

House of Representatives

Supplementary Order Paper

Tuesday, 12 April 2005

Railways Bill

Proposed amendments

Hon Pete Hodgson, in Committee, to move the following amendments:

Clause 4

To omit the definition of **Authority** (lines 26 to 28 on page 4), and substitute the following definition:

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

To omit from the definition of **Director** the word “Safety” (line 1 on page 5). To omit the definition of **network controller** (lines 5 to 8 on page 7), and substitute the following definition:

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

Clause 6(2)

To insert, after the words “she knows” (line 30 on page 14), the words “or ought reasonably to know”.

Clause 10(1)

To omit the words “occupancy of a railway line or the movement of a rail vehicle” (lines 5 and 6 on page 18), and substitute the words “entry onto, occupancy of, or movement of rail vehicles on a railway line”.

Clause 32(2)(b)

To insert, after the words “regarding the” (line 7 on page 40), the words “replacement or”.

Clause 33(1)

To insert, after the words “requires a” (line 15 on page 40), the words “replacement or”.

Clause 48

To omit this clause (lines 13 to 26 on page 52), and substitute the following clause:

48 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.

Clause 51

To insert, before paragraph (b) (before line 22 on page 53), the following paragraph:

- (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:

Clause 74

To omit subclause (3) (lines 3 to 8 on page 72), and substitute the following subclause:

- (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.

Clause 81

To omit from the heading the word “**Warning**” (line 10 on page 77), and substitute the words “**Notices and warning**”.

To omit from subclause (1) the words “, after consultation with the road controlling authority of the road concerned,” (lines 14 and 15 on page 77).

To insert, after subclause (1) (after line 16 on page 77), the following subclauses:

- (1A) 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.

- (1B) Any agreement reached under **subsection (1A)** 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.

To add to subclause (2) (line 18 on page 77) the words “unless the access provider and other persons directly involved with the operation or management of the level crossing agree otherwise”.

To add the following subclause (after line 28 on page 77):

- (5) Nothing in **subsection (1)** limits the general safety duties set out in **section 6**.

Clause 92(1)(b)

To omit the expression “**81**,” (line 33 on page 84).

Clause 103A(1)(c)

To omit this paragraph (lines 31 to 34 on page 90).

Schedule 1

To omit the item in lines 30 to 32 on page 102, and substitute the following item:

Repeal section 30(3)(b).

To insert, in their appropriate alphabetical order, the following items:

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**”.

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**”.

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**”.

Schedule 2

To insert, in their appropriate alphabetical order, the following items:

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”.

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

Omit clause 9.1(5).

To omit the items in lines 4 to 24 on page 105.

Explanatory note

This Supplementary Order Paper amends the Railways Bill. The amendment to *clause 4* accounts for the recent replacement of the Land Transport Safety Authority with Land Transport New Zealand. The amendment to *clause 6(2)* clarifies the duties of rail personnel and rail operators. The amendment to *clause 10(1)* clarifies the circumstances in which a rail operator, its rail personnel, and any person authorised to access a railway line must comply with instructions given by a network controller. The amendments to *clause 32(2)(b)* and *clause 33(1)* add the word “replacement” to make them consistent with the wording used elsewhere in these clauses. The amendment to *clause 48* modifies the Minister’s power to make ordinary rules to align it with changes recently made to the Minister’s power to make ordinary rules in other transport legislation. The amendment to *clause 51* reinstates a provision that provides that rules may include provisions that 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. The amendment to *clause 74* clarifies that consent to enter property in an emergency may not be withheld if doing so would be unreasonable. The amendments to *clause 81* insert 2 new subclauses to specify the responsibilities with respect to the operation or management of level crossings. They also add a proviso to *clause 81(2)* to clarify that the location of a warning device may be different if the relevant parties agree, and add *clause 81(5)* to clarify that nothing in *clause 81(1)* limits the general safety duties set out in *clause 6*. The amendment to *clause 92(1)(b)* omits an unneeded cross-reference. The amendment to *clause 103A(1)* omits paragraph (c). The amendments to *Schedule 1* give both the Electricity Act 1992 and the Gas Act 1992 the same definition of **level crossing** as found in the Railways Bill, and give the Te Ture Whenua Maori Act 1993 the same definitions of **railway line** and **rail operator** as found in the Railways Bill. The amendments

to *Schedule 2* add a consequential change to the Explosives Regulations 1959 to account for the recently made Land Transport (Road User) Rule 2004.
