

# Railways Bill

10 June 2003

Attorney-General

Legal Advice

Consistency With The New Zealand Bill Of Rights Act 1990

Railways Bill

## Introduction

1. We have considered whether the Railways Bill (the Bill) (PCO 4623/16) is consistent with the New Zealand Bill of Rights Act 1990 ("Bill of Rights Act"). We understand that this Bill will be considered by the Cabinet Legislation Committee at its meeting on Thursday 19 June 2003.

## Conclusion on consistency of the Bill with the Bill of Rights Act

2. We have concluded that the Bill does not appear to be inconsistent with the rights and freedoms affirmed by the Bill of Rights Act. However, the Bill does raise one issue that we wish to draw to your attention.

## Overview of the Bill

3. The Bill seeks to:
  - promote the safety of rail operations;
  - restate and amend the law relating to the management of the railway corridor; and
  - consolidate legislation relating to railways.

## ISSUE OF CONSISTENCY WITH THE BILL OF RIGHTS ACT

### Section 21 of the Bill of Rights Act: Right to be secure against unreasonable search and seizure

*Clause 46 (Powers of safety assessors to obtain information, etc)*

*Clause 47 (Powers of entry of safety assessors)*

4. Clause 46 sets out the powers of safety assessors to obtain certain information for the purposes of carrying out a safety assessment. Under clause 46, a safety assessor may require:
  - any documents and information that he or she considers relevant to the safety assessment;
  - a rail participant or rail personnel to demonstrate the rail personnel's familiarity with essential procedures for the safe operation of rail vehicles or railway infrastructure; and

- a rail participant or rail personnel to demonstrate that operational, maintenance, or servicing procedures are capable of being carried out in a competent manner.
5. Clause 47 confers on a safety assessor a right of access powers of entry for the purposes of carrying out a safety assessment. These powers include:
    - questioning rail personnel;
    - obtaining documents or records; and
    - entering and inspecting any vehicle, building or place belonging to, or used by, a rail participant.
  6. We have considered whether the powers contained in the clauses 46 and 47 are consistent with section 21 of the Bill of Rights Act.
  7. Section 21 of the Bill of Rights Act provides the right to be secure against unreasonable search and seizure. There are two limbs to the right. First, section 21 is applicable only in respect of those activities that constitute a search or a seizure . Second, where certain actions do constitute a search or seizure, [1] section 21 protects only against those searches or seizures that are unreasonable in the circumstances.
  8. In assessing the substantive "reasonableness" of any power of search and seizure, the Ministry is of the view that section 5 of the Bill of Rights Act is of limited application. In particular, it would appear difficult to use section 5 to justify a search that has already been assessed as unreasonable in terms of section 21. However, a number of the considerations which are normally relevant in the context of a section 5 inquiry will also be material in assessing the "reasonableness" of a power of search and seizure.
  9. We understand that the powers in clauses 46 and 47 of the Bill are necessary to give effect to the proposed new safety system, audit and inspection process, and incident reporting process. A failure to address these deficiencies will impact on safety for rail employees and the public.
  10. The Bill contains a number of safeguards on the exercise of the powers. For example, the Bill provides that:
    - safety assessors are only able to enter and inspect premises or vehicles at reasonable times;
    - rail personnel are not required to answer questions or provide information that may incriminate them;
    - safety assessors exercising their powers under clause 47 must give reasonable notice of the intended entry, and must produce evidence of their identity and authority to all relevant persons;
    - safety assessors must obtain a warrant before entering a dwellinghouse or marae (or building associated with a marae); and
    - before appointing a safety assessor, the Director must be satisfied that the person has the training, knowledge, or experience required to undertake the functions and duties of a safety assessor.

11. In light of the information above, we consider the powers contained in clauses 46 and 47 appear to be reasonable in terms of section 21 of the Bill of Rights Act.

## **CONCLUSION ON THE RAILWAYS BILL'S CONSISTENCY WITH THE BILL OF RIGHTS ACT**

12. On balance, we have concluded that the Bill does not appear to be inconsistent with the Bill of Rights Act. In accordance with your instructions, we attach a copy of this opinion for referral to the Minister of Justice. A copy is also attached for referral to the Minister of Transport, if you agree.

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