

The Railways Act 2005

Part 3 section 73, 75 & 77 only.

Note: *The complete act can be found at <http://www.legislation.govt.nz/act/public/2005/0037/latest/DLM341568.html>*

Part 3 Rail corridor

Subpart 1—Protection of rail corridor

73. Trespass relating to railway

(1) A person must not, without the express authority¹ of the appropriate licensed access provider (in the case of railway infrastructure) or railway premises owner (in the case of railway premises),—

(a) encroach on any railway infrastructure or railway premises by constructing or placing a building, fence, ditch, drain, or other obstacle, or planting a tree or shrub, on the railway infrastructure or railway premises; or

(b) dig up, remove, alter, or undermine the soil or surface of any railway infrastructure or railway premises; or

(c) fill up, divert, alter, or obstruct any ditch, drain, or watercourse that directly carries water off any railway infrastructure or railway premises or is made to protect that railway infrastructure or those railway premises; or

(d) do any act in which—

(i) a ditch, drain, or watercourse that directly carries water off any railway infrastructure or railway premises or is made to protect railway infrastructure or railway premises is stopped; or

(ii) the natural flow of water in that ditch, drain, or watercourse is obstructed; or

(e) interfere with or divert a ditch, drain, or watercourse in a manner that damages any railway infrastructure or railway premises; or

(f) fell or remove a tree, shrub, or timber growing on any railway infrastructure or railway premises; or

(g) interfere with or damage a rail vehicle or container or other property carried on a railway; or

¹ By way of Grant

(h) interfere with, change, or move a building, structure, or property in a manner that causes damage to railway infrastructure or railway premises; or

(i) cause or procure to be done any of the acts specified in paragraphs (a) to (h).

(2) A person must not enter any railway infrastructure or railway premises,—

(a) in the case of railway infrastructure, without the express authority of the appropriate licensed access provider; and

(b) in the case of railway premises, without the express or implied authority of the appropriate railway premises manager.

(3) The owner of stock, or a person in charge of stock, must prevent the stock from trespassing on a railway or on any part of a railway.

(4) If stock is found trespassing on a railway,—

(a) rail personnel may impound that stock:

(b) the relevant rail participant, or its rail personnel, may, in respect of that stock, exercise any of the functions or powers conferred on an occupier of land by the Impounding Act 1955 (and the provisions of that Act, except section 26(1), apply accordingly).

(5) The provisions of this section are in addition to, and not in substitution for, the provisions of the [Trespass Act 1980](#).

75. Access to railway by easements or for works

(1) Despite anything in any other Act, no person may exercise a right under an easement, or construct or carry out work on, over, or under any railway infrastructure or railway premises, without having first sought and obtained the written permission of the licensed access provider or railway premises owner concerned.

(1A) The New Zealand Railways Corporation, and any other licensed access provider that the Minister, by notice in the *Gazette*, declares to be subject to this subsection, must publish, on a publicly available Internet site, the criteria that the Corporation or other body will apply when considering whether to grant permission under subsection (1), and must apply those criteria when considering whether to grant permission.

(1B) If a local authority or owner of any pipe, line, or other work associated with wastewater or the supply of water, electricity, gas, or telecommunications requests, in writing, permission for access to any railway infrastructure or railway premises for the purpose of carrying out work on any such pipe, line, or other works, the licensed access provider or railway premises owner must respond to the request, in writing, within 30 working days of receiving the request.

(2) The licensed access provider or railway premises owner may require the person to execute a deed or agreement setting out the conditions subject to which the permission is granted.

(3) Permission given under subsection (1) is not negated by a change in the licensed access provider or railway premises owner.

(4) If a condition in a deed or agreement executed under subsection (2) constitutes a charge, that charge must be reasonable.

(5) Before granting a permission, the licensed access provider or railway premises owner must consult with any other rail participants who may be affected by the easement or work.

(6) A licensed access provider or railway premises owner—

(a) may refuse to grant a permission sought under subsection (1) only if the licensed access provider or railway premises owner has reasonable grounds to do so that relate to the carrying out or safety of rail activities; and

(b) may not charge any amount for considering or deciding on a permission sought under subsection (1).

(7) The rental (if any) from an easement granted to a public body on, over, or under a railway at a level crossing may be no more than nominal.

77. Power to prevent damage to railway

(1) Subject to the provisions of the [Resource Management Act 1991](#), for the purposes of protecting a railway, or preventing or lessening the risk of damage to any railway infrastructure or railway premises, a licensed access provider or railway premises owner may—

- (a) construct, maintain, alter, or reconstruct an embankment, groyne, or other protective work on any land or on the bank of a river or stream; or
- (b) divert, dam, or take away any part of the whole of the water of a river or stream, or alter the course of a river or stream; or
- (c) discontinue or abandon the work when the licensed access provider or railway premises owner thinks fit.

(2) If a person enters a place on behalf of a licensed access provider or railway premises owner under subsection (1), the person must, as soon as practicable after entering the place,—

- (a) identify himself or herself; and
- (b) inform the occupier of the place of the entry; and
- (c) specify the reasons for the entry.

(3) A licensed access provider or railway premises owner may give written notice (in accordance with [section 78](#)) to the occupier or, if there is no occupier, to the owner of land abutting any railway infrastructure or railway premises that requires that person to do any of the following acts:

- (a) to remove, lower, or trim, to the satisfaction of the licensed access provider or railway premises owner, any tree or hedge if, in the opinion of the licensed access provider or railway premises owner, the removal, lowering, or trimming is necessary to prevent damage to the railway infrastructure or railway premises or obstruction to the traffic on the railway concerned or to a channel, ditch, or drain associated with that railway:
- (b) if, in the opinion of the licensed access provider or railway premises owner, a tree, hedge, fence, or wall is likely, by reason of its obstructing the view, to cause danger to traffic on the railway concerned,—
 - (i) to remove, lower, or trim, to the satisfaction of the licensed access provider or railway premises owner, that tree or hedge; **or**
 - (ii) to lower that fence or wall:

(c) to take effective measures to prevent damage to land on which the railway infrastructure or railway premises is situated, whether caused by grazing animals or otherwise.