

MINISTERIAL BRIEFING NOTE

Subject	Railways Act 2005 pt2 s.43(2) Prohibition notice – Passenger services through Otira Tunnel
Date	8 July 2022
Briefing number	BRI-2522

Contact(s) for telephone discussion (if required)				
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Action taken by Office of the Minister

- ☐ Noted
- ☐ Seen by Minister
- ☐ Agreed
- ☐ Feedback provided
- ☐ Forwarded to
- ☐ Needs change [please specify]
- ☐ Withdrawn
- ☐ Overtaken by events

8 July 2022

Hon Michael Wood – Minister of Transport

Railways Act 2005 pt2 s.43(2) Prohibition notice – Passenger services through Otira Tunnel

Purpose

1. This briefing provides you with an update on the regulatory prohibition that is going to be issued to KiwiRail under the Railways Act 2005 (the Act) pt2 s.43(2).

Key points

2. Since 2013, Waka Kotahi NZ Transport Agency and WorkSafe NZ have been seeking assurances from KiwiRail regarding the safety of railway operations through the Otira Tunnel on New Zealand's South Island.
3. Recommended remedial actions from a Special Safety Assessment (SSA) the regulator undertook in November 2020 were accepted by KiwiRail. At the conclusion of the improvement period, 31 May 2022, the regulator had received insufficient evidence to demonstrate that all remedial actions had been implemented and were operating effectively.
4. Therefore, in accordance with the Act s.43(2), a prohibition notice is to be served which will prohibit passenger services through the Otira Tunnel until sufficient evidence is presented demonstrating compliance. KiwiRail's TranzAlpine service is the only service that will be affected by the prohibition.

Background

5. The intent of the Act is that the industry develops, implements, administers and continuously improves its own codes of practice and standards, and safety risk management policies and procedures. Waka Kotahi, as the rail regulator, has the responsibility to provide assurance that the rail industry maintains compliance with the Act, and to intervene when a specific risk is not being addressed acceptably.
6. It obligates all rail licence holders to manage safety risks, and mechanisms for harm, for which they are accountable So Far As Is Reasonably Practicable (SFAIRP). Waka Kotahi works actively with all rail licence holders so that this threshold is met.
7. The Otira tunnel, located on the Midland Line, South Island, between Arthurs Pass and Otira, is one of the longest tunnels in the KiwiRail network, measuring 8,566m in length. Construction commenced in 1907 and the tunnel opened to the public in August 1923. It is in a geographically isolated and seismically active location, it has a 1:33 gradient from the Otira portal to Arthurs Pass, and it is used for a mix of passenger and freight operations, work trains, and maintenance vehicles.
8. Tunnels are an inherently hazardous environment and what may be a minor incident in the open could become a high consequence incident in a tunnel. Whilst this regulator activity relates specifically to Otira, the lessons can be applied system wide.

Process to date

9. Since 2013, Waka Kotahi and WorkSafe NZ have been active in seeking assurance that KiwiRail fully appreciate and understand the hazards associated with operating rail services through the Otira tunnel and that risks are mitigated or controlled to SFAIRP levels, as required under the Act. Safety improvements of the Otira tunnel have been made, s 9(2)(g)(i) [REDACTED].
10. As a result of previous regulatory interventions, KiwiRail have made several safety improvements to rolling stock, infrastructure, processes and procedures. However, significant concerns remain, particularly regarding the safety of passenger rail services. In 2020, following a review of documentation provided by KiwiRail, Waka Kotahi determined KiwiRail's rail activities in the Otira tunnel could cause death, serious injury, or significant property damage and, as such, under s.37 of the Act, an SSA was undertaken. The findings of the SSA were accepted by KiwiRail and resulted in KiwiRail being given a Notice of Requirement to take remedial action under s.42 of the Act. Submission of responses and evidence to close the remedial action was required by 31 May 2022.
11. The evidence provided to date by KiwiRail does not demonstrate that a general system-level review of safety risks has been completed in relation to operation of train services through Otira tunnel. Further, it is unclear how many of the identified mitigations have been implemented, or whether they have been effective in mitigating the risks.
12. KiwiRail's identification and management of risks associated with the conduct of rail services through the Otira tunnel remains reactionary and backward-looking. Whilst historical data is important and does form part of safety assessment, SFAIRP assessment and risk mitigation requires consideration of current and future factors which are not presented in the evidence submitted. This is especially pertinent to the harsh environment of the Otira tunnel when, considering the many years of managed decline across the National Rail System, and KiwiRail's admission in their Asset Management Plan that "*the Otira Tunnel will be in a holding strategy between FY22 – FY24*".
13. s 9(2)(g)(i) [REDACTED].
14. Both freight and passenger services operate within the Otira Tunnel. The prohibition notice is limited only to passenger services. Unlike trained rail personnel, passengers cannot be assumed to be anything other than vulnerable in the event of an emergency; passengers do not have the benefit of rail and tunnel experience or of individualised emergency equipment; passengers do not have known training in the use of emergency equipment; passengers cannot be assumed to be trained in emergency situations; passengers have no familiarity of the tunnel and its environs; and passengers do not travel in fire hardened carriages. All the above do apply to KiwiRail staff on freight and work trains.

Next steps

15. Noting the situation detailed above regarding the Otira tunnel, KiwiRail have failed to provide sufficient evidence to assure the regulator that the remedial actions have been undertaken and that the safety improvements have been effectively implemented. Therefore, in accordance with the Act pt2 s.43(2), notice is to be served to prohibit passenger services through the Otira Tunnel until sufficient evidence is presented demonstrating effective compliance. This prohibition will affect the public due to the indefinite withdrawal of the KiwiRail TranzAlpine passenger service.
16. Waka Kotahi will also issue KiwiRail with a safety improvement plan to ensure that the remedial actions are effective and completed to the required standard.

It is recommended that you:

1. **Note** that Waka Kotahi are to prohibit passenger services through the Otira Tunnel in accordance with s.43(2) of the Railways Act 2005 with effect from 5pm 11 July 2022.
2. **Note** that this prohibition will affect the public due to the indefinite withdrawal of the KiwiRail TranzAlpine passenger service.

**Kane Patena**

Director Land Transport New Zealand

Hon Michael Wood, Minister of Transport

Date: 2022