

Examined and certified:

Clerk of the House of Representatives

*In the name and on behalf of Her Majesty Queen Elizabeth
the Second I hereby assent to this Act this 12th day
of November 2003*

Governor-General.

Land Transport Management Act 2003

Public Act 2003 No 118

Contents

1	Title	17	Special consultative procedure for consulting land transport users and providers, affected communities, and public
	Part 1		
	Preliminary provisions		
2	Commencement	18	Consultation with Māori
3	Purpose		<i>National land transport programme</i>
4	Treaty of Waitangi	19	National land transport programme
5	Interpretation	20	Approval of activities and activity classes
6	Meaning of land transport revenue	21	Funding for land transport research, education, or training
7	Act binds the Crown	22	Funding for Māori roadways
	Part 2		<i>Public organisations</i>
	Funding of land transport system	23	Approval of public organisations
	Subpart 1—Funding system		<i>Land transport disbursement accounts</i>
	<i>National land transport fund</i>	24	Land transport disbursement accounts
8	National land transport fund		<i>Procurement procedures</i>
9	Crown's authority to incur certain land transport expenditure	25	Procurement procedures
	<i>National land transport account</i>	26	Payments exempt from procurement procedure
10	National land transport account		<i>Local authority interest in public transport services</i>
11	Management of national land transport account	27	Manner in which certain local authority interests in public transport service must be held
	<i>Land transport programmes</i>		<i>Safety administration programme</i>
12	Land transport programmes	28	Safety administration programme
13	Local authority may not need to prepare land transport programme		
14	Variation of land transport programmes		
15	Who must be consulted about land transport programme		
16	Consultation principles		

29	Approval of safety administration programme	57	When concession agreement may be entered into
30	Agencies must adhere to safety administration programme	58	Approval process and relationship to national land transport programme
31	Secretary must make safety administration programme available to public	59	Consultation requirements
32	Secretary may submit supplementary safety administration programme	60	Terms of concession agreements
33	Minister may approve supplementary safety administration programme	61	Delegation of roading functions and powers to concessionaires
34	Reports on outputs and programmes	62	Effect of delegation under section 61
	<i>General provisions</i>	63	Leasing
35	Needs of transport disadvantaged must be considered	64	Registration of leases
36	Transfund may reduce, refuse, or withhold payments in certain cases		<i>Enforcement of this Part and other land transport legislation</i>
37	Disputes	65	This Part and other land transport legislation enforceable in relation to concession roads and toll roads
38	Provision of information		Part 3
	<i>Infrastructure Auckland</i>		Administrative provisions relating to Transfund and Transit, and miscellaneous provisions
39	Grants from Infrastructure Auckland		<i>Transfund</i>
	<i>Diversion of excise duty and excise-equivalent duty to national land transport fund</i>	66	Transfund continued
40	Apportionment of excise duty and excise-equivalent duty	67	Crown entity status
41	Refund of excise duty, excise-equivalent duty, and GST	68	Objective of Transfund
42	Procedure for obtaining refund	69	Functions
43	Offence and penalty	70	Separate legal personality
44	Consequential repeal	71	Capacity and powers
45	Regulations relating to sections 40 to 42	72	Transfund's board
	Subpart 2—Road tolling schemes and concession agreements	73	Further provisions about Transfund
	<i>Road tolling schemes</i>	74	Use of words Transfund New Zealand
46	Authority to establish road tolling scheme		<i>Transit</i>
47	When tolling power is exercisable	75	Transit continued
48	Procedure for recommending making of order under section 46	76	Crown entity status
49	Consultation requirements	77	Objective of Transit
50	Privacy	78	Functions
51	Payment of tolls	79	Separate legal personality
52	Who is liable to pay toll	80	Capacity and powers
53	Enforcement of tolls	81	Transit's board
54	Offences and penalties	82	Further provisions about Transit
55	Application of Fair Trading Act 1986	83	Use of words Transit New Zealand
	<i>Concession agreements for roads</i>		<i>Provisions applying to both Transfund and Transit</i>
56	Concession agreements	84	Performance agreements must be completed by Transfund and Transit
		85	Failure to prepare performance agreement or comply with directions
		86	Amendment of performance agreement after approval

87	Transfund and Transit must consider delegating or contracting out functions and powers <i>Miscellaneous provisions</i>	106	Superannuation of employees of Transfund or Transit
88	Public availability of documents	107	Number of members on Transfund's board
89	Application of Act to Chatham Islands <i>Amendments and repeals</i>	108	Regional land transport strategies
90	Consequential amendments	109	Application of sections 48(1)(d)(i) and 58(2)(a)(i)
91	Repeals <i>Savings provisions</i>	110	Determinations under section 32(b) of Transit New Zealand Act 1989
92	Transit New Zealand (Apportionment and Refund of Excise Duty) Regulations 1998	111	Matters continued by this Part have effect until replaced or revoked under this Part
93	Performance agreements	112	Transitional regulations
94	Accounts	113	Expiry of section 112
95	Competitive pricing procedure	<hr/>	
96	Approved outputs and capital projects	Schedule 1	
97	Existing programmes continued	Provisions relating to programmes	
98	Completion of draft programmes	Schedule 2	
99	Transitional programmes: period ending 30 June 2004	Provisions relating to consultation under this Act	
100	Transitional programmes: 1 July 2004 to 30 June 2005	Schedule 3	
101	Policy directions	Provisions relating to safety administration programme	
102	Delegations	Schedule 4	
103	Excise duty, excise-equivalent duty, and GST	Provisions relating to Transfund and Transit	
104	Applications for grants from Infrastructure Auckland	Schedule 5	
105	<i>Gazette</i> notices relating to functions of Transfund or Transit	Matters to be included in performance agreement	
		Schedule 6	
		Consequential amendments to other Acts	

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Land Transport Management Act 2003.

**Part 1
Preliminary provisions**

2 Commencement

- (1) Sections 40 to 44, 92, and 103(1) and (2) come into force on a date to be appointed by the Governor-General by Order in Council.
- (2) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

3 Purpose

- (1) The purpose of this Act is to contribute to the aim of achieving an integrated, safe, responsive, and sustainable land transport system.
- (2) To contribute to that purpose, this Act—
 - (a) provides an integrated approach to land transport funding and management; and
 - (b) improves social and environmental responsibility in land transport funding, planning, and management; and
 - (c) changes the statutory objectives of Transfund and Transit to broaden the focus of each entity; and
 - (d) improves long-term planning and investment in land transport; and
 - (e) ensures that land transport funding is allocated in an efficient and effective manner; and
 - (f) improves the flexibility of land transport funding, including provisions enabling new roads to be built on a tolled or concession agreement basis or on a basis involving a combination of those methods; and
 - (g) amends the Local Government Act 1974, the Transit New Zealand Act 1989, and the Land Transport Act 1998, and repeals the Auckland Transport Board Act 1928.

4 Treaty of Waitangi

In order to recognise and respect the Crown's responsibility to take appropriate account of the principles of the Treaty of Waitangi and to maintain and improve opportunities for Māori to contribute to land transport decision-making processes, sections 15, 16, 18, 28, 49, and 59, clause 58 of Schedule 4, and clauses 13 and 24 of Schedule 5 provide principles and requirements which are intended to facilitate participation by Māori in land transport decision-making processes.

5 Interpretation

In this Act, unless the context otherwise requires,—

activity means a land transport output or capital project, or both

activity class means a group of activities

administration means the activities or components of activities that in the opinion of Transfund are, or reasonably ought to be, provided in administering the delivery of land transport-related activities

affected community, in relation to a proposed activity, means a group of people who are affected by the proposed activity because of living, studying, or working in close geographical proximity to the proposed activity

approved activity means an activity approved under section 20

approved organisation means—

- (a) Transit;
- (b) a regional council;
- (c) a territorial authority;
- (d) an approved public organisation

approved public organisation means a public organisation approved under section 23

approved safety administration programme means the safety administration programme approved by the Minister under section 29 or section 33, as from time to time amended or varied

Authority means the Land Transport Safety Authority of New Zealand continued by section 184 of the Land Transport Act 1998

board, in relation to an entity, means the board members of the entity

board member means a member of an entity's board

capital project—

- (a) means an individual land transport-related activity of a capital nature; and
- (b) includes—
 - (i) planning, design, and supervision related to the particular capital project; and
 - (ii) construction and reconstruction; and
 - (iii) any activity of a capital nature the purpose of which is to improve public safety in relation to land transport; and
 - (iv) administration related to the particular capital project

coastal shipping means the carriage of coastal cargo by means of any ship (as defined in section 2(1) of the Maritime Transport Act 1994), being carriage that is authorised by or under section 198 of that Act

collecting body means a body corporate, organisation, or other person authorised, by a written delegation or authorisation from the Secretary, to exercise or perform the relevant duties, functions, and powers of the Secretary

Commissioner means the Commissioner of Police

concession agreement means an agreement or a suite of agreements approved under section 56 between a public road controlling authority and 1 or more other persons, being an agreement or agreements in respect of an activity that involves the leasing of land for roading purposes under Part 2 (whether or not the public road controlling authority is the lessor)

concession road means a formed or unformed road to which a concession agreement applies

concessionaire means a person who has a concession agreement with a public road controlling authority

council-controlled organisation has the same meaning as in section 6 of the Local Government Act 2002

council-controlled trading organisation has the same meaning as in section 6 of the Local Government Act 2002

Crown Bank Account has the same meaning as in the Public Finance Act 1989

district means—

- (a) the district of a territorial authority;
- (b) in relation to land in respect of which a Minister of the Crown is the council, that land

enforcement authority, in relation to a toll road, means the public road controlling authority named in the relevant Order in Council made under section 46

enforcement officer has the same meaning as in section 2(1) of the Land Transport Act 1998

entity means—

- (a) Transfund;
- (b) Transit

excise duty means any excise duty payable on motor spirits, compressed natural gas, or liquefied petroleum gas under the Customs and Excise Act 1996

excise-equivalent duty means any excise-equivalent duty payable on motor spirits, compressed natural gas, or liquefied petroleum gas under the Customs and Excise Act 1996

fees and charges, when used in Part 2,—

- (a) means the fees and charges prescribed for the purposes of the Road User Charges Act 1977 and the fees and charges prescribed for the purposes of Part I of the Transport (Vehicle and Driver Registration and Licensing) Act 1986; but
- (b) does not include any infringement fee (whether recovered by an enforcement authority or under the Summary Proceedings Act 1957) or any other fine or penalty

financial year, in relation to Transfund and Transit, means the period of 12 months commencing on 1 July in any year and ending with the close of 30 June in the next year

interested has the meaning set out in clause 16 of Schedule 4

land transport—

- (a) means—
 - (i) transport on land by any means:
 - (ii) the infrastructure, goods, and services facilitating that transport; and
- (b) includes coastal shipping (including transport by means of harbour ferries, or ferries or barges on rivers or lakes)

land transport disbursement account means an account kept under section 24

land transport options and alternatives includes land transport demand management options and alternatives

land transport programme means a land transport programme prepared under section 12, as from time to time amended or varied

land transport revenue has the meaning given to it by section 6

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

local road means a road (other than a State highway) in the district, and under the control, of a territorial authority

Māori land has the same meaning as in section 4 of Te Ture Whenua Maori Act 1993

Māori roadway means a roadway laid out or to be laid out by order of the Maori Land Court under sections 315 to 326 of Te Ture Whenua Maori Act 1993 or laid out under any former Act relating to Māori land

Minister or **responsible Minister** means the 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

Ministry means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

minor and ancillary works—

- (a) means works associated with a local road that are determined by Transfund to be minor and ancillary roading works; but
- (b) does not include in-house professional services or works associated with a State highway

motor spirits does not include aviation spirits of a kind specified in the Third Schedule of the Customs and Excise Act 1996 as aviation fuel

motor vehicle has the same meaning as in section 2(1) of the Land Transport Act 1998

national land transport account means the account or accounts kept by Transfund under section 10

national land transport fund means the dedicated part of the Crown Bank Account into which land transport revenue is paid under section 8

national land transport programme means a national land transport programme adopted under section 19, as from time to time amended or varied

national land transport strategy has the same meaning as in section 2(1) of the Land Transport Act 1998

new road includes a lane that is added to an existing road

outputs means goods or services

performance agreement means a performance agreement approved under section 84 or section 85, as from time to time amended under section 86

personal information has the same meaning as in section 2(1) of the Privacy Act 1993

procurement procedure means a procurement procedure approved under section 25

public organisation means—

- (a) a Minister of the Crown;
- (b) a department of State;
- (c) a Crown entity (as defined in section 2(1) of the Public Finance Act 1989);
- (d) a State enterprise (as defined in section 2 of the State-Owned Enterprises Act 1986);
- (e) a local authority;
- (f) a council-controlled organisation:

public road controlling authority, in relation to a concession road or a toll road, means Transit or a territorial authority, regardless of whether any other person is also a controlling authority for the road

public transport service means the carriage of passengers for hire or reward by means of—

- (a) vehicles as defined in section 2(1) of the Land Transport Act 1998; or
- (b) coastal ships

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

regional land transport committee means a regional land transport committee established under section 178 of the Land Transport Act 1998

regional land transport strategy has the same meaning as in section 2(1) of the Land Transport Act 1998

registered owner, in relation to a motor vehicle, means the person registered under the Transport (Vehicle and Driver Registration and Licensing) Act 1986 as the owner of the vehicle

registered service has the same meaning as in section 47 of the Transport Services Licensing Act 1989

road—

- (a) means a road as defined in section 2(1) of the Transit New Zealand Act 1989; and
- (b) despite the terms of that definition, in subpart 2 of Part 2, includes a motorway as defined in that section; and

- (c) includes toll booths and other toll-related infrastructure on a road

road controlling authority, in relation to a road, means the Minister, Department of State, Crown entity, State enterprise, or territorial authority that controls the road

road tolling scheme means a road tolling scheme established by Order in Council under section 46

safety administration, as a classification,—

- (a) means all outputs (other than those of construction and maintenance) the primary purpose of which is to improve public safety in relation to land transport; and
- (b) includes—
- (i) education; and
 - (ii) enforcement

safety administration programme means the safety administration programme submitted to the Minister under section 28

Secretary means the chief executive of the Ministry

State highway has the same meaning as in section 2(1) of the Transit New Zealand Act 1989

statutorily independent function means,—

- (a) in the case of Transfund, a function specified in section 69(2);
- (b) a matter on which any enactment provides that the entity (or any of its board members, employees, or agents) must act independently or judicially

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

toll means a toll that is payable under Part 2, and includes different levels of tolls if more than 1 level is set in respect of the same road

toll operator, in relation to a toll road, means the public road controlling authority or concessionaire who operates the toll road under a road tolling scheme

toll road means a road or part of a road that is subject to tolling under a road tolling scheme

Transfund means Transfund New Zealand, as continued by section 66

Transit means Transit New Zealand, as continued by section 75.

6 Meaning of land transport revenue

In this Act, unless the context otherwise requires, **land transport revenue** means—

- (a) all fees and charges payable for any matter under the Road User Charges Act 1977:
- (b) all excise duty and excise-equivalent duty payable to the national land transport fund under section 40:
- (c) all fees and charges payable for the purposes of Part I of the Transport (Vehicle and Driver Registration and Licensing) Act 1986:
- (d) an amount equal to the goods and services tax payable on expenses, costs, and refunds payable under this Act:
- (e) the proportion of the interest earned, or interest saved, from the investment of public money that relates to land transport revenue:
- (f) the amounts of public money that Parliament appropriates for the purpose:
- (g) all other public money that is required by any enactment to be treated as land transport revenue for the purposes of this Act.

Compare: 1989 No 75 s 8

7 Act binds the Crown

This Act binds the Crown.

Part 2

Funding of land transport system

Subpart 1—Funding system

National land transport fund

8 National land transport fund

- (1) All land transport revenue must, as soon as practicable after its receipt by the relevant collecting body, be paid into a dedicated part of the Crown Bank Account called the national land transport fund.
- (2) All roading revenue held in the Crown Bank Account under the Transit New Zealand Act 1989 immediately before the

commencement of this section must be treated as land transport revenue under this Act.

Compare: 1989 No 75 ss 9, 11

9 Crown's authority to incur certain land transport expenditure

- (1) In each financial year, the Crown incurs a liability to pay from the national land transport fund, without further appropriation than this section, the amounts referred to in subsections (2) to (6).
- (2) The Crown incurs a liability to pay to the relevant collecting body the amount agreed between the responsible Minister and the Minister of Finance for the outputs delivered in that financial year in—
 - (a) collecting land transport revenue; and
 - (b) administering and enforcing the Road User Charges Act 1977 and Part I of the Transport (Vehicle and Driver Registration and Licensing) Act 1986.
- (3) The Crown incurs a liability to pay to the relevant collecting body the refunds paid or payable in any financial year of—
 - (a) road user charges and additional charges in accordance with section 22(2) of the Road User Charges Act 1977; and
 - (b) excise duty and excise-equivalent duty in accordance with section 41; and
 - (c) fees and charges for the purposes of Part I of the Transport (Vehicle and Driver Registration and Licensing) Act 1986.
- (4) The Crown incurs a liability to pay to the Authority the amount determined by the responsible Minister for the outputs delivered under an approved safety administration programme for that financial year less any revenue received or receivable by that Authority from other sources applicable to outputs in the programme.
- (5) The Crown incurs a liability to pay to the Commissioner the amount determined by the responsible Minister for the outputs delivered under an approved safety administration programme for that financial year less any revenue received or receivable by the Commissioner from other sources applicable to outputs in the programme.

- (6) The Crown incurs a liability to pay to Transfund an amount equal to the land transport revenue for that financial year less the amount of the liabilities for that year that are referred to in subsections (2) to (5).

Compare: 1989 No 75 s 10

National land transport account

10 National land transport account

- (1) Transfund must operate a national land transport account through 1 or more accounts with any bank or banks selected by it under clause 51 of Schedule 4.
- (2) The national land transport account may be used to provide funds as follows:
- (a) to Transit for approved activities;
 - (b) to regional councils for approved activities;
 - (c) to territorial authorities for approved activities (other than public transport services activities);
 - (d) to territorial authorities for the purpose of carrying out any activity to which paragraph (b) applies, and to regional councils for the purpose of carrying out any activity to which paragraph (c) applies, if authorised to do so by a transfer of responsibility under section 17 of the Local Government Act 2002;
 - (e) to approved public organisations for any land transport purposes specified under section 23;
 - (f) to any person for the purposes of any research, education, or training activity or activity class.
- (3) The following amounts must be paid each financial year into the national land transport account:
- (a) any amount paid to Transfund under section 9(6);
 - (b) all other money received by Transfund from any other source.
- (4) Each financial year, there is payable out of the national land transport account—
- (a) payments to approved organisations and persons for approved activities; and
 - (b) all other costs and expenses of Transfund arising out of the performance of its functions and duties and the exercise of its powers under this Act or any other Act; and
 - (c) all compensation or damages payable by Transfund.

- (5) The funds held by Transfund in the accounts that constituted the National Roads Account under the Transit New Zealand Act 1989 must be treated as if they were part of the national land transport account.
- (6) Transfund may reduce payments to Transit for approved activities to take account of revenue received by Transit from the following sources:
- (a) funds invested by Transit; and
 - (b) the sale of Crown land; and
 - (c) the management of Crown land, including revenue received for advertising on State highways; and
 - (d) all other revenue derived from a source other than Transfund, except from—
 - (i) tolling; or
 - (ii) permits issued by Transit under the Heavy Motor Vehicle Regulations 1974 or under rules made under the Land Transport Act 1998 relating to overweight permits; or
 - (iii) the provision of advisory or related services; or
 - (iv) financial contributions made by developers; or
 - (v) costs, expenses, or damages awarded to Transit; or
 - (vi) Infrastructure Auckland under section 39.

Compare: 1989 No 75 ss 13, 16

11 Management of national land transport account

Transfund may—

- (a) carry forward to any later financial year any amount of the credit balance in the national land transport account at the close of any financial year; and
- (b) allocate or spend that money at any time.

Compare: 1989 No 75 s 14

Land transport programmes

12 Land transport programmes

- (1) In each financial year, every approved organisation that recommends that any activities or activity classes be included in a national land transport programme or that any safety administration outputs be included in a safety administration programme must, by a date or dates appointed by Transfund after consultation with the Authority,—

- (a) prepare a land transport programme for the next financial year; and
 - (b) forward copies to Transfund, the Authority, Transit, the Commissioner, and the Secretary; and
 - (c) make it available to the public in a written form.
- (2) The provisions of Part 1 of Schedule 1 (which relate to the content of land transport programmes) apply to land transport programmes and organisations preparing them.
- (3) An approved organisation must, in preparing a land transport programme, take into account how each activity or activity class—
- (a) assists economic development; and
 - (b) assists safety and personal security; and
 - (c) improves access and mobility; and
 - (d) protects and promotes public health; and
 - (e) ensures environmental sustainability.
- (4) However, nothing in subsection (3) applies in relation to outputs recommended for inclusion in a safety administration programme.
- (5) An approved organisation must, in preparing a land transport programme, take into account any current national land transport strategy, National Energy Efficiency and Conservation Strategy, and relevant regional land transport strategies.

Compare: 1989 No 75 s 42F

13 Local authority may not need to prepare land transport programme

A local authority need not prepare a land transport programme for a financial year if—

- (a) the local authority's long-term council community plan or annual plan includes the matters required to be in a land transport programme prepared by the local authority; and
- (b) the local authority provides details of those matters as required by section 12 in a form that Transfund and the Authority are satisfied complies with the provisions of this Act relating to the form of a land transport programme; and
- (c) in preparing the plan, the local authority has taken into account the matters referred to in section 12(3) and (5).

14 Variation of land transport programmes

- (1) The organisation responsible for preparing a land transport programme may, by agreement with Transfund or the Authority (as the case may require), vary the programme from time to time during the financial year to which it applies.
- (2) The provisions of this Act that apply to the preparation of a land transport programme apply with the necessary modifications to a variation of a land transport programme.
- (3) Transfund or the Authority (as the case may require) may (without limitation) decline to agree to a variation of a land transport programme if it is satisfied that the subject matter of the variation could reasonably have been included in the organisation's land transport programme.

15 Who must be consulted about land transport programme

- (1) When preparing its land transport programme, Transit must consult—
 - (a) Transfund; and
 - (b) the Authority; and
 - (c) every affected local authority; and
 - (d) every affected approved public organisation; and
 - (e) the Accident Compensation Corporation; and
 - (f) the Commissioner; and
 - (g) the Ministry of Health; and
 - (h) the New Zealand Historic Places Trust; and
 - (i) land transport users and providers; and
 - (j) affected communities; and
 - (k) Māori; and
 - (l) the public.
- (2) When preparing a land transport programme, a regional council (or a territorial authority having the powers of a regional council) must consult—
 - (a) Transfund; and
 - (b) Transit; and
 - (c) the territorial authorities in the region; and
 - (d) the adjoining regional councils and territorial authorities; and
 - (e) every affected approved public organisation; and
 - (f) the district health boards in the region; and
 - (g) the Accident Compensation Corporation; and

- (h) the Authority; and
 - (i) the Commissioner; and
 - (j) the New Zealand Historic Places Trust; and
 - (k) land transport users and providers; and
 - (l) affected communities; and
 - (m) Māori of the region; and
 - (n) the public in the region.
- (3) When preparing a land transport programme, a territorial authority must consult—
- (a) Transfund; and
 - (b) Transit; and
 - (c) all regional councils whose jurisdiction includes the district; and
 - (d) the adjoining territorial authorities; and
 - (e) the district health boards in the district; and
 - (f) the Accident Compensation Corporation; and
 - (g) every affected approved public organisation; and
 - (h) the Authority; and
 - (i) the Commissioner; and
 - (j) the New Zealand Historic Places Trust; and
 - (k) land transport users and providers; and
 - (l) affected communities; and
 - (m) Māori of the district; and
 - (n) the public in the district.
- (4) When preparing a land transport programme, any other approved organisation must consult—
- (a) Transfund; and
 - (b) Transit; and
 - (c) every affected regional council; and
 - (d) every affected territorial authority; and
 - (e) every affected approved organisation; and
 - (f) affected district health boards; and
 - (g) the Accident Compensation Corporation; and
 - (h) the Authority; and
 - (i) the Commissioner; and
 - (j) the New Zealand Historic Places Trust; and
 - (k) land transport users and providers; and
 - (l) affected communities; and
 - (m) Māori; and
 - (n) the public.

- (5) A local authority need not consult any organisation or person referred to in subsection (2) or subsection (3) about any matter if it has already consulted that organisation or person about the matter in the course of preparing its current long-term council community plan or annual plan in accordance with the Local Government Act 2002.

Compare: 1989 No 75 ss 42E, 42G, 42I

16 Consultation principles

- (1) Consultation required by this Act must be carried out in accordance with the consultation principles set out in Part 1 of Schedule 2.
- (2) Part 1 of Schedule 2 applies in relation to every approved organisation, but is subject to section 15(5) (which relates to consultation carried out by local authorities under the Local Government Act 2002).

17 Special consultative procedure for consulting land transport users and providers, affected communities, and public

- (1) Every approved organisation that is required by section 15 to consult with land transport users and providers, affected communities, or the public must use the special consultative procedure set out in Part 2 of Schedule 2.
- (2) Part 2 of Schedule 2 applies in relation to every such approved organisation, but is subject to section 15(5) (which relates to consultation carried out by local authorities under the Local Government Act 2002).

18 Consultation with Māori

- (1) An approved organisation that is required to consult Māori in the course of preparing a land transport programme must use the special consultative procedure set out in Part 2 of Schedule 2.
- (2) Part 2 of Schedule 2 applies in relation to every approved organisation, but is subject to section 15(5) (which relates to consultation carried out by local authorities under the Local Government Act 2002).

- (3) In addition to complying with Part 2 of Schedule 2, an approved organisation must do everything reasonably practicable to separately consult Māori affected by any proposed activity that affects or is likely to affect—
 - (a) Māori land; or
 - (b) land subject to any Māori claims settlement Act; or
 - (c) Māori historical, cultural, or spiritual interests.
- (4) In addition to complying with Part 2 of Schedule 2, the responsible approved organisation must consult the land holding trustee (as defined in section 7 of the Waikato Raupatu Claims Settlement Act 1995) about any proposed activity that affects or is likely to affect land registered in the name of Pootatau Te Wherowhero under section 19 of that Act.
- (5) Transfund, Transit, and approved public organisations other than local authorities must—
 - (a) establish and maintain processes to provide opportunities for Māori to contribute to the organisation's land transport decision-making processes; and
 - (b) consider ways in which the organisation may foster the development of Māori capacity to contribute to the organisation's land transport decision-making processes; and
 - (c) provide relevant information to Māori for the purposes of paragraphs (a) and (b).
- (6) Subsection (5) does not limit the ability of Transfund, Transit, or an approved public organisation to take similar action in respect of any other population group.

National land transport programme

19 National land transport programme

- (1) Transfund must, for each financial year,—
 - (a) prepare and adopt a national land transport programme; and
 - (b) make it available to the public in a written form.
- (2) The provisions of Part 2 of Schedule 1 (which relate to the content of national land transport programmes) apply to national land transport programmes and to Transfund.
- (3) Before adopting a national land transport programme, Transfund must be satisfied that the programme contributes to the purpose of this Act and contributes to the following:

- (a) assisting economic development; and
 - (b) assisting safety and personal security; and
 - (c) improving access and mobility; and
 - (d) protecting and promoting public health; and
 - (e) ensuring environmental sustainability.
- (4) In preparing a national land transport programme, Transfund must take into account any current national land transport strategy, relevant regional land transport strategy, and National Energy Efficiency and Conservation Strategy.
- (5) Transfund—
- (a) may add, suspend, or abandon any activities or activity classes; and
 - (b) must from time to time amend a national land transport programme to reflect such decisions; but
 - (c) need not make an amendment available to the public in a written form unless it is satisfied that the amendment is significant.

20 Approval of activities and activity classes

- (1) Transfund may approve an activity or activity class as qualifying for payments from the national land transport account if—
- (a) Transfund is satisfied that subsections (2) and (3) have been complied with; and
 - (b) Transfund is satisfied that its expenditure forecast from the national land transport account on activities and activity classes included in the national land transport programme for the relevant financial year will not exceed the following sum:
 - (i) the anticipated amounts payable under section 9(6), borrowed for that financial year, and carried forward from any previous financial year; plus
 - (ii) any other money that may be owing to Transfund (including any other liability of the Crown to Transfund under section 9); less
 - (iii) the administrative costs and expenses that are payable under section 10(4)(b).
- (2) In approving a proposed activity or activity class, Transfund must take into account—
- (a) how the activity or activity class—
 - (i) assists economic development; and
 - (ii) assists safety and personal security; and

- (iii) improves access and mobility; and
 - (iv) protects and promotes public health; and
 - (v) ensures environmental sustainability; and
 - (b) any current national land transport strategy, relevant regional land transport strategy, and National Energy Efficiency and Conservation Strategy.
- (3) In approving a proposed activity or activity class, Transfund must be satisfied that—
 - (a) the activity or activity class is included in the national land transport programme or qualifies under subsection (4); and
 - (b) the national land transport programme continues to meet the requirements of section 19(3) and (4); and
 - (c) the activity or activity class contributes to Transfund's objective, including its social and environmental responsibility, in an efficient and effective manner; and
 - (d) the activity or activity class has, to the extent practicable, been assessed against other land transport options and alternatives; and
 - (e) the organisation seeking the funding has complied with the relevant consultation requirements of this Act in preparing its land transport programme.
- (4) However, Transfund may, without complying with subsections (2) and (3), approve for payment from the national land transport account any activities and activity classes that, in the opinion of Transfund,—
 - (a) are in the urgent interests of public safety; or
 - (b) are necessary to effect immediate or temporary repair of damage caused by a sudden and unexpected event.
- (5) Transfund may apply different methods of assessment for the purpose of approving different activities and activity classes.
- (6) Transfund may approve activities and activity classes subject to any terms and conditions, which must be relevant and reasonable, that Transfund thinks fit.
- (7) If Transfund decides not to approve an activity or activity class, Transfund must give the organisation responsible for preparing the relevant land transport programme written advice of its decision and reasons for its decision.

Compare: 1989 No 75 ss 17, 18, 42C

21 Funding for land transport research, education, or training

- (1) Transfund may approve funding for any research, education, or training activity or activity class.
- (2) Persons seeking funding under subsection (1) from Transfund must prepare a proposal in a form approved by Transfund and submit the proposal to Transfund.
- (3) Funding under subsection (1)—
 - (a) is not subject to section 12 or section 19 or section 20, but the activities approved for funding must be shown in the current national land transport programme; and
 - (b) is subject to compliance with section 25 (procurement procedures) unless exempt by or under section 26.

22 Funding for Māori roadways

- (1) Transfund may, in accordance with this Part, approve an activity relating to a Māori roadway as qualifying for payments to Transit from the national land transport account as if the roadway were a State highway.
- (2) Transfund may, in accordance with this Part, approve an activity relating to a Māori roadway as qualifying for payments to a territorial authority from the national land transport account as if the roadway were a local road.
- (3) Transit and territorial authorities may apply for funding for a Māori roadway if the activity is included in its land transport programme.

*Public organisations***23 Approval of public organisations**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister,—
 - (a) approve any public organisation for the purpose of section 10(2)(e):
 - (b) revoke any approval given under this subsection.
- (2) Before making a recommendation under subsection (1), the Minister must—
 - (a) consult the persons or organisations considered by the Minister to be representative of those classes of persons having an interest in the approval or revocation; and

- (b) in the case of an approval, be satisfied that granting the approval would be consistent with the purpose of this Act.
- (3) Without limiting subsection (1), an order made under that subsection may—
 - (a) grant an approval in relation to particular land transport purposes:
 - (b) grant an approval subject to conditions specified in the order.
- (4) The Department of Conservation and the Waitangi National Trust Board are deemed to be approved public organisations under this section.

Land transport disbursement accounts

24 Land transport disbursement accounts

- (1) Every approved organisation that receives funds from the national land transport account must operate a land transport disbursement account through 1 or more accounts with any bank or banks,—
 - (a) in the case of Transit, selected under clause 51 of Schedule 4; or
 - (b) in any other case, selected by the approved organisation.
- (2) All money received from the national land transport account by a recipient referred to in section 10(2) must be paid into its land transport disbursement account.
- (3) Transit must also pay into its land transport disbursement account all other money received by Transit from any source other than the national land transport account.
- (4) All expenditure from a land transport disbursement account must be recorded in a form that contains any details that are prescribed by Transfund after consultation with the Controller and Auditor-General.
- (5) Payments may be made from a land transport disbursement account as follows:
 - (a) in the case of funds received by an approved organisation from the national land transport account, payments may be made only in respect of approved activities or activity classes:

- (b) in the case of funds received by a person for education, research, or training activities or activity classes, payments may be made for activities or activity classes approved under section 21;
 - (c) in the case of funds received by Transit from any other source, payments may be made in respect of any costs and expenses of Transit that arise out of the performance of its functions and duties, or the exercise of its powers.
- (6) All payments from a land transport disbursement account—
- (a) are subject to any relevant conditions imposed by an order made under section 23; and
 - (b) must be made in accordance with a procurement procedure unless exempt by or under section 26.
- (7) An approved organisation may—
- (a) carry forward to any later financial year any amount of the credit balance in its land transport disbursement account at the close of any financial year; and
 - (b) spend that money at any time.

Compare: 1989 No 75 ss 20, 24

Procurement procedures

25 Procurement procedures

- (1) For the purposes of this Part, Transfund must approve 1 or more procurement procedures that are designed to obtain the best value for money spent by approved organisations and persons, having regard to the purpose of this Act.
- (2) In approving a procurement procedure, Transfund must also have regard to the desirability of—
- (a) enabling persons to compete fairly for the right to supply outputs required for approved activities, if 2 or more persons are willing and able to provide those outputs; and
 - (b) encouraging competitive and efficient markets for the supply of outputs required for approved activities.
- (3) A procedure approved by Transfund under subsection (1) must specify how procurement is to be carried out (which may differ for different kinds of procurement).

- (4) It is a condition of every approved procurement procedure that an organisation or person must procure outputs from a provider other than the organisation or person, or their employees.
- (5) However, nothing in subsection (4) prevents an approved organisation from procuring from the organisation's own business units the provision of minor and ancillary works on terms approved by Transfund.
- (6) Nothing in this section compels an organisation or person to accept the lowest tender received by it for the provision of any outputs.

26 Payments exempt from procurement procedure

Section 25 does not apply in relation to any payment—

- (a) approved by Transfund on the ground that the costs of the procurement process would be disproportionate to the value of the proposed activity or activity class; or
- (b) made in respect of any approved administration activity that is approved by Transfund for the purpose of this section; or
- (c) made in respect of in-house professional services that are—
 - (i) approved by Transfund; and
 - (ii) undertaken by an approved organisation using the organisation's own staff and assets; or
- (d) made under the land transport disbursement account of an approved organisation if the payment is made to the land transport disbursement account of another approved organisation to enable that other organisation to exercise delegated functions and powers under this Act of that first-mentioned approved organisation; or
- (e) made in respect of any registered service of any public transport operator in relation to any 6-month period that follows—
 - (i) the withdrawal or proposed withdrawal of that operator from the provision of the service; or
 - (ii) the withdrawal of any other operator from the provision of the same or a similar service; or
- (f) made in respect of any expenditure that is necessary in the urgent interests of public safety; or

- (g) made in respect of any expenditure that is necessary for the immediate or temporary repair of damage caused by a sudden and unexpected event.

Compare: 1989 No 75 s 27(4), (5)

Local authority interests in public transport services

27 Manner in which certain local authority interests in public transport service must be held

- (1) Any interest that a local authority has in a public transport service to which this section applies must be held in a council-controlled trading organisation, whether or not in conjunction with another local authority.
- (2) This section applies to a public transport service held by a local authority if, and only if, the public transport service indirectly receives funding for the purpose from the national land transport account.
- (3) A regional council may, subject to subsection (1), hold an interest in, or acquire the ownership of, a public transport service or any public transport infrastructure.

Compare: 1974 No 66 s 594ZR

Safety administration programme

28 Safety administration programme

- (1) The Authority must, in each financial year, prepare for the Secretary, by a date appointed by the Minister, a safety administration programme.
- (2) The provisions of Schedule 3 (which relate to the content and form of safety administration programmes) apply to safety administration programmes and to the Authority.
- (3) The Authority must—
 - (a) consult the Commissioner before including any matter in a safety administration programme:
 - (b) consult with Māori in accordance with section 18(3) and (4) about any output that the Authority proposes to include in a safety administration programme and that has not been included in a land transport programme:
 - (c) ensure that, in preparing a safety administration programme, the Authority takes into account any current national land transport strategy:

- (d) ensure that, in preparing a safety administration programme, the Authority takes into account any current relevant regional land transport strategies;
 - (e) if the Authority decides not to recommend any output, give the organisation who sought its inclusion in the programme written advice of the Authority's decision and the reasons for its decision.
- (4) Each financial year, by a date set by the Minister, the Secretary must submit to the Minister—
- (a) the safety administration programme prepared under subsection (1); and
 - (b) the Secretary's recommendations concerning the safety administration programme for that financial year; and
 - (c) the Secretary's assessment of the safety administration needs and safety administration issues that are likely to arise during the next 5 financial years; and
 - (d) any other matters that the Minister may require.
- (5) Each financial year, by a date set by the Minister, the Secretary must give Transfund, Transit, the Authority, and the Commissioner a copy of all the items referred to in subsection (4).
- (6) The Secretary must consult the Authority and the Commissioner before making any recommendation under subsection (4)(b).

Compare: 1989 No 75 s 37

29 Approval of safety administration programme

- (1) The Minister must approve an annual safety administration programme as soon as practicable after receiving it under section 28 and must give the Secretary written notice of the approval.
- (2) The Secretary must immediately give Transfund written notice of any approval notified to the Secretary under subsection (1).
- (3) If the Minister considers that a safety administration programme should be amended,—
- (a) the Minister may amend the programme accordingly and approve the programme in the amended form, in which case the Minister must give the Secretary written notice of the amendments:

- (b) if the programme is amended, the Secretary must immediately give Transfund a copy of the amended programme;
 - (c) the Minister may decline to approve the programme, in which case the Minister must return it to the Secretary and advise the Secretary of the reasons for declining to approve the programme.
- (4) If the Minister declines to approve the programme,—
- (a) the Secretary must request the Authority to make the amendments to the programme that are necessary to obtain the approval of the Minister; and
 - (b) the Secretary must submit the amended programme to the Minister, and, once satisfied with it, the Minister must give the Secretary written notice of the approval; and
 - (c) the Secretary must immediately give Transfund a copy of the approved programme.
- (5) The Secretary must give a copy of every approved safety administration programme to—
- (a) Transfund; and
 - (b) Transit; and
 - (c) the Authority; and
 - (d) the Commissioner; and
 - (e) the Secretary; and
 - (f) every local authority; and
 - (g) every approved public organisation.

Compare: 1989 No 75 s 38

30 Agencies must adhere to safety administration programme

- (1) Transfund, Transit, the Authority, the Commissioner, the Secretary, every local authority, and approved public organisations must give effect to, observe, and enforce the observance of the requirements and provisions of the approved safety administration programme to the extent of their functions, duties (including common law obligations), and powers.
- (2) Transfund, Transit, the Authority, the Commissioner, the Secretary, every local authority, and approved organisations must consult each other as appropriate about how to comply with the obligations imposed on them by subsection (1).

- (3) If the approved safety administration programme includes an activity that requires a level of expenditure by Transit, a regional council, a territorial authority, or an approved public organisation that is greater than that provided for in its approved activities, the duty imposed by subsection (1) need be complied with only so far as its financial resources reasonably permit.

Compare: 1989 No 75 s 39

31 Secretary must make safety administration programme available to public

Each financial year, the Secretary must make the safety administration programme and every supplementary safety administration programme available to the public as soon as reasonably practicable after its approval by the Minister under section 29 or section 33.

Compare: 1989 No 75 s 40

32 Secretary may submit supplementary safety administration programme

- (1) The Secretary may submit to the Minister a supplementary safety administration programme for any financial year, and must give Transfund a copy of every supplementary safety administration programme submitted to the Minister.
- (2) A supplementary safety administration programme must,—
- (a) with the necessary modifications, be prepared as if it were a safety administration programme under section 28; and
 - (b) be in the form and contain the matters and details that the Minister may require for a safety administration programme under that section.
- (3) The Secretary must give a copy of every supplementary safety administration programme submitted to the Minister to—
- (a) Transfund; and
 - (b) the Authority; and
 - (c) the Commissioner.

Compare: 1989 No 75 s 41

33 Minister may approve supplementary safety administration programme

- (1) As soon as practicable after receiving a supplementary safety administration programme under section 32,—
 - (a) the Minister may approve the supplementary programme in whole or in part, in which case the Minister must give Transfund and the Secretary written notice of the approval:
 - (b) if the supplementary programme is approved in part only, the Minister must advise Transfund and the Secretary of the reasons for approving it in part only:
 - (c) the Minister may amend the supplementary programme and approve it in the amended form, in which case the Minister must give Transfund and the Secretary written notice of the amendments and of the reasons for amending it:
 - (d) the Minister may decline to approve the supplementary programme, in which case the Minister must give Transfund and the Secretary written reasons for doing so.
- (2) A supplementary safety administration programme approved by the Minister under subsection (1), in the form in which it is approved, forms part of the approved safety administration programme to which it relates.
- (3) The Secretary must give a copy of every approved supplementary safety administration programme to—
 - (a) Transfund; and
 - (b) Transit; and
 - (c) the Authority; and
 - (d) the Commissioner; and
 - (e) the Secretary; and
 - (f) every local authority; and
 - (g) every approved public organisation.

Compare: 1989 No 75 s 42

34 Reports on outputs and programmes

- (1) The Secretary must include in every annual report to be given by him or her to the Minister under section 30 of the State Sector Act 1988—
 - (a) a statement comparing the performance of the Authority in relation to the safety administration outputs in

- that financial year (other than those delivered by the police) with the relevant performance measures agreed under clause 5 of Schedule 3 for that year; and
- (b) a statement comparing the performance of the police in relation to the safety administration outputs delivered by the police in that financial year with the relevant performance measures agreed under clause 5 of Schedule 3 for that year, which statement must be prepared by the Commissioner in the form agreed in writing by the responsible Minister and the Minister of Police.
- (2) The Minister may require the Commissioner to provide information relating to the safety administration outputs delivered by the police, and the Commissioner must provide the information in the manner agreed in writing by the responsible Minister and the Minister of Police.
- (3) An agreement entered into by the responsible Minister and the Minister of Police under subsection (2) must be published or made available to the public in the manner that those Ministers jointly consider appropriate.

Compare: 1989 No 75 s 42N

General provisions

35 Needs of transport disadvantaged must be considered

In preparing any programme under this Part, Transfund, Transit, the Authority, the Commissioner, the Secretary, every local authority, and every approved public organisation must consider the needs of persons who are transport disadvantaged.

Compare: 1989 No 75 s 42K

36 Transfund may reduce, refuse, or withhold payments in certain cases

- (1) This section applies if Transfund considers that, in relation to an approved activity, an approved organisation or person—
- (a) is in breach of a procurement procedure; or
- (b) has been or is or will be likely to be in breach of any other provision of this Act relating to payments from a land transport disbursement account; or

- (c) has constructed or undertaken the activity, or is proposing to construct or undertake the activity, to standards that are excessively high or unsatisfactory.
- (2) If this section applies, Transfund may, to the extent that it considers appropriate,—
- (a) reduce any payment for any approved activity; or
 - (b) refuse the whole or part of any payment for any approved activity; or
 - (c) withhold the whole or part of any payment for any approved activity.
- (3) Transfund may, under subsection (2),—
- (a) reduce, refuse, or withhold any amount that it is presently considering paying for any approved activity; or
 - (b) reduce, refuse, or withhold any amount that it proposes to pay for any approved activity in the future.
- (4) If Transfund makes any payment for an approved activity that is based on information that is subsequently found to be erroneous or inaccurate, the payment is recoverable in any court of competent jurisdiction as a debt due to Transfund.

37 Disputes

- (1) This section applies to any dispute or difference between an organisation and Transfund about 1 or more of the following:
- (a) whether the organisation has complied with a procurement procedure in a particular case;
 - (b) the terms on which Transfund has granted an approval under section 25(5) for the provision of minor and ancillary works;
 - (c) the application of section 26 in a particular case;
 - (d) whether a payment should be reduced, refused, or withheld under section 36.
- (2) The dispute or difference must be determined by a single arbitrator appointed by the Minister.
- (3) No member or employee of the organisation or of Transfund is qualified to be an arbitrator under this section.
- (4) The organisation and Transfund are the parties to the arbitration.
- (5) Articles 35 and 36 of the First Schedule of the Arbitration Act 1996 (which relate to recognition and enforcement of an arbitral award) and clause 6 of the Second Schedule of that Act

(which relates to costs and expenses of an arbitration) apply in relation to an arbitration under this section as if this section were an arbitration agreement within the meaning of that Act, but no other provisions of that Act apply in relation to an arbitration under this section.

Compare: 1989 No 75 s 25

38 Provision of information

- (1) Transfund may require an approved organisation to provide any information that Transfund considers it needs to perform its functions under this Act.
- (2) An approved organisation may require any other approved organisation to provide any information that it considers it needs to perform its functions under this Act.
- (3) A requirement under this section must be made in writing, and the information required must be provided as soon as practicable after the requirement is received and be in a readily understandable form.

Compare: 1974 No 66 s 594ZZJ; 1989 No 75 ss 34, 42J

Infrastructure Auckland

39 Grants from Infrastructure Auckland

- (1) Transit may, in accordance with Part 44C of the Local Government Act 1974, apply for, and obtain and spend, a grant from Infrastructure Auckland for the purpose of obtaining funding for a capital project or part of a capital project that—
 - (a) consists primarily of land transport; and
 - (b) is a capital project within the meaning of any of the provisions of subparagraphs (ii), (iii), or (iv) of paragraph (b) of the definition of **capital project** in section 5; and
 - (c) is carried out by Transit in the region in respect of which the Auckland Regional Council is constituted.
- (2) Money received by Transit by way of grant from Infrastructure Auckland—
 - (a) is not land transport revenue within the meaning of section 6; and
 - (b) is money that must be paid into its land transport disbursement account; and

- (c) is money that may be applied only for the purpose for which that money is granted.
- (3) Money paid into Transit's land transport disbursement account under subsection (2)(b) must not, under subsection (2)(c), be paid for the purpose in respect of which it is granted unless the price of the project in respect of which it is to be paid has been determined by an applicable procurement procedure, and money that cannot be paid for that purpose must not be paid to any local authority or approved public organisation.
- (4) Transit does not require the approval of Transfund for expenditure under this section but must include the expenditure in its land transport programme.
- (5) Expenditure under this section need not be included in the national land transport programme.

Compare: 1989 No 75 s 104A

Diversion of excise duty and excise-equivalent duty to national land transport fund

- 40 Apportionment of excise duty and excise-equivalent duty**
Of the excise duty and excise-equivalent duty paid into the Crown Bank Account, after deducting any relevant refunds or drawbacks of duties under the Customs and Excise Act 1996, there must be paid to the national land transport fund the amounts prescribed for the purpose by regulations made under section 45.

Compare: 1989 No 75 s 100

- 41 Refund of excise duty, excise-equivalent duty, and GST**
- (1) Persons using any motor spirits, compressed natural gas, or liquefied petroleum gas are entitled to a refund in respect of excise duty, excise-equivalent duty, and goods and services tax charged on the consideration for the supply of motor spirits, compressed natural gas, or liquefied petroleum gas, to the extent that the amount of the duty that is refunded forms part of the consideration for that supply and to the extent specified in regulations made under section 45.
- (2) Nothing in this section applies to any motor spirits, compressed natural gas, or liquefied petroleum gas used for any

purpose declared by regulations made under section 45 to be exempt from the provisions of this section.

- (3) All refunds of excise duty, excise-equivalent duty, and goods and services tax under regulations made under section 45 must be paid out of the national land transport fund to the extent specified in the regulations without further appropriation than this section.
- (4) No such refund of excise duty, excise-equivalent duty, or goods and services tax may be allowed unless application is made for that refund in accordance with section 42.
- (5) If the amount of any refund of excise duty, excise-equivalent duty, and goods and services tax provided for in regulations made under section 45 is increased, reduced, or varied by any Act or by any regulations, refunds of duty or tax paid, whether before or after the coming into force of that increase, reduction, or variation, in satisfaction of a liability for that duty or tax incurred before that date may be applied for and made as if the increase, reduction, or variation were not in force.

Compare: 1989 No 75 s 101

42 Procedure for obtaining refund

- (1) Every application for a refund under section 41 must be made to the Secretary on a form to be provided by the Secretary, and must be supported by any documentary evidence and any other information that the Secretary may require or as may be prescribed.
- (2) Applications for refunds must be made in respect of periods ending with the date or dates approved by the Secretary.
- (3) No refund may be allowed unless application for the refund is made within 2 years following the close of the period in respect of which the application is made.
- (4) If the application for a refund is made after the expiration of 3 months from the close of the relevant period but within 2 years after the close of that period, the amount of the refund otherwise payable must be reduced by 10% unless a full refund is allowed under subsection (5).
- (5) If application for a refund is made after the expiration of 3 months from the close of the relevant period, whether or not it is made within 2 years after the close of that period, the Secretary may, at his or her discretion, allow a full refund.

- (6) The Secretary may, at his or her discretion, allow a refund in any special case before the close of any period in respect of motor spirits, compressed natural gas, or liquefied petroleum gas used within that period.

Compare: 1989 No 75 s 102

43 Offence and penalty

- (1) A person commits an offence who, for the purposes of obtaining a refund under section 41, makes any application or furnishes any information that he or she knows to be false in any material particular.
- (2) A person who commits an offence against subsection (1) is liable on summary conviction to a fine not exceeding \$2,000.
- (3) Despite anything in the Summary Proceedings Act 1957, any information for an offence against subsection (1) may be laid at any time within 3 years after the date of the offence.

44 Consequential repeal

Part V of the Transit New Zealand Act 1989 is consequentially repealed.

45 Regulations relating to sections 40 to 42

The Governor-General may, from time to time, by Order in Council, make regulations providing for any matters contemplated by sections 40 to 42, necessary for the administration of those sections, or necessary for giving those sections full effect.

Subpart 2—Road tolling schemes and concession agreements

Road tolling schemes

46 Authority to establish road tolling scheme

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, establish a road tolling scheme to provide funds that may be applied by or on behalf of a public road controlling authority for the purposes of—
- (a) 1 or more of the following activities, namely, the planning, design, supervision, construction, maintenance, or operation of a new road; and

- (b) meeting any conditions or requirements set out in the order.
- (2) An order under subsection (1) must—
- (a) describe (so far as is practicable)—
 - (i) the new road, or part of it, in respect of which the toll revenue may be applied; and
 - (ii) the road or roads that may be tolled (being the new road and, if the order so provides, a road that meets the requirements of section 48(2)), or the part or parts of those roads that may be tolled; and
 - (b) set out any conditions that must be met to the satisfaction of the Minister, being—
 - (i) any conditions that must be met before the public road controlling authority or toll operator may begin tolling; and
 - (ii) any other conditions that apply; and
 - (c) set out a process by which the Minister will confirm whether he or she is satisfied that the relevant conditions to be met before tolling may begin have been met.
- (3) An order made under subsection (1) may (without limitation)—
- (a) set tolls, or empower the public road controlling authority or toll operator to set tolls within the maximum limit, or according to the method, set out in the order:
 - (b) provide for different levels of tolls to be levied in respect of different classes of person or motor vehicles, different times or days, different directions of travel, or different methods of payment, or to be levied on any other differential basis:
 - (c) grant exemptions from the obligation to pay tolls under the scheme (whether on a basis referred to in paragraph (b) or on any other basis specified in the order), and empower the public road controlling authority or toll operator to grant exemptions (which power is subject to any limitations set out in the order):
 - (d) state how the tolls are to be collected:
 - (e) specify any information that the toll operator or the public road controlling authority is required to provide to the Minister or any other specified person or organisation:

- (f) authorise the enforcement authority to have access to law enforcement information held by a holder agency under the Privacy Act 1993, and set out terms and conditions governing that access:
 - (g) require the public road controlling authority to prepare a demand management plan in accordance with the order:
 - (h) specify civil penalties for breach of conditions referred to in subsection (2)(b)(ii), and establish a procedure for resolving disputes about the application of those penalties:
 - (i) require notice of the Minister's confirmation of the matters referred to in subsection (2)(c) to be published in the manner set out in the order.
- (4) An order made under subsection (1) is a regulation for the purposes of the Regulations (Disallowance) Act 1989 and the Acts and Regulations Publication Act 1989.
 - (5) Before recommending that an order made under subsection (1) be amended or revoked, the Minister must consult the relevant public road controlling authority about his or her proposal.
 - (6) This section does not limit any other Act that provides for tolls to be levied or collected in respect of any road.

47 When tolling power is exercisable

- (1) The power of a public road controlling authority or toll operator to begin tolling a road or part of it in accordance with an Order in Council made under section 46(1) is exercisable—
 - (a) from the time, or on and from the date, specified for the purpose in a notice published by the Minister stating that he or she is satisfied as to the matters referred to in section 46(2)(c); or
 - (b) if no time is so specified, from the time that notice is published.
- (2) A notice under subsection (1) must be published in the form and manner specified in the relevant order made under section 46(1) (if such requirements are specified in the order).
- (3) The power of a public road controlling authority or toll operator to continue tolling a road or part of it in accordance with an order made under section 46(1) is exercisable—

- (a) during the period specified for the purpose in the order;
or
- (b) if no period is specified in the order, while the toll-setting provisions of the order remain in force.

48 Procedure for recommending making of order under section 46

- (1) The Minister must not recommend the making of an Order in Council under section 46(1) unless—
 - (a) he or she is satisfied that the activity contributes to the purpose of this Act; and
 - (b) he or she has taken into account how the activity—
 - (i) assists economic development; and
 - (ii) assists safety and personal security; and
 - (iii) improves access and mobility; and
 - (iv) protects and promotes public health; and
 - (v) ensures environmental sustainability; and
 - (c) he or she has taken into account—
 - (i) any current national land transport strategy, relevant regional land transport strategies, and National Energy Efficiency and Conservation Strategy; and
 - (ii) the availability of alternative land transport options and the impact of the activity on those options; and
 - (iii) the land transport options and alternatives that have been considered by the public road controlling authority; and
 - (iv) whether the activity is consistent with current priorities for land transport expenditure; and
 - (v) the outcome of consultation undertaken by the public road controlling authority; and
 - (d) either—
 - (i) the activity is included in the current national land transport programme; or
 - (ii) the Minister is satisfied that there is a high degree of support from affected communities; and
 - (e) he or she is satisfied that—
 - (i) the requirement in subsection (2) (if applicable) is met; and
 - (ii) there is available to road users a feasible, un-tolled, alternative route.

- (2) The Minister must not recommend that an existing road or part of it be tolled unless he or she is satisfied that the existing road or part is located near, and is physically or operationally integral to, the new road in respect of which the tolling revenue will be applied.
- (3) If Transfund has assessed an activity against any criterion in subsection (1) in the course of performing its functions and duties under section 19 or section 20, the Minister is entitled to rely on that assessment and need not separately assess the activity against that criterion for the purpose of this section.
- (4) The Minister may, at his or her discretion,—
 - (a) recommend or decline to recommend the making of an order under section 46(1):
 - (b) after consulting the public road controlling authority about his or her proposal, recommend the making of an order under section 46(1) that contains provisions different from those requested by the public road controlling authority.
- (5) The application of subsection (1)(d)(i) is subject to section 109.

49 Consultation requirements

- (1) A public road controlling authority that seeks funding by way of a road tolling scheme must consult in accordance with sections 15 to 18 as if the public road controlling authority were seeking funding from Transfund, and those sections apply with the necessary modifications.
- (2) However, a public road controlling authority need not consult any person or organisation referred to in those sections about any matter if it has already consulted them about the matter in the course of carrying out consultation under any provision of this Act, other than this section, or under or for the purposes of any other Act.

50 Privacy

- (1) This section applies to personal information held or stored for the purposes of a road tolling scheme by or on behalf of a toll operator or enforcement authority.

- (2) The toll operator must not use any personal information to which this section applies except for the purpose of collecting tolls.
- (3) The enforcement authority must not use any personal information to which this section applies except for the purpose of enforcing the toll offence provisions of this Act.
- (4) The disclosure of personal information to which this section applies on any of the grounds set out in principle 11 in the Privacy Act 1993 is not prohibited by subsection (2) or subsection (3).
- (5) The toll operator and enforcement authority must each outline their privacy policies in a document and make the document available for inspection by the public free of charge during usual working hours or for purchase at a reasonable price.

51 Payment of tolls

- (1) A toll must be paid at the time the toll is due for payment under section 52.
- (2) A toll must be paid by a method required by the toll operator, and the toll operator may offer alternative methods of payment.
- (3) At least 1 of the methods of payment must be a method that does not record personal information in relation to the person paying the toll.
- (4) The toll operator may impose reasonable charges in connection with the administration of any method of payment.

52 Who is liable to pay toll

- (1) The driver of a motor vehicle is liable for payment of the toll to the toll operator when the vehicle reaches the toll payment point.
- (2) If the driver fails to pay the toll as required by subsection (1), the registered owner of the motor vehicle is liable for payment of the toll to the toll operator.
- (3) However, the registered owner of a motor vehicle is not liable under subsection (2) to pay a toll if, within 28 days after being notified of the non-payment of the toll, the registered owner supplies to the toll operator, in a sworn statement in writing or a statutory declaration,—

- (a) the name and address of the driver of the vehicle or any other particulars within the knowledge of the registered owner that may lead to the identification of the person who was in charge or control of the vehicle at the relevant time; or
 - (b) a statement that the vehicle was a stolen vehicle at the relevant time.
- (4) Tolls (and the associated enforcement costs) are recoverable in a court of competent jurisdiction as a debt due to the toll operator.
- (5) Tolls are not payable in respect of any motor vehicle that—
- (a) is a police vehicle; or
 - (b) is a fire engine; or
 - (c) is an ambulance; or
 - (d) is exempt by virtue of an Order in Council made under section 46(1).

53 Enforcement of tolls

A toll operator may deny a motor vehicle physical access to its toll road, or past the toll payment point, if—

- (a) the vehicle is subject to a toll, or the driver or registered owner of the vehicle is liable to pay a toll; and
- (b) the driver or registered owner of the vehicle has not paid the toll or made an acceptable payment arrangement with the toll operator.

54 Offences and penalties

- (1) A person commits an offence if the person, without reasonable excuse, refuses or fails to pay a toll payable by that person.
- (2) An offence against subsection (1) is a moving vehicle offence under the Land Transport Act 1998.
- (3) A person commits an offence if, for the purpose of section 52(3), the person gives a sworn statement in writing or a statutory declaration and, in that statement or declaration, gives information that the person knows to be false or misleading.
- (4) A person who commits an offence against subsection (3) is liable on summary conviction to a fine not exceeding \$500.
- (5) Subsection (3) does not limit section 111 of the Crimes Act 1961.

55 Application of Fair Trading Act 1986

- (1) Nothing in this Part limits the application of the Fair Trading Act 1986.
- (2) For the purposes of the Fair Trading Act 1986, a toll operator is supplying services to those by whom the tolls are payable and is accordingly in trade.

*Concession agreements for roads***56 Concession agreements**

- (1) An activity described in the definition of **concession agreement** in section 5 must not be undertaken by a public road controlling authority except under a concession agreement.
- (2) Before entering into a concession agreement, a public road controlling authority must—
 - (a) obtain the Minister's prior written approval in principle; and
 - (b) satisfy the Minister that the conditions referred to in subsection (3)(b)(i) that are attached to that approval have been met.
- (3) In granting an approval in principle under subsection (2), the Minister—
 - (a) must set conditions that protect public access to the associated new road;
 - (b) may make the approval subject to any other conditions the Minister thinks fit, including (without limitation) conditions that—
 - (i) must be met before the public road controlling authority may enter into a concession agreement;
 - (ii) relate to the apportionment of risk as between the parties;
 - (iii) relate to the responsibilities of the parties;
 - (iv) relate to the rights of the parties;
 - (c) may specify civil penalties for breach of the conditions referred to in paragraph (b), and establish a procedure for resolving disputes about the application of those penalties.
- (4) Conditions imposed under subsection (3) form part of the relevant concession agreement.
- (5) The term of a concession agreement must not exceed 35 years from the date on which the associated new road is opened to

- the public, except that the Minister may, before the expiry of the agreement, approve an extension of the agreement once only by up to 10 years if he or she is satisfied that—
- (a) there are exceptional circumstances justifying the extension; and
 - (b) the extension is justified in terms of the criteria set out in section 58(1)(a) and (b); and
 - (c) the concession agreement has been in effect for at least two-thirds of its term.
- (6) A concession agreement must not include any provision that provides a disincentive for a person to pursue other sustainable transport options (for example, public transport or the implementation of demand management strategies).
- (7) In performing functions, exercising rights or powers, or providing services under a concession agreement, a concessionaire must act in accordance with the agreement and this Part.
- (8) This section does not empower any person to levy a toll.

57 When concession agreement may be entered into

A public road controlling authority that has an approval in principle to enter into a concession agreement may enter into a concession agreement if the Minister has notified the public road controlling authority that he or she is satisfied that it has met the relevant conditions attached to the approval under section 56(3)(b)(i).

58 Approval process and relationship to national land transport programme

- (1) In considering whether to grant an approval under section 56, the Minister must—
- (a) be satisfied that the activity contributes to the purpose of this Act; and
 - (b) take into account how the activity—
 - (i) assists economic development; and
 - (ii) assists safety and personal security; and
 - (iii) improves access and mobility; and
 - (iv) protects and promotes public health; and
 - (v) ensures environmental sustainability; and
 - (c) take into account any current national land transport strategy, relevant regional land transport strategy, and

- National Energy Efficiency and Conservation Strategy;
and
- (d) take into account the availability of alternative land transport options and the impact of the activity on those options; and
 - (e) take into account the land transport options and alternatives that have been considered by the public road controlling authority; and
 - (f) take into account whether the activity is consistent with current priorities for land transport expenditure; and
 - (g) take into account the outcome of consultation undertaken by the public road controlling authority.
- (2) The Minister must not approve a public road controlling authority entering into a concession agreement in respect of an activity unless—
- (a) either—
 - (i) the activity is included in the current national land transport programme; or
 - (ii) the Minister is satisfied that the activity has a high degree of support from affected communities; and
 - (b) the land and road comprised in the agreement will be owned by a road controlling authority during the term of the agreement.
- (3) The fact that an approval has been granted under section 56 in respect of an activity does not of itself make the activity an approved activity.
- (4) If Transfund has assessed an activity against any criterion in subsection (1) in the course of performing its functions and duties under section 19 or section 20, the Minister is entitled to rely on that assessment and need not separately assess the activity against that criterion for the purpose of this section.
- (5) The application of subsection (2)(a)(i) is subject to section 109.

59 Consultation requirements

- (1) A public road controlling authority that seeks funding by way of a concession agreement must consult in accordance with sections 15 to 18 as if the public road controlling authority were seeking funding from Transfund, and those sections apply with the necessary modifications.

- (2) However, a public road controlling authority need not consult any person or organisation referred to in those sections about any matter if it has already consulted them about the matter in the course of carrying out consultation under any provision of this Act, other than this section, or under or for the purposes of any other Act.

60 Terms of concession agreements

- (1) A concession agreement may include any terms and conditions agreed by the parties that are not inconsistent with—
- (a) the terms and conditions of the Minister's approval under section 56; or
 - (b) the provisions of, or requirements under, this Act or any other enactment.
- (2) In addition, a concession agreement must include the functions, duties, and powers under Part XXI of the Local Government Act 1974 or Part IV of the Transit New Zealand Act 1989 that are delegated under section 61.

61 Delegation of roading functions and powers to concessionaires

- (1) A road controlling authority may, with the prior approval of the Minister, delegate in writing to a concessionaire all or any of its functions and powers under—
- (a) Part XXI of the Local Government Act 1974; or
 - (b) Part IV of the Transit New Zealand Act 1989, other than the power under section 61(3) to make bylaws or the power under section 62 to delegate.
- (2) While functions or powers of a road controlling authority are delegated to a concessionaire under subsection (1),—
- (a) the concessionaire must perform or exercise the delegated functions, duties, or powers in its own name and is liable accordingly; and
 - (b) neither the road controlling authority nor the Crown is answerable for any act or default of the concessionaire in the performance or exercise of any functions, duties, or powers so delegated; and
 - (c) the road controlling authority may not perform or exercise any of the functions, duties, or powers so delegated without first revoking that delegation.

- (3) A concessionaire to whom any functions or powers are delegated under subsection (1) may, with the prior approval in writing of the Minister and the road controlling authority, delegate to any other person such of those functions or powers as are so approved.
- (4) Nothing in this section affects the right of Transit to delegate under clause 20 or clause 21 of Schedule 4.

62 Effect of delegation under section 61

- (1) This section applies in relation to delegations under section 61.
- (2) A person may, subject to any general or special directions given or conditions imposed by the road controlling authority, exercise any functions or powers under a delegation in the same manner and with the same effect as if they had been conferred or imposed on that person directly by section 61 and not by delegation.
- (3) A delegation may be made—
 - (a) to a specified person or to persons of a specified class; or
 - (b) to the holder or holders for the time being of a specified office or specified class of office.
- (4) A delegation must be given for a specified period but in any event is revocable on the terms and conditions agreed in the relevant concession agreement.
- (5) Until it is revoked or it expires, a delegation continues in force according to its tenor, despite the fact that the person by whom it was made may cease to hold office, and continues to have effect as if it were made by the person for the time being holding that office.
- (6) A person purporting to act under a delegation must, when reasonably requested to do so, produce evidence of his or her authority to so act.
- (7) A person purporting to act under a delegation is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation.

63 Leasing

- (1) A road controlling authority may, for the purpose of enabling a concessionaire to discharge any responsibilities under a

- concession agreement or this Part, grant a lease for a term not longer than 35 years over any land under the control of the road controlling authority.
- (2) However, a road controlling authority may extend the lease once only by up to 10 years in order to align the term of the lease as closely as practicable with the term of a related concession agreement (as provided for in section 56(5)).
 - (3) In subsection (1), **land** includes—
 - (a) an estate, right, title, or interest in land; and
 - (b) a road or portion of a road; and
 - (c) land acquired by the road controlling authority under the Public Works Act 1981.
 - (4) The lease—
 - (a) may be set out in the concession agreement or in a separate deed or agreement;
 - (b) may be for the whole or any part of any period or periods within the concession agreement and on any terms and conditions that the road controlling authority thinks fit;
 - (c) if so required by the Minister, must include provisions setting out the rights and responsibilities of the lessor and lessee, including provisions about matters such as fees;
 - (d) must include provisions relating to the protection of public access to the land.
 - (5) While the concession has effect, the grant of the lease—
 - (a) is not a subdivision for the purposes of section 218 of the Resource Management Act 1991; and
 - (b) is not subject to sections 40 to 42 of the Public Works Act 1981.
 - (6) For the purposes of the Rating Powers Act 1988 and the Local Government (Rating) Act 2002, land subject to a lease under subsection (1) and formed and used for a road is not rateable property.
 - (7) A licence must not be granted for the purpose referred to in subsection (1).

64 Registration of leases

Despite anything in the Land Transfer Act 1952, if a lease under section 63 is in the form of a deed and the lease is

granted over land for which no certificate of title or computer register has been issued or created under that Act or the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002, the Minister may request the Registrar-General of Land to register the deed by constituting it as a computer interest register under section 9 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002; and the Registrar-General of Land must register the deed accordingly.

Enforcement of this Part and other land transport legislation

65 This Part and other land transport legislation enforceable in relation to concession roads and toll roads

- (1) This section applies in relation to persons who are enforcement officers under the Land Transport Act 1998.
- (2) In relation to a concession road or toll road and to any person, vehicle, or animal on that road,—
 - (a) enforcement officers who are sworn members of the police and enforcement officers who are non-sworn members of the police authorised for the purpose by the Commissioner may enforce the provisions of this Part and the other enactments referred to in section 113(1) of the Land Transport Act 1998, and, to avoid doubt, the road must be regarded for this purpose as a road as defined in section 2(1) of that Act; and
 - (b) other enforcement officers who are appointed for the purposes of this Part under section 208(1) of the Land Transport Act 1998 may enforce the provisions of this Part relating to tolls, and, to avoid doubt, the road must be regarded for this purpose as a road as defined in section 2(1) of that Act; and
 - (c) the provisions of the Summary Proceedings Act 1957 and the regulations in force under that Act apply accordingly.
- (3) For the purposes of sections 52(1)(c) and 53 of the Land Transport Act 1998, an enforcement officer who gives or imposes any lawful requirement, direction, notice, request, or prohibition in relation to a person, vehicle, or animal on a concession road or toll road must be regarded as acting in the execution of his or her functions or powers under that Act.

Part 3
**Administrative provisions relating to Transfund and
Transit, and miscellaneous provisions**

Transfund

66 Transfund continued

Transfund New Zealand is continued as a body corporate with the same name.

Compare: 1989 No 75 s 3A

67 Crown entity status

Transfund is a Crown entity for the purposes of the Public Finance Act 1989.

Compare: 1989 No 75 s 3A(8)

68 Objective of Transfund

- (1) The objective of Transfund is to allocate resources in a way that contributes to an integrated, safe, responsive, and sustainable land transport system.
- (2) In meeting its objective, Transfund must exhibit a sense of social and environmental responsibility, which includes—
 - (a) avoiding, to the extent reasonable in the circumstances, adverse effects on the environment; and
 - (b) ensuring, to the extent practicable, that persons or organisations preparing land transport programmes—
 - (i) take into account the views of affected communities; and
 - (ii) give early and full consideration to land transport options and alternatives in a manner that contributes to paragraph (a) and subparagraph (i); and
 - (iii) provide early and full opportunities for the persons and organisations listed in section 15 to contribute to the development of land transport programmes.

Compare: 1989 No 75 s 3B

69 Functions

- (1) The functions of Transfund are—
 - (a) to prepare and adopt a national land transport programme under section 19:

- (b) to review and revise the national land transport programme in accordance with its most recent performance agreement:
 - (c) to approve activities and activity classes:
 - (d) to make payments from the national land transport account as authorised by this Act:
 - (e) to approve procurement procedures under section 25:
 - (f) to audit the performance of approved organisations in relation to activities approved by Transfund and the operation of the organisation's land transport disbursement account:
 - (g) to assist and advise approved organisations in relation to Transfund's functions, duties, and powers under this Act and the Land Transport Act 1998:
 - (h) to fund research, education, and training activities and activity classes:
 - (i) to provide the Minister with any information and advice relating to Transfund's functions that the Minister may request:
 - (j) to carry out any other functions relating to the funding of land transport that the Minister requests or directs.
- (2) Transfund's statutorily independent functions are—
- (a) to determine whether particular activities should be included in a national land transport programme; and
 - (b) approving activities; and
 - (c) approving procurement procedures.

Compare: 1989 No 75 s 3C

70 Separate legal personality

Transfund is a legal entity in its own right separate from its board members and the Crown, and continues in existence until dissolved by an Act.

71 Capacity and powers

- (1) Transfund has—
- (a) the capacity, rights, powers, and privileges of a natural person; and
 - (b) any additional powers conferred by this Act or any other Act.

- (2) Transfund may exercise its powers only for the purpose of carrying out its functions.

Compare: 1989 No 75 s 3E

72 Transfund's board

- (1) Transfund's board must have at least 6, but no more than 8, board members.
- (2) The board members are appointed by the responsible Minister.

Compare: 1989 No 75 s 3A(2)

73 Further provisions about Transfund

Schedule 4 applies to Transfund.

74 Use of words Transfund New Zealand

- (1) No company or other body may be incorporated or registered under a name that contains the words Transfund New Zealand 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.
- (2) Nothing in subsection (1) applies to Transfund or to any person who is appropriately authorised by Transfund.

Compare: 1989 No 75 s 3G

Transit

75 Transit continued

Transit New Zealand is continued as a body corporate with the same name.

Compare: 1989 No 75 s 4

76 Crown entity status

Transit is a Crown entity for the purposes of the Public Finance Act 1989.

Compare: 1989 No 75 s 4(4A)

77 Objective of Transit

- (1) The objective of Transit is to operate the State highway system in a way that contributes to an integrated, safe, responsive, and sustainable land transport system.
- (2) In meeting its objective, Transit must exhibit a sense of social and environmental responsibility, which includes—
 - (a) avoiding, to the extent reasonable in the circumstances, adverse effects on the environment; and
 - (b) taking into account the views of affected communities; and
 - (c) giving early and full consideration to land transport options and alternatives in a manner that contributes to paragraphs (a) and (b); and
 - (d) providing early and full opportunities for the persons and organisations listed in section 15(1) to contribute to the development of its land transport programmes.

Compare: 1989 No 75 s 5

78 Functions

The functions of Transit are—

- (a) to control the State highway system, including planning, design, supervision, construction, and maintenance, in accordance with this Act and the Transit New Zealand Act 1989;
- (b) to prepare a land transport programme for the State highway system;
- (c) to make payments from its land transport disbursement account as authorised by this Act;
- (d) to operate road tolling schemes;
- (e) to enter into concession agreements under section 56;
- (f) to provide the Minister with any information and advice relating to Transit's functions that the Minister may request;
- (g) to carry out research, education, and training;
- (h) to carry out any other functions relating to land transport that the Minister requests or directs.

Compare: 1989 No 75 s 6

79 Separate legal personality

Transit is a legal entity in its own right separate from its board members and the Crown, and continues in existence until dissolved by an Act.

80 Capacity and powers

- (1) Transit has—
- (a) the capacity, rights, powers, and privileges of a natural person; and
 - (b) any additional powers conferred by this Act or any other Act.
- (2) Transit may exercise its powers only for the purpose of carrying out its functions.

Compare: 1989 No 75 s 7A

81 Transit's board

- (1) Transit's board must have at least 6, but no more than 8, board members.
- (2) The board members are appointed by the responsible Minister.

Compare: 1989 No 75 s 4(1)

82 Further provisions about Transit

Schedule 4 applies to Transit.

83 Use of words Transit New Zealand

- (1) No company or other body may be incorporated or registered under a name that contains the words Transit New Zealand 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.
- (2) Nothing in subsection (1) applies to Transit or to any person who is appropriately authorised by Transit.

Compare: 1989 No 75 s 3G

Provisions applying to both Transfund and Transit

84 Performance agreements must be completed by Transfund and Transit

- (1) Each entity must, not later than 1 month before the commencement of each financial year, give to the Minister a draft performance agreement in relation to that year containing the matters set out,—
 - (a) in the case of Transfund, in Part 1 of Schedule 5:
 - (b) in the case of Transit, in Part 2 of Schedule 5.
- (2) After receiving a draft performance agreement, or an amended version of it under subsection (3) (whether or not for the first time), the Minister must—
 - (a) approve it; or
 - (b) refuse to approve it and return it to the entity with directions that it be amended.
- (3) If a draft performance agreement is returned under subsection (2)(b), the entity must amend it according to the directions given by the Minister and return it to the Minister.
- (4) The draft performance agreement approved for any financial year by the Minister under subsection (2)(a) constitutes the performance agreement between the Minister and the entity for that year.
- (5) This section is subject to sections 85 and 86.

85 Failure to prepare performance agreement or comply with directions

- (1) If an entity fails to comply with section 84(1), the Minister must prepare a performance agreement, and that agreement constitutes the performance agreement between the Minister and the entity for that financial year.
- (2) If an entity fails within a reasonable time to comply to the satisfaction of the Minister with section 84(3), the Minister must determine the amendment and approve the agreement as so amended.

86 Amendment of performance agreement after approval

- (1) At any time during a financial year, the Minister and an entity may agree in writing to amend the relevant performance agreement for that year.

- (2) At any time during a financial year, the Minister may direct an entity to amend any provision of its performance agreement for that year, and the entity must amend its performance agreement according to the directions given by the Minister.

Compare: 1989 No 75 s 7B

87 Transfund and Transit must consider delegating or contracting out functions and powers

Each entity, in the course of performing its functions and exercising its powers, must consider whether it could most efficiently and effectively perform those functions and powers by means of their own operations, or by delegating or contracting out those operations to appropriate persons selected after an appropriate competitive process.

Compare: 1989 No 75 s 3H

Miscellaneous provisions

88 Public availability of documents

If a public organisation is required under this Act to make any document or matter available to the public, it must—

- (a) make sufficient copies of that document or matter available for public inspection, free of charge; and
- (b) make sufficient copies of that document or matter available for purchase, at a reasonable price, during normal office hours; and
- (c) notify that availability by advertisement in a newspaper circulating in the region or district, or regions or districts, to which the document or matter relates.

Compare: 1989 No 75 s 105

89 Application of Act to Chatham Islands

This Act applies to the Chatham Islands as if the Chatham Islands Council were a territorial authority that is also a regional council.

Compare: 1989 No 75 s 107

Amendments and repeals

90 Consequential amendments

The enactments listed in Schedule 6 are amended in the manner set out in that schedule.

91 Repeals

- (1) The Auckland Transport Board Act 1928 is repealed.
- (2) Section 104 of the Transit New Zealand Act 1989 (which relates to special purpose roads) is repealed.

*Savings provisions***92 Transit New Zealand (Apportionment and Refund of Excise Duty) Regulations 1998**

The Transit New Zealand (Apportionment and Refund of Excise Duty) Regulations 1998 (SR 1998/94) continue to have effect as if they had been made under section 45.

93 Performance agreements

The performance agreements for Transfund New Zealand and Transit New Zealand that were in effect under the Transit New Zealand Act 1989 immediately before the commencement of this section continue to have effect as if they had been approved under section 84.

94 Accounts

- (1) The State Highways Account kept under section 20 of the Transit New Zealand Act 1989 immediately before the commencement of this section is a land transport disbursement account under this Act.
- (2) The Land Transport Disbursement Accounts kept under section 24 of the Transit New Zealand Act 1989 immediately before the commencement of this section are land transport disbursement accounts under this Act.

95 Competitive pricing procedure

- (1) Competitive pricing procedures in effect under section 26 of the Transit New Zealand Act 1989 immediately before the commencement of this section continue to have effect as procurement procedures under this Act.
- (2) However, until the close of 30 June 2004, nothing in section 21(3)(b) applies in relation to any approved research, education, or training activity or activity class.

96 Approved outputs and capital projects

Approvals in effect under section 17 of the Transit New Zealand Act 1989 immediately before the commencement of this section continue to have effect as if they were given under section 20.

97 Existing programmes continued

- (1) The national roading programme in effect under section 42A of the Transit New Zealand Act 1989 immediately before the commencement of this section continues to have effect as a national land transport programme under this Act.
- (2) Every State highways programme, regional programme, and district roading programme under Part III of the Transit New Zealand Act 1989 that was in effect immediately before the commencement of this section continues to have effect as a land transport programme under this Act.
- (3) Every safety (administration) programme in effect under section 38 of the Transit New Zealand Act 1989 immediately before the commencement of this section continues to have effect as a safety administration programme under this Act.
- (4) Transfund must use its best endeavours to comply with the provisions of this Act in approving activities that were not approved before the commencement of this section and that are in a programme to which this section applies, but nothing in this section requires Transfund to be satisfied that an approved organisation has complied with section 15 in preparing the organisation's land transport programme.

98 Completion of draft programmes

- (1) This section applies to a draft programme referred to in subsection (2) if—
 - (a) the draft programme was in existence (but not completed) immediately before the date of commencement of this section; and
 - (b) the consultation required by the Transit New Zealand Act 1989 to be undertaken before the programme could be approved had been carried out before that date or is completed on or after that date.
- (2) The programmes are—
 - (a) any draft national roading programme under sections 18 and 42A of the Transit New Zealand Act 1989; and

- (b) any draft State highways programme, regional programme, and district roading programme under Part III of the Transit New Zealand Act 1989; and
 - (c) any draft safety (administration) programme under section 37 of the Transit New Zealand Act 1989.
- (3) The programmes may be completed in accordance with the following provisions of this section.
- (4) Until the close of 30 June 2004, Transfund must use its best endeavours to comply with the provisions of this Act in approving activities and activity classes, but nothing in this section requires Transfund to be satisfied that an approved organisation has complied with section 15 in preparing the organisation's land transport programme during that period.
- (5) Until the close of 30 June 2004, the following provisions apply to the completion of any draft State highways programme, regional programme, or district roading programme prepared by an approved organisation:
 - (a) Transit must consult the persons and organisations listed in section 15(1)(a) to (h), but otherwise the relevant consultation provisions of Part III of the Transit New Zealand Act 1989 apply in relation to Transit instead of sections 15 to 18 of this Act, as if that Part had not been repealed by this Act:
 - (b) an approved organisation that is a regional council (or a territorial authority having the powers of a regional council) must consult the persons and organisations listed in section 15(2)(a) to (j), but otherwise the relevant consultation provisions of Part III of the Transit New Zealand Act 1989 apply in relation to the organisation instead of sections 15 to 18 of this Act, as if that Part had not been repealed by this Act:
 - (c) an approved organisation that is a territorial authority must consult the persons and organisations listed in section 15(3)(a) to (j), but otherwise the relevant consultation provisions of Part III of the Transit New Zealand Act 1989 apply in relation to the organisation instead of sections 15 to 18 of this Act, as if that Part had not been repealed by this Act:
 - (d) any other approved organisation must consult the persons and organisations listed in section 15(4)(a) to (j), but otherwise the relevant consultation provisions of

Part III of the Transit New Zealand Act 1989 apply in relation to the organisation instead of sections 15 to 18 of this Act, as if that Part had not been repealed by this Act:

- (e) approved organisations must use their best endeavours to comply with the other relevant provisions of this Act.
- (6) Until the close of 30 June 2004, in completing any draft national roading programme, Transfund must, subject to subsection (4), use its best endeavours to comply with the provisions of this Act relating to the preparation of a national land transport programme.
- (7) Any draft safety (administration) programme that relates to the financial year ending with the close of 30 June 2005 must be completed under Part III of the Transit New Zealand Act 1989 as if that Part had not been repealed by this Act.
- (8) The completed programmes have effect as if they had been continued by section 97.

99 Transitional programmes: period ending 30 June 2004

- (1) This section applies to the preparation of land transport programmes, and national land transport programmes, in the financial year ending with the close of 30 June 2004.
- (2) Transfund must use its best endeavours to comply with the provisions of this Act in approving activities to which this section applies, but nothing in this section requires Transfund to be satisfied that an approved organisation has complied with section 15 in preparing the organisation's land transport programme during that period.
- (3) Until the close of 30 June 2004, the following provisions apply to the preparation of land transport programmes by approved organisations:
 - (a) Transit must consult the persons and organisations listed in section 15(1)(a) to (h), but otherwise the relevant consultation provisions of Part III of the Transit New Zealand Act 1989 apply in relation to Transit instead of sections 15 to 18 of this Act, as if that Part had not been repealed by this Act and as if it were preparing a State highways programme:
 - (b) an approved organisation that is a regional council (or a territorial authority having the powers of a regional council) must consult the persons and organisations

listed in section 15(2)(a) to (j), but otherwise the relevant consultation provisions of Part III of the Transit New Zealand Act 1989 apply in relation to the organisation instead of sections 15 to 18 of this Act, as if that Part had not been repealed by this Act and as if it were preparing a regional programme:

- (c) an approved organisation that is a territorial authority must consult the persons and organisations listed in section 15(3)(a) to (j), but otherwise the relevant consultation provisions of Part III of the Transit New Zealand Act 1989 apply in relation to the organisation instead of sections 15 to 18 of this Act, as if that Part had not been repealed by this Act and as if it were preparing a district roading programme:
 - (d) any other approved organisation must consult the persons and organisations listed in section 15(4)(a) to (j), but otherwise the relevant consultation provisions of Part III of the Transit New Zealand Act 1989 apply in relation to the organisation instead of sections 15 to 18 of this Act, as if that Part had not been repealed by this Act and as if it were preparing a corresponding programme under that Act:
 - (e) approved organisations must use their best endeavours to comply with the other relevant provisions of this Act.
- (4) In preparing a national land transport programme, Transfund must use its best endeavours to comply with the relevant provisions of this Act relating to the preparation of a national land transport programme.
- (5) Nothing in this section applies to a draft programme to which section 98 applies.

100 Transitional programmes: 1 July 2004 to 30 June 2005

- (1) This section applies to the preparation of land transport programmes, and national land transport programmes, in the financial year ending with the close of 30 June 2005.
- (2) Approved organisations must comply with the relevant provisions of this Act in preparing land transport programmes in the financial year ending with the close of 30 June 2005 unless it is impracticable to do so.

- (3) Transfund must comply with the relevant provisions of this Act in approving activities in the financial year ending with the close of 30 June 2005 unless it is impracticable to do so.
- (4) Transfund must comply with the relevant provisions of this Act in preparing its national land transport programme in the financial year ending with the close of 30 June 2005 unless it is impracticable to do so.

101 Policy directions

Policy directions in effect under section 3F or section 7 of the Transit New Zealand Act 1989 immediately before the commencement of this section continue to have effect as policy directions under clause 8 of Schedule 4.

102 Delegations

Delegations in effect under any of sections 3I, 3J, 7D, or 7E of the Transit New Zealand Act 1989 immediately before the commencement of this section continue to have effect as delegations under clause 20 or clause 21 of Schedule 4.

103 Excise duty, excise-equivalent duty, and GST

- (1) Applications for a refund of excise duty or goods and services tax (or both) that are pending under section 101 of the Transit New Zealand Act 1989 immediately before the commencement of this section must be treated as applications under section 41 of this Act.
- (2) All excise-equivalent duty credited to the Land Transport Fund or the National Roads Fund before the commencement of this section is deemed to have been excise duty for the purposes of section 100 of the Transit New Zealand Act 1989.
- (3) Until the commencement of section 44, references in sections 6 and 9 to the crediting or refunding of excise duty or excise-equivalent duty must be read as references to the crediting or refunding of duty under the corresponding provisions of Part V of the Transit New Zealand Act 1989.

104 Applications for grants from Infrastructure Auckland

Applications for grants from Infrastructure Auckland that are pending under section 104A of the Transit New Zealand Act

1989 immediately before the commencement of this section must be treated as applications under section 39.

105 *Gazette notices relating to functions of Transfund or Transit*

Notices in effect under section 3C(1)(j) or section 6(e) of the Transit New Zealand Act 1989 immediately before the commencement of this section continue to have effect as if they were directions given under clause 8 of Schedule 4.

106 *Superannuation of employees of Transfund or Transit*

- (1) This section applies to every person who, immediately before the commencement of this section, was an employee of Transfund or Transit.
- (2) Nothing in this Act affects any entitlement under the Government Superannuation Fund Act 1956 of a person to whom this section applies.

107 *Number of members on Transfund's board*

Until the close of 30 June 2004, it is sufficient compliance with section 72 if Transfund's board is constituted in accordance with section 3A(2) of the Transit New Zealand Act 1989.

108 *Regional land transport strategies*

- (1) The amendments to the Land Transport Act 1998 that are made by section 90 (as set out in Schedule 6) do not affect the currency of regional land transport strategies that are in force immediately before the commencement of that section
- (2) However,—
 - (a) if a regional land transport strategy referred to in subsection (1) was last renewed more than 2 years before the commencement of section 90, steps to renew it must begin within 12 months after that commencement and the strategy must be renewed within 2 years after that commencement; and
 - (b) in any other case, a regional land transport strategy referred to in subsection (1) must be renewed within 3 years after the commencement of section 90; and
 - (c) after its renewal in accordance with paragraph (a) or paragraph (b), a regional land transport strategy must be

renewed in accordance with section 176(1)(b) of the Land Transport Act 1998.

- (3) Until they are renewed in accordance with section 176(1)(b) of the Land Transport Act 1998, regional land transport strategies referred to in subsection (1) continue to have effect in their existing form or renewed form (as the case may be).

109 Application of sections 48(1)(d)(i) and 58(2)(a)(i)

Nothing in section 48(1)(d)(i) or section 58(2)(a)(i) applies until—

- (a) the regional land transport strategy for the region in which the proposed new road is to be constructed has been renewed, after the commencement of section 90, in accordance with section 176(1)(b) of the Land Transport Act 1998; and
- (b) a national land transport programme has been prepared and adopted after that renewal of the regional land transport strategy.

110 Determinations under section 32(b) of Transit New Zealand Act 1989

Determinations in effect under section 32(b) of the Transit New Zealand Act 1989 immediately before the commencement of this section continue to have effect according to their tenor for the purposes of section 25(5).

111 Matters continued by this Part have effect until replaced or revoked under this Part

If any matter or thing is continued with a specified effect by the provisions of sections 92 to 110, the matter or thing continues to have that effect until revoked or replaced under the relevant empowering enactment.

112 Transitional regulations

The Governor-General may from time to time, by Order in Council, make regulations—

- (a) prescribing transitional and savings provisions concerning the coming into force of this Act, which may be in addition to or in place of the transitional and savings provisions of this Part:

- (b) providing that, subject to such conditions as may be specified in the regulations, during a specified transitional period,—
 - (i) specified provisions of this Act (including definitions) do not apply:
 - (ii) specified terms have the meanings given to them by the regulations:
 - (iii) specified provisions repealed or amended or revoked by this Act are to continue to apply.

113 Expiry of section 112

Section 112 expires on the close of 1 July 2005.

ss 12(2), 19(2)

Schedule 1

Provisions relating to programmes

Part 1

Contents of land transport programmes

1 Outstanding payments

- (1) List each approved activity and each activity class included in any earlier national land transport programme, and approved safety administration outputs in any earlier safety administration programme, for which any payments due from Transfund or the Authority are outstanding or any payments may become due, and the amount concerned.
- (2) If it is proposed that an approved activity or activity class, or output, be varied, suspended, or abandoned, give an explanation of the proposed action.

2 Activities and safety administration outputs

- (1) List all activities and activity classes for which any payment is sought, in the current financial year, from Transfund or the Authority in order of the priority that the organisation thinks should be given to those activities or activity classes.
- (2) For activities and activity classes, indicate their total cost, proposed starting date, and duration.
- (3) Indicate the options and alternatives (including demand management) considered for the activities and activity classes.
- (4) Include any outputs recommended for inclusion in the safety administration programme for the next financial year.

3 Expenditure funded by tolling revenue

- (1) Include expenditure to be funded from tolling revenue.
- (2) In the case of Transit, also include all significant expenditure (as indicated in its performance agreement) from sources other than Transfund.

4 Objectives of activities and how they contribute to purpose of Act

- (1) State the objective or objectives to be achieved by each activity and each activity class.
- (2) State how each activity or activity class contributes to the purpose of this Act.

Part 1—*continued*

- 5 Assessment of activities**
Include an assessment of each activity and each activity class against section 12(3) and (5) and on any other basis that Transfund or the Authority may, from time to time, require.
- 6 Consultation**
Include a summary of the consultation carried out in the preparation of the land transport programme.
- 7 Steps for developing options and alternatives**
Include the steps the organisation intends to take in developing land transport options and alternatives.
- 8 Long-term financial forecast**
Include a long-term financial forecast that contains a forecast of anticipated revenue and expenditure on activities for the current financial year and the 9 following financial years.
- 9 Policy directions**
In the case of Transit, include policy directions given under clause 8 of Schedule 4.
- 10 Form**
A land transport programme must be in the form and contain the other details that Transfund and the Authority may jointly or separately prescribe.

Part 2

Contents of national land transport programme

- 11 Significant issues**
Identify any significant upcoming national land transport issues reasonably known by Transfund.
- 12 Approved activities and activity classes**
- (1) Include approved activities and activity classes.
 - (2) Include activities that Transfund anticipates approving under section 20 in the next financial year.

Part 2—*continued*

13 Long-term financial forecast

Include a forecast of Transfund's anticipated revenue and expenditure for the current financial year and the 9 following financial years.

14 Policy directions

Include relevant policy directions under clause 8 of Schedule 4.

Schedule 2 ss 16, 17, 18
Provisions relating to consultation under this Act

Part 1
Consultation principles

1 Principles

Consultation must be undertaken in accordance with the following principles:

- (a) that persons who will or may be affected by, or have an interest in, the decision or matter should be provided by the approved organisation with reasonable access to relevant information in a manner and format that is appropriate to the preferences and needs of those persons:
- (b) that persons who will or may be affected by, or have an interest in, the decision or matter should be encouraged by the approved organisation to present their views to the approved organisation:
- (c) that persons who are invited or encouraged to present their views to the approved organisation should be given clear information by the approved organisation concerning the purpose of the consultation and the scope of the decisions to be taken following the consideration of views presented:
- (d) that persons who wish to have their views on the decision or matter considered by the approved organisation should be provided by the approved organisation with a reasonable opportunity to present those views to the approved organisation in a manner and format that is appropriate to the preferences and needs of those persons:
- (e) that the views presented to the approved organisation should be received by the approved organisation with an open mind and should be given by the approved organisation, in making a decision, due consideration:
- (f) that persons who present views to the approved organisation should be provided by the approved organisation with information concerning both the relevant decisions and the reasons for those decisions.

Part 1—*continued***2 How principles are to be observed**

The principles set out in clause 1 are to be observed by an approved organisation in such manner as the approved organisation considers, in its discretion, to be appropriate in any particular instance.

3 Matters to which approved organisation must have regard

An approved organisation must, in exercising its discretion under clause 2, have regard to—

- (a) the views and preferences of persons likely to be affected by, or to have an interest in, the matter; and
- (b) the principle that consideration must be given at—
 - (i) the stage at which the problems and objectives related to the matter are defined;
 - (ii) the stage at which the options that may be reasonably practicable options of achieving an objective are identified;
 - (iii) the stage at which reasonably practicable options are assessed and proposals developed;
 - (iv) the stage at which proposals of the kind described in subparagraph (iii) are adopted; and
- (c) the extent to which the current views and preferences of persons who will or may be affected by, or have an interest in, the decision or matter are known to the approved organisation; and
- (d) the nature and significance of the decision or matter, including its likely impact from the perspective of the persons who will or may be affected by, or have an interest in, the decision or matter; and
- (e) the provisions of Part 1 of the Local Government Official Information and Meetings Act 1987 (if the organisation is a local authority) or the provisions of the Official Information Act 1982 (in any other case); and
- (f) the costs and benefits of any consultation process or procedure.

Part 1—*continued***4 Relationship with consultation requirements of other enactments**

If an approved organisation is authorised or required by this Act or any other enactment to undertake consultation in relation to any decision or matter and the procedure in respect of that consultation is prescribed by this Act or any other enactment, such of the provisions of the principles set out in clause 1 as are inconsistent with specific requirements of the procedure so prescribed are not to be observed by the approved organisation in respect of that consultation.

Part 2

Special consultative procedure

5 Special consultative procedure

If this Act requires an approved organisation to use the special consultative procedure, that organisation must—

- (a) prepare—
 - (i) a draft land transport programme; and
 - (ii) a summary of the information contained in the draft land transport programme (which summary must comply with clause 6); and
- (b) include the draft land transport programme on the agenda for a meeting of the approved organisation; and
- (c) make the draft land transport programme available for public inspection at—
 - (i) the principal public office of the approved organisation; and
 - (ii) such other places as the approved organisation considers necessary in order to provide affected communities, land transport users and providers, Māori, and the public with reasonable access to that draft land transport programme; and
- (d) distribute in accordance with clause 6(1)(c) the summary of the information contained in the draft land transport programme; and
- (e) give public notice, and such other notice as the approved organisation considers appropriate, of the draft land transport programme and the consultation being undertaken; and

Part 2—*continued*

- (f) include in the public notice a statement about how persons interested in the draft land transport programme—
 - (i) may obtain the summary of information about the proposal; and
 - (ii) may inspect the full draft land transport programme; and
- (g) include in the public notice a statement of the period within which submissions on the draft land transport programme may be made to the approved organisation; and
- (h) ensure that any person who makes a submission on the draft land transport programme within that period—
 - (i) is sent a written notice acknowledging receipt of that person's submission; and
 - (ii) is given a reasonable opportunity to be heard by the approved organisation (if that person so requests); and
- (i) ensure that the notice given to a person under paragraph (h)(i) contains information—
 - (i) advising that person of that person's opportunity to be heard; and
 - (ii) explaining how that person may exercise that person's opportunity to be heard; and
- (j) ensure that, except as otherwise provided by Part 7 of the Local Government Official Information and Meetings Act 1987 (if the approved organisation is a local authority), every meeting at which submissions are heard or at which the approved organisation deliberates on the proposal is open to the public; and
- (k) subject to the Local Government Official Information and Meetings Act 1987 (if the approved organisation is a local authority) or the Official Information Act 1982 (in any other case), make all written submissions on the proposal available to the public.

6 Summary of information

- (1) A summary of the information contained in a draft land transport programme must—
 - (a) be a fair representation of the major matters in the draft land transport programme; and

Part 2—*continued*

- (b) be in a form determined by the approved organisation; and
 - (c) be distributed as widely as reasonably practicable (in such manner as is determined appropriate by the approved organisation, having regard to the matter to which the draft land transport programme relates) as a basis for general consultation; and
 - (d) indicate where the draft land transport programme may be inspected, and how a copy may be obtained; and
 - (e) state the period within which submissions on the draft land transport programme may be made to the approved organisation.
- (2) This clause applies only in relation to approved organisations that are local authorities.

7 Period for making submissions

The period specified in the statement included under clause 5(g) must be a period of not less than 1 month beginning with the date of the first publication of the public notice.

8 Advice about draft and submissions

This Part does not prevent an approved organisation from requesting or considering, before making a decision, comment or advice from an officer of the organisation or any other person in respect of the draft land transport programme or any submission, or both.

s 28(2)

Schedule 3
Provisions relating to safety administration programme

1 Priorities

Set out, in order of priority,—

- (a) the safety administration outputs recommended by the Authority; and
- (b) the estimated cost of each output; and
- (c) the total budgeted cost of all safety administration outputs for that financial year; and
- (d) an estimate of the revenue to be received by the Authority and the police, respectively, from sources (other than the national land transport fund) applicable to those outputs.

2 Objectives

Set out the objective or objectives to be achieved by each output.

3 Options

Set out the options considered as being available to achieve the objective or objectives.

4 Assessment of options and outputs in previous programme

Provide an assessment of each output and each option that is for the time being required by the last approved safety administration programme.

5 Performance measures

Set out the measures by which the performance of each output is to be judged.

6 Relationship to national land transport strategy

State how the current national land transport strategy has been taken into account in preparing the safety administration programme.

- 7 Basis for assessing outputs in next programme**
Set out the basis upon which the Authority will assess individual outputs for inclusion in the next safety administration programme.
- 8 Authority's objectives over next 5 years**
Set out the Authority's objectives in respect of safety administration for the next 5 financial years.
- 9 Assessment of needs and issues over next 5 years**
Set out the Authority's assessment of the safety administration needs and safety administration issues that are likely to arise during the next 5 financial years, and the proposed response to those needs and issues.
- 10 Measures for judging safety administration**
Set out the measures by which safety administration is to be judged.
- 11 Form**
A safety administration programme must be in a form, and contain the other matters and details, that the Minister may require.

ss 73, 82

Schedule 4

Provisions relating to Transfund and Transit

Contents

Part 1 Key provisions about governance and operation of each entity	Part 2 Board members and employees
	<i>Appointment, removal, and conditions of membership of board</i>
<i>Board members' role</i>	
1 Board members' role	24 Method of appointment
2 Accountability of board members to responsible Minister	25 Requirements before appointment
	26 Criteria for appointments
<i>Responsible Minister's role</i>	27 Qualifications of board members
3 Responsible Minister's role	28 Term of appointment
4 Responsible Minister accountable to House of Representatives	29 Validity of acts
	30 Resignation
<i>Operation of entity—collective board duties</i>	31 Removal from office
5 Entity must act consistently with objective and statement of intent	32 No compensation for ceasing to hold office
6 Functions must be performed efficiently, effectively, and consistently with spirit of service to public	33 Board members ceasing to hold office
7 Entity must operate in financially responsible manner	34 Board members' remuneration and allowances
8 Entity must comply with policy directions	<i>Employees</i>
9 Independence	35 Entity must be good employer
	36 Employment of chief executive
<i>Further duties of board members</i>	37 Employment of other employees
10 Duty to not contravene this Act	38 Reviews of appointments
11 Duty to act in good faith and not at expense of entity's interests	<i>Protections from liability of board members and employees</i>
12 Duty to exercise reasonable care, diligence, and skill	39 Protections for board members and employees from liabilities of entity
13 Use and disclosure of information	40 Immunity of board members and employees from civil liability to third parties
14 Principles of good conduct for board members	41 Indemnity for board members and employees for costs from civil and criminal proceedings
<i>Reliance on information and advice</i>	42 Insurance for board members and employees
15 When board members may rely on certain information and advice	43 Definitions for protections from liability
<i>Conflict of interest provisions</i>	<i>General</i>
16 Meaning of interested	44 Board members and employees are officials
17 Obligation to disclose interest	45 Superannuation schemes
18 Method of disclosure of interest	46 Government service
19 Consequences of interest	47 Persons who cease to be contributor to Government Superannuation Fund
<i>Delegation</i>	48 References to controlling authority
20 Delegation to employees	
21 Delegation to persons outside entity	
22 Effect of delegation	
<i>Effect of non-compliance with board duties</i>	
23 Effect of non-compliance with board duties	

49	Application of Government Super-annuation Fund Act 1956 to board members and employees	61	Presumptions and saving of certain transactions
Part 3		Part 5	
Accountability and financial provisions		Board procedure	
		<i>Chairperson and deputy chairperson of board</i>	
50	Funds	62	Appointment
51	Bank accounts	63	Term of appointment
52	Restrictions on investments	64	Resignation
53	Restrictions on borrowing	65	Removal
54	Auditor-General is auditor	66	Exercise of chairperson's functions, duties, and powers during vacancy
55	Official Information Act 1982 and Ombudsmen Act 1975 apply	<i>Procedure of board</i>	
56	Further Public Finance Act 1989 provisions may apply	67	Procedure generally
57	Application of liquidation provisions of Judicature Act 1908	68	Notice of meetings
58	Annual report	69	Methods of holding meetings
Part 4		70	Quorum
Administration		71	Presiding at meetings
59	Method of contracting	72	Voting at meetings
60	Attorneys	73	Unanimous written resolutions

Part 1

Key provisions about governance and operation of each entity

Board members' role

1 Board members' role

- (1) The board is the governing body of the entity, with the authority, in the entity's name, to exercise the powers and perform the functions of the entity.
- (2) All decisions relating to the operation of the entity must be made by, or under the authority of, the board.
- (3) The board has all the powers necessary for carrying out its role.

2 Accountability of board members to responsible Minister

Board members are accountable to the responsible Minister, in accordance with this Act, for performing their duties and responsibilities as board members.

Part 1—*continued*

Responsible Minister's role

3 Responsible Minister's role

The responsible Minister has the following functions, powers, and duties in relation to the entity:

- (a) appoints and removes board members in accordance with Part 2:
- (b) has the power to direct the entity on the matters referred to in clause 8:
- (c) may review the operations or performance of the entity at any time (without limiting any other power of review in an enactment):
- (d) may request information from the entity under section 45B of the Public Finance Act 1989 (whether for a review or otherwise):
- (e) is involved in preparing the entity's statement of intent and must present that statement of intent, and the entity's annual report, to the House of Representatives in accordance with Part V of the Public Finance Act 1989:
- (f) has the other functions, powers, and duties given to him or her by this Act or any other enactment.

4 Responsible Minister accountable to House of Representatives

The responsible Minister is accountable, in accordance with this Act and the Public Finance Act 1989, to the House of Representatives for the exercise and performance of the functions, powers, and duties given to him or her in relation to the entity.

Operation of entity—collective board duties

5 Entity must act consistently with objective and statement of intent

The board must ensure that the entity acts in a manner consistent with its objective, including its social and environmental responsibility, with its current performance agreement, and with its current statement of intent.

Part 1—*continued***6 Functions must be performed efficiently, effectively, and consistently with spirit of service to public**

The board must ensure that the entity performs its functions efficiently and effectively and in a manner consistent with the spirit of service to the public.

7 Entity must operate in financially responsible manner

- (1) The board must ensure that the entity operates in a financially responsible manner and, for this purpose, that it—
 - (a) maintains its long-term financial viability; and
 - (b) ensures that its total operating expenses do not exceed its total operating revenues; and
 - (c) acts as a successful going concern; and
 - (d) prudently manages its assets and liabilities.
- (2) The board must ensure that the entity's annual report to the House of Representatives in accordance with Part V of the Public Finance Act 1989 includes a general statement on the means by which the entity is meeting its obligations under this clause.

8 Entity must comply with policy directions

- (1) In the exercise or performance of its functions, duties, and powers, the board must ensure that the entity has regard to the policy of the Government in relation to land transport, and must comply with any general directions relating to that policy given in writing signed by the responsible Minister.
- (2) Without limiting subclause (1), the Minister may direct the entity to carry out any functions that are consistent with this Act and relate to the entity's objective.
- (3) The responsible Minister must consult with the entity before giving a direction to it.
- (4) Within 12 sitting days after a direction is given under this clause, the Minister must publish in the *Gazette* and present to the House of Representatives a copy of that direction.

9 Independence

- (1) Nothing in this Act limits any requirement for the entity or its board to act independently or judicially on any matter.

Part 1—*continued*

- (2) The entity may refuse to do anything that the responsible Minister requires it to do under any of his or her powers if doing that thing would limit the entity's ability to act independently in—
- (a) making decisions on a particular person; or
 - (b) carrying out its statutorily independent functions.

Further duties of board members

10 Duty to not contravene this Act

A board member must not contravene, or agree to the entity acting in a manner that contravenes, this Act.

11 Duty to act in good faith and not at expense of entity's interests

A board member must, when acting as a board member, act in good faith and not pursue his or her own interests at the expense of the entity's interests.

12 Duty to exercise reasonable care, diligence, and skill

A board member must, when acting as a board member, exercise the care, diligence, and skill that a reasonable person would exercise in the same circumstances, taking into account (without limitation)—

- (a) the nature of the entity; and
- (b) the nature of the action; and
- (c) the position of the board member and the nature of the responsibilities undertaken by him or her.

13 Use and disclosure of information

- (1) A board member who has information in his or her capacity as a board member that would not otherwise be available to him or her must not disclose that information to any person, or make use of, or act on, that information, except—

- (a) for the purposes of the entity; or
- (b) as required or permitted by law; or
- (c) in accordance with subclause (2); or
- (d) in complying with the requirements for board members to disclose interests.

Part 1—*continued*

- (2) A board member may disclose, make use of, or act on the information if—
- (a) the board member is first authorised to do so by the board; and
 - (b) the disclosure, use, or act in question will not, or will not be likely to, prejudice the entity.

14 Principles of good conduct for board members

A board member must, when acting as a board member, act with honesty and integrity.

Reliance on information and advice

15 When board members may rely on certain information and advice

- (1) A board member may, when acting as a board member, rely on reports, statements, financial data, and other information prepared or supplied, and on professional or expert advice given, by any of the following persons:
- (a) an employee of the entity whom the board member believes on reasonable grounds to be reliable and competent in relation to the matters concerned;
 - (b) a professional adviser or expert in relation to matters that the board member believes on reasonable grounds to be within the person's professional or expert competence;
 - (c) any other board member or a committee of the board on which the board member did not serve in relation to matters within the board member's or committee's designated authority.
- (2) A board member may, when acting as a board member, rely on reports, statements, financial data, and other information supplied by the Crown.
- (3) Subclauses (1) and (2) apply to a board member only if the board member—
- (a) acts in good faith; and
 - (b) makes proper inquiry if the need for inquiry is indicated by the circumstances; and
 - (c) has no knowledge that the reliance is unwarranted.

Part 1—*continued**Conflict of interest provisions***16 Meaning of interested**

- (1) A person (**person A**) is **interested** in a transaction of, or other matter relating to, another person (**person B**) if, and only if, person A—
- (a) is a party to, or will or may derive a material financial benefit from, the transaction or matter; or
 - (b) has a material financial interest in another party to the transaction or in a person to whom the matter relates; or
 - (c) is a director, officer, board member, or trustee of another party to, or a person who will or may derive a material financial benefit from, the transaction or matter; or
 - (d) is the parent, child, or spouse of another party to, or a person who will or may derive a material financial benefit from, the transaction or matter; or
 - (e) is otherwise directly or indirectly materially interested in the transaction or matter; or
 - (f) is interested (within the meaning of this provision) in a subsidiary of person B.
- (2) However, person A is not interested in a transaction or other matter merely because—
- (a) he or she is a board member, director, or an officer of a wholly-owned subsidiary of person B; or
 - (b) he or she has an interest in a transaction or matter undertaken in the ordinary course of business of person B and that is not a matter on which the board of person B would ordinarily make a decision.

17 Obligation to disclose interest

- (1) A board member who is interested in a matter relating to the entity must disclose the interest in accordance with clause 18 as soon as practicable after the board member becomes aware that he or she is interested.
- (2) A general notice of an interest in a matter relating to the entity, or in a matter that may in future relate to the entity, that is disclosed in accordance with clause 18 is a standing disclosure of that interest for the purposes of this clause.

Part 1—*continued*

- (3) A standing disclosure ceases to have effect if the nature, monetary value, or extent of the interest materially increases above that disclosed in the general notice.
- (4) A failure by a board member to comply with this clause does not affect the validity of any act, transaction, agreement, instrument, resolution, or other thing.

18 Method of disclosure of interest

- (1) The board member must disclose the details of the interest listed in subclause (2) in an interests register kept by the entity and to—
 - (a) the chairperson or, if there is no chairperson, the deputy chairperson; or
 - (b) if there is no person holding an office referred to in paragraph (a), the responsible Minister; or
 - (c) if the person holding the office referred to in paragraph (a) is interested in the matter, the responsible Minister.
- (2) The details are—
 - (a) the nature of the interest and the monetary value of the interest (if the monetary value can be quantified); or
 - (b) the nature and extent of the interest (if the monetary value cannot be quantified).

19 Consequences of interest

- (1) A board member who is interested in a matter relating to the entity—
 - (a) must not vote or take part in any deliberation or decision of the board or any board committee relating to the matter; and
 - (b) must be disregarded for the purpose of forming a quorum for that part of a meeting of the board or board committee during which a deliberation or decision relating to the matter occurs or is made.
- (2) However, the responsible Minister may, by written notice to the board, permit 1 or more board members, or board members with a specified class of interest, to do anything otherwise prohibited by this clause.
- (3) The permission may state conditions that the board member or the entity must comply with.

Part 1—*continued*

- (4) The responsible Minister may amend or revoke the permission in the same way as it may be given.

Delegation

20 Delegation to employees

- (1) The board may from time to time, either generally or particularly, delegate to an employee of the entity any of the functions and powers of the board or the entity.
- (2) Every delegation under this clause must be in writing.
- (3) The board must not delegate any functions or powers delegated to the board or the entity by the Minister without the written consent of the Minister.
- (4) If the board has delegated any functions or powers to an employee of the entity under this clause, that employee may, with the prior approval in writing of the board, delegate to any other employee of the entity such of those functions or powers as are so approved.

21 Delegation to persons outside entity

- (1) The board may from time to time, either generally or particularly, delegate to any person who is not an employee of the entity all or any of the functions and powers of the board or the entity.
- (2) Every delegation under this clause must be in writing.
- (3) No delegation may be made under this clause without the written consent of the Minister.
- (4) If the board has delegated any functions or powers to any person under this clause, that person may, with the prior approval in writing of the Minister, delegate to any other person such of those functions or powers as are so approved.

22 Effect of delegation

- (1) This clause applies in relation to delegations made under clause 20 or clause 21.
- (2) A person may, subject to any general or special directions given or conditions imposed by the board, exercise any functions or powers under a delegation in the same manner and with the same effect as if they had been conferred or imposed

Part 1—*continued*

on that person directly by the relevant clause and not by delegation.

- (3) A delegation may be made—
 - (a) to a specified person or to persons of a specified class; or
 - (b) to the holder or holders for the time being of a specified office or specified class of office.
- (4) A delegation must be given for a specified period but in any event is revocable at will.
- (5) A delegation does not affect or prevent the performance or exercise of any function or power by the board, and does not affect the responsibility of the board, for the actions of any person acting under the delegation.
- (6) Until it is revoked or it expires, a delegation continues in force according to its tenor, despite the fact that the person by whom it was made may cease to hold office, and continues to have effect as if it were made by the person for the time being holding that office.
- (7) A person purporting to act under a delegation must, when reasonably requested to do so, produce evidence of his or her authority to so act.
- (8) A person purporting to act under a delegation is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation.
- (9) A person who exercises any function or power under a delegation under clause 21 may charge the person in respect of whom the function or power is exercised a reasonable fee in respect of the exercise of that function or power.

Effect of non-compliance with board duties

23 Effect of non-compliance with board duties

- (1) The duties governing the operation of the entity given to the board in clauses 5 to 8 are collective duties and the other duties given to board members by this Act are individual duties.
- (2) If the board does not comply with any of its collective duties, that breach of duty justifies all or any of the board members being removed from office.

Part 1—*continued*

- (3) However, subclause (2) does not apply to a board member if—
 - (a) he or she did not know and could not reasonably be expected to know that the duty was to be or was being breached; or
 - (b) he or she took all reasonable steps to prevent the duty being breached.
- (4) If a board member does not comply with his or her individual duties, that breach of duty justifies the board member being removed from office.
- (5) This provision does not limit any other ground for removing a board member from office.
- (6) The collective and individual duties do not provide any other ground of action.

Part 2

Board members and employees

*Appointment, removal, and conditions of membership of board***24 Method of appointment**

- (1) A board member is appointed by written notice to the board member (with a copy to the entity).
- (2) The notice of appointment must—
 - (a) state the date on which the appointment takes effect; and
 - (b) be published by the responsible Minister in the *Gazette* as soon as practicable after being given.

25 Requirements before appointment

- (1) Before a person is appointed as a board member, the person must—
 - (a) consent in writing to being a board member; and
 - (b) certify in writing that he or she is not disqualified from being a board member; and
 - (c) disclose to the responsible Minister the nature and extent (including monetary value if quantifiable) of all interests or potential interests that the person has at that time in matters relating to the entity.

Part 2—*continued*

- (2) A person is **potentially interested** in a transaction of, or other matter relating to, the entity if he or she has an interest in a transaction of, or other matter relating to, a person who is likely to be materially affected by decisions of the entity or who is likely to have material dealings with the entity.

26 Criteria for appointments

- (1) The responsible Minister must not appoint a board member unless he or she has consulted with the persons, representative groups within the land transport sector or elsewhere, government departments, and Crown entities that he or she considers appropriate.
- (2) The responsible Minister—
- (a) may only appoint a person who, in the responsible Minister's opinion, has appropriate skills and experience to assist the entity to achieve its objectives and perform its functions; and
 - (b) in appointing a person, must take into account the desirability of promoting diversity in the membership of Crown entities.

27 Qualifications of board members

- (1) A natural person who is not disqualified by subclause (2) may be a board member.
- (2) The following persons are disqualified from being a board member:
- (a) a person who is an undischarged bankrupt;
 - (b) a person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, a company under section 382, section 383, or section 385 of the Companies Act 1993;
 - (c) a person who is subject to a property order made under section 10, section 11, section 12, section 30, or section 31 of the Protection of Personal and Property Rights Act 1988, or whose property is managed by a trustee corporation under section 32 of that Act;
 - (d) a person who has been convicted of an offence punishable by imprisonment for a term of 2 years or more, or who has been sentenced to imprisonment for any other offence, unless that person has obtained a pardon or

Part 2—*continued*

served the sentence or otherwise suffered the penalty imposed on the person:

- (e) a person who has failed to disclose his or her interests and potential interests as required by clause 25.
- (3) To avoid doubt, a person who is a member of the board of one entity may also be a member of the board of the other entity.

28 Term of appointment

- (1) A board member—
- (a) holds office for 3 years or any shorter term stated in the notice of appointment; but
 - (b) continues in office despite the expiry of his or her term of office until—
 - (i) the board member is reappointed; or
 - (ii) the board member's successor is appointed; or
 - (iii) the responsible Minister informs the board member by written notice (with a copy to the entity) that the board member is not to be reappointed and no successor is to be appointed at that time.
- (2) Subclause (1) does not apply if the board member ceases to hold office under this Act or any other enactment.
- (3) A board member may be reappointed.

29 Validity of acts

The acts of a person as a board member are valid even if—

- (a) the person's appointment was defective; or
- (b) the person is not qualified to be a board member.

30 Resignation

- (1) A board member may resign from office by written notice to the responsible Minister (with a copy to the entity) signed by the board member.
- (2) The resignation is effective on receipt by the responsible Minister of the notice, or at any later time specified in the notice.

Part 2—*continued***31 Removal from office**

The responsible Minister may, at any time and entirely at his or her discretion, remove a board member from office by written notice to the board member (with a copy to the entity).

32 No compensation for ceasing to hold office

A board member is not entitled to any compensation or other payment or benefit, on any basis, for removal from office.

33 Board members ceasing to hold office

A board member ceases to hold office if he or she—

- (a) resigns in accordance with this Act; or
- (b) is removed from office in accordance with this Act; or
- (c) becomes disqualified from being a board member under this Act; or
- (d) otherwise ceases to hold office in accordance with any enactment.

34 Board members' remuneration and allowances

There must be paid to the members of the board such remuneration by way of fees, salary, or allowances, and such travelling allowances and expenses, as are agreed between members of the Board and the Minister of Transport and the Minister of Finance.

*Employees***35 Entity must be good employer**

- (1) The entity must, if it employs employees,—
 - (a) operate a personnel policy that complies with the principle of being a good employer; and
 - (b) report on its compliance with that policy (including its equal employment opportunities programme) in its annual report.
- (2) For the purposes of this clause, a **good employer** is an employer who operates a personnel policy containing provisions generally accepted as necessary for the fair and proper treatment of employees in all aspects of their employment, including provisions requiring—
 - (a) good and safe working conditions; and

Part 2—*continued*

- (b) an equal employment opportunities programme; and
 - (c) the impartial selection of suitably qualified persons for appointment; and
 - (d) recognition of—
 - (i) the aims and aspirations of Māori; and
 - (ii) the employment requirements of Māori; and
 - (iii) the need for involvement of Māori as employees of the entity; and
 - (e) opportunities for the enhancement of the abilities of individual employees; and
 - (f) recognition of the aims and aspirations, and the cultural differences, of ethnic or minority groups; and
 - (g) recognition of the employment requirements of women; and
 - (h) recognition of the employment requirements of persons with disabilities.
- (3) For the purposes of this clause, an **equal employment opportunities programme** means a programme that is aimed at the identification and elimination of all aspects of policies, procedures, and other institutional barriers that cause or perpetuate, or tend to cause or perpetuate, inequality in respect of the employment of any persons or group of persons.

36 Employment of chief executive

- (1) The board may appoint a chief executive, who must not be a board member.
- (2) The terms and conditions of employment of the chief executive are determined by the board.

37 Employment of other employees

- (1) The chief executive may appoint, as staff of the entity, such employees (including acting or temporary or casual employees) as the chief executive thinks necessary for the efficient exercise of the functions and powers of the entity.
- (2) The chief executive, in making an appointment under this clause, must give preference to the person who is best suited to the position.
- (3) If the chief executive intends to fill a position in the staff of the entity that is vacant or is to become vacant, the chief executive

Part 2—*continued*

must, wherever practicable, notify the vacancy or prospective vacancy in a manner sufficient to enable suitably qualified persons to apply for the position.

- (4) The chief executive must notify the members of the staff of the entity of every appointment (other than that of an acting, temporary, or casual employee) made to the staff of the entity.
- (5) A failure to comply with this clause does not invalidate the acts of an employee of the entity.

38 Review of appointments

- (1) The chief executive must establish, after consultation with the State Services Commission, a procedure for reviewing appointments made under clause 37 that are the subject of any complaint by an employee of the entity, and that procedure must be approved by the entity before being established.
- (2) The chief executive may, after consultation with the State Services Commission and with the approval of the entity, amend or replace any procedure established under subclause (1).

Protections from liability of board members and employees

39 Protections for board members and employees from liabilities of entity

A board member or employee of the entity is not liable for any liability of the entity merely because he or she is a board member or employee.

40 Immunity of board members and employees from civil liability to third parties

- (1) A board member or employee of the entity is not liable to any person (other than the entity) for any act or omission by him or her, in the performance or intended performance of the entity's functions, unless done in bad faith.
- (2) The entity is liable for any act or omission for which, but for this clause, a board member or employee would have been liable to a person.

Part 2—*continued***41 Indemnity for board members and employees for costs from civil and criminal proceedings**

The entity may indemnify a board member or employee for costs incurred by him or her in a proceeding—

- (a) that relates to acts or omissions by him or her in good faith in the performance or intended performance of the entity's functions; and
- (b) in which judgment is given in his or her favour, in which he or she is acquitted, or that is discontinued.

42 Insurance for board members and employees

The entity may effect insurance for a board member or employee in relation to—

- (a) liability (other than criminal liability) for any act or omission in the performance or intended performance of the entity's functions; and
- (b) costs incurred in any proceeding relating to that liability or in any criminal proceedings.

43 Definitions for protections from liability

In clauses 39 to 42,—

board member includes a former board member

effect insurance includes pay, whether directly or indirectly, the costs of the insurance

employee includes a former employee

indemnity includes relieve or excuse from liability, whether before or after the liability arises.

*General***44 Board members and employees are officials**

Board members and employees of the entity are officials for the purposes of sections 105 and 105A of the Crimes Act 1961.

45 Superannuation schemes

For the purposes of providing superannuation funds or retiring allowances for employees of the entity, sums by way of subsidy may from time to time be paid into any scheme registered under the Superannuation Schemes Act 1989.

Part 2—*continued***46 Government service**

- (1) Despite anything in this 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.

47 Persons who cease to be contributor to Government Superannuation Fund

Nothing in clause 46 entitles any person to become a contributor to the Government Superannuation Fund after that person has once ceased to be a contributor.

48 References to controlling authority

For the purposes of applying the Government Superannuation Fund Act 1956, in accordance with clause 46, to all employees of the entity who are contributors to the Government Superannuation Fund, **controlling authority**, in relation to those employees, means the board.

49 Application of Government Superannuation Fund Act 1956 to board members and employees

No person is, merely because of his or her appointment as a board member of, or employment by, the entity, deemed to be employed in the Government service for the purposes of the Government Superannuation Fund Act 1956.

Part 3
Accountability and financial provisions

50 Funds

The funds of the entity consist of—

- (a) all money appropriated by Parliament and paid to the entity; and
- (b) all other money lawfully received by the entity for its purposes; and
- (c) all accumulations of income derived from that money.

51 Bank accounts

- (1) The entity must establish, maintain, and operate 1 or more bank accounts at 1 or more—
 - (a) registered banks (within the meaning of the Reserve Bank of New Zealand Act 1989):
 - (b) banks outside New Zealand approved by the Minister of Finance for the purpose.
- (2) Subject to sections 10 and 24, all money received by the entity must be paid into one of those bank accounts as soon as practicable after it has been received.
- (3) The entity must properly authorise the withdrawal or payment of money from any of its bank accounts.

52 Restrictions on investments

Any money held by the entity and that is not immediately required may be invested only in accordance with section 25 of the Public Finance Act 1989.

53 Restrictions on borrowing

The entity must not borrow from any person, or amend the terms of any borrowing, except with the prior written approval of the Minister of Finance.

54 Auditor-General is auditor

The entity is a public entity as defined in section 4 of the Public Audit Act 2001 and, in accordance with that Act, the Auditor-General is its auditor.

Part 3—*continued***55 Official Information Act 1982 and Ombudsmen Act 1975 apply**

The entity is an organisation to which the Official Information Act 1982 and Ombudsmen Act 1975 apply.

56 Further Public Finance Act 1989 provisions may apply

In addition to the other provisions in this Part, further provisions of the Public Finance Act 1989 concerning the accountability and financial resources of Crown entities apply to the entity.

57 Application of liquidation provisions of Judicature Act 1908

For the avoidance of doubt, sections 17A to 17E of the Judicature Act 1908 apply to the entity.

58 Annual report

The entity must include in its annual report a statement about the activities that the entity has undertaken in the financial year to establish and maintain processes to provide for opportunities for Māori to contribute to the land transport decision-making processes of the entity.

Part 4
Administration**59 Method of contracting**

- (1) A contract or other enforceable obligation may be entered into by the entity as provided in this clause.
- (2) An obligation that, if entered into by an individual, is required to be by deed may be entered into on behalf of the entity in writing, signed under the name of the entity, by—
 - (a) 2 or more of its board members; or
 - (b) 1 or more attorneys appointed by the entity in accordance with this Part.
- (3) An obligation that, if entered into by an individual, is required to be in writing may be entered into on behalf of the entity in writing by a person acting under the entity's express or implied authority.

Part 4—*continued*

- (4) An obligation that, if entered into by an individual, is not required to be in writing may be entered into on behalf of the entity in writing or orally by a person acting under the entity's express or implied authority.
- (5) This clause applies to a contract or other obligation—
 - (a) whether or not that obligation was entered into in New Zealand; and
 - (b) whether or not the law governing that obligation is the law of New Zealand.

60 Attorneys

- (1) The entity may, by an instrument in writing executed as a deed, appoint a person as its attorney either generally or in relation to a specified matter.
- (2) An act of the attorney in accordance with the instrument binds the entity.

61 Presumptions and saving of certain transactions

- (1) The validity or enforceability of any deed, agreement, right, or obligation entered into, conferred on, or incurred by, the entity is not affected by a failure of the Crown, the responsible Minister, entity, or its board to comply with any provision of this Act.
- (2) A person purporting to execute any documentation on behalf of the entity under any authority is, in the absence of proof to the contrary, presumed to be acting in accordance with that authority.

Part 5
Board procedure

Chairperson and deputy chairperson of board

62 Appointment

- (1) The responsible Minister may appoint one of the board members as the chairperson, and another member as the deputy chairperson, of the board by written notice to the board member (with a copy to the board).
- (2) The notice of appointment must state the date on which the appointment takes effect.

Part 5—*continued***63 Term of appointment**

The chairperson and the deputy chairperson each holds that office until he or she—

- (a) resigns from that office; or
- (b) is removed from it by the responsible Minister; or
- (c) ceases to hold office as a board member.

64 Resignation

- (1) A chairperson or deputy chairperson may, without resigning as a board member, resign from that office by written notice to the responsible Minister (with a copy to the board).
- (2) The notice of resignation must state the date on which the resignation takes effect.

65 Removal

- (1) The responsible Minister may remove a chairperson or deputy chairperson from that office by written notice to the person (with a copy to the board).
- (2) The notice of removal must state the date on which the removal takes effect.

66 Exercise of chairperson's functions, duties, and powers during vacancy

If there is no chairperson or, for any reason, the chairperson is unable to perform or exercise his or her functions, duties, and powers as chairperson, the deputy chairperson has all the functions, duties, and powers of the chairperson.

*Procedure of board***67 Procedure generally**

Except as otherwise provided in this Act, the board members may regulate their own procedure.

68 Notice of meetings

- (1) The board must appoint the times and places of ordinary meetings of the board, and give notice of those meetings to each board member not present when the appointment is made.

Part 5—continued

- (2) The chairperson or any 2 board members may call a special meeting of the board by giving at least 7 days' notice of the special meeting, and the business to be transacted at the meeting, to each board member for the time being in New Zealand.
- (3) Only the business stated in the notice of special meeting may be transacted at the special meeting.
- (4) Notice of a meeting—
 - (a) must be written, and state the time and place of the meeting; and
 - (b) may be given by post, delivery, or electronic communication; and
 - (c) must be sent to the board member's last known address in New Zealand.
- (5) An irregularity in a notice of meeting is waived if all board members entitled to receive the notice attend the meeting without protesting about the irregularity or agree to the waiver.

69 Methods of holding meetings

A meeting of the board may be held—

- (a) by a quorum of the board members being assembled together at the time and place appointed for the meeting; or
- (b) by means of audio, audio and visual, or electronic communication by which a quorum of board members can simultaneously communicate with each other throughout the meeting.

70 Quorum

- (1) A quorum for a meeting of the board members is a majority of the members then in office.
- (2) No business may be transacted at a meeting of the board if a quorum is not present.

71 Presiding at meetings

- (1) At a meeting of the board, the following person presides:
 - (a) the chairperson; or
 - (b) if there is no chairperson or he or she is not present, the deputy chairperson; or

Part 5—*continued*

- (c) in any other case, a board member chosen by the board members present to be the chairperson of the meeting.
- (2) The person chosen under subclause (1)(c) may exercise or perform all the powers, duties, and functions of the chairperson for the purposes of the meeting.

72 Voting at meetings

- (1) Each board member has 1 vote.
- (2) In addition to his or her general vote, the chairperson at a meeting has a casting vote.
- (3) A resolution of the board is passed if it is agreed to by all board members present without dissent or if a majority of the votes cast on it are in favour of it.
- (4) A board member present at a meeting of the board is presumed to have agreed to, and to have voted in favour of, a resolution of the board unless he or she expressly dissents from, or votes against, the resolution at the meeting.

73 Unanimous written resolutions

- (1) A resolution signed or assented to in writing (whether sent by post, delivery, or electronic communication) by all board members is as valid and effectual as if it had been passed at a meeting of the board duly called and constituted.
 - (2) The resolution may consist of several documents containing the same resolution, each signed or assented to in writing by 1 or more board members.
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s 84

Schedule 5

Matters to be included in performance agreement

Part 1

Matters in relation to Transfund

- 1 The basis on which Transfund will prepare the national land transport programme.
- 2 Any requirement to review or revise the national land transport programme and the basis on which that review or revision is to be carried out.
- 3 Any directions under clause 8 of Schedule 4, relating to either or both of the following:
 - (a) activities and activity classes (including any directions relating to the assessment of those activities and activity classes):
 - (b) the maximum amounts of those activities and activity classes.
- 4 The basis on which Transfund will approve procurement procedures under section 25.
- 5 The proposed statement of output objectives for the relevant financial year prepared by Transfund under section 41D(1)(h) of the Public Finance Act 1989 in respect of Transfund.
- 6 The methods (including financial and non-financial performance measures) by which Transfund intends to assess the extent to which it in fact meets those objectives during the financial year.
- 7 How Transfund intends to report to the Minister on the extent to which it met or is meeting those objectives for that year and the dates by which interim reports, if any, will be given to the Minister.
- 8 The management and financial systems under which Transfund will undertake its functions.

Part 1—*continued*

- 9 Any borrowings, financial leases, or similar liabilities Transfund intends to incur during that financial year.
- 10 Financial forecasts in respect of Transfund for the 2 financial years following the year to which the performance agreement relates.
- 11 A statement of Transfund's best estimate that the following have for an integrated, safe, responsive, and sustainable land transport system:
 - (a) the various impacts of the outputs described in the statement of objectives referred to in clause 5; and
 - (b) the consequences of those outputs.
- 12 The maximum amount of Transfund's administration budget for the relevant financial year.
- 13 Any steps that Transfund intends to take, having considered ways in which it might foster the development of Māori capacity to contribute to Transfund's land transport decision-making processes, over the period covered by the agreement.
- 14 How Transfund proposes to meet its obligations under section 68(2) and clause 7 of Schedule 4.
- 15 Any other matters that Transfund and the Minister agree or the Minister requires.

Part 2

Matters in relation to Transit

- 16 The proposed statement of output objectives for the relevant financial year prepared by Transit under section 41D(1)(h) of the Public Finance Act 1989 in respect of Transit.
- 17 The methods (including financial and non-financial performance measures) by which Transit intends to assess the extent to which it in fact meets those objectives during that year.

Part 2—*continued*

- 18 Any directions under clause 8 of Schedule 4, relating to either or both of the following:
- (a) activities and activity classes (including any directions relating to evaluation of those activities and activity classes):
 - (b) the maximum amounts of those activities and activity classes.
- 19 How Transit intends to report to the Minister on the extent to which it met or is meeting those objectives for that financial year and the dates by which interim reports, if any, will be given to the Minister.
- 20 The management and financial systems under which Transit will undertake its functions.
- 21 Any borrowings, financial leases, or similar liabilities Transit intends to incur during that financial year.
- 22 Financial forecasts in respect of Transit for the 2 financial years following the financial year to which the performance agreement relates.
- 23 A statement of Transit's best estimate of the various impacts the outputs described in the statement of objectives will have, and the consequences of those outputs, for an integrated, safe, responsive, and sustainable State highway system.
- 24 Any steps that Transit intends to take, having considered ways in which it might foster the development of Māori capacity to contribute to Transit's land transport decision-making processes, over the period covered by the agreement.
- 25 Any requirement to review or revise its land transport programme and the basis on which that review or revision is to be carried out.
- 26 How Transit proposes to meet its obligations under section 77(2) and clause 7 of Schedule 4.

Part 2—*continued*

- 27 Any other matters that Transit and the Minister agree or the Minister requires.
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s 90

Schedule 6

Consequential amendments to other Acts

Christchurch–Lyttelton Road Tunnel Authority Dissolution Act 1978 (1978 No 51)

Repeal the definition of **Account** in section 2 and substitute:

“**Account** means the national land transport account kept under section 10 of the Land Transport Management Act 2003”.

Repeal the definitions of **Board** and **Transit New Zealand** in section 2 and substitute:

“**Board** means the body corporate called Transit that is continued by section 75 of the Land Transport Management Act 2003

“**Transit** means the body corporate called Transit that is continued by section 75 of the Land Transport Management Act 2003”.

Omit from section 6(2) the words “to section 17 of the Transit New Zealand Act 1989” and substitute the words “with the prior approval of Transfund New Zealand”.

Goods and Services Tax Act 1985 (1985 No 141)

Repeal section 5(13A) and substitute:

“(13A) For the purposes of this Act, if a registered person receives any refund of excise duty or excise-equivalent duty paid out of the Crown Bank Account under section 41 of the Land Transport Management Act 2003, that refund is, to the extent that it relates to excise duty or excise-equivalent duty incurred for the principal purpose of making taxable supplies, deemed to be consideration received for a supply of services by that registered person in the course or furtherance of that person’s taxable activity.”

Land Transport Act 1998 (1998 No 110)

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

“**Board** and **Transfund** mean the body corporate called Transfund that is continued by section 66 of the Land Transport Management Act 2003”.

Add to the definition of **enforcement authority**:

“(c) a public road controlling authority that is an enforcement authority for the purposes of an Order in

Land Transport Act 1998 (1998 No 110)—continued

Council made under section 46 of the Land Transport Management Act 2003, in relation to an infringement offence that is a toll offence”.

Insert in the definition of **infringement offence** in section 2(1), after paragraph (c):

“(ca) a toll offence.”

Add to the definition of **moving vehicle offence** in section 2(1) the word “; or” and also add:

“(d) a toll offence”.

Insert in section 2(1), after the definition of **territorial authority**:

“**toll** has the same meaning as in section 5 of the Land Transport Management Act 2003

“**toll offence** means an offence against section 54(1) of the Land Transport Management Act 2003”.

Repeal the definition of **Transit New Zealand** in section 2(1) and substitute:

“**Transit** and **Transit New Zealand** mean the body corporate called Transit that is continued by section 75 of the Land Transport Management Act 2003”.

Insert in section 113(1)(a), after the words “the Railway Safety and Corridor Management Act 1992,”, the words “the Land Transport Management Act 2003,”.

Insert in section 145(1), after the words “traffic control device,”, the words “the fact that a toll has not been paid in respect of the vehicle,”.

Insert in section 167(1), after paragraph (f):

“(fa) setting the infringement fee for a toll offence.”

Insert in section 168(1)(a), after the words “the Transit New Zealand Act 1989,”, the words “the Land Transport Management Act 2003,”.

Repeal section 174 and substitute:

“174 Effect of national land transport strategy

“(1) In exercising or performing their functions, duties, and powers, the Authority, Transfund, and Transit must ensure that they take into account any current national land transport strategy.

“(2) The Commissioner must, except to the extent that his or her statutory functions or duties or common law obligations in any particular case otherwise require, ensure that in exercising

Land Transport Act 1998 (1998 No 110)—continued

or performing his or her functions, duties, and powers he or she takes into account any current national land transport strategy.

“(3) The Secretary must ensure that the actions of the Ministry in relation to sections 28 and 34 of the Land Transport Management Act 2003 take into account any current national land transport strategy.”

Repeal section 175(2) and substitute:

- “(2) Every regional land transport strategy must—
- “(a) contribute to the overall aim of achieving an integrated, safe, responsive, and sustainable land transport system; and
 - “(b) take into account how the strategy—
 - “(i) assists economic development; and
 - “(ii) assists safety and personal security; and
 - “(iii) improves access and mobility; and
 - “(iv) protects and promotes public health; and
 - “(v) ensures environmental sustainability; and
 - “(c) take into account any national land transport strategy and National Energy Efficiency and Conservation Strategy; and
 - “(d) take into account the land transport funding likely to be available within the region during the period covered by the strategy; and
 - “(e) avoid, to the extent reasonable in the circumstances, adverse effects on the environment; and
 - “(f) take into account the views of affected communities; and
 - “(g) take into account the views of land transport network providers; and
 - “(h) take into account the need for persons and organisations preparing regional land transport strategies to give early and full consideration to land transport options and alternatives in a way that contributes to the objectives referred to in paragraphs (e) and (f) when preparing a regional land transport strategy; and
 - “(i) take into account the need to encourage persons and organisations preparing regional land transport strategies to provide early and full opportunities for persons and organisations listed in section 179(1) to contribute

Land Transport Act 1998 (1998 No 110)—continued

to the development of those regional land transport strategies; and

- “(j) identify an appropriate role for each land transport mode in the region, including freight traffic, public passenger transport, cycling, and pedestrian traffic; and
- “(k) include any regional passenger transport plan (within the meaning of section 47 of the Transport Services Licensing Act 1989) that has been prepared by the regional council that has prepared the strategy; and
- “(l) identify land transport outcomes sought by the region and the strategic options for achieving those outcomes; and
- “(m) identify any strategic options for which co-operation is required with other regions; and
- “(n) identify persons or organisations who should be involved in the further development of strategic options; and
- “(o) include a demand management strategy that has targets and timetables appropriate for the region; and
- “(p) provide for the strategy to be independently audited; and
- “(q) take into account any guidelines issued by the Minister for the purposes of this section.”

Repeal section 176(1) and substitute:

- “(1) A regional land transport strategy prepared under section 175—
 - “(a) must, at all times, be kept current for a period of not less than 3 years in advance but not more than 10 years; and
 - “(b) may be renewed from time to time, but must be renewed at least once every 3 years.”

Repeal section 176(3) and substitute:

- “(3) In reviewing its regional land transport strategy, a regional council must take into account any current national land transport strategy.”

Repeal section 178(2) and substitute:

- “(2) Each regional land transport committee consists of suitable persons appointed by the relevant regional council to represent—

Land Transport Act 1998 (1998 No 110)—continued

- “(a) the objectives of economic development, safety and personal security, public health, access and mobility, and environmental sustainability; and
- “(b) cultural interests; and
- “(c) the council; and
- “(d) other territorial authorities in the region; and
- “(e) the Authority; and
- “(f) Transfund.”

Omit from section 178(3) the words “and the regional programme prepared under section 42F of the Transit New Zealand Act 1989”.
Repeal section 179 and substitute:

“179 Consultation requirements for preparation of regional land transport strategies

- “(1) When preparing a regional land transport strategy, a regional council must consult—
 - “(a) Transfund; and
 - “(b) Transit; and
 - “(c) the Authority; and
 - “(d) the Commissioner; and
 - “(e) the territorial authorities in the region; and
 - “(f) the adjoining regional councils and territorial authorities; and
 - “(g) the Historic Places Trust of New Zealand; and
 - “(h) land transport users and providers; and
 - “(i) the public in the region; and
 - “(j) the district health boards in the region; and
 - “(k) every affected approved public organisation in the region; and
 - “(l) affected communities; and
 - “(m) Māori of the region; and
 - “(n) the Accident Compensation Corporation.
- “(2) In carrying out the consultation required by subsection (1), a regional council must use the special consultative procedure under section 83 of the Local Government Act 2002.
- “(3) Section 83 of the Local Government Act 2002 applies for the purposes of this section with the necessary modifications.
- “(4) A regional council need not consult any organisation or person referred to in subsection (1) about any matter if it has already consulted that organisation or person about the matter

Land Transport Act 1998 (1998 No 110)—continued

in the course of preparing its current long-term council community plan in accordance with the Local Government Act 2002.

- “(5) A regional council that is preparing a regional land transport strategy may require from any territorial authority within its region such information as the council considers it requires in order to properly perform its functions under this Act in relation to that strategy, and the territorial authority must promptly comply with that requirement.”

Repeal section 181 and substitute:

“181 Effect of regional land transport strategies

- “(1) In exercising or performing their functions, duties, and powers, the Authority, Transfund, and Transit must ensure that they take into account any current regional land transport strategies.

- “(2) The Commissioner must, except to the extent that his or her statutory functions or duties or common law obligations in any particular case otherwise require, ensure that in exercising or performing his or her functions, duties, and powers he or she takes into account any current regional land transport strategies.

- “(3) The Secretary must ensure that the actions of the Ministry in relation to sections 28 to 34 of the Land Transport Management Act 2003 take into account any current regional land transport strategies.”

Insert in section 183(1), after the words “the Transit New Zealand Act 1989”, the words “and the Land Transport Management Act 2003”.

Omit from section 190(1)(h) the words “Transit New Zealand Act 1989” and substitute the words “Land Transport Management Act 2003”.

Insert in section 208(1), after the words “this Act”, the words “or Part 2 of the Land Transport Management Act 2003”.

Add to section 223(1)(a)(ii) the words “or Part 2 of the Land Transport Management Act 2003”.

Local Government Act 1974 (1974 No 66)

Repeal Part XXXIVB.

Repeal the definitions of **land transport**, **passenger service**, and **passenger transport operation** in section 707ZZI and substitute:

Local Government Act 1974 (1974 No 66)—continued

“**land transport** has the same meaning as in section 5 of the Land Transport Management Act 2003

“**passenger service** means a public transport service as defined in section 5 of the Land Transport Management Act 2003

“**passenger transport operation**—

“(a) means any activity of any description carried on to provide any service for the carriage for reward of persons by any means, including activities incidental to or connected with the service or capable of being conveniently carried on in association with any such activities; but

“(b) does not include any agreement entered into by a local authority for the provision of a passenger service by some other person”.

Omit from section 707ZZK(5) the words “Notwithstanding the provisions of sections 594R(2) and 594ZS”.

New Zealand Railways Corporation Act 1981 (1981 No 119)

Omit from section 119A the words “or the Land Transport Act 1998,” and substitute the words “the Land Transport Act 1998, or the Land Transport Management Act 2003,”.

Privacy Act 1993 (1993 No 28)

Add to the third column of the item in the Fifth Schedule relating to the motor vehicles register that appears under the heading *Ministry of Transport Records*:

“An enforcement authority under the Land Transport Management Act 2003.”

Public Works Act 1981 (1981 No 35)

Repeal the definition of **Transit New Zealand** in section 2 and substitute:

“**Transit New Zealand** means the body corporate called Transit New Zealand that is continued by section 75 of the Land Transport Management Act 2003”.

Road User Charges Act 1977 (1977 No 124)

Repeal section 22(1) and substitute:

“(1) All road user charges, additional charges under section 21A of this Act, assessments under section 18C or section 18D of this Act, and other amounts received under this Act must, subject

Road User Charges Act 1977 (1977 No 124)—continued

to section 9(3) of the Land Transport Management Act 2003, be paid into the Crown Bank Account and are land transport revenue within the meaning of section 6 of that Act.”

Transit New Zealand Act 1989 (1989 No 75)

Repeal the definitions of **administration**, **approved**, and **approved safety (administration) programme** in section 2(1).

Repeal the definitions of **Authority** and **Board** in section 2(1) and substitute:

“**Authority** means the body corporate called Transit New Zealand that is continued by section 75 of the Land Transport Management Act 2003

“**Board** means the body corporate called Transfund New Zealand that is continued by section 66 of the Land Transport Management Act 2003”.

Repeal the definitions of **capital project**, **competitive pricing procedure**, **district roading programme**, **employee of the Board**, and **fees and charges** in section 2(1).

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

“**land transport** has the same meaning as in section 5 of the Land Transport Management Act 2003”.

Repeal the definitions of **national roading programme**, **National Roads Account or Account**, **outputs**, **passenger service**, **passenger transport company**, **passenger transport operation**, **performance agreement**, **planning**, **design**, and **supervision**, **regional programme**, **registered service**, **safety (administration)**, **safety (administration) programme**, **State Highways Account**, and **State highways programme** in section 2(1).

Repeal section 2(3).

Repeal Parts IA, I, II, and III and substitute:

**“Part 1
“Transfund and Transit**

“Overview

“4 **Overview**

In general terms, the scheme of the relevant legislation is as follows:

“(a) this Act deals with the roading powers of Transit:

“(b) Part 2 of the Land Transport Management Act 2003 deals with land transport funding:

Transit New Zealand Act 1989 (1989 No 75)—continued

- “(c) Part 3 of the Land Transport Management Act 2003 deals with governance matters relating to Transfund and Transit.

*“Governance***“5 Transfund**

Transfund New Zealand is the body corporate continued by section 66 of the Land Transport Management Act 2003.

“6 Transit

Transit New Zealand is the body corporate continued by section 75 of the Land Transport Management Act 2003.

“7 Functions, duties, and powers

Transfund and Transit each has the functions, duties, and powers conferred or imposed on them by the Land Transport Management Act 2003, this Act, and any other enactment.

*“Land transport funding***“8 Funding system**

Transfund funds land transport activities in accordance with Part 2 of the Land Transport Management Act 2003.”

Repeal section 60(4) and substitute:

- “(4) A declaration under subsection (1) that affects or is likely to affect Māori land, land registered in the name of Pootatau Te Wherowhero under section 19 of the Waikato Raupatu Claims Settlement Act 1995, land subject to any other Māori claims settlement Act, or Māori historical, cultural, or spiritual interests, may not be made or revoked unless Transit has consulted,—
- “(a) in the case of land registered in the name of Pootatau Te Wherowhero or interests relating to that land, the land holding trustee (as defined in section 7 of the Waikato Raupatu Claims Settlement Act 1995):
 - “(b) if any other Māori claims settlement Act requires consultation about the declaration or revocation, in accordance with that Act:
 - “(c) in any other case, every iwi or hapū that in the opinion of Transit will or may be affected by the declaration or revocation.

Transit New Zealand Act 1989 (1989 No 75)—continued

“(4A) Transit must be satisfied after that consultation that the declaration should be made.”

Repeal section 71(3) and substitute:

“(3) No request may be made under subsection (1) that affects or is likely to affect Māori land, land registered in the name of Pootatau Te Wherowhero under section 19 of the Waikato Raupatu Claims Settlement Act 1995, land subject to any other Māori claims settlement Act, or Māori historical, cultural, or spiritual interests, unless Transit has consulted,—

“(a) in the case of land registered in the name of Pootatau Te Wherowhero or interests relating to that land, the land holding trustee (as defined in section 7 of the Waikato Raupatu Claims Settlement Act 1995):

“(b) if any other Māori claims settlement Act requires consultation about the request, in accordance with that Act:

“(c) in any other case, every iwi or hapū that, in the opinion of Transit, will or may be affected by the request.

“(3A) Transit must be satisfied after such consultation that the request should be made.”

Repeal section 104A.

Repeal Schedules 1A and 1B, and the First Schedule.

Transport Act 1962 (1962 No 135)

Repeal the definition of **Transit New Zealand** in section 2(1) and substitute:

“**Transit** means the body corporate called Transit that is continued by section 75 of the Land Transport Management Act 2003”.

Transport Services Licensing Act 1989 (1989 No 74)

Repeal the definition of **Transit New Zealand** in section 2(1) and substitute:

“**Transit** means the body corporate called Transit that is continued by section 75 of the Land Transport Management Act 2003”.

Omit from section 22(2) the words “and having regard to the requirements of section 594ZZI of the Local Government Act 1974,”.

Legislative history

3 December 2002	Introduction (Bill 19-1)
10 December 2002	First reading and referral to Transport and Industrial Relations Committee
13 October 2003	Reported from Transport and Industrial Relations Committee (Bill 19-2)
21 October 2003	Second reading
4, 5 November 2003	Committee of the whole House (Bill 19-3)
6 November 2003	Third reading
