

Rail Network Bill

Government Bill

Explanatory note

General policy statement

This Bill provides for the long-term structure and role of the New Zealand Railways Corporation (the **entity**), which has responsibility for owning and operating the national rail network following its purchase by the Crown.

The Bill repeals the entity's existing legislation (the New Zealand Railways Corporation Act 1981 and the New Zealand Railways Corporation Restructuring Act 1990), which has a mixture of outdated or redundant provisions. The Bill carries over provisions that are still required, updating them as necessary, including the entity's special provisions relating to the holding and disposal of rail network land.

The Bill aligns the objective and functions of the entity with the New Zealand Transport Strategy without compromising its commercial focus. It provides for the entity's new objective and functions, and some principles concerning how it must perform its functions, and changes it from a State-owned enterprise to a Crown entity.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. This Bill (except *clause 14*), comes into force on 1 July 2005. *Clause 14* is deemed to have come into force on 1 July 2004.

Part 1

Preliminary provisions

Clause 3 sets out the purpose of the Bill.

Clause 4 relates to the interpretation of the Bill.

Clause 5 provides that the provisions of the Bill bind the Crown.

Part 2

Rail network

Subpart 1—Entity responsible for operating rail network

Key governance provisions

Clause 6—

- provides that the New Zealand Railways Corporation (the entity) continues in existence, continues to be an instrument of the Executive Government of New Zealand, and is a Crown entity for the purposes of section 7 of the Crown Entities Act 2004:
- provides that the entity's board must have at least 5, but no more than 8 board members (*subclause (3)*):
- relates to protection of the entity's name (*subclauses (4) and (5)*).

Clause 7 states that the objective of the entity is to undertake its functions in a way that contributes to the aim of achieving an integrated, safe, responsive, and sustainable transport system.

Clause 8 sets out the functions of the entity and some principles concerning how the entity must perform those functions.

Powers of entity

Clause 9 carries over certain powers of the entity in relation to rail network land (formerly known as, among other things, land held for railway purposes) from the New Zealand Railways Corporation Act 1981 (the **1981 Act**) and the New Zealand Railways Corporation Restructuring Act 1990 (the **1990 Act**), which will both be repealed by the Bill.

Clause 10 carries over and amends section 12 of the New Zealand Railways Corporation Restructuring Act 1990, which relates to certain powers to grant leases and other rights to use rail network assets (formerly known as railway assets). The amendment provides that section 11(1) of the Resource Management Act 1991 does not apply

to the surrender or variation of leases granted under that clause. Section 11(1) of the Resource Management Act 1991 contains certain restrictions on the subdivision of land.

Clause 11 (which is carried over from section 32 of the 1981 Act and section 20(b) of the 1990 Act) gives the entity the power to request the issue of a certificate of title for certain specified rail network land for which the fee simple is extinguished.

Planning

Clause 12 provides for the entity to prepare a rail network development plan, which must take into account any current national land transport strategy, the National Energy Efficiency and Conservation Strategy, and relevant regional land transport strategies.

Application of other Acts to entity

Clause 13 deals with the application of the Government Superannuation Fund Act 1956 for persons who, immediately before becoming an employee of the entity, are contributors to the Government Superannuation Fund.

Clause 14 provides that the entity is not a public authority for tax purposes. This means that the income derived by the entity is no longer exempt from income tax.

Clauses 15 to 17 carry over certain provisions from the 1981 Act and the 1990 Act concerning the application to the entity of the Public Works Act 1981, the Resource Management Act 1991, and certain road transport Acts.

Subpart 2—Disposal of affected rail network land

Procedure for disposal by entity

Clauses 18 to 21 set out the procedure by which the entity may dispose of any affected rail network land.

Disposal of former Maori land

Clause 22 sets out the procedure by which the entity may dispose of any affected rail network land that was formerly Maori land.

Transfer of affected rail network land

Clause 23 provides that any rail network land that is disposed of under this subpart may be transferred by memorandum of transfer under the Land Transfer Act 1952.

Subdivisions relating to disposal of affected rail network land

Clauses 24 to 31 set out the provisions related to any subdivision undertaken by the entity to give effect to a transfer or disposal of affected rail network land.

Subpart 3—Miscellaneous provisions

Clause 32 provides that assets that have been fixed to, or placed under or over, any land may vest in the Crown or the entity even though no interest in the land also vests in the Crown or in the entity.

Clause 33 provides that a certificate by the entity of certain matters is sufficient evidence of the matter certified unless the contrary is proved.

Clause 34 provides that the Governor-General may, by Order in Council, declare a body corporate to be a railway operator for the purposes of this Bill or a provision of this Bill.

Clause 35 provides that railway operations carried on by a railway operator are deemed for the purposes of the law of nuisance to be authorised by Act of Parliament.

Clause 36 provides, with several minor exceptions, that no railway line that is under the control of the entity may be closed to traffic without the prior written consent of the Minister.

Regulation-making powers

Clause 37 pertains to regulation-making.

Repeals, consequential amendments, revocations, and transitional and savings provisions

Clause 38 repeals the New Zealand Railways Corporation Act 1981 and the New Zealand Railways Corporation Restructuring Act 1990.

Clause 39 provides that the Acts in *Part 1 of Schedule 1* are amended in the manner set out in that Part.

Clause 40 provides that the regulations set out in *Part 2 of Schedule 1* are revoked.

Clause 41 provides that the transitional and savings provisions are set out in *Schedule 2*.

Miscellaneous

Clause 42 declares that section 11(1) of the Resource Management Act 1991 does not apply, and has never applied, to any partial surrender by New Zealand Rail Limited or its successors with respect to the lease dated 20 December 1991 between the Minister of Finance, the Minister for State-Owned Enterprises, and New Zealand Railways Corporation as lessors and New Zealand Rail Limited as lessee.

Hon Pete Hodgson

Rail Network Bill

Government Bill

Contents

1	Title	
2	Commencement	
	Part 1	
	Preliminary provisions	
3	Purpose	
4	Interpretation	
5	Act binds the Crown	
	Part 2	
	Rail network	
	Subpart 1—Entity responsible for operating rail network	
	<i>Key governance provisions</i>	
6	New Zealand Railways Corporation continues in existence	
7	Objective	
8	Functions	
	<i>Powers of entity</i>	
9	General powers of entity	
10	Powers to grant leases and other rights to railway operators	
11	Certificates of title for rail network land	
	<i>Planning</i>	
12	Rail network development plan	
	<i>Application of other Acts to entity</i>	
13	Application of Government Superannuation Fund Act 1956	
14	Application of Inland Revenue Acts	
15	Application of Public Works Act 1981	
16	Application of Resource Management Act 1991	
17	Application of certain land transport Acts to entity	
	Subpart 2—Disposal of affected rail network land	
	<i>Procedure for disposal by entity</i>	
18	Offer to former owner or former owner's successor	
19	Sale to owner of adjacent land	
20	Determination of current market value	
21	Sale to other persons	
	<i>Disposal of former Maori land</i>	
22	Disposal of former Maori land	
	<i>Transfer of affected rail network land</i>	
23	Transfer of affected rail network land	
	<i>Subdivisions relating to disposal of affected rail network land</i>	
24	Application of Resource Management Act 1991	
25	Conditions	
26	Consultation with Registrar-General of Land	
27	Conditions to be endorsed on survey plan	
28	Condition under section 25(a)	
29	Covenant under section 25(b)	
30	Cancellation of condition or covenant	
31	Consequences of amalgamation	
	Subpart 3—Miscellaneous provisions	
32	Treatment of assets on land	
33	Certificate by entity to be evidence of certain facts	
34	Railway operators	
35	Authority for railway operators	

36	Closure of railway lines controlled by entity <i>Regulation-making powers</i>	41	Transitional and savings provisions <i>Miscellaneous</i>
37	Regulations <i>Repeals, consequential amendments, revocations, and transitional and savings provisions</i>	42	Declaration
38	Repeals	Schedule 1	
39	Consequential amendments	Enactments amended and regulations revoked	
40	Revocations	Schedule 2	
		Transitional and savings provisions	

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Rail Network Act **2005**.

2 Commencement

- (1) This Act (except **section 14**) comes into force on **1 July 2005**.
- (2) **Section 14** is deemed to have come into force on **1 July 2004**.

Part 1
Preliminary provisions

3 Purpose

The purpose of this Act is to—

- (a) contribute to the aim of achieving an integrated, safe, responsive, and sustainable transport system; and
- (b) reform the entity; and
- (c) amend and consolidate railways legislation.

4 Interpretation

In this Act, unless the context otherwise requires,—

affected rail network land means rail network land held under the Public Works Act 1981 by the Crown or the entity for a public work, other than land acquired after 31 January 1982 and before 31 March 1987 for a public work that was not an essential work, and which is held by the entity, or by the Crown, for railways purposes

agreement—

- (a) includes a deed, a contract, an agreement, an arrangement, and an understanding, whether oral or written,

express or implied, and whether or not enforceable at law; and

- (b) without limiting **paragraph (a)**, includes a contract of service and a deed, contract, agreement, or arrangement creating or evidencing a trust

allotment in **subpart 2 of Part 2** has the same meaning as in section 218 of the Resource Management Act 1991

amalgamated in **subpart 2 of Part 2** means amalgamated pursuant to a condition under **section 25**

assets—

- (a) means any real or personal property of any kind, whether or not subject to rights; and
- (b) without limiting **paragraph (a)** includes—
 - (i) any estate or interest in any land, including all rights of occupation of land or buildings:
 - (ii) all buildings, vehicles, plant, equipment, and machinery, and any rights in them:
 - (iii) all securities within the meaning of the Securities Act 1978:
 - (iv) all rights of any kind, including rights under Acts and agreements, and all applications, objections, submissions, and appeals relating to such rights:
 - (v) all patents, trade marks, designs, copyright, plant variety rights, and other intellectual property rights of any kind whether enforceable by Act or rule of law:
 - (vi) goodwill, and any business undertaking:
 - (vii) interests of any kind in any of the property specified in **subparagraphs (i) to (vi)**

employee has the same meaning as in section 6 of the Employment Relations Act 2000

entity means the New Zealand Railways Corporation (a corporation that uses or has used the trading name ONTRACK)

land includes—

- (a) subsoil, airspace, and water and marine areas; and
- (b) interests in or over land

Land Valuation Tribunal has the same meaning as in section 2 of the Land Valuation Proceedings Act 1948

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**

local authority has the same meaning as in section 5(1) of the Local Government Act 2002

Minister or **responsible Minister** means a 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 or a provision of this Act

operate, in relation to the entity and the rail network, means that the entity administers, manages, operates, controls, controls access to, controls operations on, maintains, or develops the rail network

rail network means the network of railway lines, and the infrastructure that facilitates the network of railway lines, that is for the time being under the control of the entity

rail network land means land that is held by the Crown or the entity for railway purposes

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

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

railway operator means a body corporate declared under—

- (a) **section 34** to be a railway operator for the purposes of this Act or a provision of this Act; or
- (b) section 2(1) of the New Zealand Railways Corporation Restructuring Act 1990

registered valuer means a valuer for the time being registered under the Valuers Act 1948

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 27 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

successor, in relation to any person,—

- (a) means the person who would have been entitled to the land under the will or intestacy of that person had he or she owned the land at the date of his or her death; and
- (b) if part of a person's land was acquired or taken, includes the successor in title of that person

territorial authority has the same meaning as in section 5(1) of the Local Government Act 2002.

5 Act binds the Crown

This Act binds the Crown.

Part 2 Rail network

Subpart 1—Entity responsible for operating rail network

Key governance provisions

6 New Zealand Railways Corporation continues in existence

- (1) The New Zealand Railways Corporation—
 - (a) continues in existence; and
 - (b) continues to be an instrument of the Executive Government of New Zealand; and
 - (c) is a Crown entity for the purposes of section 7 of the Crown Entities Act 2004.
- (2) The Crown Entities Act 2004 applies to the New Zealand Railways Corporation except to the extent that this Act expressly provides otherwise.
- (3) The entity's board must have at least 5, but no more than 8, board members.

- (4) No person may be incorporated or registered, or operate or carry on activities, under a name that contains the words New Zealand Railways Corporation or under any name that, in the opinion of the Registrar of Companies, or the appropriate registering authority within the meaning of section 2 of the Flags, Emblems, and Names Protection Act 1981, so resembles a name containing those words that it is likely to deceive.
- (5) Nothing in **subsection (4)** applies to the entity or to any person who is appropriately authorised by the entity.

7 Objective

- (1) The objective of the entity is to undertake its functions in a way that contributes to the aim of achieving an integrated, safe, responsive, and sustainable transport system.
- (2) In meeting its objective, the entity must exhibit a sense of social and environmental responsibility, which includes avoiding, to the extent reasonable in the circumstances, adverse effects on the environment.
- (3) In meeting its objective, the entity must aim to recover its direct and indirect costs of operating the rail network.

8 Functions

- (1) The entity has the functions of—
 - (a) operating the rail network; and
 - (b) operating rail vehicles to the extent reasonable and necessary for the purpose of carrying out its function referred to in **paragraph (a)**; and
 - (c) preparing and maintaining industry codes and standards to the extent reasonable and necessary for the purpose of carrying out its function referred to in **paragraph (a)**; and
 - (d) acquiring, administering, managing, controlling, maintaining, developing, leasing, and disposing of rail network land in accordance with this Act; and
 - (e) co-operating with, or providing advice and assistance to, any government agency or local government agency when requested to do so by the Minister, but only if the Minister and the entity are satisfied that the performance of the functions and duties of the entity will not be compromised; and

- (f) providing the Minister with any advice relating to the entity's functions that the Minister may request; and
 - (g) carrying out any other functions and duties conferred on it by this Act or any other enactment; and
 - (h) carrying out any other functions relating to rail transport that the Minister directs in accordance with section 112 of the Crown Entities Act 2004; and
 - (i) carrying out any functions that are incidental and related to, or consequential on, its functions set out in **paragraphs (a) to (h)**.
- (2) In performing its functions, the entity must—
- (a) act consistently with its objective; and
 - (b) act efficiently and effectively and in a manner consistent with the spirit of service to the public; and
 - (c) operate in a financially responsible manner and, for this purpose,—
 - (i) prudently manage its assets and liabilities; and
 - (ii) endeavour to ensure its long-term financial viability; and
 - (iii) endeavour to ensure that it acts as a successful going concern.
- (3) **Subsection (2)** does not limit any of the duties of the entity's board under sections 49 to 51 of the Crown Entities Act 2004.
- (4) Neither a code nor a standard prepared or maintained under **subsection (1)(c)** is to be treated as a regulation for the purposes of—
- (a) the Regulations (Disallowance) Act 1989;
 - (b) the Acts and Regulations Publication Act 1989.

Powers of entity

9 General powers of entity

- (1) Subject to this Act, the entity may do all or any of the following things:
- (a) acquire any land (whether by or on behalf of the Crown, or on its own behalf):
 - (b) occupy, use, and manage any rail network land:
 - (c) grant leases, licences, easements, and permits or rights of any kind in respect of, and receive income from, any rail network land:

- (d) dispose of any rail network land, and receive the proceeds of the disposal of that rail network land, without any authority other than this paragraph:
- (e) subdivide any rail network land (whether by or on behalf of the Crown, or on its own behalf).
- (2) Nothing in **subsection (1)(d)** applies to the disposal of any public reserve within the meaning of the Reserves Act 1977.
- (3) No rail network land may be sold under **subsection (1)(d)** without the prior written consent of the Minister, who must have due regard to the future development of the rail network.
- (4) **Subsection (1)** does not limit sections 16 and 17 of the Crown Entities Act 2004.

Compare: 1981 No 119 s 24; 1990 No 105 s 20(a)

10 Powers to grant leases and other rights to railway operators

- (1) The entity may—
 - (a) grant to a railway operator leases, licences, easements, and permits or rights of any kind in respect of rail network land on any terms and conditions that the responsible Minister or the entity (as the case may be) may agree with the railway operator:
 - (b) accept the total or partial surrender of any lease, licence, easement, or permit or right of any kind in respect of rail network land.
- (2) Section 11(1) of the Resource Management Act 1991 does not apply in respect of—
 - (a) the granting of a lease to a railway operator under **subsection (1)** unless the land in respect of which the lease is granted is used, or is intended to be used, solely or principally for—
 - (i) car parking; or
 - (ii) administration or residential purposes; or
 - (iii) any purpose that is not connected with railway operations:
 - (b) the total or partial surrender of any lease that was granted to a railway operator under **subsection (1)**:
 - (c) the variation of any lease that was granted to a railway operator under **subsection (1)**.

Compare: 1990 No 105 s 12

11 Certificates of title for rail network land

- (1) If any land has become vested in the Crown or the entity for railway purposes so that the fee simple estate and all other estates and interests in the land of any person other than the Crown are extinguished,—
 - (a) the Registrar-General of Land, on the completion of such surveys (if any) as may be necessary, must, at the request of the entity, issue a certificate of title for the estate in the land or part of the land specified in the request in the name of either the Crown or the entity; and
 - (b) that certificate of title must include a reference to the purposes for which the land is held.
- (2) The entity must not, without the prior consent of the Minister, request the Registrar-General of Land to issue a certificate of title in the name of the entity for land vested in the Crown for railway purposes.
- (3) An instrument that relates to the land in any such certificate of title and is duly executed by a person having the necessary authority under this Act may be registered in accordance with the Land Transfer Act 1952.
- (4) A certificate of title issued before the commencement of this section in the name of the Crown and any instrument which is duly executed by a person having the necessary authority under this Act or under the corresponding provisions of any former Act and which relates to the land in any such certificate of title is deemed to have been lawfully issued or executed.
- (5) Any land declared by section 26 of the Public Works Act 1981 to be vested in the Crown in fee simple is for the purposes of this section deemed to be vested in the Crown so that the fee simple in the land is extinguished.

Compare: 1981 No 119 s 32; 1990 No 105 s 20(b)

*Planning***12 Rail network development plan**

- (1) For each financial year, commencing with the 2006/2007 financial year, the entity must, in accordance with a process approved by the Minister, prepare a rail network development plan, to be included in its Statement of Intent, which includes the following:

- (a) a statement of its priorities in relation to the rail network for the current financial year and the 9 following financial years:
 - (b) a forecast of its proposed capital expenditure in relation to the rail network for the current financial year and the 9 following financial years.
- (2) The entity must, in preparing its rail network development plan, take into account any current national land transport strategy, the National Energy Efficiency and Conservation Strategy, and any relevant regional land transport strategies.

Application of other Acts to entity

13 Application of Government Superannuation Fund Act 1956

- (1) Despite anything in any other Act, a person who, immediately before becoming an employee of the entity, is a contributor to the Government Superannuation Fund under Part 2 or Part 2A of the Government Superannuation Fund Act 1956 is, for the purposes of that Act, deemed to be employed in the Government service so long as that person continues to be an employee of the entity.
- (2) The Government Superannuation Fund Act 1956 applies to that person in all respects as if that person's service as an employee of the entity is Government service.
- (3) Nothing in **subsections (1) and (2)** entitles any person to become a contributor to the Government Superannuation Fund after that person has once ceased to be a contributor.
- (4) For the purposes of applying the Government Superannuation Fund Act 1956, in accordance with this section, to all employees of the entity who are contributors to the Government Superannuation Fund, **controlling authority**, in relation to those employees, means the entity's board.

14 Application of Inland Revenue Acts

- (1) For the purposes of section 169 of the Crown Entities Act 2004, the entity is not a public authority for the purpose of the Inland Revenue Acts (as that term is defined in the Tax Administration Act 1994).

- (2) **Subsection (1)** applies to amounts of income derived by the entity on and after 1 July 2004.

Compare: 2004 No 115 s 169

15 Application of Public Works Act 1981

- (1) The powers and duties conferred and imposed on the Minister of Lands in respect of the compulsory acquisition of land by the Public Works Act 1981 are, so far as they are applicable, and with any necessary modifications, conferred and imposed on the Minister in respect of all matters and works under the control of, or being carried out by, the entity.
- (2) The powers and duties conferred and imposed on the following persons are conferred and imposed on the entity in respect of all matters and works under the control of, or being carried out by, the entity:
- (a) the Minister of Lands under any provision of the Public Works Act 1981 (other than the powers and duties conferred and imposed on that Minister in respect of the compulsory acquisition of land);
 - (b) the Minister of Transport under any provision of that Act (other than the powers and duties conferred and imposed on that Minister in respect of motorways and limited access roads);
 - (c) any Minister of the Crown under any provision of that Act;
 - (d) any chief executive under any provision of that Act.
- (3) Despite **subsections (1) and (2)**, nothing in sections 40 to 42 of the Public Works Act 1981 applies to affected rail network land.
- (4) The powers and duties conferred and imposed on the Minister and the entity by this section do not in any way limit or interfere with the powers and duties conferred on any Minister of the Crown or on any chief executive under the Public Works Act 1981.

Compare: 1981 No 119 s 30

16 Application of Resource Management Act 1991

Despite **section 6(2)(b)**, the entity is not an instrument of the Executive Government of New Zealand for the purposes of the Resource Management Act 1991.

Compare: 1981 No 119 s 3A

17 Application of certain land transport Acts to entity

Despite **section 6(2)(b)**, or any other enactment or rule of law, proceedings for any offence committed on or after 1 November 1989 against any of the following Acts, or any regulations or bylaws made under any of those Acts, may be brought against the entity as if the entity were not an instrument of the Executive Government of New Zealand for the purposes of those Acts:

- (a) Land Transport Act 1998:
- (b) Land Transport Management Act 2003:
- (c) Road User Charges Act 1977:
- (d) Transport Act 1962:
- (e) Transport Services Licensing Act 1989:
- (f) Transport (Vehicle and Driver Registration and Licensing) Act 1986.

Compare: 1981 No 119 s 119A

Subpart 2—Disposal of affected rail network land*Procedure for disposal by entity***18 Offer to former owner or former owner's successor**

- (1) If the entity proposes to sell any affected rail network land, it must offer to sell the land by private contract to the person from whom it was acquired by the Crown or the entity, or to the successor of that person, at the current market value of the land determined by a valuation carried out by a registered valuer appointed by the entity.
- (2) **Subsection (1)** does not apply if—
 - (a) the entity considers that it would be impracticable, unreasonable, or unfair to do so; or
 - (b) there has been a significant change in the character of the land for the purposes of, or in connection with, the public work or other activities for which it was acquired or is held; or
 - (c) the person from whom it was acquired, or the successor of that person, was, or is, a local authority.

Compare: 1990 No 105 s 23(1)

19 Sale to owner of adjacent land

Despite anything in **section 18**, if the entity believes on reasonable grounds that, because of the size, shape, or situation of

the land it could not expect to sell the land to any person who did not own land adjacent to the land to be sold, the land may be sold to an owner of adjacent land at a price negotiated between the parties.

Compare: 1990 No 105 s 23(4)

20 Determination of current market value

- (1) The person to whom an offer is made under **section 18** may, within 20 working days after receipt of the offer, give notice to the entity that the person requires the current market value of the land to be determined by the Land Valuation Tribunal.
- (2) The entity must, on receipt of the notice, refer the matter to that Tribunal for determination.

Compare: 1990 No 105 s 23(2)

21 Sale to other persons

The entity may sell or otherwise dispose of the affected rail network land to any person on any terms and conditions that it thinks fit if—

- (a) an offer under **section 18** is not accepted within 40 working days after the making of the offer or, if an application is made to the Land Valuation Tribunal, within 20 working days after the determination of the Tribunal, whichever is later, and the parties have not agreed on other terms for the sale of the land; or
- (b) **section 18(2)** applies.

Compare: 1990 No 105 s 23(3)

Disposal of former Maori land

22 Disposal of former Maori land

The entity may, instead of making an offer under **section 18**, apply to the Maori Land Court for an order under section 134 of Te Ture Whenua Maori Act 1993 if the affected rail network land was, immediately before it became affected rail network land,—

- (a) Maori freehold land or general land owned by Maori (as those terms are defined in section 4 of Te Ture Whenua Maori Act 1993); and
- (b) beneficially owned by more than 4 persons; and

(c) not vested in any trustee or trustees.

Compare: 1990 No 105 s 26

Transfer of affected rail network land

23 Transfer of affected rail network land

- (1) Any affected rail network land that is disposed of under this subpart (except **section 22**) may be transferred by a memorandum of transfer under the Land Transfer Act 1952.
- (2) The transfer may state that the land being transferred is to be amalgamated with any other land in an existing certificate of title; and that statement is sufficient authority to the Registrar-General of Land to amend the certificate of title accordingly, without fee.
- (3) On the amendment of the certificate of title, the land transferred becomes subject to and, if applicable, receives the benefit of all encumbrances, easements, and other interests noted on the certificate of title.

Compare: 1990 No 105 s 25

Subdivisions relating to disposal of affected rail network land

24 Application of Resource Management Act 1991

Section 11 and Part 10 of the Resource Management Act 1991 do not apply to any subdivision undertaken by the entity to give effect to a transfer or disposal of affected rail network land under this subpart if that transfer or disposal (of all or part of an allotment) is to an owner of adjoining land.

Compare: 1990 No 105 s 25A(1)

25 Conditions

Every transfer or other disposition to which **section 24** applies, is deemed to be subject to a condition that—

- (a) the land being transferred or disposed of is held in 1 certificate of title with the owner's adjoining land; or
- (b) if **section 26(2)** applies, a covenant must be entered into between the owner of the adjoining land and the territorial authority that the land being transferred or disposed of must not, otherwise than in accordance with a subdivision consent under the Resource Management Act

1991, be transferred, leased, or otherwise disposed of except in conjunction with the owner's adjoining land.

Compare: 1990 No 105 s 25A(2)

26 Consultation with Registrar-General of Land

- (1) The entity must consult with the Registrar-General of Land as to the practicality of a condition of a kind referred to in **section 25(a)**.
- (2) If the Registrar-General of Land advises the entity that a condition of a kind referred to in **section 25(a)** is not practical, then any transfer or disposal of land to which **section 24** applies is deemed to be subject to a condition of a kind referred to in **section 25(b)**.

Compare: 1990 No 105 s 25A(3), (4)

27 Conditions to be endorsed on survey plan

- (1) Every condition of a kind referred to in **section 25(a) or (b)** is to be endorsed on the survey plan giving effect to the subdivision to which **section 24** applies.
- (2) The Registrar-General of Land must not deposit that survey plan unless—
 - (a) he or she is satisfied that any condition of the kind referred to in **section 25(a)** has been complied with as fully as may be possible in an office of the Registrar-General of Land; or
 - (b) a covenant of a kind referred to in **section 25(b)** has been lodged for registration.

Compare: 1990 No 105 s 25A(5)

28 Condition under section 25(a)

If a condition of a kind referred to in **section 25(a)** has been complied with—

- (a) the separate parcels of land included in the certificate of title in accordance with the condition are not capable of being disposed of individually or being held under separate certificates of title, otherwise than in accordance with a subdivision consent under the Resource Management Act 1991; and

- (b) on the issue of a certificate of title, the Registrar-General of Land must enter on the certificate of title a memorandum that the land is subject to this section.

Compare: 1990 No 105 s 25A(6)

29 Covenant under section 25(b)

Every covenant of a kind referred to in **section 25(b)**—

- (a) must be in writing; and
- (b) must be signed by the owner of the adjoining land; and
- (c) must have affixed to it the common seal of the territorial authority; and
- (d) is deemed to be an instrument capable of registration under the Land Transfer Act 1952, and, when so registered, to create in favour of the territorial authority an interest in the land, in respect of which it is registered, within the meaning of section 62 of that Act; and
- (e) is deemed to run with the land and bind subsequent owners.

Compare: 1990 No 105 s 25A(7)

30 Cancellation of condition or covenant

- (1) The territorial authority may, at any time, after a survey plan giving effect to a subdivision to which **section 24** applies has been deposited in the Land Registry Office, cancel in whole or in part—
 - (a) any condition of a kind referred to in **section 25(a)**; or
 - (b) any covenant of a kind referred to in **section 25(b)**.
- (2) If a territorial authority cancels, in whole or in part, a condition or covenant in accordance with **subsection (1)**, the territorial authority must forward an authenticated copy of the resolution of the territorial authority cancelling or partially cancelling that condition or covenant to the Registrar-General of Land, who must note the records accordingly.

Compare: 1990 No 105 s 25A(8), (9)

31 Consequences of amalgamation

- (1) The consequences specified in **subsection (2)** apply if—
 - (a) for the purpose of complying with conditions of a kind referred to in **section 25**—
 - (i) a covenant of a kind referred to in **section 25(b)** is registered in accordance with this section; or

- (ii) the land being transferred or disposed of is amalgamated in 1 certificate of title with adjoining land in accordance with this subpart; and
 - (b) the adjoining land is already subject to a registered instrument under which a power to sell, a right of renewal, or a right or obligation of purchase is lawfully conferred or imposed; and
 - (c) that power, right, or obligation becomes exercisable but is not able to be exercised or fully exercised because of **section 27 or section 28**.
- (2) The consequences are—
- (a) the land being transferred or disposed of is deemed to be and always to have been part of the adjoining land that is subject to that instrument; and
 - (b) all rights and obligations in respect of, and encumbrances on, that adjoining land are deemed to be rights and obligations in respect of, or encumbrances on, the land being transferred or disposed of; and
 - (c) the Registrar-General of Land must enter on all relevant certificates of title a memorandum to the effect that the land in those certificates of title is subject to **subsection (1)**.
- (3) If any instrument to which **subsection (1)** applies is a mortgage, charge, or lien, it is deemed to have priority over any mortgage, charge, or lien against the land being transferred or disposed of which is registered after the issue of the certificate of title under **section 28**, or the registration of a covenant entered into under **sections 27 and 29**, as the case may be.
- (4) The Registrar-General of Land must enter on all relevant certificates of title a memorandum to the effect that the land in those certificates of title is subject to **subsection (3)**.

Compare: 1990 No 105 s 25A(10), (11)

Subpart 3—Miscellaneous provisions

32 Treatment of assets on land

Assets that have been fixed to, or placed under or over, any land may vest in the Crown or the entity even though no interest in the land also vests in the Crown or in the entity (as the case may be) and in any such case—

- (a) the assets and the land are to be treated as separate assets each capable of separate ownership; and

- (b) for the purposes of this Act and any other enactment or rule of law, the assets are to be treated as personal property, and not as land or an interest in land, even though the assets are affixed to, or under or over, land.

Compare: 1990 No 105 s 6(8)

33 Certificate by entity to be evidence of certain facts

A certificate by the entity of any of the following matters is sufficient evidence of the matter certified unless the contrary is proved:

- (a) any specified land belonging to either the Crown or to the entity or forming part of a public reserve, or any specified fixed or movable property belonging to the entity, is part of a railway or the rail network:
- (b) a railway is open for traffic:
- (c) the specified distance between any 2 points on a railway or on the rail network.

Compare: 1981 No 119 s 117

34 Railway operators

The Governor-General may, by Order in Council, declare a body corporate to be a railway operator for the purposes of this Act or a provision of this Act.

35 Authority for railway operators

Railway operations carried on by a railway operator are deemed for the purposes of the law of nuisance to be authorised by Act of Parliament.

Compare: 1990 No 105 s 29

36 Closure of railway lines controlled by entity

- (1) No railway line that is for the time being under the control of the entity may be permanently closed without the prior written consent of the Minister.
- (2) The entity must notify the Minister if it intends to close a railway line to traffic.
- (3) **Subsections (1) and (2)** do not apply to any of the following:
 - (a) a siding:
 - (b) a crossing loop:
 - (c) a marshalling yard:

- (d) a railway line that—
 - (i) was closed to traffic before the commencement of this Act; or
 - (ii) is temporarily closed to traffic on or after the commencement of this Act for—
 - (A) rail safety purposes; or
 - (B) carrying out repairs.
- (4) If the Minister withholds consent under **subsection (1)**, the entity may enter into an agreement with the Minister with respect to the recovery of direct and indirect costs associated with retaining the railway line.

Regulation-making powers

37 Regulations

The Governor-General may, by Order in Council, make regulations providing for any other matters contemplated by this Act or necessary for its administration or necessary for giving it full effect.

Compare: 2004 No 115 s 173(1)(l)

Repeals, consequential amendments, revocations, and transitional and savings provisions

38 Repeals

The following Acts are repealed:

- (a) New Zealand Railways Corporation Act 1981:
- (b) New Zealand Railways Corporation Restructuring Act 1990.

39 Consequential amendments

The Acts specified in **Part 1 of Schedule 1** are amended in the manner set out in that Part.

40 Revocations

The regulations specified in **Part 2 of Schedule 1** are revoked.

41 Transitional and savings provisions

This Act is subject to the transitional and savings provisions set out in **Schedule 2**.

*Miscellaneous***42 Declaration**

It is hereby declared that section 11(1) of the Resource Management Act 1991 does not apply, and has never applied, to any partial surrender by New Zealand Rail Limited or its successors with respect to the lease dated 20 December 1991 between the Minister of Finance, the Minister for State-Owned Enterprises, and New Zealand Railways Corporation as lessors and New Zealand Rail Limited as lessee.

Schedule 1
Enactments amended and regulations revoked

ss 39, 40

Part 1
Enactments amended

Company Law Reform (Transitional Provisions) Act 1994
(1994 No 16)

Repeal so much of Schedule 1 as relates to the New Zealand Railways Corporation Restructuring Act 1990.

Conservation Act 1987 (1987 No 65)

Repeal section 24(9)(c) to (e) and substitute:

“(c) the grant of a lease or licence of any land under **section 10** of the **Rail Network Act 2005**:

“(d) the sale or other disposition of land held by the New Zealand Railways Corporation to any person.”

Crown Entities Act 2004 (2004 No 115)

Insert in Part 1 of Schedule 1, in its appropriate alphabetical order, the following item:

New Zealand Railways Corporation

Crown Minerals Act 1991 (1991 No 70)

Repeal the definition of **railway** in section 2(1) and substitute:

“**railway** has the same meaning as in section 2 of the Public Works Act 1981”.

Crown Organisations (Criminal Liability) Act 2002

(2002 No 37)

Repeal paragraph (d) of the definition of **government-related organisation** in section 4.

Electricity Act 1992 (1992 No 122)

Repeal so much of Schedule 4 as relates to the New Zealand Railways Corporation Act 1981.

Fencing Act 1978 (1978 No 50)

Repeal section 3(1)(c) and (ca) and substitute:

“(c) land held for the purposes of the rail network or railway purposes other than for the accommodation of employees by the Crown or the New Zealand Railways Corporation:

Part 1—*continued***Fencing Act 1978** (1978 No 50)—continued

“(ca) land held or occupied for the operation of a railway by a **railway operator** within the meaning of **section 4** of the **Rail Network Act 2005** other than land used principally for car parking, the storage of freight, materials, and ancillary equipment, or administration or residential purposes:”.

Finance Act 1990 (1990 No 20)

Repeal Part 2.

Holidays Act 2003 (2003 No 129)

Repeal so much of Schedule 2 as relates to the New Zealand Railways Corporation Restructuring Act 1990.

Human Rights Amendment Act 2001 (2001 No 96)

Repeal so much of Schedule 2 as relates to the New Zealand Railways Corporation Act 1981.

Land Transport Act 1998 (1998 No 110)

Repeal so much of Schedule 3 as relates to the New Zealand Railways Corporation Act 1981.

Land Transport Management Act 2003 (2003 No 118)

Repeal so much of Schedule 6 as relates to the New Zealand Railways Corporation Act 1981.

Local Government Act 2002 (2002 No 84)

Repeal so much of Schedule 16 as relates to the New Zealand Railways Corporation Act 1981 and to the New Zealand Railways Corporation Restructuring Act 1990.

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

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

“**railway operator** has the same meaning as in **section 4** of the **Rail Network Act 2005**”.

Maori Housing Amendment Act 1938 (1938 No 17)

Omit from section 4A(3) the expression “New Zealand Railways Corporation Act 1981” and substitute the expression “**Rail Network Act 2005**”.

Part 1—*continued***Minimum Wage Act 1983** (1983 No 115)

Omit from section 9(b) the words “the New Zealand Railways Corporation Act 1981,”.

Minors’ Contracts Act 1969 (1969 No 41)

Omit from section 5(4)(c) the words “section 82 of the New Zealand Railways Corporation Act 1981,”.

Ngai Tahu Claims Settlement Act 1998 (1998 No 97)

Repeal section 50(c)(ii) and substitute:

“(ii) **section 18(1)** of the **Rail Network Act 2005**; or”.

Repeal section 54(b) and substitute:

“(b) **section 18(1)** of the **Rail Network Act 2005**; or”.

Repeal section 463(b) and (e).

Ngati Ruanui Claims Settlement Act 2003 (2003 No 20)

Omit from section 17(2)(a) the expression “sections 8A to 8HJ” and substitute the expression “sections 8A to 8HI”.

Repeal section 17(2)(e).

Ngati Tama Claims Settlement Act 2003 (2003 No 126)

Omit from section 14(2)(a) the expression “sections 8A to 8HJ” and substitute the expression “sections 8A to 8HI”.

Repeal section 14(2)(e).

Ngati Turangitukua Claims Settlement Act 1999

(1999 No 118)

Repeal section 11(1)(b) and (e).

Pouakani Claims Settlement Act 2000 (2000 No 90)

Repeal section 14(2)(b) and (e).

Property Law Act 1952 (1952 No 51)

Repeal section 129B(13)(c) and substitute:

“(c) any railway line within the meaning of the **Rail Network Act 2005**.”

Public Finance Act 1989 (1989 No 44)

Repeal so much of Schedule 1 as relates to the New Zealand Railways Corporation Act 1981.

Omit from Schedule 4 the item “Every transferee company under the New Zealand Railways Corporation Restructuring Act 1990 in which the Crown holds 50% or more of the issued ordinary shares.”

Part 1—*continued***Public Finance Amendment Act 1992** (1992 No 142)

Repeal so much of Schedule 2 as relates to the New Zealand Railways Corporation Restructuring Act 1990.

Reserves Act 1977 (1977 No 66)

Omit from section 22(5) the expression “New Zealand Railways Corporation Act 1981” and substitute the expression “**Rail Network Act 2005**”.

Omit from section 113(6) the expression “New Zealand Railways Corporation Act 1981” and substitute the expression “**Rail Network Act 2005**”.

Omit from section 114(4) the expression “New Zealand Railways Corporation Act 1981” and substitute the expression “**Rail Network Act 2005**”.

Omit from section 115(5) the expression “New Zealand Railways Corporation Act 1981” and substitute the expression “**Rail Network Act 2005**”.

Resource Management Act 1991 (1991 No 69)

Repeal so much of Schedule 8 as relates to the New Zealand Railways Corporation Act 1981 and to the New Zealand Railways Corporation Restructuring Act 1990.

Sale of Liquor Act 1989 (1989 No 63)

Repeal section 233.

Repeal so much of Schedule 1 as relates to the New Zealand Railways Corporation Act 1981.

State-Owned Enterprises Act 1986 (1986 No 124)

Omit the item relating to The New Zealand Railways Corporation in Schedule 1.

Repeal so much of Schedule 3 as relates to the New Zealand Railways Corporation Act 1981.

Taxation Review Authorities Act 1994 (1994 No 165)

Omit from section 10 the words “the New Zealand Railways Corporation Act 1981,”.

Te Uri o Hau Claims Settlement Act 2002 (2002 No 36)

Omit from section 19(2)(a) the expression “sections 8A to 8HJ” and substitute the expression “sections 8A to 8HI”.

Repeal section 19(2)(e).

Part 1—*continued***Transport Services Licensing Act 1989** (1989 No 74)

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

“**rail service operator**—

“(a) means any holder of a rail service licence granted under section 8 of this Act; and

“(b) includes a railway operator within the meaning of **section 4** of the **Rail Network Act 2005**”.

Treaty of Waitangi Act 1975 (1975 No 114)

Repeal section 5(1)(ad).

Repeal section 8HJ and the heading above that section.

Waikato Raupatu Claims Settlement Act 1995 (1995 No 58)

Repeal section 11(1)(b)(ii) and substitute:

“(ii) **section 18(1)** of the **Rail Network Act 2005**; or”.

Repeal section 14(1)(c) and (d).

Part 2

Regulations revoked

Cityline (NZ) Limited Vesting Order 1992 (SR 1992/243)

New Zealand Rail Limited Vesting Order 1990 (SR 1990/313)

New Zealand Rail Limited Vesting Order 1991 (SR 1991/204)

New Zealand Railways Corporation (Capital of the Corporation) Order 1982 (SR 1982/150)

New Zealand Railways Corporation (General) Regulations 1982 (SR 1982/47)

New Zealand Railways Corporation (General) Regulations Application Order 1990 (SR 1990/314)

New Zealand Railways Corporation Restructuring Order 1993 (SR 1993/350)

New Zealand Railways Corporation (Staff) Regulations 1982 (SR 1982/46)

North City Bus Limited Vesting Order 1991 (SR 1991/105)

Speedlink Carriers Limited Vesting Order 1991 (SR 1991/71)

s 41

Schedule 2 Transitional and savings provisions

Members

1 Existing members exempt from qualification requirements

Every member of the entity in office immediately before the commencement of this clause may continue in office for the remainder of his or her current term of office as if section 30 of the Crown Entities Act 2004 had not been enacted.

Compare: 2004 No 115 s 182

2 Term of office of existing members

Every member of the entity in office immediately before the commencement of this clause may continue in office for the remainder of his or her current term of office as if section 32(1) of the Crown Entities Act 2004 had not been enacted.

Compare: 2004 No 115 s 183

3 Term of office of existing chairperson and deputy chairperson

Every chairperson and deputy chairperson of the entity in office immediately before the commencement of this clause is not affected by any change in the method of appointment of the person under this Act.

Compare: 2004 No 115 s 185

Delegations

4 Existing delegations

Delegations in effect under section 10 of the New Zealand Railways Corporation Act 1981 immediately before the commencement of this clause continue to have effect as delegations under section 73 of the Crown Entities Act 2004.

Compare: 2003 No 118 s 102

Directions

5 Existing ministerial directions

Ministerial directions in effect under section 10A of the New Zealand Railways Corporation Act 1981 immediately before the commencement of this clause continue to have effect as if

they were directions given under section 103 of the Crown Entities Act 2004.

Compare: 2003 No 118 s 101

Employees

6 Continuation of existing employment

A person who is, immediately before the commencement of this clause, an employee of the entity, does not cease to be an employee because of the coming into force of this Act.

Compare: 2004 No 115 s 187

Government Superannuation Fund

7 Existing rights under Government Superannuation Fund Act 1956 unaffected

This Act does not affect any entitlement of a member, employee, or office holder of the entity under the Government Superannuation Fund Act 1956.

Compare: 2004 No 115 s 191

Protection from liability

8 Existing compensation provision

- (1) This clause applies to a member of the entity who is entitled, immediately before the commencement of this clause under any contract or arrangement, to any compensation or other payment or benefit relating to his or her ceasing for any reason to hold office as a member.
- (2) The entitlement is not affected by the enactment of this Act.
- (3) However, the entitlement is cancelled on the date of reappointment of the member to the entity.

Compare: 2004 No 115 s 188

9 Existing protection from liability provisions

- (1) This clause applies to a member, office holder, or employee of the entity who is entitled, immediately before the commencement of this clause, to be indemnified by the entity in respect of any proceedings for any liability or costs arising from any act or omission as a member, office holder, or employee that occurred before that commencement.

- (2) This Act does not affect the member, office holder, or employee's entitlement to an indemnity if that entitlement is, in its overall effect, as favourable to that person as, or more favourable to that person than, the entitlement provided for in this Act.

Compare: 2004 No 115 s 189

10 Existing insurance cover

- (1) This clause applies to a member, office holder, or employee of the entity who has insurance cover immediately before the commencement of this clause in respect of any liability or costs arising from any act or omission as a member, office holder, or employee.
- (2) The insurance cover is not affected by the enactment of this Act.
- (3) However, if the insurance cover expires, or the member, office holder, or employee is reappointed or re-employed, the insurance can be renewed or effected only if permitted by this Act.

Compare: 2004 No 115 s 190

Planning

11 Existing statement of corporate intent

The statement of corporate intent for the entity that was in effect under the State-Owned Enterprises Act 1986 immediately before the commencement of this clause continues to have effect as if it had been a statement of intent prepared under section 140 of the Crown Entities Act 2004.

12 Existing capital works expenditure programme

A capital works expenditure programme in effect under section 40 of the New Zealand Railways Corporation Act 1981 immediately before the commencement of this clause continues to have effect as part of a rail network development plan under **section 12** of this Act.

Financial provisions

13 Capital works expenditure programme

Consents of the Minister of Railways and determinations of the Minister of Finance under section 40 of the New Zealand

Railways Corporation Act 1981 in effect immediately before the commencement of this clause continue to have effect.

14 Existing investments, borrowing, guarantees, indemnities, and derivatives

- (1) This clause applies to any investment, borrowing, guarantee, indemnity, or derivative transaction of the entity that existed immediately before the commencement of this clause that the entity would be restricted from having, acquiring, giving, or entering into under this Act.
- (2) The investment, borrowing, guarantee, indemnity, or derivative transaction is not affected by the enactment of this Act.
- (3) However, the terms of the investment, borrowing, guarantee, indemnity, or derivatives may be amended, or any options resulting from the investment, borrowing, or derivatives may be taken up, only if permitted by the Minister of Finance.
- (4) This clause does not apply to an indemnity in respect of a member, office holder, employee, or committee member of the entity.

Compare: 2004 No 115 s 197

15 Existing loan and swap obligations of entity guaranteed by the Crown

- (1) This clause applies to any loan or swap transaction raised or entered into by the entity under the New Zealand Railways Corporation Act 1981 (whether before or after the commencement of this clause)—
 - (a) that was guaranteed in accordance with section 10 of the Finance Act 1990; and
 - (b) for which that guarantee was in force immediately before the commencement of this clause.
- (2) The loan or swap transaction to which this clause applies is not affected by the enactment of this Act, and section 10 of the Finance Act 1990 continues to apply to the loan or swap transaction as if that section had not been repealed by **section 39** of this Act.

*Reporting obligations***16 Reporting obligations in respect of current financial year**

- (1) The reporting requirements and provisions that would have applied if this Act had not been enacted continue to apply, in respect of the financial year that is current when this clause comes into force, to the entity, rather than the reporting requirements and provisions enacted by this Act.
- (2) Therefore, for example, the entity must comply with the requirements relating to annual financial statements, annual reports, and audit that applied to the entity immediately before the commencement of this clause.

Compare: 2004 No 115 s 198

*General***17 Other existing things protected**

The commencement of this Act does not affect the completion of a matter or thing, or the bringing or completion of proceedings, that relate to an existing right, interest, title, immunity, or duty.

Compare: 2004 No 115 s 193

18 Orders in Council for existing railway operators

Every Order in Council declaring, under section 2(1) of the New Zealand Railways Corporation Restructuring Act 1990, a body corporate to be a railway operator for the purposes of that Act, and in force immediately before the commencement of this clause, continues in force as if the Order in Council had been made under **section 36** of this Act.

19 Savings for certain reclamation land

Despite anything in any other Act and despite their repeal by **section 38** of this Act, section 119 and Schedule 3 of the New Zealand Railways Corporation Act 1981 continue in force, as if—

- (a) they had not been repealed; and
- (b) the Harbours Act 1950 had not been repealed by section 10 of the Local Government Amendment Act (No 2) 1999.