

# Railways Bill 2003

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## Questions & Answers – for rail industry

### 1. What is the purpose of this Bill?

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 existing rail safety legislation into a single Act.

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(LTSA) has more powers to audit, inspect and sanction operators.

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.

### 2. What are the main features of the Bill?

Acknowledging the variety of the New Zealand rail industry, the Bill proposes new provisions to allow appropriate greater flexibility in safety monitoring and safety enforcement. In particular, this would be done by:

- licensing additional participants
- having a “high level” document called the “safety case”, which will be approved by the Land Transport Safety Authority
- requiring a rail licence holder to appoint a safety manager, who will be responsible for the safety of the operation
- clarifying the Director of Land Transport Safety’s powers so they are appropriately tailored to the seriousness of a safety breach
- replacing the current audit system with a more generic “safety assessment”, which is more flexible and comprehensive
- requiring those operators whose safety record is in need of, or could benefit from, improvement to develop a safety improvement plan
- introducing court-imposed penalties for non-compliance
- requiring operators to supply additional safety-related information to the Land Transport Safety Authority, which will allow the Authority to identify emerging trends and be proactive in safety regulation.

The Bill would apply to the rail industry as a whole (including voluntary operations), but would allow the system to be tailored to suit the type of operation.

Contractors of rail operators would also be required to carry out their duties and functions in keeping with the standards of their employer's safety case, in written agreements.

### **3. Why introduce the Bill now?**

The Railways Bill is a culmination of two years work, undertaken as a result of recommendations of the *Wilson Report*. The government had originally planned to introduce legislation early this year, but delayed this while it worked through issues related to small heritage operators.

The Bill is now ready and there are no good reasons to delay its introduction. The Bill will have a positive effect on rail safety as it brings about a more robust safety regime. This will help manage safety better in a devolved environment, as it extends the licensing regime to cover those who provide access to the track. An example is Auckland, where the rail operator and track owner are different entities. It will also enable those who are interested in investing in New Zealand railways to understand the proposed regulatory regime.

### **4. When will the Bill come into force?**

The Bill will come into effect in the next 12 months. The Bill was tabled in the House on 8 July 2003 and the Select Committee will consider the Bill for six months. Then it will be returned to Parliament for final consideration before being given the Royal Assent. Once the Bill is signed, there will be an implementation period, to allow implementation and transition to take place.

### **5. Who will have to be licensed?**

This Bill proposes that all rail operators and rail access providers be licensed. This means that all rail operators and all those who provide access to the track (access providers), would have to apply for a new licence, whether or not they already held a rail service licence. While not all rail participants would need a licence, they must all be covered by the safety case of either a licensed operator or a licensed access provider.

### **6. Why does the Bill change the terms previously used and what do they mean?**

The current legislation uses a number of terms and concepts that are not ideal to describe a situation or activity. The Bill proposes changes to some activities and has updated terms accordingly. This aims to avoid confusion with the old function (for example, "safety assessment" replaces "audit", but they are not entirely the same so it is more than just a name change).

### **7. How will the Bill improve rail safety?**

The Bill 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.

## 8. What is new about the Bill?

|                    | What would change?   |
|--------------------|--|
| <b>Licensing</b>   | All existing licensed operators would have to re-licence<br>Those who provide access to the track (access providers) would have to become licensed.  |
| <b>Documenting</b> | All licence holders would need to prepare and submit a high level “safety case” for approval and publication by the LTSA.<br>Manuals and other operational procedure documents would be used for safety assessment purposes  |
| <b>Assessing</b>   | 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.<br>Auditors would no longer be appointed by rail operators. Instead, assessors would be appointed by the LTSA and their costs recovered from the licence holder. |
| <b>Enforcing</b>   | The Regulator would be able to impose a greater variety of penalties for safety breaches.  |
| <b>Costs</b>       | Existing fees and charges would be reviewed.<br>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.   |

## 9. What would operators have to do to comply with the Bill?

The answer to question four sets out who will need a licence under the Railways Bill. To gain a rail licence, participants would have to submit a safety case for approval by 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 it would be publicly available.

Rail participants would have increased reporting requirements and these would be stated in the rail participant’s approved safety case. In addition to the already required accident and incident reporting, key performance indicators may also be required at the reasonable discretion of the Director of Land Transport Safety. Clause 19(2)(e) outlines this in detail.

The Bill proposes to replace annual audits with a safety assessment, which is conducted as regularly as considered necessary by the Director of Land Transport Safety to be sure that the operation is safe.

## 10. How does the Bill affect heritage operators?

As with all other operators, heritage operators would have to be licensed. While those with a poor safety record can expect tougher intervention, those with a good safety record may require less regulatory oversight under the new regime than they currently have.

## 11. How much will costs increase and when will they be implemented?

The government is dedicated to ensuring that some non-commercial rail operators (particularly small, heritage operators) are not unduly penalised by costs that may be associated with implementing this new safety regime. Fees and charges are still being finalised, and ways to keep increased costs to a minimum

are being considered. We are interested in knowing what you consider the compliance costs may be, and encourage you to make a submission to the Select Committee.

At this stage, we believe that there will be some initial compliance costs that will be met by the industry. These include the cost of having a new safety case approved by the LTSA, in addition to an internal cost to develop a safety case. As is with the current regime, there will be a number of on-going regulatory costs associated with an annual licence fee, having regular assessments, reporting incidents and accidents, and developing safety assurance processes and/or measures. If a licence holder has a poor safety record, a safety improvement plan may also be required as part of the licensing process so that the LTSA can have greater surety that a rail provider is actively managing its safety risk. The licence holder would have to pay the costs of this requirement.

The changes proposed in the Bill include reviewing the current fees and charges structure including the possibility of ensuring a safe rail licence holder is rewarded by fewer compliance costs and that the licence holder with the safety risk pays directly for any intervention required by the LTSA.

During the next few months, government officials will be consulting the industry as part of a review of the fees and charges structure for the Bill.

**12. Will the government subsidise the costs in any way?**

Maybe. While the costs incurred under the Bill are operational costs relating to the safety of the operation, and it is up to the licence holder to manage its safety outcome and meet these costs, fees and charges are still being finalised, and ways to keep increased costs to a minimum are being considered.

**13. Will the supporting paperwork (compliance) be prohibitive relative to the size of the rail operation?**

The government is conscious of the need to minimise the paperwork for small operators. The Director of Land Transport Safety may, if appropriate, allow an operator to use the documentation required for its current licence as its safety case. The aim is to avoid additional work and unnecessary costs for small operators.

**14. What is a safety assessment?**

The present system requires rail licence holders to be audited each year. The Bill proposes to replace this requirement with a safety assessment, which is conducted as regularly as considered necessary by the Director of Land Transport Safety to be sure that the operation is safe.

The assessments would ensure that a rail licence holder is operating in accordance with its approved safety case, and will be carried out by the LTSA or its appointed representative.

An assessment could include inspection, spot checks, investigations, or discussions with staff and could take into account trend analysis of incident and accident reporting. There would be two sorts of safety assessment – an “ordinary assessment” which would be undertaken routinely for continued assurance, and a “special assessment” which could look at a particular circumstance.

A good safety record would mean that the time between ordinary assessments may be extended (for example, to eighteen months or two years).

**15. How will safety assessors be appointed?**

The Bill proposes that the Director of Land Transport Safety be responsible for appointing and engaging safety assessors whose primary role is to conduct assessments on rail operations. The Director of Land Transport Safety would have the flexibility to appoint the person most qualified/suitable for the job.

**16. Who will monitor the assessors?**

The Director of Land Transport Safety and the LTSA are accountable for their activities through a performance agreement with the Minister of Transport. The LTSA's activities are reviewed regularly and it will have internal processes to ensure the integrity of the safety assessment process.

**17. Will the cost of assessors be more than for current auditors?**

That would depend on what you currently pay, because costs vary across the country. However, a safety assessment is likely to be wider in application than the current audit, so could result in increased cost.

**18. Will the Bill double up on regulation with occupational health and safety legislation?**

The *Wilson Report* recommended that it is better to manage an overlap in workplace safety than to manage a gap. There may be an overlap created by this Bill. To minimise this however, a separation of occupational safety and health issues from operational safety has already been implemented through the *Health and Safety in Employment Amendment Act 2002*. In addition, LTSA and Occupational Safety and Health have a memorandum of understanding to avoid unnecessary duplication.

**19. Will the Bill set up a good regulatory regime and be responsive to future developments in New Zealand railways?**

One of the aims of the Bill is to recognise that the rail industry in New Zealand is undergoing changes. In developing the Bill, possible scenarios have been considered in an effort to "future proof" the legislation. Tracks and trains are no longer likely to be owned and operated by a single owner and the industry is becoming increasingly fragmented. The Bill aims to address the safety implications resulting from more industry players and, therefore, greater separation of risk, more potential for safety gaps to occur, and the increased need for coordination between all rail participants to manage safety effectively.

**20. Why does the Bill not set standards?**

The Bill does not set standards, but has the ability to make Rules, which would set standards on a wide variety of different issues.

**21. Why does the Bill not set standards for driving hours for locomotive engineers and drug and alcohol standards for employees?**

The Bill gives the Minister the ability to make Rules on a wide variety of topics, if necessary. These will be considered for priority as part of the Land Transport Rule-making programme. The issue of drug and alcohol standards is being considered in line with other modes of transport (air and maritime) so that there is consistency across modes.

**22. What processes will be put in place to support the Bill?**

The LTSA will develop processes, guidelines and a fee regime, for implementation of the Bill. Details will be provided as they come to hand. The Bill has transitional provisions that will allow existing operators to continue operating while changing to the new regime.

**23. How can the industry make submissions/comments on the Bill?**

The Select Committee will consider the Bill for six months. If you wish to comment on the contents of the Bill during this process, please contact:

Office of the Clerk of the House of Representatives

Phone: 04 471 9999

Fax: 04 473 2439

Website: <http://www.clerk.parliament.govt.nz/Programme/Committees>