

# Land Transport (Rail) Legislation Bill

Government Bill

## Explanatory note

### General policy statement

The Land Transport (Rail) Legislation Bill (the **Bill**) is an omnibus Bill introduced under Standing Order 263(a). That Standing Order provides that an omnibus Bill to amend more than 1 Act may be introduced if the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy.

### Objective

The objective of the Bill is to implement a new planning and funding framework for the heavy rail track network (the **rail network**) owned by KiwiRail. This new framework involves bringing planning and funding of the rail network under the land transport planning and funding regime set by the Land Transport Management Act 2003 (the **LTMA**).

### Approach

The Bill contains 2 Parts. *Part 1* amends the LTMA while *Part 2* amends the Land Transport Act 1998 (and, consequentially, the Legislation Act 2012).

#### *Part 1: new planning and funding framework for heavy rail under LTMA*

*Part 1* of the Bill will bring planning and funding of the rail network under the land transport planning and funding regime set up in the LTMA. The LTMA currently deals with the planning and funding of public transport, state highways, road policing, and local roads.

The existing planning and funding framework for the rail network creates uncertainty for the rail business as a result of annual budget processes, and separates road and rail network investment decisions. This has resulted in a short-term focus rather than a long-term strategic planning focus for the rail network, an inability to consider road

and rail investment together, and the absence of an integrated and co-ordinated land transport investment programme.

Under the proposed rail planning and funding framework, funding for the rail network will be channelled through the national land transport fund. A statutory rail network investment programme (an **RNIP**) will be established, which the Minister of Transport will need to approve in consultation with KiwiRail's shareholding Ministers. This will allow the rail network to be funded from the national land transport fund.

To promote integration of rail network investment and other land transport investment, the New Zealand Transport Agency (**NZTA**) will advise the Minister of Transport on how the RNIP fits with the overall land transport investment programme under the LTMA. This advice will be given as part of the RNIP approval processes. KiwiRail will be responsible for providing rail activities funded from the national land transport fund.

#### *Part 2: charges for use of rail network in Land Transport Act 1998*

Changes will also ensure track users can contribute to the costs of the rail network in a fair and transparent way. A minor amendment to the Land Transport Act 1998 will allow fees and charges established by regulations under Part 11 of that Act to become land transport revenue. This change will allow track user charges, set by regulation to recover rail network costs from track users, to be paid into the national land transport fund. A consequential amendment to the Legislation Act 2012 is required to ensure any regulations that are made for this purpose will be classified as confirmable instruments under that Act.

### **Departmental disclosure statement**

The Ministry of Transport is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2019&no=191>

### **Regulatory impact assessment**

The Ministry of Transport produced a regulatory impact assessment on 21 August 2019 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact assessment can be found at—

- <https://www.transport.govt.nz/about/governance/ris-bccs/>
- <http://www.treasury.govt.nz/publications/informationreleases/ria>

### Clause by clause analysis

*Clause 1* is the Title clause.

*Clause 2* provides that the Bill, once passed, will take effect on 1 July 2020.

## Part 1

### Amendments to Land Transport Management Act 2003

*Clause 3* provides that *Part 1* amends the Land Transport Management Act 2003.

*Clause 4* amends section 5 of the LTMA to insert new definitions relevant to *new sections 22A to 22G* (inserted by *clause 11*) and to amend the definition of regional transport committee as it relates to Auckland (for the purposes of the amendments in *clause 13*). A definition of region is also inserted.

*Clause 5* inserts *new section 5A* into the LTMA to define the term rail activity. The definition may be extended or limited by regulations.

*Clause 6* amends paragraph (c) of the definition of land transport revenue in section 6 of the LTMA to include an express reference to Part 11 of the Land Transport Act 1998. This amendment relates to the amendment in *clause 16*. The amendment to paragraph (c) also removes a reference to the Transport (Vehicle and Driver Registration and Licensing) Act 1986. That Act was repealed in 2011.

*Clause 7* makes 2 amendments to section 9 of the LTMA. The first authorises the Crown to utilise land transport revenue to fund rail activities or combinations of rail activities approved by the Minister under *new section 22E* (inserted by *clause 11*). The second amendment clarifies that the Crown, when utilising money from that fund, may apply that money to land transport investment-related strategy and policy activities by the insertion of *new paragraph (iva)* in subsection 9(2)(b).

*Clause 8* amends section 10 of the LTMA to authorise the national land transport fund to be used to pay for rail activities or combinations of rail activities approved by the Minister under *new section 22E*.

*Clause 9* amends section 16 of the LTMA, which relates to the form and content of regional land transport plans. The amendment requires the plans for the Auckland and Wellington regions (and any other region that the Minister so requires under *new section 105A* (inserted by *clause 14*)) to include a list of rail activities that have significance for the region and that are included in the current rail network investment programme or that KiwiRail intends to propose be included in the programme immediately after that (*see new section 22A* in *clause 11*).

*Clause 10* amends section 19C of the LTMA, which sets out the matters that must be included in a national land transport programme. The amendment requires a programme to also include rail activities or combinations of rail activities that have funding approval under *new section 22E*.

*Clause 11* inserts 7 new provisions into the LTMA, *new sections 22A to 22G*, which relate to the planning and funding of certain rail activities provided by or on behalf of KiwiRail. *New section 22A* requires KiwiRail to prepare a programme of activities

(the rail network investment programme) for which it seeks funding from the national land transport fund. The Minister may approve the programme under *new section 22B*, but only after having consulted KiwiRail's shareholding Ministers and receiving advice from the New Zealand Transport Agency (NZTA) (defined in the LTMA as the **Agency**). Once a programme is approved, the rail activities or combinations of activities in the programme are then eligible for funding under *new section 22E* if the Minister approves their funding (and, again, provided the Minister has consulted KiwiRail's shareholding Ministers and received advice from NZTA). *New section 22G* requires KiwiRail to apply a particular procurement procedure to activities funded in this manner.

*New section 22E* also authorises the Minister to approve funding of urgent or emergency rail activities without following the usual planning and funding framework.

*Clause 12* inserts *new section 102A* into the LTMA, which confers a new monitoring duty on NZTA in relation to the delivery of rail activities approved by the Minister under the new framework (and a corresponding duty on KiwiRail to provide sufficient relevant information so that NZTA can properly fulfil this new obligation).

*Clause 13* amends section 105 of the LTMA, which relates to the establishment of regional transport committees. The section will now be subject to the requirements in *new section 105A*.

*Clause 14* inserts *new section 105A* into the LTMA and requires an additional member to be appointed to certain regional transport committees. The requirement applies to the committees for Auckland and the Wellington region and any other regional committee that the Minister names, by notice in the *Gazette*. The additional member must be appointed by KiwiRail, but the member has no voting rights and must not preside at any meeting of the committee.

## Part 2

### Amendments to other legislation

*Clause 15* provides that *clauses 16 and 17* amend the Land Transport Act 1998 (the **LTA**).

*Clause 16* amends section 168 of the LTA, which empowers regulations to be made under the LTA in relation to fees and charges for land transport. The amendment adds to the scope of the regulation-making power to provide that regulations may identify those fees and charges that are to be treated as land transport revenue for the purposes of the LTMA.

*Clause 17* inserts *new section 168AA* into the LTA and imposes procedural requirements on an Order in Council making regulations that prescribe fees or charges that are to be treated as land transport revenue for the purposes of the LTMA, including that the order is a confirmable instrument under section 47B of the Legislation Act 2012.

*Clause 18* amends the Legislation Act 2012 to insert a reference to the confirmable instrument provision inserted by *clause 17*.

*Hon Phil Twyford*

## **Land Transport (Rail) Legislation 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**.

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## 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)

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(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

- (2) In section 5(1), definition of **regional transport committee**, paragraph (b)(i), after “Transport”, insert “(and the person required by **section 105A**)”.
- (3) In section 5(1), definition of **regional transport committee**, paragraph (b)(ii), after “member”, insert “(and the person or persons required by **section 105A**)”.

## 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)** 5  
(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)(iv), insert:  
(iva) land transport investment-related strategy and policy activities: 10
- 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)** 15  
(1) After section 16(6)(g), insert:  
(ga) in the case of the plan for Auckland, a list of rail activities that have significance for Auckland and that are included in the current rail network investment programme or that KiwiRail intends to propose be included in the programme immediately after that; and 20  
(gb) in the case of the plan for the Wellington region (or any other region whose transport regional committee is named in a notice under **section 105A**), a list of rail activities that have significance for the region and that are included in the current rail network investment programme or that KiwiRail intends to propose be included in the programme immediately after that; and 25
- (2) After section 16(6), insert:  
(6A) The matters included in a regional land transport plan under **subsection (6)(ga) or (gb)** are for the purposes of co-ordinated planning and do 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. 30
- 10 Section 19C amended (Content of national land transport programme)**  
After section 19C(e), insert:  
(ea) rail activities or combinations of rail activities approved under **section 22E**; and 35



**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 for the following 3 financial years. 5
- (2) Each 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)**. 10
- (3) Each programme must—
- (a) be prepared by a date set by the Minister; and
- (b) include sufficient information to allow the Agency to give advice to the Minister on the matters set out in **section 22C**; and 15
- (c) include any other information that the Minister requires KiwiRail to provide.
- (4) Despite **subsection (3)(a)**, KiwiRail must prepare the first rail network investment programme by 1 July 2021.

**22B Minister must decide whether to approve rail network investment programme** 20

- (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 decide whether to approve a programme by the beginning of the first financial year to which the programme relates. 25
- (3) The Minister must not approve a programme 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. 30
- (5) **Subsection (6)** applies if the Minister refers a programme back under **subsection (4)** and KiwiRail submits a revised programme after the Minister has completed the requirements of **subsection (3)**.
- (6) The Minister must repeat the requirements of **subsection (3)** unless the Minister considers that the revisions are not significant (or the Minister does not intend to approve the revised programme). 35

- (7) The Minister must notify the shareholding Ministers, the Ministry, the Agency, and KiwiRail of whether a programme has been 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** 5
- (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 contributes to the purpose of this Act and is consistent with the GPS on land transport:
- (b) whether the Agency is satisfied that the programme includes the following information: 10
- (i) a recommendation on the total amount of the 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: 15
- (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: 20
- (c) whether the Agency considers 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. 25
- (2) The Agency's advice must be provided by a date set by 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. 30
- (2) For that purpose, the process for approval set out in **section 22B** must be followed, and that section and **section 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. 35

- 22E Minister may approve funding of rail network investment programme activities**
- (1) 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—
- (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 22A** (and as a parallel process to that approval); and
  - (b) the Minister has first—
    - (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)** without satisfying the requirements of **subsection (2)** if—
- (a) either or both of the following apply:
    - (i) the activity or activities are in the urgent interests of public safety;
    - (ii) the activity or activities are necessary to immediately or temporarily repair damage caused by a sudden and unexpected event; and
  - (b) the activity or 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 a programme being considered for approval under **section 22A**;
  - (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:	5
(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:	10
(f)	whether, based on the matters set out in <b>paragraphs (a) to (e)</b> , 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.	15
(2)	If the advice relates to activities or combinations of activities included in a programme being considered for approval under <b>section 22A</b> , the Agency must also give advice on whether there is reference to the activities or combinations of activities in the statement required by <b>section 22C(1)(b)(ii)</b> .	20
(3)	The Agency must develop, and make it available on its Internet site, 1 or more assessment methods to use when giving advice in relation to the matters set out in <b>subsection (1)(c) and (d)</b> .	
<b>22G</b>	<b>KiwiRail must use specified procurement procedure for delivering certain activities</b>	25
(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 <b>section 10(3)(aa)</b> .	
(2)	The procedures must—	
(a)	be designed to obtain the best value for the money funded under that section; and	30
(b)	be consistent with current all-of-government procurement practices to the extent that they are applicable to the matter.	
(3)	KiwiRail must consult the Agency before approving the procedures.	
(4)	KiwiRail and the Agency must each publish the procurement procedures on their Internet sites.	35

**12 New section 102A inserted (Monitoring and reporting on rail activities approved under section 22E)**

After section 102, insert:

**102A Monitoring and reporting on rail 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
  - (b) report on its findings to the Minister. 5
- (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.

**13 Section 105 amended (Regional transport committees)**

After section 105(15), insert: 10

- (16) This section is subject to the requirements of extra membership in **section 105A**.

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

After section 105, insert: 15

**105A KiwiRail representation on regional transport committees**

- (1) In this section, **regional transport committee** means—
  - (a) the regional transport committee for the Wellington region established under section 105 (or a joint committee established under that section that includes members for the Wellington region); and 20
  - (b) the regional transport committee for Auckland (as that committee is defined in section 5(1)); and
  - (c) a regional transport committee to which **subsection (5)** applies.
- (2) A regional transport committee must include 1 further member to represent KiwiRail (the **KiwiRail member**). 25
- (3) The KiwiRail member must be appointed by KiwiRail.
- (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, by notice in the *Gazette*, name any other regional transport committee, or the joint regional committee to which that regional transport committee belongs, as a regional transport committee for the purposes of this section, but only if the Minister considers that the consequence of doing so will contribute to the purpose of this Act. 30

## Part 2

### Amendments to other legislation

#### 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) 5

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

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

#### 17 New section 168AA inserted (Certain orders are confirmable instruments) 10

After section 168, insert:

##### 168AA Certain orders are confirmable instruments

- (1) This section applies to regulations made by Order in Council under section 167(1)(j) that prescribe fees or charges to be treated as land transport revenue for the purposes of the Land Transport Management Act 2003. 15
- (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 20
- (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, insert in its appropriate alphabetical order: 25

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