



# Railways Act 2005

Public Act 2005 No 37  
Date of assent 20 April 2005  
Commencement see section 2

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## The Parliament of New Zealand enacts as follows:

### 1 Title

This Act is the Railways Act 2005.

### 2 Commencement

This Act comes into force 3 months after the date on which it receives the Royal assent.

## Part 1 Preliminary provisions

### 3 Purpose

The purpose of this Act is to—

- (a) promote the safety of rail operations by—
  - (i) stating the duty of rail participants to ensure safety; and
  - (ii) authorising the Minister to make rules relating to rail activities; and
  - (iii) clarifying the nature of approved safety systems established by rail participants;
- (b) restate and amend the law relating to the management of the railway corridor:

- (c) consolidate legislation relating to railways.

#### 4 Interpretation

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

**access provider**, in relation to a railway line, means the person who controls the use of that railway line by rail operators (including that person if it is also a rail operator), whether or not that person engages rail personnel to exercise or assist in exercising that control on its behalf; but does not include those rail personnel

**accident** means an occurrence associated with the operation of a rail vehicle or the use of railway infrastructure or railway premises that causes—

- (a) the death of, or serious injury to, individuals; or
- (b) significant damage to property

**approved safety case** means a safety case that the Director has approved under section 32; and includes any variation approved or confirmed under section 35

**Authority** means Land Transport New Zealand established by section 66 of the Land Transport Management Act 2003

**Commission** means the Transport Accident Investigation Commission established under section 3 of the Transport Accident Investigation Commission Act 1990

**Director** means the Director of Land Transport appointed under section 186 of the Land Transport Act 1998

**director**,—

- (a) in relation to a company, has the same meaning as in section 126 of the Companies Act 1993 as if—
  - (i) this Act were referred to in subsections (1)(b) to (d), (2), and (3) of that section; and
  - (ii) subsection (1A) of that section were omitted:
- (b) in relation to any other body corporate, means a person occupying a position in, or in relation to, the body corporate that is comparable with that of a person who is a director of a company within the meaning of paragraph (a)

**enforcement officer**—

- (a) means any of the following:
  - (i) a sworn member of the police:

- (ii) a non-sworn member of the police who is authorised by the Commissioner to be an enforcement officer for the purposes of the Land Transport Act 1998;
  - (iii) a person who is appointed as an enforcement officer or a dangerous goods enforcement officer for the purposes of the Land Transport Act 1998 by warrant under section 208 of that Act or who holds that office by virtue of that Act;
  - (iv) a person who is appointed as an enforcement officer by warrant under section 102 or who holds that office by virtue of this Act; but
- (b) does not include a safety assessor

**equipment** includes software

**incident** means an occurrence, other than an accident, that is associated with the operation of a rail vehicle or the use of railway infrastructure or railway premises that placed, or could have placed,—

- (a) a person at risk of death or serious injury; or
- (b) property at risk of significant damage

**infrastructure owner** means a person who owns, or leases for a period of 7 years or more, any railway infrastructure, whether or not that person engages rail personnel to exercise or assist in exercising the rights and duties of ownership on its behalf; but does not include those rail personnel

**level crossing**—

- (a) means any place where—
  - (i) a railway line crosses a road on the same level; or
  - (ii) the public is permitted to cross a railway line on the same level; and
- (b) includes a bridge used for both rail vehicles and road traffic on the same level; but
- (c) does not include a railway line on a road that is intended solely for the use of light rail vehicles

**licence** means a licence granted under section 17 that is in force

**licence holder** means a person who—

- (a) is required to hold a licence under section 15; and
- (b) was granted a licence under section 17

**light rail vehicle**—

- (a) means a rail vehicle that is designed to run on or along a road with other road vehicles and users; and
- (b) includes a tram; but
- (c) does not include—
  - (i) a rail vehicle approaching or on a level crossing; or
  - (ii) a rail vehicle while it is on a railway line that is not on a road

**maintenance provider** means a person who provides maintenance services for any railway infrastructure or rail vehicle, whether or not that person engages rail personnel to do so on its behalf; but does not include those rail personnel

**Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

**network controller** means a person who authorises entry onto, occupancy of, or movement of rail vehicles on a railway line, whether or not that person engages rail personnel to do so on that person's behalf; but does not include that rail personnel

**ordinary safety assessment** means a safety assessment undertaken of all parts or any part of a rail participant's rail activities to enable the Director—

- (a) to gain appropriate assurances that those rail activities will continue to be conducted safely; or
- (b) to determine the action that must be taken by the rail participant so that those assurances may be gained

**rail activities** has the meaning specified in subsection (2)

**rail document** means a document that a rail participant or any rail personnel is required to hold under this Act; and includes a licence

**rail operator** means a person who provides or operates a rail vehicle, whether or not that person engages rail personnel to do so or to assist in doing so on its behalf; but does not include those rail personnel

**rail participant** means any of the following:

- (a) an infrastructure owner:
- (b) a rail vehicle owner:
- (c) a railway premises owner:

- (d) an access provider:
- (e) a rail operator:
- (f) a network controller:
- (g) a maintenance provider:
- (h) a railway premises manager:
- (i) any other class of person prescribed as a rail participant by regulations

**rail personnel**, in relation to a rail participant, means an individual engaged by the rail participant or by an agent or contractor of the rail participant, whether as an employee, agent, contractor, or volunteer, for the purposes of carrying out, or assisting in carrying out, rail activities of the rail participant

**rail traffic control equipment** means train control and signal equipment and systems

**rail vehicle**—

- (a) means any vehicle that runs on, or uses, a railway line; and
- (b) includes—
  - (i) a locomotive, rail carriage, rail wagon, railcar, light rail vehicle, rail maintenance vehicle (whether or not self-propelled), and any other vehicle prescribed as a rail vehicle by regulations; and
  - (ii) a vehicle designed to operate both on rails and off rails, but only when that vehicle is running on rails

**rail vehicle owner** means a person who owns, or leases for a period of 7 years or more, a rail vehicle, whether or not that person engages rail personnel to exercise or to assist in exercising the rights and duties of ownership on its behalf; but does not include those rail personnel

**railway** means the railway infrastructure, rail vehicles, and other property (other than railway premises), including property specified by regulations made under section 59(j) and vehicles prescribed under section 59(k), that together are being used for the purpose of transporting people or goods by rail; but excludes—

- (a) a railway used as an amusement device as defined in section 21A(1) of the Machinery Act 1950:

- (b) a railway that operates on a set of rails with a gauge of less than 550 mm between them, unless that set of rails is designated as a railway line under section 59(1);
- (c) a railway that operates on a railway line excluded by regulations made under section 59(m);
- (d) a private cable car

**railway infrastructure** means—

- (a) railway lines;
- (b) rail traffic control equipment;
- (c) communications equipment;
- (d) electrical traction equipment;
- (e) any other property specified as railway infrastructure in regulations

**railway line**—

- (a) means a single rail or set of rails, having a gauge of 550 mm or greater between them, laid for the purposes of transporting people or goods by rail; and
- (b) includes—
  - (i) sleepers, associated formation and ballast, tunnels, and bridges; and
  - (ii) in relation to a single rail or set of rails that are laid on a road for the purposes of 1 or more light rail vehicles,—
    - (A) any area between the rails; and
    - (B) the area that extends 500 mm outside the extremity of any light rail vehicle being used on that single rail or set of rails; and
  - (iii) a set of rails, having a gauge of less than 550 mm between them, that is designated as a railway line in regulations made under section 59(1); and
  - (iv) except as provided in subparagraph (ii), any area within 5 m of a single rail or within 5 m of a line drawn midway between a set of rails; but
- (c) excludes—
  - (i) a railway line that is part of a railway used as an amusement device as defined in section 21A(1) of the Machinery Act 1950;
  - (ii) a railway line excluded by regulations made under section 59(m);
  - (iii) a railway line that exclusively serves private cable cars

**railway premises** means the land, buildings, or structures that are—

- (a) located near a railway line; and
- (b) used for the purposes of, in connection with, or for obtaining access to, a railway

**railway premises manager** means a person who manages and operates any railway premises, whether or not that person engages rail personnel to do so or to assist in doing so on its behalf; but does not include those rail personnel

**railway premises owner** means a person who owns, or leases for a period of 7 years or more, any railway premises, whether or not that person engages rail personnel to exercise or assist in exercising the rights and duties of ownership on its behalf; but does not include those rail personnel

**regulations** means regulations made under this Act

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

- (a) includes—
  - (i) a road under the jurisdiction of a local authority; and
  - (ii) a State highway within the meaning of section 2(1) of the Transit New Zealand Act 1989; but
- (b) does not include—
  - (i) a footpath or private road within the meaning of section 315 of the Local Government Act 1974; or
  - (ii) a motorway within the meaning of section 2(1) of the Transit New Zealand Act 1989; or
  - (iii) a roadway laid out by order of the Maori Land Court under Part XXVII of the Maori Affairs Act 1953 (repealed) or any former Act, unless—
    - (A) that order has been cancelled; or
    - (B) the roadway has been declared to be a road under section 421 of the Maori Affairs Act 1953 (repealed); or
  - (iv) a level crossing

**road controlling authority** means the authority, body, or other person that has control of a road; and includes a person acting under, and within the terms of, any delegation or authorisation given by that authority, body, or other person

**rule** means an ordinary rule or emergency rule made under this Act

**safety assessment** means an ordinary safety assessment or a special safety assessment

**safety assessor** means a person appointed as a safety assessor under section 45

**safety case** means a document that contains the information specified in section 30

**safety improvement plan** means a plan required to be prepared under section 36

**safety system**, in relation to a rail participant, means a written record of all the rail participant's management and operational policies and practices that relate to the safe conduct of its rail activities; and includes the rail participant's operational and training manuals

**special safety assessment** means a safety assessment undertaken of all parts or any parts of a rail participant's rail activities when the Director believes, on reasonable grounds, that—

- (a) those rail activities could cause—
    - (i) the death of, or serious injury to, individuals; or
    - (ii) significant damage to property; and
  - (b) there is a need for an early determination of the nature and extent of the action that the Director would require the rail participant to take to mitigate that risk.
- (2) In this Act, the **rail activities** of a rail participant, or for which a rail participant is responsible, are as follows:
- (a) in the case of an infrastructure owner, the ownership of railway infrastructure:
  - (b) in the case of a rail vehicle owner, the ownership and management of rail vehicles:
  - (c) in the case of a railway premises owner, the ownership and maintenance of railway premises (whether or not the railway premises owner is also a maintenance provider):
  - (d) in the case of an access provider, the operation and maintenance of all railway infrastructure that is, or relates to, the railway lines controlled by the access provider (whether or not the access provider is also an infrastructure owner, maintenance provider, or network controller):

- (e) in the case of a rail operator, the operation and maintenance of rail vehicles (whether or not the rail operator is also a rail vehicle owner or maintenance provider):
- (f) in the case of a maintenance provider, the maintenance of any railway infrastructure or rail vehicles or railway premises:
- (g) in the case of a railway premises manager, the management and operation of railway premises:
- (h) in the case of a network controller, the authorisation of rail vehicles occupying or moving on a railway line:
- (i) in the case of a class of person prescribed as a rail participant by regulations, the activities prescribed by regulations as being the rail activities of persons of that class.

## 5 All practicable steps

- (1) In this Act, **all practicable steps**, in relation to achieving any result in any circumstances, means all steps to achieve the result that it is reasonably practicable to take in the circumstances, having regard to—
- (a) the nature and severity of the injury that may be suffered if the result is not achieved; and
  - (b) the current state of knowledge about the likelihood that an injury of that nature and severity will be suffered if the result is not achieved; and
  - (c) the current state of knowledge about injuries of that nature; and
  - (d) the current state of knowledge about the means available to achieve the result, and about the likely efficacy of each of those means; and
  - (e) the availability and cost of each of those means.
- (2) To avoid doubt, a person required by this Act to take all practicable steps is required to take those steps only in respect of circumstances that the person knows or ought reasonably to know about.

## 6 Act binds the Crown

This Act binds the Crown.

## Part 2 Safety

### Subpart 1—Duties of rail participants and other persons

#### 7 **General safety duties of rail participants and persons working for rail participants**

- (1) A rail participant must take all practicable steps on its part to ensure that none of the rail activities for which it is responsible causes, or is likely to cause, the death of, or serious injury to, individuals.
- (2) No rail personnel of a rail participant may do or omit to do anything in respect of a rail vehicle, railway infrastructure, or railway premises if he or she knows or ought reasonably to know that act or omission will cause, or will be likely to cause, the death of, or serious injury to, individuals.

#### 8 **Relationship of Act with Health and Safety in Employment Act 1992**

- (1) Nothing in this Act limits the Health and Safety in Employment Act 1992.
- (2) Despite subsection (1), the Authority and the Department must enter into a memorandum of understanding with respect to investigations conducted and prosecutions taken under this Act or the Health and Safety in Employment Act 1992.
- (3) For the purposes of this section, **Department** has the same meaning as in section 2(1) of the Health and Safety in Employment Act 1992.

#### 9 **General safety duties of other persons**

- (1) Every person on or near a rail vehicle, railway infrastructure, or railway premises commits an offence who fails to take all practicable steps to ensure that no individual dies or is seriously injured, and that no property is significantly damaged, as a result of any act or omission of that person.
- (2) Every person commits an offence who, not having lawful authority to do so, knowingly—
  - (a) places or moves any rail vehicle or other object on a railway line or leaves any rail vehicle or other object on any part of a railway line; or

- (b) moves, changes, or otherwise interferes with any signal, points, or stop blocks, or shows any signal likely to mislead; or
  - (c) causes or uses or attempts to use, or interferes with or attempts to interfere with, any braking appliances provided in any rail vehicle; or
  - (d) interferes with any railway line, structure, formation, tunnel, bridge, or other part of a railway; or
  - (e) interferes with any telecommunications or radio facility or signal, or gives any false or misleading information by means of any message, signal, or radio that will affect the operation of any rail vehicle; or
  - (f) enters upon any part of a railway line or rail vehicle with the intention of doing any of the acts mentioned in paragraphs (a) to (e).
- (3) Every person commits an offence who, not having lawful authority to do so, knowingly causes or caused any of the acts mentioned in subsection (2).
- (4) This section does not apply to—
- (a) rail participants; or
  - (b) any person to whom section 7(2) applies.

Compare: 1992 No 111 s 24

## **10 Rail operators and access providers must hold licences**

- (1) A rail operator must not operate a rail vehicle or permit a rail vehicle to be operated on a railway line unless—
- (a) the rail operator holds a licence as a rail operator; and
  - (b) the access provider for that railway line holds a licence as an access provider.
- (2) An access provider must not permit a rail vehicle to be operated on a railway line controlled by it unless—
- (a) the rail operator of the rail vehicle holds a licence as a rail operator; and
  - (b) the access provider holds a licence as an access provider.

## **11 Duty to comply with licences, safety cases, and safety systems**

A licence holder must—

- (a) ensure that—

- (i) every condition of its licence is complied with; and
  - (ii) its approved safety case is complied with; and
  - (iii) no serious or sustained breach of its safety system occurs; and
- (b) provide appropriate training and supervision of all rail personnel who do anything for, or on behalf of, it in respect of its rail activities, and ensure that those persons comply with—
  - (i) the conditions of its licence; and
  - (ii) its approved safety case; and
  - (iii) its safety system.

## **12 Duty to comply with instructions from network controllers**

- (1) A rail operator, its rail personnel, and any person authorised to access a railway line must comply with instructions given by the network controller with respect to the entry onto, occupancy of, or movement of rail vehicles on, a railway line.
- (2) Despite subsection (1), a person may refuse to comply with an instruction if that person believes on reasonable grounds that complying with the instruction would imminently cause an accident or incident.
- (3) If a person refuses to comply with an instruction given by a network controller, that person must immediately notify that network controller of the refusal.

## **13 Duties in relation to accidents and incidents**

- (1) If a driver of a rail vehicle believes that an accident arising directly or indirectly from the operation of the rail vehicle has occurred, the driver of the rail vehicle must—
  - (a) stop the rail vehicle as soon as safely practicable and ascertain whether a person has been harmed; and
  - (b) ensure that all practicable assistance is rendered if a person has been harmed.
- (2) Rail personnel must, as soon as practicable, report any accident or incident to—
  - (a) 1 or more of the following (as the case may require):
    - (i) the relevant rail operator;
    - (ii) the relevant access provider;
    - (iii) the relevant network controller; and

- (b) the rail participant that engages that rail personnel (if not done so under paragraph (a)).
- (3) The rail operator or access provider concerned must ensure, as soon as practicable, that the Director, or any other person that the Director has designated for this purpose,—
  - (a) is notified of any accident or incident; and
  - (b) is provided with the information about the accident or incident that the rules require or that the Director reasonably requires.
- (4) As soon as practicable after the Director is notified of any accident or incident, the Director must,—
  - (a) in the case of an accident, notify the Commission of the accident, and give to the Commission the information about the accident known to the Director that the Commission reasonably requires;
  - (b) in the case of an incident that the Director considers that the Commission should investigate, notify the Commission that the Director has been notified of the incident, and give to the Commission the information about the incident known to the Director that the Commission reasonably requires.

#### **14 Duty of rail participants to comply with dangerous goods provisions of Land Transport Act 1998**

A rail participant must comply with the provisions of sections 129 to 132 of the Land Transport Act 1998 that apply to that rail participant.

#### **Subpart 2—Licensing of rail participants**

#### **15 Certain rail participants must be licensed**

- (1) The following rail participants must hold a licence:
  - (a) a rail operator;
  - (b) an access provider;
  - (c) a rail participant who is required by regulations to hold a licence.
- (2) If a person is a member of more than 1 class of rail participant to which subsection (1) applies, a single licence covering each of the classes of rail participant concerned may be issued to the person, and that licence may have different conditions for the different classes covered by it.

- (3) Despite subsection (1), the Director may, on the conditions that the Director considers appropriate, exempt a person from holding a licence if all of the rail activities of that person are covered under—
- (a) the licence of another licence holder; and
  - (b) the approved safety case of that other licence holder.

## **16 Application for licence**

- (1) Every application for a licence must—
- (a) be made to the Director in the prescribed form or, if a form is not prescribed, in the form that the Director may require; and
  - (b) contain the information, and comply with any other requirements, prescribed by regulations or rules or reasonably required by the Director; and
  - (c) be accompanied by the fee required by regulations.
- (2) If a person is a member of more than 1 class of rail participant to which section 15(1) applies, a single application covering each of the classes of rail participant concerned may be made under subsection (1).

Compare: 1989 No 74 s 6

## **17 Grant of licences**

- (1) After considering an application for a licence, the Director may grant the licence only if he or she has determined that—
- (a) all relevant requirements of this Act, the regulations, and the rules have been complied with; and
  - (b) the proposed safety case has been approved under section 32; and
  - (c) it is not contrary to the interests of rail safety for the licence to be granted.
- (2) The Director may grant an interim licence to an applicant if that applicant—
- (a) is continuing an existing rail activity previously carried out by another rail participant; and
  - (b) has applied for a licence but is yet to have its—
    - (i) safety case approved; or
    - (ii) application determined.
- (3) Section 27 applies to a decision not to grant a licence.

**18 Transfer or assignment of licence prohibited**

A licence may not be transferred or assigned to any person without the prior written consent of the Director, and any purported transfer or assignment is void.

Compare: 1989 No 74 s 26(1)

**19 Term of licence**

(1) A licence takes effect on the day it is granted and continues in force until it is—

- (a) surrendered under subsection (2); or
- (b) suspended under section 23; or
- (c) revoked under section 24 or section 26.

(2) A holder of a licence may surrender the licence at any time by written notice to the Director.

Compare: 1989 No 74 ss 27, 28

**20 Register of licences**

(1) The Authority must continue and maintain a register of licences.

(2) The register must show for each licence the following information:

- (a) the holder's name;
- (b) the holder's address;
- (c) the number of the licence;
- (d) the date of issue of the licence;
- (e) any conditions applying to the licence;
- (f) information about any expiry, revocation, suspension, or surrender;
- (g) the dates of any amendments to the licence;
- (h) whether any safety case and variations to the safety case have been approved by the Director.

(3) A person who applies to the Director and pays the prescribed fee (if any) is entitled to the information specified in subsection (2) that relates to the licence holder named in the application.

Compare: 1989 No 74 s 29

*Conditions of licences***21 Conditions of licences**

(1) A licence may be granted on any conditions that—

- (a) the Director, on reasonable grounds, considers appropriate in the interest of safety; or
  - (b) are prescribed by the rules.
- (2) Without limiting subsection (1), every licence has the following conditions:
  - (a) the licence holder has a safety liaison officer who is authorised to act as the licence holder's primary contact with the Authority in relation to the licence; and
  - (b) the fees with respect to the licence are paid to the Authority; and
  - (c) the licence holder must report to the Director those matters that are specified in the licence holder's safety case and any other matters that the Director reasonably considers necessary in the interests of safety.
- (3) Without limiting subsection (1), every licence held by a rail operator has the following conditions:
  - (a) every rail vehicle used by the rail operator must be maintained as provided for in the approved safety case:
  - (b) the rail operator must, whenever required to do so by the Director, present for inspection any rail vehicle that is used by the rail operator:
  - (c) a rail vehicle that has suffered serious damage may not be used until it has been approved in accordance with the rail operator's safety system and approved safety case:
  - (d) the rail operator must, on being requested to do so by the Director or an enforcement officer, immediately supply the full name and address of any rail personnel of the rail operator who has committed or allegedly committed an offence (being an offence of which the rail operator is aware and that may be relevant to the safe operation of a rail vehicle).
- (4) Without limiting subsection (1), every licence held by an access provider has the following conditions:
  - (a) all railway infrastructure used by the access provider must be maintained as provided for in the approved safety case:
  - (b) the access provider must, whenever required to do so by the Director, present for inspection any railway infrastructure controlled by the access provider:

- (c) any railway infrastructure that has suffered serious damage may not be used until it has been approved in accordance with the access provider's safety system and approved safety case:
  - (d) the access provider must, on being requested to do so by the Director or an enforcement officer, immediately supply the full name and address of any rail personnel of the access provider who has committed or allegedly committed an offence (being an offence of which the access provider is aware and that may be relevant to the safe operation of any railway infrastructure).
- (5) Without limiting subsection (1), every licence has the condition that the licence holder must provide the Director with—
- (a) the licence holder's current—
    - (i) place of business; and
    - (ii) postal address; and
    - (iii) electronic address (if any); and
  - (b) the safety liaison officer's contact details (including, but not limited to, current phone number and current electronic address (if any)).

Compare: 1989 No 74 ss 31, 32

## **22 Agents and contractors**

- (1) A licence may prohibit or restrict the licence holder from appointing agents or contractors to carry out any rail activities of the licence holder without the consent of the Director (which consent may not be unreasonably withheld).
- (2) Every licence has the condition that,—
- (a) if any rail activities of the licence holder are carried out by another person who does not hold a licence to carry out those rail activities, the licence holder must take all reasonable steps (including providing necessary monitoring personnel and resources) to ensure that the person carries out those rail activities in accordance with—
    - (i) the licence; and
    - (ii) the licence holder's approved safety case and safety system; and
    - (iii) any relevant rules; and
  - (b) the licence holder must give written notice to the Director of the appointment of, or a change in, any of the principal agents or contractors engaged by the licence

holder to carry out any or all of the licence holder's rail activities.

*Suspensions, revocations, and other conditions of licences*

**23 Power of Director to suspend licence or impose temporary conditions**

- (1) The Director may, by written notice given to the licence holder, suspend a licence issued under this Act or impose temporary conditions in respect of that licence if the Director—
- (a) considers it necessary to avoid a risk of—
    - (i) the death of, or serious injury to, individuals; or
    - (ii) significant damage to property; and
  - (b) is satisfied that—
    - (i) the action is necessary to ensure compliance with sections 7 and 10 to 13 or the rules; or
    - (ii) the licence holder has contravened, or failed to comply with, any of sections 7 and 10 to 13 or the rules; or
    - (iii) the licence holder gave false or misleading information for the purpose of obtaining the licence; or
    - (iv) the licence holder failed to comply with any conditions of the licence; or
    - (v) the circumstances of the licence holder have changed significantly and the licence holder's approved safety case does not adequately provide for those changed circumstances; or
    - (vi) the licence has purportedly been transferred or assigned in contravention of section 18; and
  - (c) in the case of suspension, has had regard to whether an action other than suspension is appropriate in the circumstances.
- (2) A notice given under subsection (1) must inform the licence holder of—
- (a) the decision to suspend a licence issued under this Act or impose temporary conditions on that licence; and
  - (b) the reasons for the decision and the information upon which the decision is based; and
  - (c) the licence holder's right to appeal under section 68.

- (3) The duration of a temporary condition or a suspension may not exceed 10 working days unless, before the expiry of that 10-working-day period, the Director extends the temporary conditions or the suspension for a further specified period.
- (4) If notice of a proposed revocation or the imposition of permanent conditions is given while a suspension is, or temporary conditions are, in force, the suspension remains, or the temporary conditions remain, in force until a final decision on revocation or permanent conditions has been made.
- (5) Either a licence or a part of a licence may be suspended under this section.
- (6) Section 27 applies in respect of a decision under subsection (1).

Compare: 1990 No 98 s 17

#### **24 Power of Director to revoke licence or impose permanent conditions**

- (1) The Director may, at any time, revoke, or impose permanent conditions in respect of, a licence if the Director,—
  - (a) by reason of a safety assessment report or otherwise, considers it necessary to avoid a risk of—
    - (i) the death of, or serious injury to, individuals; or
    - (ii) significant damage to property; and
  - (b) on reasonable grounds, believes that no other action under this Act is appropriate to address that risk.
- (2) Either a licence or a part of a licence may be revoked, or encumbered with permanent conditions, under this section.
- (3) Section 27 applies in respect of a decision under subsection (1).

Compare: 1990 No 98 s 18

#### **25 Matters relating to action taken under section 23 or section 24**

- (1) This section applies if the Director is to determine whether a licence should be—
  - (a) suspended or subjected to temporary conditions under section 23; or
  - (b) revoked or subjected to permanent conditions under section 24.

- (2) If this section applies, the Director, as the Director considers appropriate, may take into account and give weight to the following matters:
- (a) the licence holder's compliance history with transport safety regulatory requirements (including this Act and the rules) and with the conditions of the licence holder's licence:
  - (b) any conviction of the licence holder, or any of the licence holder's officers, for a transport safety offence:
  - (c) evidence that the licence holder has committed a transport safety offence or has contravened or failed to comply with this Act, the rules, or any conditions of the licence holder's licence.
- (3) The Director is not confined to consideration of the matters specified in subsection (2), and may take into account other matters and evidence from any source that he or she considers relevant.

Compare: 1990 No 98 s 19

## **26 Power of Director to amend or revoke licences in other cases**

- (1) The Director may, by agreement with a licence holder, amend that licence holder's licence.
- (2) The Director may, without the agreement of a licence holder, do any of the following:
- (a) amend a licence to reflect the fact that a rail activity for which the licence was granted is no longer being carried out by the licence holder:
  - (b) revoke a licence if none of the rail activities for which the licence has been granted is being carried out by the licence holder:
  - (c) amend a licence to correct any clerical error or obvious mistake on the face of the licence.
- (3) Section 27 applies in respect of a decision under subsection (2)(a) or (b).

Compare: 1990 No 98 s 20

*Adverse decisions***27 Rights of persons affected in relation to adverse decisions**

- (1) If the Director proposes to make an adverse decision under this Act in respect of a person, the Director must give written notice to the person directly affected of—
  - (a) the proposed decision; and
  - (b) subject to subsection (3), the reasons for the proposed decision and the information upon which the decision is based; and
  - (c) the date by which submissions may be made to the Director in respect of the proposed decision (which date must not be less than 15 working days after the date on which the notice is given); and
  - (d) if appropriate, the date on which the proposed decision takes effect, being a date not less than 20 working days after the date on which the notice is given; and
  - (e) the person's right to appeal under section 68 if the Director proceeds with the proposed decision; and
  - (f) any other matters that, in any particular case, may be required under this Act or any other Act.
- (2) If the Director gives a notice under subsection (1), the Director—
  - (a) must also supply a copy of the notice to any affected licence holder if the Director considers that the proposed adverse decision is likely to have a significant effect on the rail activities of that affected licence holder; and
  - (b) may supply a copy of the notice to any other affected rail participant.
- (3) No notice, or copy of a notice, given under this section may include, or be accompanied by, information that is, or may be, prejudicial to a person except to the extent that—
  - (a) the notice or copy is supplied to that person; or
  - (b) the person consents to the supply of that information to another person.
- (4) If a notice, or copy of a notice, is given to a person under this section,—
  - (a) that person has the responsibility to ensure that all information that the person wishes to have considered by the Director in relation to the proposed adverse decision is

- received by the Director within the period specified in the notice, or copy, under subsection (1)(c), or within any further period that the Director may allow; and
- (b) the Director may, but is not obliged to, consider information (other than information requested by the Director) supplied by the person after the expiry of the period referred to in paragraph (a); and
  - (c) the Director must consider submissions made in accordance with paragraph (a) and information supplied to the Director by request of the Director, but is not obliged to hear any person on the matter.
- (5) After considering the matters referred to in subsection (4)(c), the Director must—
- (a) decide whether or not to make the proposed adverse decision; and
  - (b) as soon as practicable after making the decision, give written notice to the person directly affected, and any other person of a kind referred to in subsection (2)(a), of—
    - (i) the reasons for the decision if those reasons differ from those notified under subsection (1)(b); and
    - (ii) if appropriate, the date on which the decision takes effect; and
    - (iii) if appropriate, the right of appeal under section 68.
- (6) In this section, unless the context otherwise requires,—
- adverse decision** means a decision of the Director—
- (a) to refuse to grant a licence under section 17; or
  - (b) to suspend a licence or to impose temporary conditions on a licence under section 23; or
  - (c) to revoke a licence or to impose permanent conditions on a licence under section 24; or
  - (d) to amend a licence under section 26(2)(a); or
  - (e) to revoke a licence under section 26(2)(b); or
  - (f) to give notice of the requirement for remedial action under section 42(1)

**affected licence holder**, in relation to a person directly affected by an adverse decision, means the holder of, or the applicant for, the licence

**person directly affected**, in relation to any adverse decision, means the person who would be entitled to appeal against that adverse decision under section 68.

Compare: 1989 No 74 s 25

### *Further powers of Director*

#### **28 Power of Director to prohibit operation, impose conditions, or detain or immobilise rail vehicles or railway infrastructure**

- (1) If the Director believes, on reasonable grounds, that the operation or use of a rail vehicle or class of rail vehicle or any railway infrastructure may endanger persons or property and that prompt action is necessary to prevent the risk, the Director may do either of the following:
  - (a) prohibit, or impose conditions on, the operation or use of the rail vehicle or rail vehicles of that class or railway infrastructure; or
  - (b) detain or immobilise the rail vehicle or any rail vehicle of that class or railway infrastructure, if he or she considers it necessary to prevent its operation or use.
- (2) If a power is exercised under subsection (1), the Director must, by written notice to each rail operator and access provider concerned, inform the rail operator or access provider (as the case requires) of—
  - (a) the reasons for the action taken; and
  - (b) the right of appeal under section 68.
- (3) If a rail vehicle or class of rail vehicle or any railway infrastructure is detained or immobilised under subsection (1), the following provisions apply:
  - (a) the detention or immobilisation may be effected in the manner and imposed for the duration that will cause only as much disruption to the rail activities as is reasonably necessary to avoid endangering persons or property;
  - (b) if a rail vehicle or any railway infrastructure, or any parts of the vehicle or infrastructure, is required for the purpose of a prosecution or safety assessment under this Act or any other Act, the Director may detain the rail vehicle or railway infrastructure, or parts of the vehicle or infrastructure, for the period that the Director considers necessary for that purpose:

- (c) the rail operator or access provider concerned may have access to the rail vehicle or railway infrastructure for the purpose of obtaining evidence for a prosecution or safety assessment.

Compare: 1989 No 74 s 39E

### Subpart 3—Safety cases, safety systems, and improvement plans

#### **29 Proposed safety case to accompany application for licence**

- (1) An application by a rail participant for a licence must be accompanied by a proposed safety case that contains the matters specified in section 30.
- (2) A licence may not be granted to a rail participant unless—
  - (a) the form and content of the rail participant’s proposed safety case is approved under section 32; and
  - (b) the safety case is derived from, and consistent with, the rail participant’s safety system.

Compare: 1989 No 74 s 6A

#### **30 Contents of safety case**

- (1) A safety case must contain a statement or description, as appropriate, of the following:
  - (a) the rail activities of the rail participant, including details of the extent and geographical location of those rail activities;
  - (b) the safety policy and objectives of the rail participant and of how that policy and those objectives will be implemented or given effect;
  - (c) the management and organisational arrangements that the rail participant will establish in order to promote the safety of its rail activities;
  - (d) the management systems that the rail participant has in place to—
    - (i) identify and assess the safety risks arising from its rail activities; and
    - (ii) develop and implement safety risk control measures;
  - (e) the safety risks arising from the rail activities of the rail participant, and details of the measures to be in place to mitigate those risks;

- (f) the process for ensuring that interoperability arrangements between the rail participant and other rail participants enhance rail safety:
- (g) the arrangements that are in place to ensure that—
  - (i) assets and equipment used are, in safety terms, fit for their purpose; and
  - (ii) safety-critical tasks and activities are clearly identified; and
  - (iii) rail personnel carrying out safety-critical tasks and activities have received appropriate training and instruction; and
  - (iv) the competence of rail personnel carrying out safety-critical tasks and activities has been appropriately tested; and
  - (v) working practices and procedures are fit for their purpose:
- (h) the arrangements for procuring and maintaining evidence to ensure that the measures and processes necessary for safety are working as intended, including (but not limited to)—
  - (i) the identification of the key safety performance factors and measures, including (but not limited to) accidents and incidents; and
  - (ii) the monitoring and recording of, and reporting on (both internally and to the Director), the key safety performance factors and measures, including (but not limited to) accidents and incidents; and
  - (iii) the regular supervision, inspection, monitoring, and audit of the rail participant's safety case, safety system, and licence conditions; and
  - (iv) when required, the provision of evidence to the Director substantiating the matters in subparagraphs (i) to (iii):
- (i) the process by which, in consultation with the Director, the frequency of ordinary safety assessments under section 37 may be agreed:
- (j) the arrangements for the rail participant to report to other relevant rail participants concerns about the state or performance of any rail vehicle, rail infrastructure, or railway premises that it considers has implications for the safe operation of the railway:

- (k) the policies in place to ensure that the rail participant's rail personnel—
    - (i) are fit for duty; and
    - (ii) are not suffering impairment or incapacity as a result of fatigue, illness, medication, drugs, alcohol, or any other factor:
  - (l) the arrangements for ensuring that safety is maintained or continuously improved despite changes in circumstances that may affect the rail participant, its rail personnel, or any person that uses the rail participant's services, including (but not limited to)—
    - (i) the continuous review of the rail participant's activities to identify potentially significant changes (both internal and external); and
    - (ii) the review and revision of the rail participant's safety case and safety system, as a whole and in its various parts, to ensure that its safety case and safety system continue to be the most appropriate; and
    - (iii) the identification of the areas of significant risk and the plans that are in place, or being developed, to reduce those risks:
  - (m) the arrangements for ensuring that the rail participant consults any representatives of rail personnel (including, but not limited to, unions) with respect to the development and variation of safety systems that affect, or are likely to affect, rail personnel:
  - (n) any other matters that may be prescribed by the rules or that the Director considers appropriate in the interests of safety.
- (2) A safety case may adopt, by reference and with any necessary modifications, 1 or more parts of another approved safety case.
- (3) If a provision of an approved safety case is inconsistent with a rule,—
- (a) the rule prevails; and
  - (b) the rail participant must amend the provision so that it is consistent with the rule.

Compare: 1989 No 74 s 6B

### **31 Matters to be taken into account in considering proposed safety case**

- (1) In considering a proposed safety case, the Director must have regard and give weight to, as the Director considers appropriate, the following matters:
  - (a) the nature and extent of the proposed rail activities of the rail participant:
  - (b) the safety result attainable, consistent with the nature of the rail activities of the rail participant:
  - (c) the past history and performance (if any) of the rail participant within the transport industry:
  - (d) any submissions or representations about safety issues received from any other rail participant involved with the railway that the rail participant intends to use:
  - (e) any submissions or representations received from—
    - (i) any rail personnel of the rail participant; or
    - (ii) any representatives of the rail personnel of that rail participant:
  - (f) any other matters the Director reasonably considers appropriate in the interests of safety.
- (2) The Director must not approve a proposed safety case unless satisfied that—
  - (a) the form and content of the proposed safety case are clearly defined; and
  - (b) the proposed safety case complies with section 30; and
  - (c) the rail participant is capable of establishing, implementing, maintaining, regularly reviewing, and improving its safety case and safety system; and
  - (d) the proposed safety case provides a programme of training and supervision that ensures that all rail personnel of the rail participant are capable of safely carrying out their responsibilities; and
  - (e) any provisions of the safety case that the Director considers should be in a standard form applicable to more than 1 rail participant are in a common form approved by the Director.

Compare: 1989 No 74 s 6C

**32 Approval of safety case**

- (1) The Director must consider each proposed safety case and, after consulting with the chief executive of the Department of Labour, either—
  - (a) approve the form and content of the proposed safety case; or
  - (b) refuse to do so until the Director is satisfied under section 31(2).
- (2) The Director must make reasonable efforts to make a decision under subsection (1) not later than 60 working days after receipt of the proposed safety case.
- (3) The Director must give written notice to the applicant of the Director's decision under subsection (1).
- (4) If the Director refuses to approve a proposed safety case, the notice under subsection (3) must state the reasons for the refusal and indicate the changes that need to be made to the proposed safety case for approval to be given.
- (5) An approved safety case may not be replaced or varied unless the Director has approved the replacement or variation.
- (6) An approved safety case must be made available for public inspection in a manner that the Director considers appropriate.
- (7) Despite anything in this section, a rail participant may submit its safety system instead of its safety case to the Director if it considers that its safety system meets the requirements set out in section 30.

Compare: 1989 No 74 s 6D

**33 Application to replace or vary approved safety case**

- (1) A licence holder may, at any time, apply to the Director for approval of any replacement or variation of the licence holder's approved safety case.
- (2) An application under subsection (1) must be made in writing and must include the reasons why the licence holder is requesting the replacement or variation.
- (3) The proposed variation must be considered by the Director as if the licence holder were proposing a new safety case, and section 31 applies as if it were a fresh application for approval.

Compare: 1989 No 74 s 6E

**34 Requirement by Director to replace or vary approved safety case**

- (1) The Director may, at any time, require the replacement or variation of an approved safety case if the Director—
  - (a) considers it necessary in the interests of safety; and
  - (b) is satisfied that—
    - (i) the action is necessary to ensure compliance with this Act or the rules; or
    - (ii) the licence holder has failed to comply with this Act or the rules; or
    - (iii) the licence holder gave false or misleading information for the purpose of obtaining the licence; or
    - (iv) the licence holder failed to comply with any conditions of the licence; or
    - (v) circumstances have changed significantly and the licence holder's approved safety case does not adequately provide for those changed circumstances.
- (2) If a replacement or variation is required under subsection (1), the Director must, by written notice, inform the licence holder—
  - (a) of the reasons for the requirement; and
  - (b) that the licence holder may, within a reasonable time specified in the notice, make written submissions regarding the replacement or variation that the Director requires.
- (3) Nothing in this section affects a power of the Director under this Act, or any other Act, to take any other action in respect of a rail document or person.

Compare: 1989 No 74 s 6F

**35 Procedure for replacement or variation of approved safety case**

- (1) If an application for a replacement or variation is made under section 33, or the Director requires a replacement or variation under section 34, the Director must, as soon as practicable but not later than 20 working days after receipt of the application, consider any submission made on the matter by the licence holder.

- (2) After considering the submission (if any), the Director must, as soon as practicable but not later than 20 working days after considering any submission made by the licence holder,—
  - (a) decide whether or not to approve the application or confirm the requirement; and
  - (b) give written notice to the licence holder of the Director's decision.
- (3) The Director may approve an application, or confirm a requirement, in whole or in part and subject to any conditions that the Director considers appropriate.
- (4) If the Director has refused to approve an application, or has confirmed a requirement, the Director must, in the written notice given under subsection (2)(b), inform the licence holder of—
  - (a) the reasons for the refusal or confirmation; and
  - (b) the right to appeal under section 68.
- (5) A replacement or variation applied for under section 33 or required under section 34 does not have effect unless its approval or confirmation is notified under subsection (2).

Compare: 1989 No 74 ss 6G, 6I

### **36 Safety improvement plans**

- (1) The Director may, by written notice, require a rail participant to prepare a safety improvement plan in respect of the rail activities specified in the notice if the Director has reason to believe that the rail participant has failed to take appropriate remedial action under sections 42 to 44.
- (2) As soon as practicable but not later than 20 working days after receiving a plan under subsection (1), the Director must advise the rail participant by written notice—
  - (a) whether he or she has approved the plan; and
  - (b) if he or she has not approved the plan, of the changes that he or she requires to be made to the plan.
- (3) A rail participant who is advised under subsection (2)(b) of changes to be made to a plan must make those changes as soon as practicable but not later than 20 working days after being advised and must submit the amended plan to the Director for his or her approval, and subsection (2) applies in respect of the amended plan with all necessary modifications.

- (4) If a plan has been approved by the Director, the rail participant must—
- (a) implement the plan in accordance with its provisions; and
  - (b) make any amendments to the approved plan that are required at any time by the Director; and
  - (c) not otherwise amend the plan without first obtaining the Director's written approval of the amendment.

## Subpart 4—Safety assessments

### *Safety assessments*

#### **37 Ordinary and special safety assessments**

- (1) The Director may, at any time or times, by written notice given to the person or persons concerned, require a rail participant or any rail personnel of a rail participant to undergo either—
- (a) an ordinary safety assessment at a time determined in accordance with section 30(1)(i) and specified in the notice; or
  - (b) a special safety assessment at a time specified in the notice.
- (2) Before giving notice of the requirement for a special safety assessment, the Director must determine on reasonable grounds that the rail participant's rail activities could cause the death of, or serious injury to, individuals, or significant damage to property, by having regard to—
- (a) the nature and extent of the rail activities of the rail participant concerned;
  - (b) the extent to which the Director considers that the duties specified in sections 7 and 10 to 13, and any rules and regulations, are being complied with;
  - (c) with regard to a licence holder, the time when the Director last considered the licence holder's safety case;
  - (d) the findings of recent safety assessments;
  - (e) the information on the safety of the rail participant's rail activities obtained from the safety monitoring and reporting;
  - (f) the nature and scope of—

- (i) any safety improvement plan required to be prepared by the licence holder and approved under section 36; and
    - (ii) any notice issued to the licence holder under subsection (1):
  - (g) the extent of the improvements in rail safety produced by—
    - (i) those safety improvement plans and notices; and
    - (ii) any other safety improvements:
  - (h) the nature and extent of any recent accidents or incidents that the licence holder has reported to the Director under section 13(3):
    - (i) any other recent reports or information that the Director has received on—
      - (i) the overall safety of the rail participant's rail activities; or
      - (ii) the safety of particular aspects of the rail participant's rail activities:
    - (j) any other matters that the Director reasonably considers necessary to take into account.
- (3) A safety assessment must be carried out by a safety assessor who is independent of the rail participant being assessed.

### **38 Safety assessor must consult**

- (1) A safety assessor must, before completing a safety assessment, consult the rail participant and any representatives of rail personnel (including, but not limited to, unions) of that rail participant on the safety matters being assessed.
- (2) Before making a report in relation to a safety assessment carried out under this Part, a safety assessor must give the rail participant and any representatives of rail personnel consulted under subsection (1) an opportunity to comment on the safety assessor's proposed report.

### **39 Safety assessment report**

A safety assessor must, after making a safety assessment under section 37, submit a written report that covers the matters set out in section 40 to—

- (a) the Director; and
- (b) the rail participant; and

- (c) any representatives of rail personnel consulted under section 38(1).

#### **40 Matters included in safety assessment report**

- (1) In a safety assessment report, the safety assessor must consider and comment on—
  - (a) the matters that are required to be considered or assessed by that assessor under the terms of his or her appointment under section 45; and
  - (b) the nature and extent of any non-compliance by the rail participant concerned or any of its rail personnel with the duties under sections 7 and 10 to 13, or any rules or regulations; and
  - (c) the comments with respect to safety matters (if any) made by representatives of rail personnel as a result of consultation under section 38.
- (2) A safety assessor may, if he or she considers it necessary, make recommendations or suggestions to improve the safety of the rail activities of the rail participant.

#### **41 Costs of safety assessments**

- (1) The Authority is responsible for paying the costs of safety assessments.
- (2) The Authority may recover from a rail participant, as a debt due to the Authority, the costs of a safety assessment relating to the rail participant.
- (3) The costs of a safety assessment may be specified by regulations.

#### **42 Notification of requirement for improvements**

- (1) As soon as practicable, but not later than 20 working days after receipt of a safety assessment report, the Director must give written notice to the rail participant that the Director considers that—
  - (a) no remedial action by the rail participant is necessary; or
  - (b) remedial action by the rail participant is necessary.
- (2) If remedial action is necessary, the Director must give written notice to the rail participant of—

- (a) the safety area or areas in which remedial action is required; and
  - (b) the time limit within which the remedial action must be effected; and
  - (c) any interim requirements imposed on the rail participant's rail activities under subsection (3) until the remedial action is completed; and
  - (d) the right of appeal under section 68.
- (3) If a notice under subsection (2) refers to any non-compliance of the kind referred to in section 40(1)(b), the Director may specify, in that notice, interim requirements that the rail participant must comply with until the non-compliance ceases.
- (4) If a variation to the rail participant's approved safety case is required by the Director, the Director must proceed under section 34.
- (5) Section 27 applies in respect of a decision under subsection (1).
- (6) Nothing in this section prevents the Director from taking further action that the Director considers appropriate in the interests of preventing the death of, or serious injury to, individuals, or significant damage to property, including, without limitation, the suspension or revocation of a licence.

Compare: 1989 No 74 s 39K

### **43 Report on remedial action**

- (1) At the expiry of a time limit imposed under section 42, or sooner if requested by the Director, the safety assessor must provide the Director with a report on whether the remedial action required has been satisfactorily completed.
- (2) If the required remedial action has not been completed to the Director's satisfaction, those rail activities of the rail participant that are specified by the Director for the purposes of this subsection may not lawfully continue unless the Director gives a further extension of time under section 44.
- (3) The Director must make a decision under subsection (2) within 20 working days after receiving a report under subsection (1).

Compare: 1989 No 74 s 39L

**44 Extension of time to complete remedial action**

- (1) If the Director is satisfied that reasonable progress is being made towards completing the remedial action required under section 42, and that adequate interim action has been taken to prevent the death of, or serious injury to, individuals, or significant damage to property, the Director may, by written notice, grant an extension of time to enable that remedial action to be completed.
- (2) An extension of time under this section may be granted subject to any conditions or restrictions that the Director considers reasonably necessary to prevent—
  - (a) the death of, or serious injury to, individuals; or
  - (b) significant damage to property.

Compare: 1989 No 74 s 39M

*Safety assessors***45 Appointment of safety assessors**

- (1) The Director may appoint 1 or more persons as safety assessors.
- (2) An appointment as a safety assessor may be—
  - (a) a general appointment that authorises the appointed person to carry out any safety assessment that may be required; or
  - (b) a specific appointment that applies to any 1 or more specified rail participants.
- (3) An appointment as a safety assessor may state particular matters that the appointed person is to consider or assess.
- (4) Before appointing a person as a safety assessor, the Director must be satisfied that the person has the training, knowledge, expertise, and experience to carry out any safety assessment to which that person's appointment relates.

Compare: 1989 No 74 s 39G

**46 Functions and duties of safety assessors**

Unless the Director otherwise directs, the functions and duties of safety assessors are to—

- (a) carry out safety assessments as required by the Director;
- (b) prepare reports in accordance with sections 39 and 43:

- (c) identify and report non-compliance with the duties specified in sections 7 and 10 to 13, or any rules or regulations:
- (d) perform any other functions and duties that may be prescribed by regulations or rules made under this Act.

Compare: 1989 No 74 s 39H

#### **47 Powers of safety assessors to obtain information, etc**

- (1) For the purposes of carrying out a safety assessment, a safety assessor may, in writing,—
  - (a) require from a rail participant, or any rail personnel of a rail participant that has the relevant qualifications, knowledge, and experience, any documents and information that the safety assessor considers relevant to the safety assessment:
  - (b) require any such person to demonstrate to the safety assessor the rail personnel's familiarity with essential procedures for the safe operation of rail vehicles or railway infrastructure:
  - (c) require any such person to demonstrate to the safety assessor that any operational, maintenance, or servicing procedure in respect of a rail vehicle or railway infrastructure is capable of being carried out in a competent manner.
- (2) For the purposes of carrying out a safety assessment, a safety assessor may take copies of—
  - (a) the documents or information; or
  - (b) extracts from those documents or that information.
- (3) If, at any time, a safety assessor believes that a situation exists, or is about to exist, within the activities of a rail participant that constitutes a risk of the death of, or serious injury to, individuals, or of significant damage to property, the safety assessor must, as soon as is reasonably practicable, advise the Director of that belief and the reasons for that belief.
- (4) Nothing in this section limits or affects the privilege against self-incrimination.

#### **48 Powers of entry of safety assessors**

- (1) For the purpose of carrying out a safety assessment, a safety assessor has the right of access at any reasonable time to the following:

- (a) any vehicle, building, or place belonging to, or used by, a rail participant in that rail participant's rail activities:
  - (b) any document or record that is in the possession, or under the control, of a rail participant that is used for the purposes of that rail participant's rail activities:
  - (c) rail personnel for the purposes of subsection (7).
- (2) Without limiting the power conferred by subsection (1), a safety assessor may, at any reasonable time, enter and inspect any vehicle, building, or place belonging to, or used by, a rail participant to determine whether a matter referred to in paragraphs (a) to (c) exists, if that safety assessor has reasonable grounds to believe that—
- (a) a breach of any regulations or rules made under this Act is being, or is about to be, committed; or
  - (b) the conditions of a licence or an approved safety case are not being complied with; or
  - (c) a situation exists, or is about to exist, within the rail activities of a rail participant that constitutes a risk of—
    - (i) the death of, or serious injury to, individuals; or
    - (ii) significant damage to property.
- (3) Nothing in subsection (1) or subsection (2) confers on a safety assessor the power to enter a dwellinghouse or marae or building associated with a marae, unless the entry is authorised by a warrant given by a judicial officer on written application on oath, which must not be granted unless the judicial officer believes, on reasonable grounds, that the entry is essential in the interests of the safety of the rail activities of a rail participant.
- (4) A warrant issued under subsection (3)—
- (a) must be directed to a named person; and
  - (b) is valid for a period of 1 month from the date of its issue or for a lesser period that the judicial officer considers appropriate; and
  - (c) must specify its period of validity; and
  - (d) must state the location of the dwellinghouse or marae or building associated with a marae.
- (5) A safety assessor exercising the right of access under subsection (1) or the power of entry under subsection (2) must carry a warrant of authority issued by the Director specifying—

- (a) the name of that safety assessor and the office or offices held by that safety assessor; and
  - (b) that the safety assessor is authorised by the Director to exercise the power under subsection (1) or subsection (2) to enter vehicles, buildings, and places belonging to, or used by, a rail participant to carry out a safety assessment.
- (6) A safety assessor exercising the right of access under subsection (1) or the power of entry under subsection (2) must—
- (a) give reasonable notice of the intended entry (unless the giving of that notice is likely to defeat the purpose of the entry); and
  - (b) produce the warrant of authority and evidence of identity—
    - (i) on first entering the vehicle, building, or place; and
    - (ii) whenever subsequently reasonably required to do so.
- (7) Any rail personnel that has the relevant qualifications, knowledge, and experience must answer the questions asked by safety assessors.
- (8) Nothing in this section limits or affects the privilege against self-incrimination.

Compare: 1989 No 74 s 39P

## Subpart 5—Rules and regulations

### *Rules*

#### **49 Minister's power to make ordinary rules**

In addition to the matters specified in section 152(a) to (g) of the Land Transport Act 1998, the Minister may make ordinary rules for the purposes of, or concerning,—

- (a) safety and licensing, including, without limitation, the authorisation of rail participants and rail personnel, and technical requirements and standards for, or in relation to, all or any rail vehicles, railway premises, or railway infrastructure;
- (b) the prevention of interference with all or any railways or railway premises:

- (c) any other matter contemplated by a provision of this Act.

Compare: 1998 No 110 s 152

## **50 Rules concerning behaviour on railways or railway premises**

Without limiting the power to make ordinary rules under section 49, ordinary rules may—

- (a) set out standards and requirements relating to the behaviour of individuals on railways or railway premises, including, without limitation, standards and requirements concerning the conduct of rail personnel, passengers, or other individuals working on or using railways or railway premises:
- (b) regulate all traffic and all classes of traffic, and prohibit traffic or a class of traffic, either absolutely or conditionally, on railways:
- (c) set out standards and requirements concerning the use of safety equipment by rail personnel, passengers, or other individuals working on or using railways or railway premises.

Compare: 1998 No 110 s 153

## **51 Rules concerning dangerous goods**

The rules made under the Land Transport Act 1998 in relation to the packing, loading, consignment, and carriage of dangerous goods apply to dangerous goods carried by a rail vehicle.

Compare: 1998 No 110 s 156

## **52 Rules concerning rail vehicles, railway premises, and railway infrastructure**

Without limiting the power to make ordinary rules under section 49, ordinary rules may—

- (a) regulate the use of railway lines, and empower access providers to control, restrict, and prohibit the use of a railway line, and to close railway lines in specified circumstances or on specified occasions:
- (b) set out standards, specifications, or codes of practice for the safety performance, design, construction, inspection, alteration, maintenance, or use of railway infrastructure or railway premises:

- (c) set out standards, specifications, or codes of practice for personal security and access:
- (d) provide for the design, specifications, construction, maintenance, and operation of notices and warning devices erected at level crossings:
- (e) set out the standards and requirements for forming, surfacing, and maintaining carriageways at level crossings:
- (f) set out standards and requirements concerning rail vehicles, including, without limitation, their construction, mass and dimensions, emissions, environmental requirements, loading requirements, identification, and fuel systems, and their repair, maintenance, modification, and inspection:
- (g) set out standards and requirements concerning systems, components, devices, fittings, or equipment to be incorporated in the construction of, fitted to, or carried in or on, rail vehicles, or to be used by the driver or any other person:
- (h) set out procedures to verify compliance with standards and requirements of the rules:
- (i) provide for the recording of, and making available of, information about rail vehicles (including, without limitation, their systems, components, devices, fittings, and equipment).

Compare: 1998 No 110 ss 155, 157

### **53 Rules concerning authorisation, standard-setting, etc**

- (1) Without limiting the power to make ordinary rules under section 49, ordinary rules may—
  - (a) provide for the identification, classification, registration, authorisation (including, without limitation, licensing), examination, or testing of all or any of the following:
    - (i) any rail participants:
    - (ii) any agents or contractors of rail participants:
    - (iii) any rail personnel:
    - (iv) any person involved in the education, training, examination, testing, or authorisation of rail participants or their rail personnel:
    - (v) any person involved in the design or construction of any railway infrastructure or railway premises:

- (b) put in place a system or provide for the licensing of rail personnel, including, without limitation, provisions for the issue, endorsement, alteration, replacement, surrender, suspension, expiry, and revocation of licences:
- (c) specify different licensing requirements for persons of different experience, including, without limitation, requirements concerning the issue and expiry of licences:
- (d) provide for different classes of licences, and for the endorsement of licences for different purposes, and specify their effect:
- (e) specify the documentary evidence and other information to be submitted with applications for licences:
- (f) provide for—
  - (i) the issue by the Director of identification cards containing any or all of the following:
    - (A) photographic images:
    - (B) names and signatures:
    - (C) dates of birth:
    - (D) unique identifiers:
    - (E) any other features for the purpose of verifying or protecting the integrity of the cards; and
  - (ii) the cards to remain the property of the Director:
- (g) specify the medical standards that any or all rail personnel must meet:
- (h) specify the requirements with respect to fitness for duty, including (but not limited to) the requirements designed to prohibit impairment or incapacity as a result of fatigue, illness, medication, drugs, alcohol, or any other factor:
- (i) provide for—
  - (i) the theoretical, practical, and medical examination and testing of the persons referred to in paragraph (a), and the standards for the theoretical, practical, and medical examinations and tests:
  - (ii) the approval of persons who have functions under the rules, including persons who are to conduct the theoretical, practical, or medical examination and testing of the persons referred to in paragraph (a).

- (2) The rules may provide for the setting of standards, specifications, restrictions, registration, and authorisation requirements in respect of all or any of the persons specified in subsection (1), including, without limitation, provisions that—
- (a) set standards for training systems and techniques, including, without limitation, recurrent training requirements:
  - (b) specify the information to be given by persons applying for rail documents and specify the persons by and to whom the information must be given:
  - (c) set out the requirements of systems and procedures to be used in the exercise of a power given to a person under a rule:
  - (d) set out the responsibilities and required behaviour of rail participants and rail personnel, including, without limitation,—
    - (i) for the purposes of rail safety, the permissible work time of rail personnel; and
    - (ii) requirements concerning logbooks to be kept by rail participants or rail personnel.
- (3) The rules may—
- (a) provide for the appointment or approval of persons or organisations who are to carry out safety assessments or examinations or tests, certify things, issue rail documents, and provide other services under this Act:
  - (b) require a person who applies for or holds a rail document to satisfy the Director that the person (or individual) is a fit and proper person, and—
    - (i) specify which of the criteria set out in the rules made under section 159(3) of the Land Transport Act 1998, and any other criteria, are to be applied in determining whether a person is a fit and proper person:
    - (ii) set out different fit and proper person assessments for different classes of rail documents, applicants, or licence holders:
  - (c) provide for the issue, endorsement, alteration, replacement, surrender, expiry, suspension, and revocation of rail documents.

- (4) Subject to the rules, a rail document may be issued, or a document may be recognised as a rail document, by the Director for a period, and subject to the conditions, that the Director considers appropriate in each particular case.

Compare: 1998 No 110 ss 158, 159

#### **54 Other provisions concerning ordinary rules**

- (1) An ordinary rule may apply generally or to different classes of persons or things, or to the same class of person or things in different circumstances.
- (2) An ordinary rule may apply generally throughout New Zealand or within a specified part or parts of New Zealand.
- (3) The commencement of an ordinary rule may be wholly suspended until it is applied by the Minister by notice in the *Gazette*.
- (4) An ordinary rule may—
- (a) require or provide for a matter to be determined, undertaken, or approved by the Authority, Director, or any other person, and empower the Authority, Director, or any other person to impose requirements or conditions on the performance of activities:
  - (b) specify standards, procedures, and requirements for the purposes of the rules:
  - (c) impose conditions, restrictions, and prohibitions:
  - (d) specify the definitions, abbreviations, and units of measurement to apply within any or all railways or railway premises:
  - (e) prescribe, or provide for the approval of, forms, documents, and records for the purposes of the rules:
  - (f) make transitional and savings provisions for the purposes of implementing any rule.
- (5) An ordinary rule is a regulation for the purposes of the Regulations (Disallowance) Act 1989, but is not a regulation for the purposes of the Acts and Regulations Publication Act 1989.
- (6) If a bylaw of a local authority is inconsistent with any ordinary rules in force in the same locality, the rules override the bylaws.

- (7) Despite section 28 of the State Sector Act 1988, the Minister may not delegate his or her power to make ordinary rules under this Act.

Compare: 1998 No 110 s 160

## **55 Procedure concerning ordinary rules**

The procedure for making ordinary rules in section 161 of the Land Transport Act 1998 applies with any necessary modifications to all ordinary rules made by the Minister under sections 49 to 53.

## **56 Director may make emergency rules**

- (1) The Director may, in accordance with section 163 of the Land Transport Act 1998 (which applies with any necessary modifications), make any emergency rules that the Director considers necessary to alleviate or minimise the risk of the death of, or serious injury to, individuals, or significant damage to property, caused by the operation of a railway or the use of railway premises.
- (2) The Director may not make emergency rules unless it is impractical in the circumstances of the particular case for the Minister to make ordinary rules to effectively alleviate or minimise the risk concerned.
- (3) The Minister may revoke any emergency rule made under subsection (1), and the revocation must be notified as if it were an emergency rule.
- (4) An emergency rule is a regulation for the purposes of the Regulations (Disallowance) Act 1989, but is not a regulation for the purposes of the Acts and Regulations Publication Act 1989.

Compare: 1998 No 110 s 162

## **57 General provisions concerning making of rules**

The provisions of sections 164 to 166 of the Land Transport Act 1998 apply with any necessary modifications to all ordinary rules and all emergency rules made under this Act.

## **58 Evidence of rules**

Without limiting any other method of proof, the production in proceedings of a copy of the following rules is, in the absence

of evidence to the contrary, sufficient evidence of the rules and of the fact that they have been made in accordance with this Act:

- (a) an ordinary rule purporting to have been made by the Minister under sections 49 to 53; or
- (b) an emergency rule purporting to have been made by the Director under section 56.

### *Regulations*

#### **59 Regulations**

The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:

- (a) specifying breaches of the rules that constitute offences against this Act:
- (b) specifying infringement offences for the purposes of this Act:
- (c) setting out defences to offences referred to in paragraph (a) or paragraph (b):
- (d) setting out the maximum penalty for each offence prescribed under paragraph (a), which may be a fine not exceeding \$50,000:
- (e) setting the infringement fee for each offence prescribed under paragraph (b), which,—
  - (i) in the case of an individual, may not exceed \$2,000; or
  - (ii) in the case of a body corporate, may not exceed \$10,000:
- (f) specifying the matters for which fees or charges or costs must be paid under this Act or any other enactment concerning rail transport, and providing for the collection of those fees or charges or costs:
- (g) prescribing forms for the purposes of this Act:
- (h) providing for the exemption of certain rail participants from all or part of this Act on the conditions (if any) that are specified:
  - (i) specifying rail participants who are required to hold a licence:
  - (j) specifying property that is railway infrastructure:
  - (k) prescribing vehicles as rail vehicles:
  - (l) designating a set of rails with a gauge of less than 550 mm between them as a railway line:

- (m) specifying excluded railway lines:
- (n) providing for any other matters that are contemplated by, or necessary for giving full effect to, the provisions of this Act or for its due administration.

Compare: 1998 No 110 s 167(1)

## **60 Regulations relating to fees and charges for rail transport**

- (1) Without limiting section 59, regulations may be made under that section prescribing, or providing for the fixing of, fees and charges payable for the purposes of meeting, or assisting in meeting, the costs and expenses incurred by the Authority, the Director, or the Crown in the performance or exercise of functions or powers, or in the performance of duties, or in the provision of services, under this Act or any other enactment relating to rail transport, including, without limitation, costs and expenses relating to any of the following:
  - (a) safety assessments (whether or not undertaken by an employee, agent, or contractor of the Authority):
  - (b) the maintenance of records and registers:
  - (c) the issuing of licences.
- (2) Different rates of fees or charges, or both, may be prescribed or fixed in respect of different classes of persons, rail vehicles, railway infrastructure, or railway premises, or on the basis of different times of use, or on any other differential basis.
- (3) Regulations made under section 59(f) may authorise persons carrying out statutory functions, powers, or duties concerning rail transport to charge a reasonable fee or rate of fee for the service or work performed.
- (4) Any regulation made under section 59(f) may—
  - (a) specify the persons by whom, and to whom, any fees or charges, or both, are payable:
  - (b) prescribe, or provide for the fixing of, additional fees or charges, or both, for services or work carried out outside normal working hours, at weekends, or on statutory holidays:
  - (c) prescribe, or provide for the fixing of, charges for reimbursement of travelling time, accommodation, and other expenses:
  - (d) provide for the refund, waiver, or rebate, or enable the refund, waiver, or rebate, of any fee or charge, or both:

- (e) fix, or empower the fixing of, a date by which any fee or charge must be paid:
  - (f) fix, or enable the fixing of, discounts for early payment of any fee, charge, or penalties for late payment:
  - (g) prescribe any returns, and the conditions relating to those returns, to be made by persons by whom any fees, charges, or penalties are payable.
- (5) Regulations under this section may fix or provide for the fixing of the costs referred to in section 41, but nothing in this section requires those charges to be fixed by or under regulations made under this section, and, in the absence of those regulations, those costs are payable under that section without further authority.

Compare: 1998 No 110 s 168

### Subpart 6—Offences and remedies

#### **61 Failure to comply with safety duties**

- (1) A person who contravenes or fails to comply with section 7 or section 11 or section 12 commits an offence and is liable on summary conviction to,—
- (a) in the case of an individual,—
    - (i) imprisonment for a term not exceeding 6 months; or
    - (ii) a fine not exceeding \$50,000; or
    - (iii) both:
  - (b) in the case of a body corporate, a fine not exceeding \$500,000.
- (2) A person who contravenes or fails to comply with section 9 commits an offence and is liable on summary conviction to—
- (a) imprisonment for a term not exceeding 6 months; or
  - (b) a fine not exceeding \$50,000; or
  - (c) both.

#### **62 Failure to hold licence**

- (1) A person who carries out any rail activities for which a licence is required by section 15 and who does not hold a licence to carry on those rail activities commits an offence and is liable on summary conviction to,—
- (a) in the case of an individual, a fine not exceeding \$50,000:

- (b) in the case of a body corporate, a fine not exceeding \$500,000.
- (2) A person who contravenes or fails to comply with section 10 commits an offence and is liable on summary conviction to,—
  - (a) in the case of an individual, a fine not exceeding \$50,000:
  - (b) in the case of a body corporate, a fine not exceeding \$500,000.

### **63 Failure to report accident or incident**

- (1) A rail operator, access provider, or railway premises owner who contravenes or fails to comply with section 13 commits an offence and is liable on summary conviction to,—
  - (a) in the case of an individual, a fine not exceeding \$5,000:
  - (b) in the case of a body corporate, a fine not exceeding \$30,000.
- (2) Any rail personnel who contravenes or fails to comply with section 13(1) commits an offence and is liable on summary conviction to a fine not exceeding \$5,000.

### **64 Obstructing safety assessor**

A person who obstructs a safety assessor or fails to comply with a lawful requirement of a safety assessor commits an offence and is liable on summary conviction to,—

- (a) in the case of an individual, a fine not exceeding \$25,000:
- (b) in the case of a body corporate, a fine not exceeding \$250,000.

### **65 Liability of employers and principals**

If an offence is committed against this Act by a person as the employee, agent, or contractor of another person, that offence must be treated as having been committed by both persons, whether or not it was done with the other person's knowledge or approval, if it is proved that—

- (a) the other person—
  - (i) knew, or could reasonably be expected to have known, that the offence was to be, or was being, committed; and
  - (ii) failed to take all practicable steps to prevent the commission of the offence; and

- (b) the other person failed to take all practicable steps in the circumstances to remedy the effects of the act or omission that gave rise to the offence.

## **66 Liability of directors of bodies corporate**

If a body corporate is convicted of an offence against this Act, every director of the body corporate also commits the offence and is liable to the same penalty if it is proved that—

- (a) the act or omission that constituted the offence took place with his or her express or implied authority; and
- (b) he or she failed to take all practicable steps to prevent or stop that act, or remedy that omission.

## **67 Power to prohibit or restrict persons from being involved in rail activities**

- (1) A District Court Judge may, on the application of the Director or any other person, make an order prohibiting or restricting a person from acting as a rail participant, director of a rail participant, or rail personnel if that person—
  - (a) has been convicted of an offence against this Act or the rules or a major transport-related offence, particularly an offence relating to safety; or
  - (b) has failed more than once to comply with this Act or the rules or the conditions of a licence.
- (2) An order under this section—
  - (a) may be for a specified period of time or without time limit, and may be made on the terms and conditions that the District Court thinks fit; and
  - (b) may be cancelled or varied at any time by the District Court on application by the Director or the affected party.
- (3) In proceedings under this section, the District Court may make an order for the payment by a party to the proceedings of the whole or part of the full costs incurred by any other party to the proceedings (including, without limitation, reasonable costs incurred between solicitor and client, fees, and other expenses), and the costs awarded are recoverable as a debt by the party against whom they have been awarded to the party in whose favour they have been awarded.

## Subpart 7—Appeals

### **68 Appeal to District Court**

- (1) A person who is dissatisfied with a decision relating to that person made by the Director may appeal to a District Court against that decision.
- (2) For the purposes of subsection (1), the exercise of a power conferred on the Director by a provision of this Act, or a regulation or rule made under this Act, is a decision.

### **69 Procedure**

- (1) An appeal under section 68 must be brought, by way of an originating application, no later than 28 days after the date on which the appellant was notified under this Act of the decision appealed against, or within any further period that the District Court may allow.
- (2) When considering an appeal under section 68,—
  - (a) a District Court may hear all evidence tendered and representations made by, or on behalf of, any party to the appeal that the Court considers relevant to the appeal, whether or not that evidence would be otherwise admissible in the Court; and
  - (b) the Court may—
    - (i) confirm, reverse, or modify the decision appealed against, make the orders, and give the directions to the Director that may be necessary to give effect to the Court's decision; or
    - (ii) refer the matter back to the Director with directions to reconsider the whole or any part of the matter; and
  - (c) subject to this section, an appeal must be made and determined in accordance with the District Courts Act 1947 and the rules of the District Court made under that Act.
- (3) Subject to sections 71 and 72, the decision of the District Court on an appeal under section 68 is final.

### **70 Decision of Director to continue in force pending appeal, etc**

A decision of the Director appealed against under section 68 or section 71 or section 72 continues in force pending the

determination of the appeal, and no person is excused from complying with a provision of this Act on the grounds that an appeal is pending.

**71 Appeal to High Court on question of law**

- (1) A party to an appeal under section 68 who is dissatisfied with the decision of the District Court on the grounds that it is erroneous in law may appeal to the High Court on that question of law.
- (2) The High Court Rules and sections 74 to 78 of the District Courts Act 1947, with all necessary modifications, apply to an appeal under subsection (1) as if it were an appeal under section 72 of that Act.

**72 Further appeal to Court of Appeal**

- (1) A party to an appeal under section 71 who is dissatisfied with the decision of the High Court in respect of the appeal as being erroneous in law may, with the leave of the High Court or (if that leave is declined) with special leave of the Court of Appeal, appeal to the Court of Appeal on that question of law.
- (2) The Court of Appeal may make any order or determination that it thinks fit in relation to the appeal.
- (3) The decision of the Court of Appeal on an appeal or any application for leave to appeal is final.
- (4) Except as provided in this section, the procedures in respect of an appeal under this section must be in accordance with the applicable provisions of the High Court Rules and the Court of Appeal Rules, as the case may be.

## **Part 3 Rail corridor**

### Subpart 1—Protection of rail corridor

**73 Trespass relating to railway**

- (1) A person must not, without the express authority of the appropriate licensed access provider (in the case of railway infrastructure) or railway premises owner (in the case of railway premises),—
  - (a) encroach on any railway infrastructure or railway premises by constructing or placing a building, fence, ditch,

- drain, or other obstacle, or planting a tree or shrub, on the railway infrastructure or railway premises; or
- (b) dig up, remove, alter, or undermine the soil or surface of any railway infrastructure or railway premises; or
  - (c) fill up, divert, alter, or obstruct any ditch, drain, or watercourse that directly carries water off any railway infrastructure or railway premises or is made to protect that railway infrastructure or those railway premises; or
  - (d) do any act in which—
    - (i) a ditch, drain, or watercourse that directly carries water off any railway infrastructure or railway premises or is made to protect railway infrastructure or railway premises is stopped; or
    - (ii) the natural flow of water in that ditch, drain, or watercourse is obstructed; or
  - (e) interfere with or divert a ditch, drain, or watercourse in a manner that damages any railway infrastructure or railway premises; or
  - (f) fell or remove a tree, shrub, or timber growing on any railway infrastructure or railway premises; or
  - (g) interfere with or damage a rail vehicle or container or other property carried on a railway; or
  - (h) interfere with, change, or move a building, structure, or property in a manner that causes damage to railway infrastructure or railway premises; or
  - (i) cause or procure to be done any of the acts specified in paragraphs (a) to (h).
- (2) A person must not enter any railway infrastructure or railway premises,—
- (a) in the case of railway infrastructure, without the express authority of the appropriate licensed access provider; and
  - (b) in the case of railway premises, without the express or implied authority of the appropriate railway premises manager.
- (3) The owner of stock, or a person in charge of stock, must prevent the stock from trespassing on a railway or on any part of a railway.
- (4) If stock is found trespassing on a railway,—
- (a) rail personnel may impound that stock:

- (b) the relevant rail participant, or its rail personnel, may, in respect of that stock, exercise any of the functions or powers conferred on an occupier of land by the Impounding Act 1955 (and the provisions of that Act, except section 26(1), apply accordingly).
- (5) The provisions of this section are in addition to, and not in substitution for, the provisions of the Trespass Act 1980.

Compare: 1992 No 111 s 25

#### **74 Railway drains**

- (1) If a drain on, above, or under any railway infrastructure or railway premises forms part of, or is used in connection with, a sewerage or stormwater drainage system that is under the control of a road controlling authority or a local authority,—
- (a) the cost of maintaining the drain must be borne by that road controlling authority or local authority; and
  - (b) if the maintenance work is carried out by a licensed access provider, infrastructure owner, or railway premises owner, the cost is recoverable from the road controlling authority or local authority as a debt due to the licensed access provider, infrastructure owner, or railway premises owner.
- (2) Nothing in this section confers on a road controlling authority or local authority the right to enter any railway infrastructure or railway premises for the purposes of maintaining a drain without the prior consent of the licensed access provider or railway premises owner, which may be granted on the terms and conditions that the licensed access provider or railway premises owner thinks fit.
- (3) For the purposes of subsection (2), a licensed access provider or railway premises owner may not withhold consent in an emergency if doing so would be unreasonable.

Compare: 1992 No 111 s 11

#### **75 Access to railway by easements or for works**

- (1) Despite anything in any other Act, no person may exercise a right under an easement, or construct or carry out work on, over, or under any railway infrastructure or railway premises, without having first sought and obtained the written permission of the licensed access provider or railway premises owner concerned.

- (2) The licensed access provider or railway premises owner may require the person to execute a deed or agreement setting out the conditions subject to which the permission is granted.
- (3) Permission given under subsection (1) is not negated by a change in the licensed access provider or railway premises owner.
- (4) If a condition in a deed or agreement executed under subsection (2) constitutes a charge, that charge must be reasonable.
- (5) Before granting a permission, the licensed access provider or railway premises owner must consult with any other rail participants who may be affected by the easement or work.
- (6) A licensed access provider or railway premises owner—
  - (a) may refuse to grant a permission sought under subsection (1) only if the licensed access provider or railway premises owner has reasonable grounds to do so that relate to the carrying out or safety of rail activities; and
  - (b) may not charge any amount for considering or deciding on a permission sought under subsection (1).
- (7) The rental (if any) from an easement granted to a public body on, over, or under a railway at a level crossing may be no more than nominal.

Compare: 1992 No 111 s 12

## **76 Lights, etc, liable to be confused with railway signals**

- (1) This section applies if—
  - (a) a fire, light, sign, hoarding, or similar structure may—
    - (i) be mistaken for, or obscure, a railway signal; or
    - (ii) make it difficult for a person engaged in the operation of a rail vehicle to distinguish a railway signal; or
  - (b) an electrical or radio or telecommunication signal or radiation may interfere with, or be mistaken for, a railway signal or communication.
- (2) If this section applies, a licensed access provider, or a person authorised by a licensed access provider for this purpose, may give written notice (in accordance with section 78) to the occupier or, if there is no occupier, the owner of the place where the fire, light, or structure is located, or from which the

signal or radiation emanates, or to the person in charge of the fire, light, structure, signal, or radiation, directing that owner or person to, within 10 working days,—

- (a) take effective measures to extinguish, remove, or screen the fire, light, structure, signal, or radiation; and
  - (b) prevent from appearing in that place any similar fire, light, structure, signal, or radiation in the future.
- (3) Despite subsection (2), notice is not required to be given in the case of an emergency.
- (4) For the purposes of this section, **emergency** means—
- (a) an actual or imminent danger to human health or safety; or
  - (b) a danger to the environment or chattels so significant that immediate action is required to remove the danger.

Compare: 1992 No 111 s 13; 1996 No 30 s 135

## **77 Power to prevent damage to railway**

- (1) Subject to the provisions of the Resource Management Act 1991, for the purposes of protecting a railway, or preventing or lessening the risk of damage to any railway infrastructure or railway premises, a licensed access provider or railway premises owner may—
- (a) construct, maintain, alter, or reconstruct an embankment, groyne, or other protective work on any land or on the bank of a river or stream; or
  - (b) divert, dam, or take away any part of the whole of the water of a river or stream, or alter the course of a river or stream; or
  - (c) discontinue or abandon the work when the licensed access provider or railway premises owner thinks fit.
- (2) If a person enters a place on behalf of a licensed access provider or railway premises owner under subsection (1), the person must, as soon as practicable after entering the place,—
- (a) identify himself or herself; and
  - (b) inform the occupier of the place of the entry; and
  - (c) specify the reasons for the entry.
- (3) A licensed access provider or railway premises owner may give written notice (in accordance with section 78) to the occupier or, if there is no occupier, to the owner of land abutting any railway infrastructure or railway premises that requires that person to do any of the following acts:

- (a) to remove, lower, or trim, to the satisfaction of the licensed access provider or railway premises owner, any tree or hedge if, in the opinion of the licensed access provider or railway premises owner, the removal, lowering, or trimming is necessary to prevent damage to the railway infrastructure or railway premises or obstruction to the traffic on the railway concerned or to a channel, ditch, or drain associated with that railway:
- (b) if, in the opinion of the licensed access provider or railway premises owner, a tree, hedge, fence, or wall is likely, by reason of its obstructing the view, to cause danger to traffic on the railway concerned,—
  - (i) to remove, lower, or trim, to the satisfaction of the licensed access provider or railway premises owner, that tree or hedge; or
  - (ii) to lower that fence or wall:
- (c) to take effective measures to prevent damage to land on which the railway infrastructure or railway premises is situated, whether caused by grazing animals or otherwise.

Compare: 1992 No 111 s 14

## **78 Notice requirements**

- (1) A notice given under section 76(2) or section 77(3)—
  - (a) must inform the person concerned of the right to apply to a District Court for an order under subsection (2); and
  - (b) may be given to that person in accordance with section 94(1), or by affixing it in some conspicuous place near the fire, light, structure, source of the signal or radiation, or land to which the notice relates.
- (2) Within 10 working days after a notice is given to a person under section 76(2) or section 77(3), the person may apply to a District Court for an order setting the notice aside.
- (3) On the hearing of the application, the District Court, whose decision is final, must determine whether the notice should be set aside.
- (4) If a District Court sets a notice aside, the notice is void.
- (5) If a notice given under section 76(2) is not set aside and the person concerned neglects, for a period of 10 working days, to

extinguish, remove, or screen effectively the fire, light, structure, signal, or radiation specified in the notice, the licensed access provider may, after giving reasonable notice to that person,—

- (a) enter the place where the fire, light, structure, or source of the signal or radiation is located and extinguish, remove, or screen it in a manner that does not cause unnecessary damage; and
  - (b) recover the expenses incurred in doing this as a debt due to the licensed access provider from that person.
- (6) If a notice given under section 77(3) is not set aside, and the person concerned neglects, for a period of 20 working days after the notice is given or, if an application has been made under subsection (2), within 20 working days after the District Court makes its decision, to comply with the notice, the licensed access provider or railway premises owner or person entering on their behalf may, if reasonable notice is given to that person,—
- (a) enter on the land and, without causing any unnecessary damage, carry out those acts necessary to comply with the notice; and
  - (b) recover the cost of doing so as a charge upon the land.
- (7) A person entering on land on behalf of a licensed access provider or railway premises owner under this section must carry authorisation and produce it on initial entry and, if requested, at any subsequent time.

## **79 Compensation for damage**

- (1) An owner of land is entitled to full compensation from a licensed access provider or railway premises owner who exercises a power under section 76 or section 77 (whether the exercise of the power is proper or improper, or normal or excessive) if—
- (a) no other provision for compensation is made under this Act or any other Act; and
  - (b) the land suffers damage as a result of the exercise of that power.
- (2) All claims for compensation under subsection (1) must, unless settled by agreement, be determined in the manner provided by the Public Works Act 1981, and the provisions of that Act relating to compensation apply accordingly.

## Subpart 2—Interaction of rail and road

### 80 Rail vehicles have right of way

- (1) Except as provided in subsection (2),—
  - (a) any rail operator (and any person responsible for the driving or control of a rail vehicle) is entitled to assume, for the purposes of determining the speed at which it is reasonable for a rail vehicle to travel past a station, level crossing, or elsewhere on a railway line, that all persons, animals, and vehicles not using the railway line will keep clear of the railway line; and
  - (b) neither a rail operator nor any other person is to be regarded as negligent merely because that rail operator or person acts on that assumption for that purpose.
- (2) If a rail operator (or a person responsible for the driving or control of a rail vehicle) has reason to believe, or by the exercise of reasonable care would have reason to believe, that a collision is likely to occur between a rail vehicle and a person, animal, or vehicle not using the railway line, the rail operator (or person responsible) must take all reasonable steps to prevent the collision.
- (3) For the purposes of this section,—

**rail vehicle** does not include a light rail vehicle

**railway line** does not include a railway line operated solely for the use of light rail vehicles.

### 81 Notices and warning devices at level crossings

- (1) The licensed access provider for a railway line may cause to be erected at each level crossing of the railway line the notices and warning devices that the licensed access provider considers necessary for the protection of persons using the level crossing.
- (2) When considering what is necessary for the protection of persons using the level crossing, the licensed access provider must consult with any other persons directly involved with the operation or management of the level crossing, including (but not limited to) a road controlling authority or adjacent landowner, with the objective of agreeing on the notices and warning devices to be erected.
- (3) Any agreement reached under subsection (2) must be recorded in writing and specify—

- (a) the notices and warning devices required; and
  - (b) the parties who are to fund the installation and maintenance of the notices and warning devices; and
  - (c) the amount of each party's contribution.
- (4) For the purposes of subsection (1), a warning device must be located within 5 m of the centre of the railway line unless the access provider and other persons directly involved with the operation or management of the level crossing agree otherwise.
- (5) Despite any rule of law to the contrary, no access provider may be deemed negligent if that access provider fails to provide a warning device or notice at a level crossing for the purposes of—
- (a) protecting rail vehicles using the railway line when they are passing over the level crossing; or
  - (b) warning road users of the approach of those rail vehicles.
- (6) No rail operator is liable in respect of any accident that may occur by reason of any failure of a warning device.
- (7) Nothing in subsection (1) limits the general safety duties set out in section 7.

Compare: 1992 No 111 s 5

## **82 Gates and cattle stops**

- (1) Despite anything in the Local Government Act 1974, the Public Works Act 1981, this Act, or any other Act relating to the erection of gates across roads, the following provisions apply with respect to a railway line:
- (a) except as provided in paragraph (b), no person may erect or maintain a gate across the road at a level crossing within 100 m of the centre line of the railway line:
  - (b) if there is no cattle stop at a level crossing, the licensed access provider for the railway line may, if the licensed access provider considers it appropriate, agree with the road controlling authority that has control of the road to allow a gate to be erected or maintained under the conditions that the licensed access provider thinks fit to impose in the interests of public safety:
  - (c) if there is a cattle stop at a level crossing,—
    - (i) no person may erect gates that enclose the railway line; and

- (ii) that cattle stop may not be between the gate and the railway line if there are gates connected with the fencing that encloses the railway line:
  - (d) if a gate is erected in contravention of this Act, the licensed access provider for the railway line, or a person authorised for this purpose by the licensed access provider,—
    - (i) may remove the gate; and
    - (ii) may, by giving notice in accordance with section 78, recover the cost of removing the gate from the person who erected it.
- (2) Despite section 4(1), for the purposes of subsection (1)(c), **level crossing** includes private roads.

Compare: 1992 No 111 s 6

### **83 Maintenance of crossings**

- (1) At a level crossing, the licensed access provider for the railway line concerned must form, surface, and maintain the carriageway at the level crossing on the railway line, and the road controlling authority for the road concerned must form, surface, and maintain the approaches to the level crossing.
- (2) If a road crosses over a railway by means of a bridge, the road controlling authority for the road must maintain the bridge.
- (3) If a railway line crosses over a road by means of a bridge, the licensed access provider for the railway line must maintain the bridge.
- (4) If a road and railway line both use the same bridge, the relevant road controlling authority and the relevant licensed access provider must jointly maintain the bridge.
- (5) The duties imposed by this section are subject to any agreement between the road controlling authority and the licensed access provider.

Compare: 1992 No 111 s 8

### **84 Use of road for railway**

- (1) If a part of a road is used or occupied for a railway line (other than at a level crossing), that part of the road ceases to be a highway.
- (2) If a railway line is constructed on or across a road at a level crossing, it is lawful for the licensed access provider for the

railway line to allow, and for a licensed rail operator to carry on and conduct, the working and management of the railway concerned in every respect on or across that road, but not in a manner that unreasonably impedes the flow of road traffic across the railway line.

- (3) If a licensed access provider proposes to install or relocate a signal or sign used for rail traffic control that may confuse road users, the licensed access provider must consult the relevant road controlling authority before installing or relocating the signal or sign.
- (4) Nothing in subsection (1) or subsection (2) applies to a railway line operated solely for the use of light rail vehicles.

Compare: 1992 No 111 s 9

### Subpart 3—Construction and maintenance of railways

#### **85 Landowner has no interest in railway lines**

Except to the extent that a deed or agreement provides otherwise, no person has an interest in a railway line by reason only of having an interest in the land on which the railway line is installed.

Compare: 1992 No 111 s 15

#### **86 Right of entry to existing railway infrastructure**

- (1) In the case of existing railway infrastructure that was constructed under the authority of an Act before 1 April 1993, a licensed access provider for that railway infrastructure—
  - (a) may enter any land or premises (excluding any dwellinghouse or marae) at,—
    - (i) in the case of an emergency, any time; or
    - (ii) in any other case, any time during the ordinary hours of business for the purpose of gaining access to that railway infrastructure; and
  - (b) may perform any act or operation necessary for the purposes of—
    - (i) inspecting, maintaining, or operating the railway line;
    - (ii) in the case of a railway line the construction of which had not been completed before 1 April 1993, completing that railway line.

- (2) A person who exercises, or purports to exercise, the right of entry must carry and be able to produce, if required to do so, evidence of—
  - (a) his or her identity; and
  - (b) his or her authorisation to act on behalf of the licensed access provider.
- (3) In this section, **ordinary hours of business** means the hours of 8 am to 6 pm from Monday to Friday.

Compare: 1992 No 111 s 16

### **87 Maintenance of railway infrastructure on roads**

- (1) A licensed access provider may maintain railway infrastructure in, on, along, over, across, or under a road, and, for this purpose, may—
  - (a) open or break up that road;
  - (b) alter the position of—
    - (i) a pipe (not being a main) for the supply of water or gas or the conveyance of waste or sewage; or
    - (ii) a telecommunications line; or
    - (iii) an electric line;
  - (c) alter, repair, or remove any works, or any part of those works, that are constructed or maintained.
- (2) A licensed access provider must exercise the power to maintain railway infrastructure in accordance with any reasonable conditions that may be prescribed by—
  - (a) the local authority or other body or person that has jurisdiction over the road; and
  - (b) the owner of the pipe, telecommunications line, or electric line.
- (3) When prescribing any reasonable conditions under subsection (2), the local authority or other body or person that has jurisdiction over the road, or the owner of the pipe, telecommunications line, or electric line must have regard to the following matters:
  - (a) the safe and efficient flow of traffic (whether pedestrian or vehicular);
  - (b) the health and safety of any person who is, or class of persons who are, likely to be directly affected by the work on the road:

- (c) the need to lessen the damage that is likely to be caused to property (including to the structural integrity of the road) as a result of work on the road:
- (d) the compensation that may be payable under any enactment for property that is likely to be damaged as a result of work on the road:
- (e) the need to lessen disruption to the local community (including businesses):
- (f) the co-ordination of installation of other networks:
- (g) the co-ordination with road construction work by the local authority or other person who has jurisdiction over that road.

Compare: 1992 No 111 s 17; 2001 No 103 s 119

## **88 Notice of alteration to railway lines or works on roads**

- (1) Except as provided in subsection (5), before a licensed access provider undertakes any work under the powers contained in section 87(1), the licensed access provider must give written notice of its intention to undertake the work to—
  - (a) the local authority or other body or person that has jurisdiction over the road to which the work relates; and
  - (b) the owner of a pipe, telecommunications line, or electric line that is constructed in, on, along, over, across, or under that road and that is affected, or is likely to be affected, by the work.
- (2) A notice under subsection (1) must specify—
  - (a) the location of the proposed work; and
  - (b) the nature of the work to be undertaken; and
  - (c) the reasons for the work; and
  - (d) the timing and duration of the work.
- (3) Within 10 working days after the receipt of a notice given under subsection (1), the person who is given the notice must give written notice to the licensed access provider of any conditions imposed under section 87(2).
- (4) If a person who is given a notice under subsection (1) fails to give written notice to the licensed access provider of any conditions imposed under section 87(2) within the period referred to in subsection (3),—
  - (a) no conditions may be imposed; and
  - (b) the licensed access provider may commence work.

- (5) If work is rendered urgent and necessary by defective equipment, or other emergency, an infrastructure owner or licensed access provider is excused from complying with the requirements of subsection (1) before the commencement of the work, but must give the notice required by that subsection as soon as practicable after the commencement of the work.

Compare: 1992 No 111 s 18

### **89 Appeals in relation to conditions imposed**

- (1) An infrastructure owner or licensed access provider has a right to appeal to a District Court against all or any of the conditions imposed under section 87(2).
- (2) An appeal must be made by giving notice of an appeal within 40 working days after the date of notification of the conditions imposed.
- (3) In its determination of an appeal under this section, a District Court may confirm or modify or cancel all or any of the conditions imposed.
- (4) Subject to section 90, the decision of a District Court on an appeal under this section is final.

Compare: 1992 No 111 ss 20, 21

### **90 Appeals on questions of law**

- (1) If a party to an appeal under section 89 is dissatisfied with the decision of the District Court as being erroneous in point of law, that party may appeal to the High Court by way of case stated for the opinion of the High Court on the question of law only.
- (2) The High Court Rules and sections 74 to 78 of the District Courts Act 1947, with all necessary modifications, apply to an appeal under subsection (1) as if it were an appeal under section 72 of that Act.
- (3) The provisions of Part IV of the Summary Proceedings Act 1957 (including the other provisions of that Act that are applied in that Part), so far as they refer to appeals by way of case stated on questions of law only, apply, so far as they are applicable and with all necessary modifications, to an appeal under this section.

Compare: 1992 No 111 s 22

**91 No charging for access to road reserve**

- (1) Despite anything in this Act or in any other enactment, no local authority or other body or person that has jurisdiction over a road may require the payment by, or on behalf of, an infrastructure owner or licensed access provider or rail premises owner of any amount of, or in the nature of, rent in respect of any railway infrastructure or railway premises constructed or placed in, on, along, over, across, or under that road.
- (2) Nothing in subsection (1) applies in respect of—
  - (a) a rate or charge levied under the Local Government (Rating) Act 2002; or
  - (b) any shops in, on, over, or under any railway premises.
- (3) In this section, **road** includes a motorway within the meaning of section 2(1) of the Transit New Zealand Act 1989.

Compare: 1992 No 111 s 23

**Subpart 4—Offences and certificates****92 Offences**

- (1) A person who—
  - (a) fails to comply with section 73 commits an offence and is liable on summary conviction to a fine not exceeding \$10,000;
  - (b) fails to comply with any of sections 82, 83, 84, 87, or 88 commits an offence and is liable on summary conviction to a fine not exceeding \$100,000.
- (2) In addition to a fine imposed under subsection (1), the court may make any order relating to compensation that it thinks fit.

**93 Certificates by infrastructure owners or licensed access providers**

- (1) In the absence of evidence to the contrary, a certificate signed by an infrastructure owner or licensed access provider is sufficient proof of the fact that it certifies, if the certificate is to the effect that specified land is used for the purposes of a railway.
- (2) The land to which a certificate relates may be specified in the certificate by words of general or particular description as the infrastructure owner or licensed access provider considers appropriate.
- (3) A certificate signed by the infrastructure owner of an existing railway line containing a statement that a specified part of the

railway line was constructed, erected, or laid (in whole or in part) before 1 April 1993 under an Act is admissible in evidence in any proceedings and, in the absence of proof to the contrary, constitutes proof of that statement.

Compare: 1992 No 111 s 26

## **Part 4**

### **Miscellaneous**

#### **94 Notices**

- (1) Except as otherwise specified in this Act or in regulations, if a notice or other document is to be given, served on, or provided to a person under this Act, that notice or document may be—
  - (a) given to that person personally; or
  - (b) sent by registered post to that person at that person's usual or last known place of business or abode; or
  - (c) given personally to any other person authorised to act on behalf of that person; or
  - (d) sent by registered post to that other person at that other person's usual or last known place of business or abode; or
  - (e) except in the case of a notice or other document to be given or served in the course of, or for the purpose of, any court proceedings for an offence against this Act or an appeal under this Act, sent by post to that person, or any other person authorised to act on that person's behalf, at that person's or other person's usual or last known place of business or abode.
- (2) A notice or other document sent by post or registered post is deemed to have been given, served, or received 7 days after the date on which it was posted, unless the person to whom it was posted proves that, otherwise than through that person's fault, the notice or other document was not received.
- (3) To avoid doubt, a notice may be in electronic form.

Compare: 1989 No 74 s 61

#### **95 Information for offences**

An information for an offence against this Act may be laid only by the Director or an enforcement officer.

Compare: 1989 No 74 s 62

**96 Evidence and proof**

In any proceedings for an offence against this Act,—

- (a) any licence or other rail document issued under this Act or rules may be proved by the production of a copy of the licence or rail document certified to be correct and signed by the Director or by an officer of the Authority authorised in that capacity by the Director:
- (b) evidence of the contents of the register maintained under section 20 may be given by a certificate signed by the Director or an officer of the Authority authorised in that behalf by the Director, and every certificate is sufficient evidence of the matters stated in it unless the contrary is proved:
- (c) the production of a certificate signed by the Director or by an officer of the Authority authorised in that behalf by the Director to the effect that on a specified date a person was or was not the holder of a licence or other rail document is sufficient evidence of the matter certified unless the contrary is proved:
- (d) until the contrary is proved, it is presumed that a document purporting to have been certified or a certificate purporting to have been given under this section has been certified or given by the Director or by an officer of the Authority authorised by the Director to certify documents or give certificates under this section.

Compare: 1989 No 74 s 63

**97 Application of fees**

All fees and other money (not being fines, infringement fees, or other penalties) received or recovered for the purposes of this Act must be paid or credited to the Authority.

Compare: 1989 No 74 s 65

*Infringement offences***98 Infringement offences**

- (1) If a person is alleged to have committed an infringement offence, that person may either—
  - (a) be proceeded against summarily for the alleged offence; or
  - (b) be served with an infringement notice as provided in section 99.

- (2) Despite anything in section 21 of the Summary Proceedings Act 1957, leave of a District Court Judge or Registrar to lay an information is not necessary if the enforcement authority proceeds with an infringement offence summarily.

### **99 Issue of infringement notice**

- (1) If an enforcement officer has reasonable cause to believe an infringement offence is being, or has been, committed by a person, an infringement notice in respect of that offence may be issued to that person by that enforcement officer.
- (2) An infringement notice may be served—
- (a) by delivering it, or a copy of it, personally to that person; or
  - (b) by sending it, or a copy of it, by post addressed to that person at that person's last known place of residence or business or postal address; or
  - (c) if that person is a holder of a rail document, by serving it, or a copy of it, by post on that person at that person's last address for service provided with respect to that rail document.
- (3) For the purposes of the Summary Proceedings Act 1957, an infringement notice sent to a person by post under subsection (2)(b) or (c) is to be treated as having been served on the person 7 days after the date on which it was posted.
- (4) An infringement notice must be in the prescribed form and must inform the person to whom it is issued that—
- (a) no proceedings in respect of the infringement offence will be taken if the infringement fee is paid to the enforcement authority at the address shown in the notice within 28 days after the date of issue of the notice; and
  - (b) the person may write to the enforcement authority if the person wishes to—
    - (i) raise a matter concerning the circumstances of the offence for consideration by the enforcement authority; or
    - (ii) deny liability for the offence and request a court hearing; or
    - (iii) admit liability for the offence, but make written submissions to the court; and

- (c) if the person does not respond to the infringement notice, a *reminder notice* that explains how to defend the charge and that contains a statement of the person's rights must be issued to the person.
- (5) Different forms of infringement notices may be prescribed for different kinds of infringement notices.

Compare: 1998 No 110 s 139

### **100 Reminder notices**

- (1) A reminder notice may be in a form prescribed by regulations made under this Act or by regulations made under the Summary Proceedings Act 1957.
- (2) However, if the form of a reminder notice is prescribed under this Act, the reminder notice must contain—
- (a) details of the alleged infringement offence that are sufficient to inform a person of the time, place, and nature of the alleged infringement offence; and
  - (b) in the case of an infringement offence for which a scale of infringement fees is prescribed with regard to the extent of the alleged infringement offence, the extent of the alleged infringement offence; and
  - (c) the amount of the infringement fee specified for the alleged infringement offence; and
  - (d) the address of the place where the infringement fee may be paid; and
  - (e) the time within which the infringement fee may be paid; and
  - (f) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957; and
  - (g) a statement of the right of the person served with the reminder notice to request a hearing; and
  - (h) a statement of the consequences if the person served with the notice—
    - (i) does not pay the infringement fee; or
    - (ii) does not request a hearing.
- (3) Different forms of reminder notices may be prescribed for different kinds of infringement offences.

**101 Infringement fees**

- (1) The infringement fee payable in respect of an infringement offence is the appropriate infringement fee prescribed in respect of that infringement offence under this Act.
- (2) If an infringement fee is paid to an enforcement authority other than the police, the enforcement authority must give the Commissioner of Police the particulars of the payment and the relevant infringement offence as the Commissioner of Police requires.
- (3) All infringement fees received under this Act by an enforcement authority, or recovered under the Summary Proceedings Act 1957 in respect of an infringement offence under this Act, must be paid into the Crown Bank Account.
- (4) Despite subsection (3), the enforcement authority may retain the portion of the infringement fees so received that the Minister of Finance approves as being the expenses incidental to their collection.
- (5) For the purposes of subsection (4), the Minister of Finance may approve the retention of different portions of different infringement fees.

Compare: 1998 No 110 s 141

**102 Appointment of enforcement officers**

For the purposes of sections 98 to 101, the Director may, by warrant, appoint an employee of the Authority to be an enforcement officer.

*Repeals and transitional provisions***103 Repeals, revocations, and consequential amendments**

- (1) The Railway Safety and Corridor Management Act 1992 is repealed.
- (2) The Railway Safety and Corridor Management Act Commencement Order 1996 is revoked.
- (3) The Acts specified in Schedule 1 are consequentially amended in the manner specified in that schedule.
- (4) The regulations specified in Schedule 2 are consequentially amended in the manner indicated in that schedule.

**104 Repeals by Order in Council**

- (1) The following enactments are hereby repealed:
  - (a) Part XIV (comprising sections 175 to 183) of the Public Works Act 1981;
  - (b) sections 44 and 45 of the Public Works Amendment Act 1988, and the heading above section 44 of that Act.
- (2) Subsection (1) comes into force on a date to be appointed by the Governor-General by Order in Council, and 1 or more Orders in Council may be made bringing different paragraphs of that subsection into force on different dates.

Compare: 1992 No 111 s 28

**105 Issue of licences to persons holding rail service licences under Transport Services Licensing Act 1989**

- (1) This section applies to a person who, immediately before the commencement of this Act,—
  - (a) is the holder of a rail service licence granted under the Transport Services Licensing Act 1989; and
  - (b) carries out rail activities as a rail operator or as an access provider.
- (2) A person to whom this section applies must,—
  - (a) not later than 1 month after the commencement of this Act, provide the Director with a written statement of that person's rail activities, including (but not limited to)—
    - (i) that person's name; and
    - (ii) if the person is an access provider, the location, length, and gauge of the track used by that person, and the location and extent of that person's train control activities; and
  - (b) not later than 11 months after the commencement of this Act, apply for a licence under this Act.
- (3) However, if section 109(2) applies, that person must comply with the requirements of subsection (2) no later than 1 month after a licence is granted under section 6 of the Transport Services Licensing Act 1989.
- (4) The Director must issue an interim licence to a person who has provided a written statement specified in subsection (2)(a) not later than 10 working days after receipt of that statement.
- (5) The interim licence specified in subsection (4)—

- (a) may apply to a rail participant's activities as—
    - (i) a rail operator; or
    - (ii) an access provider; or
    - (iii) both; and
  - (b) must include the same conditions as the person's rail service licence granted under the Transport Services Licensing Act 1989; and
  - (c) expires 24 months after the commencement of this Act or when an application for a licence under this Act is granted (whichever is the sooner); and
  - (d) may be revoked, suspended, or otherwise dealt with under this Act as if it were a licence granted under section 17.
- (6) Despite subsection (5)(c), the Director may extend the expiration date of an interim licence if the Director considers it appropriate.
- (7) If a person has been issued an interim licence under subsection (4), the person's approved safety system under the Transport Services Licensing Act 1989 is deemed to be that person's approved safety case for the purposes of this Act until the expiry of the interim licence under subsection (5)(c).
- (8) A rail service licence granted under the Transport Services Licensing Act 1989—
- (a) continues in effect for a period of 2 months after the commencement of this Act or until the Director issues an interim licence under subsection (4) (whichever is the sooner); and
  - (b) may be revoked, suspended, or otherwise dealt with under this Act as if it were a licence granted under section 17.

**106 Provisions relating to persons requiring licences who do not hold rail service licences under Transport Services Licensing Act 1989**

- (1) This section applies to a person who, at the date of commencement of this Act,—
- (a) carries out rail activities; and
  - (b) is required to be licensed under this Act; and
  - (c) is not the holder of a rail service licence granted under the Transport Services Licensing Act 1989.
- (2) A person to whom this section applies must,—

- (a) not later than 1 month after the commencement of this Act, provide the Director with a written statement of that person's rail activities, including (but not limited to)—
    - (i) that person's name; and
    - (ii) if the person is an access provider, the location, length, and gauge of the track controlled by that person, and the location and extent of that person's train control activities; and
    - (iii) any details that may be required by the regulations by which that person was prescribed to be a rail participant; and
  - (b) not later than 8 months after the commencement of this Act, apply for a licence under this Act.
- (3) The Director must issue an interim licence to a person who has provided the written statement specified in subsection (2)(a) not later than 10 working days after receipt of that statement.
- (4) An interim licence issued under subsection (3)—
- (a) expires 18 months after the commencement of this Act or when an application for a licence under this Act is granted (whichever is the sooner); and
  - (b) may be revoked, suspended, or otherwise dealt with under this Act as if it were a licence granted under section 17.

#### **107 Safety audits under Transport Services Licensing Act 1989**

A safety audit report must be completed as if the relevant provisions of the Transport Services Licensing Act 1989 had not been repealed if, on the date of commencement of this Act, a safety auditor has commenced, but not completed,—

- (a) a regular safety audit report under section 39F of the Transport Services Licensing Act 1989; or
- (b) a special safety audit under section 39N of the Transport Services Licensing Act 1989.

#### **108 Decisions of Director under Transport Services Licensing Act 1989**

- (1) If the Director made a decision in respect of a rail participant under a provision of the Transport Services Licensing Act

1989 that has been repealed by this Act, that decision continues to have effect as if the provisions under which it was made had not been repealed.

- (2) A decision-making process commenced under the provisions of the Transport Services Licensing Act 1989 must continue under that Act if—
- (a) the Director has notified a rail participant of a proposed decision to—
    - (i) require a variation of an approved safety system under section 6F of the Transport Services Licensing Act 1989; or
    - (ii) revoke a rail service licence under section 11 of the Transport Services Licensing Act 1989; or
    - (iii) impose conditions on or suspend a rail service licence under section 39D of the Transport Services Licensing Act 1989; and
  - (b) the final determination of that decision is still pending at the date of commencement of this Act.

### **109 Applications under Transport Services Licensing Act 1989**

- (1) If a person has made an application for a rail service licence under section 6 of the Transport Services Licensing Act 1989 that is pending at the date of commencement of this Act, that application must be treated as an application under that Act.
- (2) A licence granted under section 6 of the Transport Services Licensing Act 1989 in accordance with this provision must, for the purpose of section 105, be treated as a licence that was held immediately before the commencement of this Act.
- (3) If subsection (2) applies, despite anything in section 105(2), the person must comply with the requirements of section 105(2) not later than 1 month after a licence is granted under section 6 of the Transport Services Licensing Act 1989.

### **110 Court proceedings under Transport Services Licensing Act 1989**

A proceeding commenced under a provision of the Transport Services Licensing Act 1989 that is pending or in progress immediately before the repeal of that provision by this Act may be continued, completed, or enforced (as the case may require) as if that provision had not been repealed.

**111 Application of Transport Services Licensing Regulations 1989 to licences issued under this Act**

- (1) The Transport Services Licensing Regulations 1989 apply, with all necessary modifications, to licences issued under this Act, except that—
    - (a) regulations 4 and 5 must be read as if every reference to a transport service licence issued under the Transport Services Licensing Act 1989 were a reference to a licence to carry out rail activities issued under this Act:
    - (b) regulation 7A must be read as if the reference to a rail service licence were a reference to a licence to carry out activities as an access provider or rail operator under this Act:
    - (c) item 2 in column 2 of the First Schedule must be read as if the reference to a rail service licence were a reference to a licence to carry out rail service activities under this Act:
    - (d) in the Second Schedule, every reference to—
      - (i) a rail service licence must be read as if it were a reference to a licence to carry out activities as a rail operator under this Act:
      - (ii) a rail service vehicle or rail service vehicles must be read as if it were a reference to a rail vehicle or rail vehicles, as the case may be.
  - (2) Regulation 9(1) of the Transport Services Licensing Regulations 1989 has effect as if it were a regulation made under section 59 exempting the rail participant referred to in that regulation from complying with Parts 1 and 2.
  - (3) This section expires on a date specified by Order in Council.
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s 103(3)

## Schedule 1

### Acts consequentially amended

#### **Electricity Act 1992** (1992 No 122)

Repeal the definition of **level crossing** in section 2(1) and substitute:  
“**level crossing** has the same meaning as in section 4(1) of the Railways Act 2005”.

#### **Gas Act 1992** (1992 No 124)

Repeal the definition of **level crossing** in section 2(1) and substitute:  
“**level crossing** has the same meaning as in section 4(1) of the Railways Act 2005”.

#### **Hazardous Substances and New Organisms Act 1996**

(1996 No 30)

Insert, after the definition of **lifecycle** in section 2(1):

“**light rail vehicle** has the same meaning as in section 4(1) of the Railways Act 2005”.

Repeal the definitions of **rail service vehicle** and **light service vehicle** in section 2(1) and substitute:

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

Omit from the definition of **railway line** in section 2(1) the words “section 2(1) of the Transport Services Licensing Act 1989” and substitute the words “section 4(1) of the Railways Act 2005”.

Omit from section 97(c) and (d) the words “rail service vehicle” and substitute in each case the words “rail vehicle”.

#### **Land Transport Act 1998** (1998 No 110)

Insert in paragraph (a) of the definition of **Land Transport Register** in section 2(1), after the words “this Act”, the words “, the Railways Act 2005,”.

Insert, after the definition of **licensed** in section 2(1):

“**light rail vehicle** has the same meaning as in section 4(1) of the Railways Act 2005”.

Insert in the definition of **premises** in section 2(1), after the word “vehicle,”, the words “rail vehicle,”.

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

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

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

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

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

Add to paragraph (c) of the definition of **vehicle** in section 2(1):

“(x) any rail vehicle:”.

Insert in section 4(3), after the words “A participant”, the words “, other than a rail participant,”.

Add to section 22:

“(8) This section does not apply to a rail vehicle unless that vehicle is a light rail vehicle.”

Omit from section 113(1)(a) the expression “Railway Safety and Corridor Management Act 1992” and substitute the expression “Railways Act 2005”.

Omit from section 129(1) the words “(other than a rail service vehicle)”.

Omit from the heading to section 130 the words “**rail service vehicles and**”.

Omit from section 130(1)(a) and (2) the words “rail service vehicle” wherever they appear and substitute in each case the words “rail vehicle”.

Omit from section 130(2)(b) the words “rail service operator” and substitute the words “rail operator”.

Omit from section 130(3)(a) the word “train” and substitute the words “rail vehicle”.

Insert in section 131(1)(a)(i), after the words “unloads the vehicle”, the words “or a rail operator loads or unloads a rail vehicle”.

Insert in section 131(1)(a)(ii), after the words “transport service vehicle” in both places where they appear, the words “or a rail vehicle”.

Insert in section 131(2), after the word “vehicle”, the words “or rail vehicle”.

Insert in section 148(3), after the word “vehicle” wherever it appears, the words “or rail vehicle”.

Add to section 148:

“(4) With respect to subsection (3), the definition of **load** in section 2(1) must be read as if the references to a vehicle or vehicles in that definition were references to a rail vehicle or rail vehicles, as the case may be.”

Insert in section 158(a)(ix), after the words “land transport system” wherever they appear, the words “(other than the rail transport system)”.

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

Insert in section 159(1)(i), after the words “land transport system” wherever they appear, the words “(other than the rail transport system)”.

Insert in section 166(1), after the word “vehicle,”, the words “rail vehicle,”.

Insert in section 168(1)(a), after the expression “Transport Services Licensing Act 1989,”, the expression “the Railways Act 2005,”.

Repeal section 168(5).

Add to section 197:

“(5) In this section, **land transport document** includes a rail document as defined in section 4(1) of the Railways Act 2005.”

Insert, after section 213:

**“213A Public right of way at level crossings**

“(1) At a level crossing, the public right of way at the crossing—

“(a) ceases whenever a rail vehicle on the railway line is approaching and is within a distance of 800 m from the crossing; and

“(b) at all other times, extends only to the right of crossing the railway line with all convenient speed, but not to stopping or remaining on it.

“(2) In this section, **level crossing** has the same meaning as in section 4(1) of the Railways Act 2005.”

**Land Transport Management Act 2003** (2003 No 118)

Add to the definition of **public transport service** in section 5 the word “; or” and also add:

“(c) rail vehicles as defined in section 4(1) of the Railways Act 2005.”

**Local Government Act 1974** (1974 No 66)

Insert, after section 341:

**“341A Contribution to cost of railway, subway, or bridge**

“(1) A controlling authority or local authority, or any 2 or more of those authorities, may agree with an infrastructure owner to—

“(a) the construction and maintenance by the infrastructure owner of a subway under, or a bridge over, a railway, or a railway bridge over a road, that is within the district of the controlling authority or local authority; and

**Local Government Act 1974** (1974 No 66)—continued

- “(b) the payment by the controlling authority or local authority of the whole or part of the cost of that construction and maintenance.
- “(2) An agreement may be entered into with respect to any existing or proposed subway or bridge.
- “(3) A controlling authority or local authority that is authorised by this section to pay in whole or in part the cost of the construction of a subway, bridge, or railway bridge may agree with an infrastructure owner (and is deemed to always have had the power to agree) that—
- “(a) the payment must be made by instalments extending over a period of not more than 10 years; and
- “(b) interest at a rate agreed on (if any) must be paid on any unpaid balance of that cost.
- “(4) Every controlling authority and local authority has all the powers that are reasonably necessary or expedient to enable them to carry out functions or duties conferred or imposed under section 83 of the Railways Act 2005 or this section, including (without limitation) the power to enter into agreements with an infrastructure owner to provide for the maintenance of any footbridge or pedestrian subway.
- “(5) In this section, **infrastructure owner** has the same meaning as in section 4(1) of the Railways Act 2005.

Compare: 1992 No 111 s 10”.

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

Repeal the definition of **railway line** in clause 1 of the Notes to Schedule 1 and substitute:

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

**New Zealand Railways Corporation Act 1981** (1981 No 119)

Omit from the heading to section 119A the word “**road**”.

Insert in section 119A, after the expression “Transport Services Licensing Act 1989,”, the expression “the Railways Act 2005,”.

**Privacy Act 1993** (1993 No 28)

Add to the item in Schedule 5 relating to the “Land Transport Safety Authority Records”:

Rail licensing register	A national register of all licences under the Railways Act 2005	Police
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**Te Ture Whenua Maori Act 1993** (1993 No 4)

Repeal the definition of **rail service operator** in section 326A and substitute:

“**rail operator** has the same meaning as in section 4(1) of the Railways Act 2005”.

Repeal the definition of **railway line** in section 326A and substitute:

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

Omit from section 326B(4)(f) the words “rail service operator” and substitute the words “rail operator”.

Omit from section 326B(5)(b) the words “section 12 of the Railway Safety and Corridor Management Act 1992” and substitute the words “section 75 of the Railways Act 2005”.

**Transport Accident Investigation Commission Act 1990**

(1990 No 99)

Repeal paragraph (b) of the definition of **accident** in section 2 and substitute:

“(b) in relation to rail transport, has the same meaning as in section 4(1) of the Railways Act 2005; and”.

Repeal paragraph (b) of the definition of **incident** in section 2 and substitute:

“(b) in relation to rail transport, has the same meaning as in section 4(1) of the Railways Act 2005; and”.

Repeal the definition of **rail service vehicle** in section 2.

Omit from the definition of **transport related thing** in section 2 the words “rail service vehicle” and substitute the words “rail vehicle”.

Omit from section 8(2)(f)(ii) the words “section 39C of the Transport Services Licensing Act 1989” and substitute the words “section 13(4) of the Railways Act 2005”.

Omit from section 9(1)(b) the word “service”.

Omit from section 13(1), (4), (5), and (6) the words “section 39C of the Transport Services Licensing Act 1989” and substitute in each case the words “section 13(4) of the Railways Act 2005”.

Omit from section 13(3) the word “service”.

**Transport Act 1962** (1962 No 135)

Repeal the definitions of **railway line** and **rail service vehicle** in section 2(1).

Repeal section 30(3)(b).

Omit from section 70B(9) the words “any rail service vehicle, or in respect of”.

**Transport Services Licensing Act 1989** (1989 No 74)

Repeal the definitions of **accident**, **approved safety system**, **incident**, **light rail vehicle**, **proposed safety system**, **railway line**, **rail service**, **rail service operator**, and **rail service vehicle** in section 2(1).

Omit from paragraph (a) of the definition of **transport service** in section 2(1) the words “rail service,”.

Repeal paragraph (c) of the definition of **transport service licence** in section 2(1).

Omit from the definition of **transport service vehicle** in section 2(1) the words “rail service vehicle,”.

Repeal section 3A.

Repeal section 4(e).

Repeal section 5(6) and substitute:

“(6) A person who is convicted of a second or subsequent offence against this section is liable on summary conviction to a fine not exceeding \$25,000 and, unless in the circumstances of the case the court considers there are special reasons relating to either offence why it should not do so, the court must order every vehicle used under the transport service to be surrendered to the Director and held by the Director, at the expense of the convicted person, for a period specified by the court that does not exceed 90 days.”

Repeal sections 6A to 6I.

Omit from section 7(1) the words “, a vehicle recovery service licence, or a rail service licence” and substitute the words “or a vehicle recovery service licence”.

Repeal section 8(1)(d).

Repeal section 9A.

Repeal section 10(1)(c).

Repeal section 18(2)(ac).

Repeal the heading above section 39A.

Repeal sections 39A to 39P.

Omit from section 63(a) the words “or rail service vehicle” in both places where they appear.

Repeal section 66(ca), (cb), and (cc).

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s 103(4)

## Schedule 2

### Regulations consequentially amended

#### **Explosives Regulations 1959** (SR 1959/126)

Omit from regulation 57(1)(b) the words “section 4 of the Railway Safety and Corridor Management Act 1992” and substitute the words “Part 9 of the Land Transport (Road User) Rule 2004”.

#### **Hazardous Substances (Classes 1 to 5 Controls) Regulations 2001** (SR 2001/116)

Revoke the definition of **rail service vehicle** in regulation 3.

Insert in regulation 59(4), after the expression “Transport Services Licensing Act 1989”, the words “or the Railways Act 2005 or rules made under the Land Transport Act 1998”.

#### **Land Transport (Offences and Penalties) Regulations 1999** (SR 1999/99)

Omit from regulation 5(1)(a)(i) and (ii) the words “rail service vehicle” and substitute in each case the words “rail vehicle”.

Omit from Schedule 1 the words “rail service vehicle” wherever they appear and substitute in each case the words “rail vehicle”.

#### **Land Transport (Road User) Rule 2004** (SR 2004/427)

Omit clause 9.1(5).

#### **Traffic Regulations 1976** (SR 1976/227)

Revoke the definitions of **level crossing** and **light rail vehicle** in regulation 2 and substitute:

“**level crossing** has the same meaning as in section 4(1) of the Railways Act 2005

“**light rail vehicle** has the same meaning as in section 4(1) of the Railways Act 2005”.

Revoke the definition of **rail service** in regulation 2.

Insert in regulation 2, before the definition of **rear axis**:

“**rail vehicle** has the same meaning as in the Railways Act 2005”.

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**Legislative history**

8 July 2003	Introduction (Bill 65-1)
31 July 2003	First reading and referral to the Transport and Industrial Relations Committee
9 August 2004	Reported from Transport and Industrial Relations Committee
12 April 2005	Second reading, committee of the whole House, third reading
20 April 2005	Royal assent

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This Act is administered in the Ministry of Transport.

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