in the case of the plan for the Wellington region, any significant rail activities or combinations of rail activities proposed by KiwiRail for the Wellington region; and
 - (gc) in the case of the plan for any other region that has a regional transport committee within the meaning of **section 105A(1)(c)**, any significant

rail activities or combinations of rail activities proposed by KiwiRail for that region; and

- (2) After section 16(6), insert:
- (6A) Any matter included in a regional land transport plan under **subsection (6)(ga), (gb), or (gc)** is for the purposes of co-ordinated planning and does not limit or affect the process by which any rail activities or combinations of rail activities may be included or excluded, as the case may be, from a rail network investment programme and its funding processes.

10 Section 19C amended (Content of national land transport programme)

After section 19C(e), insert:

- (ea) a list of rail activities or combinations of rail activities included in the current rail network investment programme; and
- (eb) a list of rail activities or combinations of rail activities approved under **section 22E**; and

11 New sections 22A to 22G and cross-heading inserted

After section 22, insert:

Rail network investment programme

22A KiwiRail must prepare rail network investment programme

- (1) Every 3 financial years, KiwiRail must prepare a rail network investment programme to apply for the following 3 financial years.
- (2) The programme must set out KiwiRail's recommendations for the rail activities or combinations of rail activities—
- (a) to be provided by KiwiRail (whether itself or on its behalf); and
- (b) to be funded or partially funded by the national land transport fund in accordance with **section 10(3)(aa)**.
- (3) The programme must—
- (a) take into account the purpose of this Act; and
- (aa) take into account the GPS on land transport; and
- (ab) indicate any significant rail activities or combinations of rail activities likely to be included in the next programme; and
- (b) include sufficient information to allow the Agency to give advice to the Minister on the matters set out in **section 22C**; and
- (c) include any other information that the Minister requires KiwiRail to provide.
- (3A) KiwiRail must prepare the programme by a date set by the Minister.

- (4) Despite **subsections (1) and (3A)**, KiwiRail must prepare the first programme to take effect from 1 July 2021.

22B Minister must decide whether to approve rail network investment programme

- (1) The Minister must decide whether to approve (or not approve) each rail network investment programme prepared by KiwiRail under **section 22A**.
- (2) The Minister must make reasonable efforts to make a decision before the start of the first financial year to which the programme applies.
- (3) The Minister must not make a decision unless the Minister has first—
- (a) consulted KiwiRail’s shareholding Ministers; and
 - (b) considered the Agency’s advice given under **section 22C**.
- (4) The Minister may at any time refer a programme back to KiwiRail with a request that KiwiRail reconsider 1 or more aspects of it.
- (5) **Subsection (6)** applies if, after the Minister has completed the requirements of **subsection (3)**,—
- (a) the Minister refers a programme back under **subsection (4)**; and
 - (b) KiwiRail submits a revised programme.
- (6) The Minister must repeat the requirements of **subsection (3)** unless the Minister considers that the revisions to the programme are not significant.
- (7) The Minister must notify the shareholding Ministers, the Ministry, the Agency, and KiwiRail of whether a programme has been approved (or not approved).
- (8) A programme approved under this section is to be treated as if it were approved before the start of the first financial year to which it applies.

22C Agency must advise on rail network investment programme

- (1) The Agency must give advice to the Minister for the purposes of **section 22B(3)(b)** on the following matters:
- (a) whether the rail network investment programme—
 - (i) contributes to the purposes of this Act; and
 - (ii) is consistent with the GPS on land transport; and
 - (iii) takes into account any relevant regional land transport plan:
 - (b) whether the Agency is satisfied that the programme includes the following information:
 - (i) a recommendation on the ~~total amount of the~~ maximum contribution to be made from the national land transport fund under **section 10(3)(aa)**;
 - (ii) a statement of the specific rail activities or combinations of rail activities to be funded or partially funded using that contribution:

- (iii) a statement of the revenue (if any) KiwiRail expects to receive in relation to the activities other than from the fund:
 - (iv) a financial forecast, for the 10-year period starting from the date on which the programme takes effect, of anticipated revenue and expenditure in relation to the activities:
 - (c) whether the Agency considers that KiwiRail has provided the information that the Minister has required under **section 22A(3)(c)** (if any):
 - (d) whether, based on the matters set out in **paragraphs (a) to (c)**, and any other matter the Agency thinks relevant, the Agency considers that the Minister should approve the programme.
- (2) The Agency must give—
- (a) its advice to the Minister by a date set by the Minister; and
 - (b) a copy of that advice to the Ministry and KiwiRail as soon as practicable after giving it to the Minister.

22D Rail network investment programme may be varied during its currency

- (1) KiwiRail may prepare a variation to a rail network investment programme for approval during its currency.
- (2) For that purpose, **sections 22A to 22C** apply as far as they are relevant and with any necessary modification.
- (3) **Subsection (2)** applies unless the Minister considers the variation is not significant, in which case the Minister must simply approve (or not approve) the variation.

22DA Rail network investment programmes to be available on Agency and KiwiRail Internet sites

The Agency and KiwiRail must make available on their Internet sites each rail network investment programme approved by the Minister under **section 22B**, including any variations to a programme (irrespective of whether the variations are included by way of **section 22D(2) or (3)**).

22E Minister may approve funding of rail network investment programme activities

- (1) ~~The~~ At KiwiRail's request, the Minister may approve a rail activity or combinations of rail activities to be funded or partially funded by the national land transport fund.
- (2) ~~The Minister must not approve the funding of an activity or combinations of activities unless~~ make a decision to approve (or not approve) the funding unless—
 - (a) the activity or combinations of activities are included in—
 - (i) the current rail network investment programme; or

- (ii) any programme being considered for approval under **section 22B** (as a process carried out in tandem with that consideration); and
- (b) the Minister has first—
 - (iaa) consulted KiwiRail’s shareholding Ministers; and
 - (i) considered the Agency’s advice given under **section 22F**; and
 - (ii) consulted KiwiRail’s shareholding Ministers.
- (3) The Minister may approve a rail activity or combinations of rail activities for funding under ~~**subsection (1)**~~ or partial funding by the national land transport fund without satisfying the requirements of **subsection (2)** if—
 - (a) either or both of the following apply:
 - (i) the activity or combinations of activities are in the urgent interests of public safety;
 - (ii) the activity or combinations of activities are necessary to immediately or temporarily repair damage caused by a sudden and unexpected event; and
 - (b) the activity or combinations of activities will be provided by KiwiRail (whether itself or on its behalf); and
 - (c) before making a decision, the Minister has sought advice from the Agency on whether it considers that the Minister should approve the funding.
- (4) The Minister must notify the shareholding Ministers, the Ministry, the Agency, and KiwiRail of all activities that, under this section, the Minister—
 - (a) approves to be funded or partially funded; or
 - (b) does not approve to be funded or partially funded.

22F Agency must advise on rail activities to be funded

- (1) The Agency must give advice to the Minister for the purposes of **section 22E(2)(b)(i)** on the following matters:
 - (a) whether the rail activity or combinations of rail activities are included in the current rail network investment programme or, as the case may be, a programme being considered for approval under **section 22B**;
 - (b) whether the activity or combinations of activities take into account—
 - (i) any relevant regional land transport plan; and
 - (ii) any national energy efficiency and conservation strategy; and
 - (iii) any relevant national policy statements or regional policy statements for the time being in force under the Resource Management Act 1991:

- (c) whether the activity or combinations of activities will contribute to the purpose of this Act and are consistent with the GPS on land transport:
 - (d) whether the activity or combinations of activities are efficient and effective:
 - (e) ~~whether the maximum level of expenditure for the activity or combinations of activities will exceed the maximum level of expenditure for the rail network investment programme as outlined in the GPS on land transport for the financial year concerned:~~
 - (f) whether, based on the matters set out in **paragraphs (a) to (d)-(e)**, and any other matter the Agency thinks relevant, the Agency considers that the Minister should approve the funding of the activity or combinations of activities.
- (2) If the advice relates to ~~activities~~ an activity or combinations of activities included in a programme being considered for approval under **section 22B**, the Agency must also give advice on whether there is reference to the ~~activities~~ activity or combinations of activities in the statement required by **section 22C(1)(b)(ii)**.
- (3) The Agency must develop, and make available on its Internet site, 1 or more assessment methods to use when giving advice in relation to the matters set out in **subsection (1)(c) and (d)**.
- (4) The Agency must give—
- (a) its advice to the Minister by a date set by the Minister; and
 - (b) a copy of that advice to the Ministry and KiwiRail as soon as practicable after giving it to the Minister.

22G KiwiRail must use specified procurement procedure for delivering certain activities

- (1) KiwiRail must approve 1 or more procurement procedures that will apply to the delivery of rail activities and combinations of rail activities funded under **section 10(3)(aa)**.
- (2) The procedures must—
- (a) be designed to obtain the best value for the money funded under that provision; and
 - (b) ~~be consistent with current all-of-government procurement practices.~~
take into account current government procurement practices.
- (3) KiwiRail must consult the Agency before approving the procedures.
- (4) KiwiRail and the Agency must ~~each publish~~ make available the procurement procedures on their Internet sites.

11A Section 95 amended (Functions of Agency)

After section 95(1)(m) (as that section is replaced by **section 8 of the Land Transport (NZTA) Legislation Amendment Act 2019**), insert:

(ma) to assist, advise, and co-operate with KiwiRail (particularly in relation to its role in preparing and implementing the rail network investment programme):

11A Section 95 amended (Functions of Agency)

After section 95(1)(g), insert:

(ga) to assist, advise, and co-operate with KiwiRail in relation to KiwiRail's role in preparing each rail network investment programme:

(gb) to monitor and report to the Minister on the matters set out in **section 102A**:

12 New section 102A inserted (Monitoring and reporting on matters relating to rail network investment programme activities approved under section 22E)

After section 102, insert:

102A Monitoring and reporting on matters relating to rail network investment programme activities approved under section 22E

- (1) The Agency must—
 - (a) monitor the provision of rail activities or combinations of rail activities approved by the Minister under **section 22E**; and
 - (ab) monitor the extent to which the rail network investment programme—
 - (i) contributes to the purposes of this Act; and
 - (ii) is consistent with the GPS on land transport; and
 - (b) report annually on its findings to the Minister.
- (2) ~~For that purpose, KiwiRail must, when reasonably requested to do so, provide the Agency with sufficient relevant information for the Agency to fulfil those obligations~~ its obligations under this section.

13 Section 105 amended (Regional transport committees)

- (1) Repeal section 105(14).
- (2) After section 105(15), insert:
- (16) This section is subject to the requirements for additional membership under **section 105A** (if any).

14 New section 105A inserted (KiwiRail representation on regional transport committees)

After section 105, insert:

105A KiwiRail representation on regional transport committees

- (1) In this section, **regional transport committee** means—
 - (a) the regional transport committee for Auckland; and
 - (b) the regional transport committee for the Wellington region (or any joint committee that includes members for the Wellington region); and
 - (c) a regional transport committee or joint committee named by the Minister, by notice in the *Gazette*.
- (2) A regional transport committee must include 1 additional member to represent KiwiRail (the **KiwiRail member**).
- (3) KiwiRail must appoint the KiwiRail member.
- (4) The KiwiRail member has no voting rights at any meeting of the committee and must not be appointed as the chairperson or deputy chairperson (or by any other process preside at any meeting).
- (5) The Minister may name a committee under **subsection (1)(c)** only if the Minister considers that the consequence of doing so will contribute to the purpose of this Act.

Part 2

Amendments to other legislation

14A Amendment to Goods and Services Tax Act 1985

- (1) This section amends the Goods and Services Tax Act 1985.
- (2) After section 5(6AA), insert:

(6AAB) For the purposes of this Act, a fee or charge paid to a person pursuant to regulations made under section 167(1)(j) of the Land Transport Act 1998 is treated as being consideration for a supply of services in the course or furtherance of a taxable activity carried on by the person.

15 Amendments to Land Transport Act 1998

Sections 16 and 17 amend the Land Transport Act 1998.

16 Section 168 amended (Regulations relating to fees and charges for land transport)

After section 168(4)(g), insert:

- (h) identify those fees and charges that are land transport revenue for the purposes of the Land Transport Management Act 2003.

17 New sections 168AA and 168AAB inserted

After section 168, insert:

168AA Land transport revenue to be paid into national land transport fund

All fees and charges (excluding applicable refunds and goods and services tax) identified in regulations made under this Part as land transport revenue for the purposes of the Land Transport Management Act 2003 must be paid into a Crown Bank Account and treated as land transport revenue.

168AAB Certain orders are confirmable instruments

- (1) This section applies to regulations made by Order in Council under this Part that identify fees or charges as land transport revenue for the purposes of the Land Transport Management Act 2003.
- (2) The explanatory note of the Order in Council must indicate that—
 - (a) it is a confirmable instrument under section 47B of the Legislation Act 2012; and
 - (b) it is revoked at a time stated in the note, unless earlier confirmed by an Act of Parliament; and
 - (c) the stated time is the applicable deadline under section 47C(1)(a) or (b) of that Act.

18 Amendment to Legislation Act 2012

- (1) This section amends the Legislation Act 2012.
- (2) In Schedule 2, before the item relating to sections 269 and 270 of the Land Transport Act 1998, insert:

Land Transport Act 1998	167(1)(j)—restriction: only if the regulations prescribe fees or charges that are identified as land transport revenue for the purposes of the Land Transport Management Act 2003
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