

Regulatory Systems (Transport) Amendment Bill

Government Bill

As reported from the Transport and Infrastructure Committee

Commentary

Recommendation

The Transport and Infrastructure Committee has examined the Regulatory Systems (Transport) Amendment Bill and recommends that it be passed with the amendments shown.

Introduction

This bill aims to maintain the effectiveness and efficiency of the transport regulatory system, and reduce the chance of regulatory failure. It seeks to:

- address regulatory duplication, and gaps, errors, and inconsistencies within transport legislation
- ensure regulators can keep the transport regulatory system up to date and relevant
- remove unnecessary compliance costs from the transport system.

The bill has three main components, which would:

- enable transport instruments
- clarify and modernise existing exemption powers
- amend four minor regulatory stewardship matters.

This is an omnibus bill, which would mainly amend the Land Transport Act 1998, the Maritime Security Act 2004, the Maritime Transport Act 1994, and the Railways Act 2005. It would also make minor amendments to other legislation administered by the Ministry of Transport.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

Transport instruments

Transport instruments' relation to secondary legislation

The Regulations Review Committee wrote to us about some matters relating to regulations in the bill. It noted that proposed new section 168F of the Land Transport Act and section 452A of the Maritime Transport Act would authorise the relevant director or specific regulator to make a new form of secondary legislation known as a “transport instrument”. The committee expressed its concern that these sections are drafted in overly broad terms. It said the bill is not clear enough about the intended scope or application of transport instruments. It advised that regulation-making powers should specify the limits of the delegated legislative power as much as possible. This is to avoid broadly drafted powers being used in ways not intended by Parliament.

We agree with the Regulations Review Committee that the provisions relating to transport instruments should be clarified. We propose doing so by taking a different approach to that in the bill as introduced. New sections 168F(2) of the Land Transport Act and 452A(2) of the Maritime Transport Act provide that the relevant director or specific regulator may make transport instruments to define terms, prescribe matters, or make other provision in relation to any activity or thing. The design as introduced therefore gives transport instruments a separate existence to the secondary legislation to which they relate, and they can only do certain types of things. New sections 168F(3)(a) and 452A(3)(a) then provide that a transport instrument only has legal effect to the extent that secondary legislation refers to it. We consider that this design is overly complicated, and may cause issues like those highlighted by the Regulations Review Committee.

We recommend adding new section 168EA to the Land Transport Act to clarify how regulations or rules may provide for transport instruments. New section 168EA(1) would clarify that regulations or rules made under a land transport Act may provide for any matter that could be included in that regulation or rule to be dealt with in a transport instrument. Along with this, we recommend the addition of an appropriateness test in section 168EA(1), where the Minister (or specific regulator in the case of emergency rules) must be satisfied that the subject matter is appropriate to be included in a transport instrument. We recommend the addition of similar provisions through new section 452AA of the Maritime Transport Act to address transport instruments in relation to maritime Acts.

We believe these additions would clarify that each transport instrument is to be treated as being part of the secondary legislation that authorises the transport instrument being made. This means that the maker of secondary legislation would have control over transport instruments. The Regulations Review Committee would still be able to scrutinise the secondary legislation that empowers the instrument, and the

instrument itself. We believe these amendments provide limitations on the effects of transport instruments while allowing flexibility for them to be used in different situations.

Clarifying who can make transport instruments

The bill as introduced provides that the Agency and the Director of Land Transport, and Maritime New Zealand (MNZ) and the Director of MNZ may make transport instruments. Section 168F(6) of the Land Transport Act provides for the Agency to delegate this power to the Secretary for Transport.

We consider that in some circumstances the Secretary has similar directive or rule-making powers to the regulators (the Agency or MNZ). We recommend amending clause 8 of the bill to provide that the Agency or Secretary may make transport instruments. We also recommend adding that the Secretary must not delegate the power to make, amend, or revoke a transport instrument.

Similarly, we recommend amending clause 32 to clarify who may make transport instruments for the purposes of a maritime Act. We recommend amending section 452A to provide that a “specified person” may make transport instruments. We also recommend the addition of section 452A(8) to stipulate that “specified person” means 1 or more of the following:

- the Authority
- the Director
- the Secretary
- the Crown entity appointed as the Designated Authority under section 7 of the Maritime Security Act.

Right of appeal should not apply to class exemptions

Section 106(1) of the Land Transport Act gives a right of appeal to the District Court to anyone who is dissatisfied with a decision made under the Act regarding a land transport document that they hold or seek. Proposed new sections 168D and 168E of the Land Transport Act (clause 8 of the bill) would clarify how the Agency can grant class and other exemptions from rules and regulations.¹ However, we note the high cost of challenging an exemption in the District Court.

The bill provides that class exemptions would be disallowable instruments, and may be scrutinised by the Regulations Review Committee. Decisions about the creation of class exemptions are also subject to judicial review. As these review processes are already in place we consider that a right of appeal (to the District Court, under section 106) for class exemptions is not appropriate.

¹ “Other exemptions” relate only to named or specified people or things. Decisions relating to these exemptions would still be subject to the right of appeal to the District Court.

We recommend the addition of clause 5A to the bill. This would replace section 106(5) to specify that the right of appeal in section 106(1) would not apply to any decision made in relation to a class exemption.

We also received advice from the Regulations Review Committee on new sections 168D and 168E, and other clauses in the bill which apply similar new sections in other Acts. It expressed concern that these clauses state that exemptions would be permanent if a term was not specified. The committee noted that it usually recommends that class exemptions be temporary, preferably expiring after five years. This allows for exemptions to be regularly reviewed to make sure the reasons for them are still valid.

We considered this advice, but note that exemptions in the transport sector are often provided to vehicles or vessels when they enter the fleet. These exemptions should last as long as the vehicle or vessel's life. We believe reviewing all transport sector exemptions every five years would be unnecessary, and we recommend only minor changes to these clauses.

Commencement date

Clause 2 of the bill sets its commencement date as 1 July 2020. As this date has now passed, we recommend amending clause 2(1) to change the commencement date to 14 days after the bill receives Royal assent.

We also note that references to the Director of Land Transport would need to be written as references to the Agency until provisions about the Director commence through the Land Transport (NZTA) Legislation Amendment Bill. We recommend the addition of clause 2(2) to specify that sections that switch references from the Agency to the Director, or add in references to the Director, (section 47 and Schedule 5) would come into force on the earlier of 1 April 2021 or a date appointed by the Governor-General by Order in Council. This would then align with the relevant commencement provision in the Land Transport (NZTA) Legislation Amendment Bill.

Appendix

Committee process

The Regulatory Systems (Transport) Amendment Bill was referred to the committee on 19 March 2020. The closing date for submissions was 1 June 2020. We received and considered nine submissions from interested groups and individuals. We heard oral evidence from one submitter.

We received advice from the Ministry of Transport. The Regulations Review Committee reported to us on the powers contained in clauses relating to transport instruments and exemptions.

Committee membership

Darroch Ball (Chairperson)

Chris Bishop

Paul Eagle

Raymond Huo

Matt King

Jan Logie

Jami-Lee Ross

Jamie Strange

Tim van de Molen

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Phil Twyford

Regulatory Systems (Transport) Amendment Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Regulatory Systems (Transport) Amendment Act **2020**.

2 Commencement

- (1) This Act comes into force on **1 July 2020** the 14th day after the date on which it receives the Royal assent, except as provided in **subsection (2)**. 5
- (2) **Section 47 and Schedule 5** come into force on the earlier of—
- (a) **1 April 2021**; and
 - (b) a date appointed by the Governor-General by Order in Council.

Part 1

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Amendments to Land Transport Act 1998

3 Amendments to Land Transport Act 1998

This Part amends the Land Transport Act 1998.

4 Section 2 amended (Interpretation)

In section 2(1), insert in its ~~their~~ appropriate alphabetical order:

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class exemption means an exemption granted under **section 168D(1)(b)**

transport instrument means an instrument made under **section 168F**

5 Section 30ZA amended (Agency may grant exemptions or approve alternative fatigue management schemes)

In section 30ZA(1), replace “section 166(2)” with “**168D(2)**”.

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5A Section 106 amended (General right of appeal to District Court)

Replace section 106(5) with:

- (5) Subsection (1) does not apply—
- (a) if a right of appeal to the District Court against the decision concerned is conferred by any other section of this Act:
 - (b) to any decision made in relation to a class exemption.

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6 Section 123 amended (Enforcement officer may seize and impound vehicle for up to 7 days in relation to certain offences)

- (1) In the heading to section 123, replace “7 days” with “10 working days”.
- (2) In section 123(1) and (3), replace “7 days” with “10 working days”.

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7 Sections 166 and 166A repealed

Repeal sections 166 and 166A.

8 New sections 168D to 168I and cross-headings inserted

After section 168C, insert:

Agency Director may grant exemptions from rules and regulations

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168D Agency Director may grant exemptions

- (1) The Agency Director may, if the Agency Director thinks it appropriate,—
 - (a) exempt 1 or more named or specified a persons, vehicles, vehicle components, rail vehicles, or land transport-related services, or other things from 1 or more a specified requirements in a regulation or rule made under this Part; or
 - (b) exempt any class of person, vehicle, vehicle component, rail vehicle, or land transport-related service, or other thing from a 1 or more specified requirements in a regulation or rule made under this Part.
- (2) The Agency Director must not grant an exemption under **subsection (1)** unless satisfied that—
 - (a) one of the following grounds applies:
 - (i) the requirement will be substantially complied with and further compliance is unnecessary:
 - (ii) the manner in which the requirement will be fulfilled is as effective as or more effective than actual compliance with the requirement:
 - (iii) the requirement is clearly unreasonable or inappropriate:
 - (iv) events have occurred that make the requirement unnecessary or inappropriate; and

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- (b) any risk of harm to the public or the environment will not be significantly increased by granting the exemption.
- (3) The Agency Director may—
- (a) grant an exemption on any terms and conditions that the Agency Director thinks fit:
 - (b) amend or revoke an exemption:
 - (c) grant an exemption ~~permanently~~ for an indefinite or for a limited period:
 - (d) replace an exemption either before or when it expires.
- (4) An exemption takes effect from the date specified in the exemption (which, for a class exemption ~~of general application~~, must not be a date earlier than the date on which the exemption is notified in the *Gazette* in accordance with **section 168E(3)(a)**).
- (5) An exemption granted for a limited period expires (unless it is sooner replaced or revoked) on the date specified in the exemption.
- (6) If the term of an exemption is not specified in the exemption, it has ~~permanent effect~~ for an indefinite period (or until it is replaced or revoked).
- (7) The breach of a term or condition of an exemption ~~granted under subsection (4)~~ is a breach of the relevant provision in the regulation or rule to which the exemption relates (unless the terms of the exemption provide otherwise).
- (8) This section does not apply if a regulation or rule specifically provides that no exemptions from its requirements may be granted.
- (9) This section does not limit or affect any other power of exemption conferred on any person under this Act or any other land transport Act.
- 168E Status and publication of exemptions**
- (1) A class exemption ~~that is of general application~~ is a legislative instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.
- (2) Any other exemption is neither a legislative instrument nor a disallowable instrument for the purposes of the Legislation Act 2012 and does not have to be presented to the House of Representatives under section 41 of that Act.
- (3) As soon as practicable after granting a class exemption ~~that is of general application is granted, the Agency~~ it must—
- (a) ~~be notified in~~ notify the exemption in the *Gazette* (and include the text of the exemption); and
 - (b) ~~be published~~ publish the exemption on the Agency's Internet site along with the Agency's Director's grounds (under **section 168D(2)(a)**) for granting the exemption.

- (4) The Agency must notify any ~~Any other exemption must be notified in the Gazette no later than 3 months after the date on which the Agency grants the exemption its date of issue.~~ Such a notice—
- (a) must include the nature of the exemption and the Agency's Director's grounds under **section 168D(2)(a)** for granting it; but
 - (b) need not include the text of the exemption.

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Transport instruments

168EA Regulations or rules may provide for transport instruments

- (1) A regulation or rule made under a land transport Act may provide for any matter that could be included in that regulation or rule to be dealt with in a transport instrument, but must not do so unless,—
- (a) in the case of the Governor-General making the regulation or rule, the Minister has advised the Governor-General that the Minister is satisfied that the subject matter is appropriate to be in a transport instrument rather than in the regulation or rule itself; or
 - (b) in the case of the Minister making the rule, the Minister is satisfied that the subject matter is appropriate to be in a transport instrument rather than in the rule itself; or
 - (c) in the case of the Agency making the rule, the Agency is satisfied that the subject matter is appropriate to be in a transport instrument rather than in the rule itself.
- (2) A regulation or rule that provides for a transport instrument must specify who may make the instrument (the Agency or the Secretary).
- (3) A regulation or rule that provides for a transport instrument may—
- (a) provide for a particular transport instrument as amended or replaced from time to time;
 - (b) provide for any transport instrument that may be made for the purposes of that regulation or rule (even if the instrument has not been made at the time the regulation or rule is made);
 - (c) provide for any requirements in relation to the instrument or its creation.
- (4) A transport instrument provided for in a regulation or rule is part of that regulation or rule.
- (5) To avoid doubt,—
- (a) a transport instrument has effect only to the extent that a regulation or rule made under a land transport Act refers to it; and
 - (b) a breach of a transport instrument is a breach of the regulation or rule that provides for the instrument.

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168F Agency or Secretary Director may make transport instruments

- (1) For the purposes of a land transport Act, the Agency or the Director may—
- (a) ~~make a transport instrument to do any thing referred to in **subsection (2)**; and~~
 - (b) ~~amend or revoke a transport instrument made under **paragraph (a)**.~~ 5
- (1) For the purposes of **section 168EA**, the Agency or the Secretary may make a transport instrument.
- (2) A transport instrument may define terms, prescribe matters, or make other provision in relation to any activity or thing, including (without limitation) by listing standards, controlling activities, setting requirements, procedures, or means of compliance, setting competency requirements, or providing for exceptions. 10
- (3) A transport instrument has effect only to the extent that—
- (a) ~~secondary legislation made under the land transport Act refers to it; and~~
 - (b) ~~the secondary legislation specifies who may make the instrument (the Agency or the Director, or both); and~~ 15
 - (c) ~~the instrument has been made by that person (having satisfied the procedural requirements of **section 168H(1)**); and~~
 - (d) ~~any requirements in relation to the instrument or its creation that are specified in the secondary legislation have been satisfied.~~
- (4) ~~A transport instrument made under this section is treated as part of the secondary legislation in which it is referred to.~~ 20
- (5) For the purposes of **subsection (3)(a)**, secondary legislation may—
- (a) ~~refer to a particular transport instrument as amended or replaced from time to time;~~
 - (b) ~~refer to any transport instrument that may be made for the purposes of that secondary legislation (even if the instrument has not been made at the time the secondary legislation is made).~~ 25
- (6) The Agency must not delegate the power to make, amend, or revoke a transport instrument to any person other than the Secretary.
- (6A) The Secretary must not delegate the power to make, amend, or revoke a transport instrument to any person. 30
- (7) ~~The Director must not delegate the power to make, amend, or revoke a transport instrument to any person.~~
- (8) ~~In this section, **secondary legislation** has the meaning given by section 5(1) of the Legislation Act 2019.~~ 35

168G Secondary legislation may provide for matters to be prescribed in transport instrument

- (1) ~~Secondary legislation made under a land transport Act may provide for any kind of activity or thing referred to in **section 168F(2)** to be prescribed in a transport instrument.~~ 5
- (2) **Subsection (1)** does not limit any other power in a land transport Act to make secondary legislation.

168H Procedures relating to transport instruments

- (1) The Agency or the Secretary Director must not make, amend, or revoke a transport instrument unless satisfied that all persons and organisations that the Agency or the Secretary Director thinks appropriate have been consulted, having regard to the subject matter of the proposed instrument, amendment, or revocation. 10
- (2) The Agency or the Secretary Director (as the case may be) may approve an amendment to a transport instrument without complying with **subsection (1)** if satisfied that the amendment is to correct an error, for example, a grammatical or spelling error, or an error in numbering or cross-referencing. 15
- (3) A transport instrument is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act. 20
- (4) The Agency or the Secretary Director (as the case may be) must, as soon as practicable after making, amending, or revoking a transport instrument—~~is made,—~~ 25
- (a) notify the transport instrument, amendment, or revocation in the *Gazette* (but need not incorporate the text of the instrument, amendment, or revocation); and 25
 - (b) ensure that a copy of the transport instrument, amendment, or revocation is— 30
 - (i) published on the Agency's Internet site; and
 - (ii) available for purchase in hard copy at a reasonable charge.
- (5) A failure to comply with **subsection (4)** does not affect the validity of the regulation or rule secondary legislation that ~~it~~ the transport instrument is ~~treated as being part of~~. 35

168I Incorporation of material in transport instruments

- (~~Section 165 (which provides for the incorporation of material by reference) applies to transport instruments as if transport instruments were rules.~~ 35
- (1) Section 165 (which provides for the incorporation of material by reference) applies to transport instruments as if—
- (a) transport instruments were rules; and

- (b) references in that section to the person making the rule were references to the person making the transport instrument.
- (2) To avoid doubt, any material incorporated by reference in a transport instrument is to be treated for all purposes as part of the regulation or rule that provides for the instrument.

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9 Section 222 amended (Saving of certain land transport documents)

Repeal section 222(2).

10 Schedule 1 amended

In Schedule 1, after clause ~~10-14~~, insert the **Part 2-3** set out in **Schedule 1** of this Act.

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Part 2

Amendments to Land Transport Management Act 2003

11 Amendment to Land Transport Management Act 2003

This Part amends the Land Transport Management Act 2003.

12 New section 7C inserted (Act is land transport Act)

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After section 7B, insert:

7C Act is land transport Act

- (1) ~~This Act is defined as a land transport Act under section 2(1) of the Land Transport Act 1998.~~
- (2) This has the effect that—
- (a) ~~transport instruments may be made for the purposes of this Act in accordance with **section 168F** of that Act; and~~
- (b) ~~enforceable undertakings may be given for the purposes of this Act in accordance with **section 112A** of that Act; and~~
- (c) ~~a land transport record may be required to be created for the purposes of this Act in accordance with **section 200B** of that Act.~~
- (3) ~~This section is intended as a guide only and is not an exhaustive statement as to the effects of this Act being defined as a land transport Act under that Act.~~

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13 Section 98 amended (Agency's board)

In section 98(1), replace “6, but no more than 8” with “7, but no more than 9”.

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Part 3

Amendments to Maritime Security Act 2004

14 Amendments to Maritime Security Act 2004

This Part amends the Maritime Security Act 2004.

15 New sections 6A and 6B inserted

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After section 6, insert:

6A Act is maritime ~~marine transport~~ Act

(1) This Act is ~~defined as a~~ maritime ~~marine transport~~ Act under section 2(1) of the Maritime Transport Act 1994.

(2) This has the effect that transport instruments may be made for the purposes of this Act under in accordance with **section 452A** of that Act. 10

(3) This section is intended as a guide only and is not an exhaustive statement as to the effects of this Act being ~~defined as a~~ maritime ~~marine transport~~ Act under that Act.

6B Transitional, savings, and related provisions

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The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.

16 Section 76 amended (Regulations)

(1) In section 76(2)(a), replace “\$5,000” with “\$10,000”.

(2) In section 76(2)(b), replace “\$30,000” with “\$50,000”. 20

17 Section 77 replaced (Exemptions from regulations)

Replace section 77 with:

77 Exemptions from regulations

(1) The chief executive may, if the chief executive thinks it appropriate,—

(a) exempt 1 or more named or specified a persons, ships, or port facility facilities, or other things from 1 or more a specified requirements in a regulation made under this Act; or 25

(b) exempt any class of person, ship, or port facility, or other thing from 1 or more a specified requirements in a regulation made under this Act.

(2) ~~Sections 47 and 47A of the Maritime Transport Act 1994 apply with any necessary modifications to exemptions granted under this section.~~ 30

(2) Sections 47 (except subsection (1) and (2)(c)) and 47A of the Maritime Transport Act 1994 apply with any necessary modifications to exemptions granted under subsection (1), but, to avoid doubt, the definition of class exemption in section 47(10) of the Maritime Transport Act 1994 must be 35

read as referring to a class exemption granted under **subsection (1)(b)** of this section.

18 Section 81 amended (Consequential amendments)

In section 81(9) and (10), replace “the Schedule” with “Schedule 1”.

19 Schedule amended

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In the Schedule heading, after “**Schedule**”, insert “**1**”.

20 New Schedule 1AA inserted

Insert the **Schedule 1AA** set out in **Schedule 2** as the first schedule to appear after the last section of the Maritime Security Act 2004.

Part 4

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Amendments to Maritime Transport Act 1994

21 Amendments to Maritime Transport Act 1994

This Part amends the Maritime Transport Act 1994.

22 Section 2 amended (Interpretation)

In section 2(1), insert in their appropriate alphabetical order:

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~~maritime~~ marine transport Act means—

- (a) the Maritime Security Act 2004; and
- (b) the Maritime Transport Act 1994 (this Act); and
- (c) the Port Companies Act 1988; and
- (d) the Shipping Act 1987; and
- (e) the Ship Registration Act 1992; and
- (f) the Submarine Cables and Pipelines Protection Act 1996

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transport instrument means an instrument made under **section 452A**

23 Section 33B amended (Interpretation)

In section 33B, replace the definition of **regional council** with:

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regional council means—

- (a) a regional council within the meaning of section 5(1) of the Local Government Act 2002; and
- (b) a unitary authority within the meaning of section 5(1) of that Act; and
- (c) the Chatham Islands Council

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24 Section 47 replaced (Exemption)

Replace section 47 with:

47 Director may grant exemptions

- (1) The Director may, if the Director thinks it appropriate,—
- (a) exempt 1 or more named or specified a persons, ships, ~~or~~ maritime products, or other things from 1 or more a-specified requirements in a maritime rule; or 5
 - (b) exempt any class of person, ship, ~~or~~ maritime product, or other thing from 1 or more a specified requirements in a maritime rule.
- (2) The Director must not grant an exemption under **subsection (1)** unless satisfied that—
- (a) granting the exemption will not breach New Zealand's obligations under any convention; and 10
 - (b) one of the following applies:
 - (i) the requirement has been substantially complied with and further compliance is unnecessary:
 - (ii) the manner in which the requirement has been fulfilled is as effective or more effective than actual compliance with the requirement: 15
 - (iii) the requirement is clearly unreasonable or inappropriate in this particular case:
 - (iv) events have occurred that make the requirement unnecessary or inappropriate in this particular case; and 20
 - (c) the risk of harm to the marine environment will not be significantly increased by granting the exemption; and
 - (d) the risk to safety will not be significantly increased by granting the exemption. 25
- (3) The Director may—
- (a) grant an exemption on any terms and conditions that the Director thinks fit:
 - (b) amend or revoke an exemption:
 - (c) grant an exemption ~~permanently~~ for an indefinite or ~~for a~~ limited period: 30
 - (d) replace an exemption either before or when it expires.
- (4) An exemption takes effect from the date specified in the exemption (which, for a class exemption ~~of general application~~, must not be a date earlier than the date on which the exemption is notified in the *Gazette* in accordance with **section 47A(3)(a)**). 35
- (5) An exemption granted for a limited period expires (unless it is sooner replaced or revoked) on the date specified in the exemption.
- (6) If the term of an exemption is not specified in the exemption, it has ~~permanent~~ effect for an indefinite period (or until it is replaced or revoked).

- (7) The breach of a term or condition of an exemption granted under **subsection (1)** is a breach of the relevant provision in the rule to which the exemption relates (unless the terms of the exemption provide otherwise).
- (8) This section does not apply if a rule specifically provides that no exemptions from its requirements may be granted. 5
- (9) This section does not limit or affect any other power of exemption conferred on any person under this Act or any other maritime ~~marine transport~~ Act.
- (10) In this section and **section 47A**, **class exemption** means an exemption granted under **subsection (1)(b)**.
- 47A Status and publication of exemptions** 10
- (1) A class exemption ~~that is of general application~~ is a legislative instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.
- (2) Any other exemption is neither a legislative instrument nor a disallowable instrument for the purposes of the Legislation Act 2012 and does not have to be presented to the House of Representatives under section 41 of that Act. 15
- (3) As soon as practicable after granting a class exemption ~~that is of general application is granted, it, the Director must—~~
- (a) ~~be notified in~~ notify the exemption in the *Gazette* (and include the text of the exemption); and 20
- (b) ~~be published~~ publish the exemption on the Authority's Internet site along with the Director's grounds (under **section 47(2)(b)**) for granting the exemption.
- (4) The Director must notify any ~~Any other exemption must be notified in the *Gazette* no later than 3 months after the date on which the Director grants the exemption its date of issue. Such a notice—~~ 25
- (a) must include the nature of the exemption and the Director's grounds under **section 47(2)(b)** for granting it; but
- (b) need not include the text of the exemption.
- 25 Section 201 amended (Regulations)** 30
- (1) In section 201(1)(c)(i), replace "\$5,000" with "\$10,000".
- (2) In section 201(1)(c)(ii), replace "\$30,000" with "50,000".
- 25A Section 206 repealed (Dispensing powers of Director)**
- Repeal section 206.
- 26 Section 394 amended (Regulations)** 35
- (1) In section 394(1)(f)(i), replace "\$5,000" with "\$10,000".
- (2) In section 394(1)(f)(ii), replace "\$30,000" with "50,000".

- (3) In section 394(1)(h)(i), replace “\$5,000” with “\$10,000”.
- (4) In section 394(1)(h)(ii), replace “\$30,000” with “50,000”.

27 Section 395 replaced (Exemptions)

Replace section 395 with:

395 Exemptions	5
(1) The Director may, if the Director thinks it appropriate,—	
(a) exempt <u>1 or more named or specified</u> a persons, ships, marine protection products, offshore installations, pipelines, reception facility facilities, or any items of real or personal property, or other things from 1 or more a specified requirements in a marine protection rule; or	10
(b) exempt any class of person, ship, marine protection product, offshore installation, pipeline, reception facility, or real or personal property, <u>or other thing from 1 or more a</u> specified requirements in a marine protection rule.	
(2) The Director must not grant an exemption under subsection (1) unless satisfied that—	15
(a) granting the exemption will not breach New Zealand’s obligations under any convention; and	
(b) one of the following applies:	
(i) the requirement has been substantially complied with and further compliance is unnecessary:	20
(ii) the manner in which the requirement has been fulfilled is as effective or more effective than actual compliance with the requirement:	
(iii) the requirement is clearly unreasonable or inappropriate in this particular case:	25
(iv) events have occurred that make the requirement unnecessary or inappropriate in this particular case; and	
(c) the risk to safety will not be significantly increased by granting the exemption; and	30
(d) the granting of the exemption will not significantly increase the risk of harm,—	
(i) for a marine protection rule on ballast water, to the environment, human health, property, or resources; or	
(ii) for any other marine protection rule, to the marine environment.	35
(3) Sections 47 and 47A apply with any necessary modifications to exemptions granted under this section.	

(3)	Sections 47(3) to (10) and 47A apply with any necessary modifications to exemptions granted under subsection (1) , but, to avoid doubt, the definition of class exemption in section 47(10) must be read as referring to a class exemption granted under subsection (1)(b) .	
28	Section 429A amended (Membership of Authority) In section 429A(1), replace “5 members” with “at least 5, but no more than 7, members”.	5
29	Section 443 amended (Delegation of Director’s functions or powers to employees of Authority) After section 443(4)(b), insert: (c) the power under section 452A to make, amend, or revoke a transport instrument (as prohibited by subsection (6) of that section).	10
30	Section 444 amended (Delegation of Director’s functions or powers to persons outside Authority) After section 444(2)(e), insert: (f) the power under section 452A to make, amend, or revoke a transport instrument (as prohibited by subsection (6) of that section).	15
31	Section 451 amended (Further general provisions in respect of rules) In section 451(4)(b), replace “Agency” with “Authority”.	
32	New sections 452AA to 452D and cross-heading inserted After section 452, insert: <i>Transport instruments</i> 452AA Regulations or rules may provide for transport instruments (1) <u>A regulation or rule made under a maritime Act may provide for any matter that could be included in that regulation or rule to be dealt with in a transport instrument, but must not do so unless,—</u> (a) <u>in the case of the Governor-General making the regulation or rule, the Minister has advised the Governor-General that the Minister is satisfied that the subject matter is appropriate to be in a transport instrument rather than in the regulation or rule itself; or</u> (b) <u>in the case of the Minister making the rule, the Minister is satisfied that the subject matter is appropriate to be in a transport instrument rather than in the rule itself; or</u> (c) <u>in the case of the Director making the rule, the Director is satisfied that the subject matter is appropriate to be in a transport instrument rather than in the rule itself.</u>	20
		25
		30
		35

- (2) A regulation or rule that provides for a transport instrument must specify which of the persons listed in **section 452A(8)** may make the instrument.
- (3) A regulation or rule that provides for a transport instrument may—
- (a) provide for a particular transport instrument as amended or replaced from time to time; 5
 - (b) provide for any transport instrument that may be made for the purposes of that regulation or rule (even if the instrument has not been made at the time the regulation or rule is made);
 - (c) provide for any requirements in relation to the instrument or its creation.
- (4) A transport instrument provided for in a regulation or rule is part of that regulation or rule. 10
- (5) To avoid doubt,—
- (a) a transport instrument has effect only to the extent that a regulation or rule made under a maritime Act refers to it; and
 - (b) a breach of a transport instrument is a breach of the regulation or rule that provides for the instrument. 15

452A Authority or Director Specified person may make transport instruments

- (1) ~~For the purposes of a marine transport Act, the Authority or the Director may—~~
- ~~(a) make a transport instrument to do any thing referred to in **subsection (2)**; and~~ 20
 - ~~(b) amend or revoke a transport instrument made under **paragraph (a)**.~~
- (1) For the purposes of a maritime Act, a specified person may make a transport instrument.
- (2) A transport instrument may define terms, prescribe matters, or make other provision in relation to any activity or thing, including (without limitation) by listing standards, controlling activities, setting requirements, procedures, or means of compliance, setting competency requirements, or providing for exceptions. 25
- (3) A transport instrument has effect only to the extent that —
- (a) ~~secondary legislation made under the marine transport Act refers to it; and~~ 30
 - (b) ~~the secondary legislation specifies who may make the instrument (the Authority or the Director, or both); and~~
 - (c) ~~the instrument has been made by that person (having satisfied the procedural requirements of **section 452C(1)**); and~~ 35
 - (d) any requirements in relation to the instrument or its creation that are specified in secondary legislation have been satisfied.

- (4) ~~A transport instrument made under this section is treated as part of the secondary legislation in which it is referred to.~~
- (5) For the purposes of ~~subsection (3)(a)~~, secondary legislation may—
- (a) ~~refer to a particular transport instrument as amended or replaced from time to time:~~
 - (b) ~~refer to any transport instrument that may be made for the purposes of secondary legislation (even if the instrument has not been made at the time the secondary legislation is made).~~
- (6) ~~A specified person~~ The Authority or the Director must not delegate the power to make, amend, or revoke a transport instrument.
- (7) ~~In this section, **secondary legislation** has the meaning given by section 5(1) of the Legislation Act 2019.~~
- (8) ~~In this section and **section 452C**, **specified person** means 1 or more of the following:~~
- (a) ~~the Authority:~~
 - (b) ~~the Director:~~
 - (c) ~~the Secretary:~~
 - (d) ~~the Crown entity appointed as the Designated Authority under section 7 of the Maritime Security Act 2004.~~
- 452B Secondary legislation may provide for matters to be prescribed in transport instrument**
- (1) ~~Secondary legislation made under a marine transport Act may provide for any kind of activity or thing referred to in **section 452A(2)** to be prescribed in a transport instrument.~~
- (2) ~~**Subsection (1)** does not limit any other power in a marine transport Act to make secondary legislation.~~
- 452C Procedures relating to transport instruments**
- (1) ~~The specified person Authority or the Director must not make, amend, or revoke a transport instrument unless satisfied that all persons and organisations that the specified person Authority or the Director thinks appropriate have been consulted, having regard to the subject matter of the proposed instrument, amendment, or revocation.~~
- (2) ~~The specified person Authority or the Director (as the case may be) may approve an amendment to a transport instrument without complying with **subsection (1)** if satisfied that the amendment is to correct an error, for example, a grammatical or spelling error, or an error in numbering or cross-referencing.~~
- (3) A transport instrument is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

- (4) The ~~specified person Authority or the Director (as the case may be)~~ must, as soon as practicable after making, amending, or revoking a transport instrument is made,—
- (a) notify the ~~transport instrument, amendment, or revocation~~ in the *Gazette* (but need not incorporate the text of the instrument, ~~amendment, or revocation~~); and 5
 - (b) ensure that a copy of the ~~transport instrument, amendment, or revocation~~ is—
 - (i) published on the Authority's Internet site; and
 - (ii) available for purchase in hard copy at a reasonable charge. 10
- (5) A failure to comply with **subsection (4)** does not affect the validity of the ~~regulation or rule secondary legislation that it the transport instrument is treated as being part of.~~
- 452D Incorporation of material in transport instruments**
- ~~Section 452 (which provides for the incorporation of material by reference) applies to transport instruments as if transport instruments were rules.~~ 15
- (1) ~~Section 452 (which provides for the incorporation of material by reference) applies to transport instruments as if—~~
 - (a) ~~transport instruments were rules; and~~
 - (b) ~~references in that section to the person making the rule were references to the person making the transport instrument.~~ 20
 - (2) ~~To avoid doubt, any material incorporated by reference in a transport instrument is to be treated for all purposes as part of the regulation or rule that provides for the instrument.~~
- 33 Schedule 1AA amended** 25
- In Schedule 1AA, after clause 3 5, insert the **Part 2 3** set out in **Schedule 3** of this Act.

Part 5

Amendments to Railways Act 2005

- 34 Amendments to Railways Act 2005** 30
- This Part amends the Railways Act 2005.
- 35 Section 4 amended (Interpretation)**
- In section 4(1), insert in its appropriate alphabetical order:
- Director** has the meaning given in section 2(1) of the Land Transport Act 1998

36 New sections 6A and 6B inserted (Act is land transport Act)

After section 6, insert:

6A Act is land transport Act

- (1) This Act is ~~defined as a~~ land transport Act under section 2(1) of the Land Transport Act 1998. 5
- (2) This has the effect that—
 - (a) transport instruments may be made for the purposes of this Act under ~~in accordance with~~ **section 168DF** of that Act; and
 - (b) enforceable undertakings may be given for the purposes of this Act in accordance with section 112A ~~section 112A~~ of that Act; and 10
 - (c) a land transport record may be required to be created for the purposes of this Act in accordance with section 200B ~~section 200B~~ of that Act.
- (3) This section is intended as a guide only and is not an exhaustive statement as to the effects of this Act being ~~defined as a~~ land transport Act under that Act.

6B Transitional, savings, and related provisions 15

The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.

37 Section 57 amended (General provisions concerning making of rules)

- (1) In section 57, replace “to 166” with “and 165”.
- (2) In section 57, insert as subsections (2) and (3): 20
- (2) The Director may, if the Director thinks it appropriate,—
 - (a) exempt a person, rail vehicle, rail vehicle component, railway premises, or railway infrastructure from a specified requirement in any ordinary rule or emergency rule made under this Act; or
 - (b) exempt any class of person, rail vehicle, railway premises, or railway infrastructure from a specified requirement in an ordinary rule or emergency rule made under this Act. 25
- (3) **Sections 168D and 168E** of the Land Transport Act 1998 apply with any necessary modifications to exemptions granted under **subsection (2)**.

37A New section 57A inserted (Exemptions from requirements in rules) 30

After section 57, insert:

57A Exemptions from requirements in rules

- (1) The Agency may, if the Agency thinks it appropriate,—
 - (a) exempt 1 or more named or specified persons, rail vehicles, rail vehicle components, railway premises, or other things, or any named or speci- 35

fied railway infrastructure, from 1 or more specified requirements in a rule made under this Act; or

- (b) exempt any class of person, rail vehicle, railway premises, railway infrastructure, or other thing from 1 or more specified requirements in a rule made under this Act.

- (2) **Sections 168D(2) to (9) and 168E** of the Land Transport Act 1998 apply with any necessary modifications to exemptions granted under **subsection (1)**, but, to avoid doubt, the definition of **class exemption** in section 2(1) of the Land Transport Act 1998 must be read as referring to a class exemption granted under **subsection (1)(b)** of this section.

38 Section 59 amended (Regulations)

In section 59, insert as subsections (2) to (4):

- (2) ~~The Director may, if the Director thinks it appropriate,—~~
- (a) ~~exempt a person, rail vehicle, railway premises, or railway infrastructure from a specified requirement in regulations made under this section; or~~
- (b) ~~exempt any class of person, rail vehicle, railway premises, or railway infrastructure from a specified requirement in regulations made under this section.~~
- (3) ~~**Sections 168D and 168E** of the Land Transport Act 1998 apply with any necessary modifications to exemptions granted under **subsection (2)**.~~
- (4) Regulations made under this section may incorporate material by reference and, for that purpose, section 165 of the Land Transport Act 1998 applies as if regulations were rules.

38A New section 60A inserted (Exemptions from requirements in regulations)

After section 60, insert:

60A Exemptions from requirements in regulations

- (1) The Agency may, if the Agency thinks it appropriate,—
- (a) exempt 1 or more named or specified persons, rail vehicles, railway premises, or other things, or any named or specified railway infrastructure, from 1 or more specified requirements in regulations made under section 59; or
- (b) exempt any class of person, rail vehicle, railway premises, railway infrastructure, or other thing from 1 or more specified requirements in regulations made under section 59.
- (2) **Sections 168D(2) to (9) and 168E** of the Land Transport Act 1998 apply with any necessary modifications to exemptions granted under **subsection (1)**, but, to avoid doubt, the definition of class exemption in section 2(1) of the Land Transport Act 1998 must be read as referring to a class exemption granted under **subsection (1)(b)** of this section.

39 New Schedule 1AA inserted

Insert the **Schedule 1AA** set out in **Schedule 4** of this Act as the first schedule to appear after the last section of the Railways Act 2005.

Part 6**Amendments to other legislation**

5

Subpart 1—Miscellaneous amendments to legislation**40 Amendment to Civil Aviation Act 1990**

- (1) This section amends the Civil Aviation Act 1990.
- (2) In section 72A(2), replace “shall consist of 5 members” with “must have at least 5, but no more than 7, members”.

10

41 Amendment to Government Roothing Powers Act 1989

- (1) This section amends the Government Roothing Powers Act 1989.
- (2) After section 3, insert:

3A Act is land transport Act

- (1) This Act is ~~defined as a~~ land transport Act under section 2(1) of the Land Transport Act 1998. 15
- (2) This has the effect that—
 - (a) transport instruments may be made for the purposes of this Act under ~~in accordance with~~ **section 168F** of that Act; and
 - (b) enforceable undertakings may be given for the purposes of this Act in accordance with section 112A ~~section 112A~~ of that Act; and 20
 - (c) a land transport record may be required to be created for the purposes of this Act in accordance with section 200B ~~section 200B~~ of that Act.
- (3) This section is intended as a guide only and is not an exhaustive statement as to the effects of this Act being ~~defined as a~~ land transport Act under that Act. 25

41A Amendments to Land Transport Management Act 2003

- (1) This section amends the Land Transport Management Act 2003.
- (2) After section 7B, insert:

7C Act is land transport Act

- (1) This Act is a land transport Act under section 2(1) of the Land Transport Act 1998. 30
- (2) This has the effect that—
 - (a) transport instruments may be made for the purposes of this Act under **section 168F** of that Act; and

- (b) enforceable undertakings may be given for the purposes of this Act in accordance with section 112A of that Act; and
- (c) a land transport record may be required to be created for the purposes of this Act in accordance with section 200B of that Act.
- (3) This section is intended as a guide only and is not an exhaustive statement as to the effects of this Act being a land transport Act under that Act. 5
- (3) In section 98(1), replace “6, but no more than 8” with “7, but no more than 9”.
- 42 Amendment to Port Companies Act 1988**
- (1) This section amends the Port Companies Act 1988.
- (2) After section 3, insert: 10
- 3A Act is maritime marine transport Act**
- (1) This Act is ~~defined as a maritime marine transport Act~~ under section 2(1) of the Maritime Transport Act 1994.
- (2) This has the effect that transport instruments may be made for the purposes of this Act under in accordance with **section 452A** of that Act. 15
- (3) This section is intended as a guide only and is not an exhaustive statement as to the effects of this Act being ~~defined as a maritime marine transport Act~~ under that Act.
- 43 Amendment to Road User Charges Act 2012**
- (1) This section amends the Road User Charges Act 2012. 20
- (2) After section 6, insert:
- 6A Act is land transport Act**
- (1) This Act is ~~defined as a land transport Act~~ under section 2(1) of the Land Transport Act 1998.
- (2) This has the effect that— 25
- (a) transport instruments may be made for the purposes of this Act under in accordance with **section 168F** of that Act; and
- (b) enforceable undertakings may be given for the purposes of this Act in accordance with ~~**section 112A**~~ section 112A of that Act; and
- (c) a land transport record may be required to be created for the purposes of this Act in accordance with ~~**section 200B**~~ section 200B of that Act. 30
- (3) This section is intended as a guide only and is not an exhaustive statement as to the effects of this Act being ~~defined as a land transport Act~~ under that Act.
- 44 Amendment to Ship Registration Act 1992**
- (1) This section amends the Ship Registration Act 1992. 35
- (2) After section 5, insert:

5A Act is maritime ~~marine transport~~ Act

- (1) This Act is ~~defined as a~~ maritime ~~marine transport~~ Act under section 2(1) of the Maritime Transport Act 1994.
- (2) This has the effect that transport instruments may be made for the purposes of this Act under ~~in accordance with~~ **section 452A** of that Act.
- (3) This section is intended as a guide only and is not an exhaustive statement as to the effects of this Act being ~~defined as a~~ maritime ~~marine transport~~ Act under that Act.

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45 Amendment to Shipping Act 1987

- (1) This section amends the Shipping Act 1987.
- (2) After section 2, insert:

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2A Act is maritime ~~marine transport~~ Act

- (1) This Act is ~~defined as a~~ maritime ~~marine transport~~ Act under section 2(1) of the Maritime Transport Act 1994.
- (2) This has the effect that transport instruments may be made for the purposes of this Act under ~~in accordance with~~ **section 452A** of that Act.
- (3) This section is intended as a guide only and is not an exhaustive statement as to the effects of this Act being ~~defined as a~~ maritime ~~marine transport~~ Act under that Act.

15

46 Amendment to Submarine Cables and Pipelines Protection Act 1996

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- (1) This section amends the Submarine Cables and Pipelines Protection Act 1996.
- (2) After section 5, insert:

5A Act is maritime ~~marine transport~~ Act

- (1) This Act is ~~defined as a~~ maritime ~~marine transport~~ Act under section 2(1) of the Maritime Transport Act 1994.
- (2) This has the effect that transport instruments may be made for the purposes of this Act under ~~in accordance with~~ **section 452A** of that Act.
- (3) This section is intended as a guide only and is not an exhaustive statement as to the effects of this Act being ~~defined as a~~ maritime ~~marine transport~~ Act under that Act.

25

30

Subpart 2—Consequential amendments**47 Amendments relating to Director of Land Transport**

Amend the Acts specified in **Schedule 5** as set out in that schedule.

Schedule 1**New Part 2 3 of Schedule 1 of Land Transport Act 1998 inserted****s 10****Part 2 3****Provisions relating to Regulatory Systems (Transport) Amendment Act 2020** 5**~~11~~ 15 Interpretation**

In this Part, **amendment Act** means the Regulatory Systems (Transport) Amendment Act **2020**.

~~12~~ 16 Pre-existing exemptions from requirements in rules made under Part 11 10

Any exemption granted under section 166 or 166A before **section 7** of the amendment Act comes into force continues to have effect as if that section had not come into force.

Schedule 2**New Schedule 1AA inserted into Maritime Security Act 2004****s 20****Schedule 1AA****Transitional, savings, and related provisions**

5

s 6B**Part 1****Provisions relating to Regulatory Systems (Transport) Amendment Act 2020****1 Interpretation**

10

In this Part, **amendment Act** means the Regulatory Systems (Transport) Amendment Act **2020**.

2 Pre-existing exemptions from regulations made under section 77

Any exemption granted under section 77 before **section 17** of the amendment Act comes into force continues to have effect as if that section had not come into force.

15

Schedule 3
New Part ~~2~~3 of Schedule 1AA of Maritime Transport Act 1994
inserted

s 33

Part ~~2~~3
Provisions relating to Regulatory Systems (Transport) Amendment
Act 2020

5

~~5~~—6 Interpretation

In this Part, **amendment Act** means the Regulatory Systems (Transport) Amendment Act **2020**.

10

~~6~~—7 Pre-existing exemptions from regulations made under sections 47 and 395

- (1) Any exemption granted under section 47 before **section 24** of the amendment Act comes into force continues to have effect as if that section had not come into force.
- (2) Any exemption granted under section 395 before **section 27** of the amendment Act comes into force continues to have effect as if that section had not come into force.

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Schedule 4
~~New Schedule 1AA inserted into Railways Act 2005~~

s.39

Schedule 1AA
~~Transitional, savings, and related provisions~~

5

s.6B

Part 1
~~Provisions relating to Regulatory Systems (Transport) Amendment Act 2020~~

- | | | |
|----------|---|----|
| 1 | Interpretation
In this Part, amendment Act means the Regulatory Systems (Transport) Amendment Act 2020 . | 10 |
| 2 | Pre-existing exemptions from rules made in accordance with section 57
Any exemption granted in accordance with section 57 before section 37(1) of the amendment Act comes into force continues to have effect as if that section had not come into force. | 15 |

Schedule 5

Consequential amendments to Acts

s 47

Land Transport Act 1998 (1998 No 110)

- In the cross-heading above **section 168D**, replace “*Agency*” with “*Director*”. 5
- In the heading to **section 168D**, replace “**Agency**” with “**Director**”.
- In **section 168D(1)**, replace “*Agency*” with “*Director*” in each place.
- In **section 168D(2)**, replace “*Agency*” with “*Director*”.
- In **section 168D(3)**, replace “*Agency*” with “*Director*”.
- In **section 168D(3)(a)**, replace “*Agency*” with “*Director*”. 10
- In **section 168E(3)**, replace “*Agency*” with “*Director*”.
- In **section 168E(3)(b)**, replace “*Agency’s grounds*” with “*Director’s grounds*”.
- In **section 168E(4)**, replace “*Agency*” with “*Director*” in each place.
- In **section 168E(4)(a)**, replace “*Agency’s*” with “*Director’s*”.
- In **section 168EA(2)**, after “*Agency*”, insert “, the *Director*,”. 15
- In the heading to **section 168F**, after “*Agency*”, insert “, **Director**,”.
- In **section 168F(1)**, after “*Agency*”, insert “, the *Director*,”.
- In **section 168F(6)**, after “other than” insert “the *Director* or”.
- In **section 168F(6A)**, after “*Secretary*”, insert “or the *Director* (as the case may be)”. 20
- In **section 168H(1)**, after “*Agency*”, insert “, the *Director*,” in each place.
- In **section 168H(2)**, after “*Agency*”, insert “, the *Director*,”.
- In **section 168H(4)**, after “*Agency*”, insert “, the *Director*,”.

Railways Act 2005 (2005 No 37)

- In **section 57A(1)**, replace “*Agency*” with “*Director*” in each place. 25
- In **section 60A(1)**, replace “*Agency*” with “*Director*” in each place.

Legislative history

14 February 2020
19 March 2020

Introduction (Bill 196–1)
First reading and referral to Transport and Infrastructure
Committee