

Info sheet – Overview of Bill

This info sheet intends to provide a general overview of the purpose, structure and main safety features of the Railways Bill, which was tabled in Parliament on 8 July 2003. For more detail, you can purchase copies of the Bill at most Bennetts bookshops or download it at www.transport.govt.nz.

Purpose and benefits of the Bill

The impetus for this Bill has come from changes in the rail industry – particularly the shift from a single network operator to a number of players – which have left gaps in safety accountability. The Railways Bill has also been developed to implement the recommendations made in the Ministerial Inquiry into Tranz Rail (*the Wilson Report*), which identified gaps in the current legislation relating to rail safety.

The Bill addresses gaps in the current legislation by extending rail safety legislation to cover a wider number of industry players, and ensuring a clear chain of accountability. It also proposes consolidating most existing rail safety legislation into a single Act (aspects of *Transport Services Licensing Act 1989* and the *Land Transport Act 1998*, as they relate to rail, and the *Rail Safety and Corridor Management Act 1992*).

It proposes a more proactive approach to identifying and managing critical safety issues by ensuring key rail participants are licensed, that key safety data are collected, that operators demonstrate they're managing safety risks, and that the Land Transport Safety Authority has more powers to audit, inspect and sanction operators.

Structure

The Bill is divided into four parts:

1. preliminary provisions
2. safety
3. issues relating to the rail corridor
4. miscellaneous issues, including transitional provisions.

This info sheet focuses on Part 2 of the Bill, as most of the proposed changes to existing safety legislation are contained here. Part 3 of the Bill involves merging existing legislation relating to the rail corridor into one, single Act and introduces an offence for trespassing. Provisions have been made for transitioning from the existing to the proposed new system in Part 4, which is also referred to in this document.

Main safety features

Part 2 of the Bill deals with the various components of rail safety, in the following order:

- Duties of rail participants and other persons
- Licensing of rail participants
- Safety cases, safety systems and improvement plans
- Safety assessments
- Rules and Regulations
- Offences and penalties

- Appeals.

The main changes proposed in each of these subparts are outlined below.

Subpart 1 – Duties of rail participants and other persons

The Bill proposes introducing a range of duties which individuals and organisations would have to comply with in order to demonstrate reasonable and safe behaviour in and around a rail operation. These duties would apply to rail participants and people working for participants, licence holders, the safety manager and people on or near a rail premises, vehicles and so on. The responsibility for ensuring these duties are undertaken would, however, rest with the licence holder.

Subpart 2 - Licensing of rail participants

Current legislation requires only rail operators to be licensed. That means that currently, as the rail industry is getting more fragmented, only some industry players are licensed and, therefore, regulated to address safety issues.

The proposed licensing regime would now include those who provide access to the track (access providers). Other rail participants, including maintenance providers and track and signal controllers, would not require a licence, but their activities would be covered by the relevant licence holder.

Regulatory powers of the Director of Land Transport Safety

At present, if there is a safety infringement, the Director can only impose a condition on a licence or revoke a licence – a sanction that is limited in scope and effectiveness. The Bill proposes introducing a series of graded approaches for dealing with safety infringements.

In addition, the regulatory authority (the Land Transport Safety Authority) is considering measures that would encourage rail organisations to be pro-active in remedying problems quickly, and avoid a safety infringement and, therefore, penalty. At the other end of the spectrum, court-imposed fines or imprisonment would be available for major safety breaches.

Again, the Bill proposes providing rail licence holders with an incentive for ensuring the safety of their operation as they would incur fewer costs in the long term if they maintain a high safety standard.

Subpart 3 - Safety cases and safety systems

The Bill proposes that all licence holders be required to have a safety system that covers all aspects of safety relating to their operation.

The safety case is the new, legislated requirement that will replace the current safety management system. To gain a rail licence, operators would have to submit a safety case for approval to the Director of Land Transport Safety. The safety case would contain key information relating to areas of an operation that are critical to safety (including identification and management of safety risks, safety training, and monitoring and reporting procedures), and would be publicly available. Details of what must be contained in a safety case are outlined in Part 2, subpart 3, clause 28 (1) of the Bill.

An operator will still need to have a safety system, which includes the development and maintenance of operational documents such as procedures and handbooks and manuals, although this is not explicitly required by legislation. While these documents are not taken into consideration in the proposed licensing application process, they would need to be made available for safety assessments.

This approach differs from the current regime in which a licence is granted on the basis of a rail participant's entire safety management system. While reducing the quantity of paperwork submitted for a licence application (that is, by providing a safety case of key information), the new regime would not cut back on the quality, as all documents for a rail participant's safety system would be considered during its regular assessments.

Subpart 4 - Safety assessments

The Bill proposes replacing the current annual audit and inspection regime with a combination of audit, inspection, investigation, and incident reporting. This would provide the regulator with a more comprehensive understanding of an organisation's safety procedures and standards rather than just an audit.

Under the proposed system, the Director of Land Transport Safety would approve, appoint and pay for safety assessors. These costs would be recovered through fees and charges to the rail licence holder. The frequency of safety assessments would be dependent on the licence holder's safety record and assessments would be targeted at the area of need.

By establishing such a system, licence holders would have an incentive to ensure a good safety record – the better their record, the fewer assessments they would require and, over the long term, the less costs they would have to pay for assessments, interventions and compliance.

Subpart 5 - Rules and regulations (including fees and charges)

The Bill proposes that the Minister of Transport retain the power to make rules and regulations on a wide range of issues.

Although rules would be made in consideration of the existing, wider land rule – making programme, regulations relating to fees and charges would need to be completed by the LTSA by the time the Bill comes into force.

The changes proposed in the Bill would require reviewing the current fees and charges structure to implement the new safety regime.

Subpart 6 - Offences and penalties

Penalties could be imposed for breaches of safety duties (as outlined in subpart 1) and would range from fines to jail sentences, depending on the level of seriousness of the offence.

Subpart 7 – Appeals

Now all decisions of the Director may be appealed to the District Court.

Transitional provisions

The Bill acknowledges that, to ensure continuity of service, transitional arrangements would be available for existing rail participants and also for those who previously were not required to hold a licence.

Part 4 identifies a specified period which would allow for those previously outside the system to develop and have a safety case approved. Current licence holders would apply for a transitional licence so they could continue operating until their new safety case is approved. There would also be a requirement for new participants to provide an outline of how safety would be managed during the transitional period.

Summary of main features of the Bill:

	What would change?
Licensing	<p>All existing licensed operators would have to re-licence.</p> <p>Those who provide access to the track (access providers) would have to become licensed.</p>
Documenting	<p>All licence holders would need to prepare and submit a high level “safety case” for approval and publication by the LTSA.</p> <p>Manuals and other operational procedure documents would be used for safety assessment purposes.</p>
Assessing	<p>Annual safety audits would be replaced with regular safety assessments on an “as needed” basis. These would be wider in scope than the present “audit” and could include spot-checks, audits, inspections and discussions with staff.</p> <p>Auditors would no longer be appointed by rail operators. Instead, assessors would be appointed by the LTSA and their costs charged back to the licence holder.</p>
Enforcing	<p>The Regulator would be able to impose a greater variety of penalties for safety breaches.</p>
Costs	<p>Existing fees and charges would be reviewed.</p> <p>Licence holders would be able to control their costs, as the better their safety record, the less regulatory intervention (for which they would have to pay) would be required.</p>

Definitions

Regulator	<p>The Director of Land Transport Safety (Director), through the Land Transport Safety Authority (LTSA).</p>
Rail participants	<p>“Rail participants” are those involved in the rail industry. The Bill would cover licence holders (rail operator and access providers) but also includes infrastructure owners, rail vehicle owners, rail premises owners, rail traffic controllers, maintenance providers and any other person deemed to be a rail participant by regulations made under the Bill. Rail participants are not all required to be licensed, but their rail activities must be covered by the safety system of a licence holder. There are general duties relating to rail participants provided in the Bill.</p>