

# Departmental Disclosure Statement

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Land Transport (Rail) Legislation Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place, a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material
- some of the key quality assurance products and processes used to develop and test the content of the Bill
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Transport.

The Ministry of Transport certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

25 November 2019

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## Part One: General Policy Statement

The Land Transport (Rail) Legislation Bill (the Bill) is an omnibus Bill introduced under Standing Order 263(a). That Standing Order provides that an omnibus Bill to amend more than one Act may be introduced if the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy.

### Objective

The objective of the Bill is to implement a new planning and funding framework for the heavy rail track network (the rail network) owned by KiwiRail. This new framework involves bringing planning and funding of the rail network under the land transport planning and funding regime set by the Land Transport Management Act 2003 (the LTMA).

### Approach

The Bill contains 2 parts. Part 1 amends the LTMA, while Part 2 amends the Land Transport Act 1998 (and, consequentially, the Legislation Act 2012).

#### *Part 1: new planning and funding framework for heavy rail under LTMA*

Part 1 of the Bill will bring planning and funding of the rail network under the land transport planning and funding regime set up in the LTMA. The LTMA currently deals with the planning and funding of public transport, state highways, road policing and local roads.

The existing planning and funding framework for the rail network creates uncertainty for the rail business as a result of annual budget processes, and separates road and rail network investment decisions. This has resulted in a short-term focus, rather than a long-term strategic planning focus for the rail network, an inability to consider road and rail investment together, and the absence of an integrated and coordinated land transport investment programme.

Under the proposed rail planning and funding framework, funding for the rail network will be channelled through the national land transport fund. A statutory rail network investment programme (an RNIP) will be established, which the Minister of Transport will need to approve in consultation with KiwiRail's shareholding Ministers. This will allow the rail network to be funded from the national land transport fund.

To promote integration of rail network investment and other land transport investment, the New Zealand Transport Agency (NZTA) will advise the Minister of Transport on how the RNIP fits with the overall land transport investment programme under the LTMA. This advice will be given as part of the RNIP approval processes. KiwiRail will be responsible for providing rail activities funded from the national land transport fund.

#### *Part 2: charges for use of rail network in Land Transport Act 1998*

Changes will also ensure track users can contribute to the costs of the rail network in a fair and transparent way. A minor amendment to the Land Transport Act 1998 will allow fees and charges established by regulations under Part 11 of that Act to become land transport revenue. This change will allow track user charges, set by regulation to recover

rail network costs from track users, to be paid into the national land transport fund. A consequential amendment to the Legislation Act 2012 is required to ensure any regulations that are made for this purpose will be classified as confirmable instruments under that Act.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b>	<b>YES</b>
Proactively Released Cabinet Paper: <i>The Future of Rail: New Planning and Funding Framework for Heavy Rail in New Zealand</i> <a href="https://www.transport.govt.nz/about/governance/cabinet-papers/">https://www.transport.govt.nz/about/governance/cabinet-papers/</a>	

### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>
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### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>YES</b>
The Ministry of Transport authored a Regulatory Impact Statement (RIS) which informed policy decisions that led to this Bill.  The RIS is titled <i>Impact Summary: New Planning and Funding Framework for Rail in New Zealand</i> . It was completed on 21 August 2019.  The RIA can be found on the Ministry of Transport's website, in the following link: <a href="https://www.transport.govt.nz/about/governance/ris-bccs/">https://www.transport.govt.nz/about/governance/ris-bccs/</a> .	

<b>2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?</b>	<b>YES</b>
The RIS was reviewed by a joint panel that included the Treasury Regulatory Impact Assessment Team and members of the Ministry of Transport Independent RIS Review Panel.	

<b>2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?</b>	<b>NO</b>
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### Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>
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<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>YES</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>NO</b>
The size of the potential costs and benefits for the policy within this Bill is available in the relevant regulatory impact assessment. The RIA has been published on the Ministry of Transport's website in the following link: <a href="https://www.transport.govt.nz/about/governance/ris-bccs/">https://www.transport.govt.nz/about/governance/ris-bccs/</a> .	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>NO</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>NO</b>

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

**3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?**

No specific issues were identified in the policy process that may have implications for New Zealand's international obligations.

### Consistency with the government's Treaty of Waitangi obligations

**3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?**

No specific issues were identified in the policy process that may have implications for the rights and interests of Māori protected by the Treaty of Waitangi.

### Consistency with the New Zealand Bill of Rights Act 1990

**3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?**

YES

The Ministry of Justice has provided advice to the Attorney-General that the Bill appears to be consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1980. The advice is available on the Ministry of Justice website:  
<https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports>

### Offences, penalties and court jurisdictions

**3.4. Does this Bill create, amend, or remove:**

(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?

NO

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

NO

### Privacy issues

**3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?**

NO

### External consultation

**3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?**

YES

#### *Engagement through the Future of Rail Review*

The Ministry of Transport worked closely with KiwiRail, the New Zealand Transport Agency and the Treasury on the Future of Rail Review, which informed the policy in the Bill.

The Future of Rail Review is governed by a Steering Group comprising the Ministry, the New Zealand Transport Agency, the Treasury, KiwiRail, the Rail and Maritime Transport Union of New Zealand, Auckland Transport, Greater Wellington Regional Council, and two independent members (a former long serving CEO of Freightways Ltd and a former long serving CEO of the New Zealand Transport Agency).

Supporting the Steering Group is a working group of officials comprising the Ministry, the New Zealand Transport Agency, the Treasury and KiwiRail. This has ensured that the views of these parties have been incorporated in the development of the options outlined in this Impact Statement.

Auckland Transport, Auckland Council and the Greater Wellington Regional Council has been engaged in the Future of Rail Review through regular workshops. Due to this engagement, changes were made to the proposed framework so that rail network investments in Auckland and Wellington are included in the development of the Regional Land Transport Plans for those areas. This will help to incentivise integrated planning in these areas between the local government operators of metro rail services and KiwiRail.

This approach to the Future of Rail Review has ensured that a range of external views have informed the development of the proposed planning and funding framework.

The State Services Commission, the Ministry for Business, Innovation and Employment, the Ministry for Culture & Heritage, the Ministry for Primary Industries, the New Zealand Police, WorkSafe New Zealand and Fire and Emergency New Zealand have been consulted.

The Department of the Prime Minister and Cabinet has been informed.

The Rail and Maritime Transport Union of New Zealand, Auckland Transport, Auckland Council and the Greater Wellington Regional Council have also been engaged in the Future of Rail Review which has informed the findings in this paper.

### ***Other relevant engagement***

#### *Productivity Commission*

The Productivity Commission has called for better integration of road and rail investment decisions in its 2018 Low-emissions Economy report. The Commission's 2012 International Freight Transport Services Inquiry report also called for more transparent decision making around major rail infrastructure projects<sup>1</sup>.

#### *Development of GPS 2018*

Feedback received on the draft Government Policy Statement on Land Transport 2018 (GPS), which provided funding for the rail network through the Transitional Rail Activity class, drew support from several stakeholders.

Although passenger rail was supported, there was a concern about the lack of support for freight rail.

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<sup>1</sup> NZ Productivity Commission (2012), International Freight Transport Services Inquiry, p 11

*“We support the inclusion of railways in the GPS and land transport planning framework. We have some concern that the transitional rail category only considers passenger rail, and doesn’t support the more efficient use of the network for freight.”*

There was also support for funding rail through the national land transport fund, with some submissions noting that rail had not received enough funding in the past. There was a desire, especially from local government, for a transparent long-term funding process for rail.

Some interest groups and private sector organisations did, however, have significant concerns about the rail network being funded from the national land transport fund. There was concern that allowing KiwiRail to access the national land transport fund would give it a competitive advantage against other transport providers in the commercial market. This was a particular concern as other transport providers contribute to the national land transport fund, whereas KiwiRail currently does not.

*“If KiwiRail is to receive funding from the NLTF (National Land Transport Fund) then surely a ‘rail user charge’, comparable to the mass/distance road user charge should be introduced to maintain the integrity of the NLTF and a semblance of mode neutrality based on true market-driven comparative advantages.”*

### Other testing of proposals

<b>3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill’s provisions are workable and complete?</b>	<b>YES</b>
KiwiRail and the New Zealand Transport Agency have been actively engaged during the development of these proposals, and have reviewed draft versions of the Bill.	

## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

<b>4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?</b>	<b>NO</b>
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### Charges in the nature of a tax

<b>4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	<b>YES</b>
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This Bill amends the regulation making power in section 168 of the Land Transport Act 1998, to allow any fees and charges made under those regulations to be treated as land transport revenue for the purposes of the LTMA. The amendment does not change the nature or scope of the regulation making power, but provides a means for revenue from those fees and charges to be channelled into the national land transport fund.

### Retrospective effect

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>NO</b>
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### Strict liability or reversal of the usual burden of proof for offences

<b>4.4. Does this Bill:</b>	
<b>(a) create or amend a strict or absolute liability offence?</b>	<b>NO</b>
<b>(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?</b>	<b>NO</b>

### Civil or criminal immunity

<b>4.5. Does this Bill create or amend a civil or criminal immunity for any person?</b>	<b>NO</b>
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### Significant decision-making powers

<b>4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?</b>	<b>NO</b>
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## Powers to make delegated legislation

<b>4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?</b>	<b>YES</b>
The Bill includes a definition of 'rail activity'. The definition may be extended or limited by regulations.	

<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>YES</b>
The Bill will amend the regulation making powers in Part 11 of the Land Transport Act 1998 to specify that regulations made under that Part may identify those fees and charges that are to be treated as land transport revenue for the purposes of the LTMA. This amendment is necessary to ensure that if fees and charges regulations are subsequently made to recover rail network costs from track users, those fees and charges are able to flow into the national land transport fund as land transport revenue. This will allow track users to contribute to the costs of the rail network in a transparent and fair way.	

## Any other unusual provisions or features

<b>4.9. Does this Bill contain any provisions (other than those noted above that are unusual or call for special comment?</b>	<b>NO</b>
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