

Land Transport (Rail) Legislation Bill

Government Bill

As reported from the Transport and Infrastructure Committee

Commentary

Recommendation

The Transport and Infrastructure Committee has examined the Land Transport (Rail) Legislation Bill and recommends that it be passed with the amendments shown.

Introduction

This bill would implement a new planning and funding framework for the heavy rail network owned by KiwiRail Holdings Limited (KiwiRail).

The current funding framework for land transport effectively separates road and rail network decisions. The bill would bring the rail network under the planning and funding regime for land transport set by the Land Transport Management Act 2003.

The bill would establish a statutory rail network investment programme (RNIP). This framework would allow the rail network to be funded from the national land transport fund.

The New Zealand Transport Agency (NZTA) would have the role of advising the Minister of Transport on how the RNIP fits within the overall land transport investment programme under the Land Transport Management Act. KiwiRail would be responsible for providing the rail activities funded from the national land transport fund.

The bill would also amend the Land Transport Act 1998 so that any track user charges set by regulation to recover rail network costs from track users, and identified as land transport revenue, must be paid into the national land transport fund. The amendment would also allow any other fees or charges set by regulation to be identified as land transport revenue. These regulations would be classified as confirmable instruments under the Legislation Act 2012.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

Rail network investment programme

Clause 11 would establish a RNIP by inserting new sections 22A to 22G into the Land Transport Management Act.

Alignment with government priorities

New section 22A would require KiwiRail to prepare a RNIP every 3 years that would apply for the following 3 financial years.

We believe it is important that the RNIP aligns with the Government's transport priorities. We recommend amending new section 22A to require each RNIP to take into account both the purpose of the Land Transport Management Act and the Government Policy Statement on land transport. This would help to improve coordinated planning and decision-making within the land transport system.

Time period for the RNIP

We heard from some submitters who thought the 3-year period for the RNIP was too short when planning long-life infrastructure. Some submitters also suggested that the RNIP align with the 10-year planning cycle for regional land transport plans.

We recommend retaining the current period of the RNIP, as this would align with the 3-year funding approval period of the national land transport programme. However, we recognise the need for more certainty in planning for rail activities. We therefore recommend amending new section 22A to require the RNIP to include an indication of any significant rail activities or combinations of rail activities likely to be included in the next RNIP. We believe that our amendment to new section 22A would strike a good balance. It would align the RNIP process with the national land transport programme, while still taking account of the significant investment and long-term focus of rail infrastructure.

Date that the first RNIP would take effect

The bill as introduced would require KiwiRail to prepare the first RNIP by 1 July 2021. We recognise that preparation of a RNIP would take time and need to be in advance of the day the RNIP takes effect. We believe the provision as introduced creates uncertainty as to when the first RNIP would take effect. We therefore recommend amending clause 11, new section 22A(4), to clarify that KiwiRail must prepare the first RNIP to take effect from 1 July 2021.

National land transport programme

Section 19C of the Land Transport Management Act sets out what must be included in the national land transport programme. Clause 10 of the bill as introduced would amend section 19C to include rail activities or combinations of rail activities

approved under new section 22E. We recommend amending clause 10 to also include rail activities or combinations of rail activities included in the current RNIP approved by the Minister under new section 22B.

Making a decision on a RNIP

New section 22B(3) would require the Minister to consult with KiwiRail's shareholding Ministers and consider NZTA's advice before approving a RNIP. We believe this provision is unclear about whether the Minister must take these two steps if they want to decline a RNIP. We recommend amending this section to refer to the Minister making a decision on a programme, which would mean the requirements in new section 22B would apply whether or not the Minister approves or rejects a RNIP.

Advice provided by NZTA

Advice on regional land transport plans

The bill would give NZTA the role of advising the Minister on the RNIP. New section 22C lists the matters that must be contained in this advice. We recommend amending the list in new section 22C to include advice on whether the RNIP takes into account any relevant regional land transport plan.

This would ensure that the Minister is informed of any interdependencies between regional priorities, the decisions NZTA must take on regional land transport programme activities proposed for inclusion in the national land transport programme, and the RNIP.

Providing advice to KiwiRail and the Ministry of Transport

Clause 11 would insert new sections 22C and 22F into the Land Transport Management Act. New section 22C would require NZTA to advise the Minister on the RNIP. New section 22F would require NZTA to advise the Minister on rail activities to be funded.

KiwiRail expressed the view that both of these sections should be amended to require NZTA to consult with it on this advice. KiwiRail believes this would help ensure that the advice includes full consideration of rail operational issues and other KiwiRail-specific information.

We do not agree with KiwiRail that the bill should be amended in this way. NZTA needs to be able to provide independent advice to the Minister. However, we recognise the importance of this advice to KiwiRail's operations, and its importance to the Ministry of Transport as the Government's principal transport adviser. We therefore recommend amending new sections 22C and 22F to require NZTA to inform both KiwiRail and the Ministry of Transport of its advice to the Minister.

Amendments related to the role of KiwiRail

Co-operation between NZTA and KiwiRail

NZTA is required to work with and advise approved organisations that receive funding from the national land transport fund. As the bill would enable KiwiRail to receive funding from the fund, we believe NZTA should be required to assist, advise, and co-operate with KiwiRail. We recommend inserting clause 11A to add this requirement to the list of NZTA's functions in section 95 of the Land Transport Management Act.

KiwiRail's procurement procedures

Section 5(1) of the Land Transport Management Act provides the definition of "procurement procedure". We recommend inserting new clause 4(1A) to expand the definition to include a procurement procedure approved by KiwiRail under new section 22G.

Associated with this change, we recommend a minor amendment to new section 22G(2)(b). We recommend removing the qualification that KiwiRail's procurement procedures must be consistent with all-of-government procurement practices "to the extent that they are applicable to the matter". It is important that any procurement procedures undertaken by KiwiRail to implement projects funded through the national land transport fund be consistent with all-of-government practice.

Amendments to other enactments

Goods and Services Tax Act 1985

The bill as introduced is silent on the GST treatment of fees and charges paid pursuant to regulations made under section 167(1)(j) of the Land Transport Act. We recommend inserting clause 14A into the bill. This would amend section 5 of the Goods and Services Tax Act 1985 to clarify that fees or charges paid under the regulations are consideration for the supply of services.

This would create consistency in the treatment of GST for all land transport fees and charges made under the regulation-making power in section 167(1)(j).

Fees and charges to be paid into a Crown Bank Account

Clause 16 would insert new section 168(4)(h) into the Land Transport Act. It would provide that regulations made under section 167(1)(j) may identify fees and charges that are land transport revenue for the purposes of the Land Transport Management Act. This provides a mechanism for fees and charges collected from track users to flow into the national land transport fund as land transport revenue.

We recommend inserting new clause 17. This would clarify that all fees and charges made under those regulations and identified as land transport revenue are to be paid into a Crown Bank Account and treated as land transport revenue. This was potentially unclear in the bill as introduced.

National Party minority view

Introduction

National supports rail in New Zealand as an important part of a multi-modal, integrated transport system. The previous National-led Government invested billions in KiwiRail after the nationalisation of KiwiRail by the Clark Labour Government. Contrary to repeated assertions, including by officials, that the network was in “managed decline”, KiwiRail was heavily capitalised and restructured so that the company, owned by the Crown on behalf of taxpayers, could make a profit.

National believes we should be realistic about the role of rail in New Zealand. Rail is particularly effective for transporting bulky, heavy goods such as coal, dairy, and forestry products. KiwiRail transports about 18 million tonnes of freight each year and shifts about a quarter of New Zealand’s exports. The Wellington and Auckland commuter rail networks are key parts of the transport systems in both cities. Since the investment in electrification, both have enjoyed strong passenger growth, particularly in Auckland. Of the alleged \$1.47 – 1.54 billion contribution that rail makes to the economy each year, \$1.3 billion comes from reduced congestion.¹

However, the economics of rail in New Zealand are challenging. We are a long, thin country with difficult geography. Rail has almost never covered its cost of capital in New Zealand, apart from on a few freight-dominated routes. The Regulatory Impact Assessment refers to this when it says “the network does not generate sufficient revenue from its users to cover its full network costs”.²

KiwiRail governance and structure

KiwiRail almost certainly has the dubious distinction of being the most reviewed and restructured organisation in New Zealand history, with various operating structures tried over the decades in order to try and ensure the efficient allocation of scarce capital.

We are concerned by Government moves to reposition KiwiRail away from commercial imperatives and this bill makes the situation worse. Currently KiwiRail is planned and funded under the State Owned Enterprises Act 1986 (SOE Act) as KiwiRail is a state-owned enterprise (SOE). This bill proposes to move planning and funding into the Land Transport Management Act, but for KiwiRail to remain as a SOE. That makes little sense in principle and we are wholly unpersuaded by officials’ arguments to the contrary.

The critical question is whether KiwiRail should be expected to operate commercially and turn a profit for its ultimate owners, the taxpayer. Budget 2019 changed the valu-

¹ Ministry of Transport, The Draft New Zealand Rail Plan, p. 14.

² Ministry of Transport, Impact Summary: New Zealand Planning and Funding Framework for Rail in New Zealand, p. 7.

ation approach of the rail freight network from a commercial basis to a public benefit basis. Treasury has said:

Following a review to consider the context of KiwiRail's purpose within a multi modal transport system, the underlying assumption of the benefits of rail were reframed as: 'Rail enables access and mobility, transporting people and goods to where they need to go, supporting productivity and business growth, reducing emissions, congestion and road deaths, and strengthening social and cultural connections between communities'. As a consequence, a valuation for the rail freight network that only reflected its cash generating potential was no longer appropriate.

The Regulatory Impact Assessment asserts that under the SOE model the Crown faces the "same decisions each year on the level of financial commitment required for rail". The fact that the Crown does not face this dilemma for other SOEs is an indicator of the longstanding challenges for rail in New Zealand.

National believes there are improvements that can definitely be made to funding and planning within the current SOE framework, but that KiwiRail should remain as a commercially-focused SOE.

New Zealand Rail Plan

National tentatively supports the development of a New Zealand Rail Plan to provide a long-term strategic vision and set out investment priorities for rail—but not necessarily the one issued by the Government.

Planning and Coordination

We also support greater coordination in planning our roading and rail networks. This bill is not required for that—there are a variety of non-legislative mechanisms that could and should be used. In any event, the bill will *not* provide for any particular greater coordination. As the New Zealand Automobile Association pointed out: "As it currently stands the Minister is tasked to sign off the KiwiRail plan, and forward that to NZTA who are to include it, as signed off, in the NLTP. This approach does not allow for consideration of trade-offs between the modes, as NZTA's board while retaining decision making authority over which road projects proceed, has no influence over the rail projects."

Accessing the national land transport fund

Our core objection is that we do not support further allowing KiwiRail to access the national land transport fund (NLTF), which is the basic aim of the bill. The bulk of the NLTF is made up of contributions by road users, who contribute into the fund through fuel taxes and road user charges.

National believes that rail users, as much as possible, should pay for the use of the rail network, just as road users pay for the use of the roads. If rail users are not prepared to pay for the rail network, then they should not be cross-subsidised by road users

who gain little-to-no benefit from funding rail. Indeed, this bill will create a situation where road users actually pay to make a competing transport mode more competitive!

This bill will be wealth destructive to the New Zealand economy. It will encourage uneconomic rail lines to re-open. If demand exists for new lines to open then Kiwi-Rail should make the commercial decision to do so, funded by the users of those lines.

Finally, the bill will place further stress on the NLTF which is already under considerable funding pressure.

Appendix

Committee process

The Land Transport (Rail) Legislation Bill was referred to the committee on 17 December 2019. The closing date for submissions was 7 February 2020. We received and considered 87 submissions from interested groups and individuals. We heard oral evidence from 24 submitters at hearings in Auckland and Wellington.

We received advice from the Ministry of Transport.

Committee membership

Darroch Ball (Chairperson)

Chris Bishop

Paul Eagle

Raymond Huo

Matt King

Jan Logie

Jami-Lee Ross

Jamie Strange

Tim van de Molen

Land Transport (Rail) Legislation Bill

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Phil Twyford

Land Transport (Rail) Legislation Bill

Government Bill

Contents

		Page
1	Title	2
2	Commencement	2
Part 1		
Amendments to Land Transport Management Act 2003		
3	Amendments to Land Transport Management Act 2003	3
4	Section 5 amended (Interpretation)	3
5	New section 5A inserted (Meaning of rail activity)	3
	5A Meaning of rail activity	3
6	Section 6 amended (Meaning of land transport revenue)	4
7	Section 9 amended (The Crown's authority to incur certain land transport expenses and capital expenditure)	4
8	Section 10 amended (National land transport fund)	4
9	Section 16 amended (Form and content of regional land transport plans)	4
10	Section 19C amended (Content of national land transport programme)	5
11	New sections 22A to 22G and cross-heading inserted	5
<i>Rail network investment programme</i>		
	22A KiwiRail must prepare rail network investment programme	6
	22B Minister must decide whether to approve rail network investment programme	6
	22C Agency must advise on rail network investment programme	7

22D	Rail network investment programme may be varied during its currency	8
22E	Minister may approve funding of rail network investment programme activities	8
22F	Agency must advise on rail activities to be funded	9
22G	KiwiRail must use specified procurement procedure for delivering certain activities	10
<u>11A</u>	<u>Section 95 amended (Functions of Agency)</u>	<u>10</u>
12	New section 102A inserted (Monitoring and reporting on rail activities approved under section 22E)	10
	102A Monitoring and reporting on rail activities approved under section 22E	10
13	Section 105 amended (Regional transport committees)	11
14	New section 105A inserted (KiwiRail representation on regional transport committees)	11
	105A KiwiRail representation on regional transport committees	11
	<u>105A</u> <u>KiwiRail representation on regional transport committees</u>	<u>11</u>

Part 2

Amendments to other legislation

<u>14A</u>	<u>Amendment to Goods and Services Tax Act 1985</u>	<u>12</u>
15	Amendments to Land Transport Act 1998	12
16	Section 168 amended (Regulations relating to fees and charges for land transport)	12
17	New section 168AA inserted (Certain orders are confirmable instruments)	12
	168AA Certain orders are confirmable instruments	12
<u>17</u>	<u>New sections 168AA and 168AAB inserted</u>	<u>13</u>
	<u>168AA</u> <u>Land transport revenue to be paid into national land transport fund</u>	<u>13</u>
	<u>168AAB</u> <u>Certain orders are confirmable instruments</u>	<u>13</u>
18	Amendment to Legislation Act 2012	13

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) 5

- (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— 10

(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 15

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— 20

(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)** 25

- (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)**”.
- 30

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— 35

- (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)** 15
- 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: 20
- (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:~~
- (2) After section 9(2)(b), insert: 25
- (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. 30
- 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)** 35
- (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~~
- (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~~ 5
- (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 10
- (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 15
- (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 20
- (2) After section 16(6), insert:
- (6A) ~~The matters included in a regional land transport plan under **subsection (6)(ga) or (gb)** are~~ 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 ~~do~~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. 25
- 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~~ 30
- (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 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 to apply for the following 3 financial years.
- (2) ~~Each~~ 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) ~~Each~~ The programme must—
- (a) ~~be prepared by a date set by the Minister; and~~
 - (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 ~~subsection (3)(a)~~ **subsections (1) and (3A)**, KiwiRail must prepare the first rail network investment programme by 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 ~~decide whether to approve a programme by the beginning of the first financial year to which the programme relates~~ make a decision before the start of the first financial year to which the programme applies.
- (3) The Minister must not ~~approve a programme~~ 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 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)**.~~
- (5) Subsection (6) applies if, after the Minister has completed the requirements of **subsection (3)**,— 5
- (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 ~~(or the Minister does not intend to approve the revised programme).~~ 10
- (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** 15
- (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:~~
- (a) whether the rail network investment programme— 20
- (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: 25
- (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: 30
- (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: 35
- (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's advice must be provided by a date set by the Minister.~~
- (2) The Agency must give— 5
- (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. 10
- (2) For that purpose, ~~the process for approval set out in **section 22B** must be followed, and that section and **section 22C** sections **22A to 22C** apply as far as they are relevant and with any necessary modification.~~
- (3) **Subsection (2)** applies unless the ~~Minster~~ Minister considers the variation is not significant, in which case the Minister must simply approve (or not approve) the variation. 15
- 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. 20
- (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— 25
- (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~~
- (ii) any programme being considered for approval under **section 22B** (as a process carried out in tandem with that consideration); 30
- 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— 35
- (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. 5
- (4) The Minister must notify the shareholding Ministers, the Ministry, the Agency, and KiwiRail of all activities that, under this section, the Minister— 10
- (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 22A 22B**: 15
- (b) whether the activity or combinations of activities take into account— 20
- (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: 25
- (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: 30
- (f) whether, based on the matters set out in **paragraphs (a) to (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. 35
- (2) If the advice relates to activities or combinations of activities included in a programme being considered for approval under **section 22A 22B**, the Agency must also give advice on whether there is reference to the activities or combinations of activities in the statement required by **section 22C(1)(b)(ii)**.

- (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 **subsection (1)(c) and (d)**.
- (4) The Agency must give—
- (a) its advice to the Minister by a date set by the Minister; and 5
 - (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)**. 10
- (2) The procedures must—
- (a) be designed to obtain the best value for the money funded under that ~~section~~ provision; and 15
 - (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. 20
- 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): 25
- 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** 30
- (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.
- (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. 35

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 of extra membership in **section 105A**.~~ 5
- (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: 10

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~~ 15
- (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**).~~ 20
- (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.~~ 25

105A KiwiRail representation on regional transport committees 30

- (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*. 35

- (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
- (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

10

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

15 Amendments to Land Transport Act 1998

Sections 16 and 17 amend the Land Transport Act 1998. 20

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 to be treated as land transport revenue for the purposes of the Land Transport Management Act 2003. 25

~~**17 New section 168AA inserted (Certain orders are confirmable instruments)**~~

~~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.~~ 30
- (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~~
- (e) ~~the stated time is the applicable deadline under section 47C(1)(a) or (b) of that Act.~~

17 New sections 168AA and 168AAB inserted

5

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.

10

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.

15

20

18 Amendment to Legislation Act 2012

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

25

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

Legislative history

2 December 2019
17 December 2019

Introduction (Bill 191–1)
First reading and referral to Transport and Infrastructure Committee