

**Legislative Council Panel on Transport
Subcommittee on Matters Relating to Railways**

MTR Bylaw Review

Purpose

This paper reports on the review of the Mass Transit Railway Bylaws and Mass Transit Railway (North-West Railway) Bylaw conducted by the Mass Transit Railway Corporation Limited (Corporation).

Background

2. In mid 2007, the then Subcommittee to Study the Draft Subsidiary Legislation Relating to the Rail Merger (the Subcommittee), having scrutinized the draft Mass Transit Railway (Amendment) Bylaws (MTR Bylaws) and Mass Transit Railway (North-West Railway) Bylaw (NWR Bylaws), approved the proposed amendments and made a number of suggestions designed to enhance the effectiveness of the bylaws, highlighting a number of areas which in its opinion needed to be addressed. As a consequence the Corporation undertook to conduct a comprehensive review of the amended bylaws taking into account the experience of operating the integrated railway system after the Merger as well as the views expressed by Members during the Subcommittee's deliberations.

The Review

3. The Corporation has conducted a review accordingly of each bylaw having regard to the following principles –

- (a) that the two sets of bylaws be reconciled to achieve consistency;
- (b) the need to retain certain provisions in the bylaws having regard to present day circumstances, and the operational need and requirements in railway operations;
- (c) the appropriateness of the maximum penalty levels for various offences, having regard to the nature and seriousness of the offences and the maximum penalty levels for similar offences in other legislation; and

- (d) improvement of the drafting of the bylaws to achieve consistency and enhance clarity.

4. The review critically examined both sets of bylaws in order to identify any inconsistencies between the two sets and any obsolescence, resulting in a number of bylaws being identified as having to be re-drafted in order to overcome an inconsistency and improve clarity, or replaced. Each bylaw was reviewed having regard to the parameters stated by the Subcommittee and the individual views expressed by Members of that Subcommittee. A summary of the findings of the Review is in the following paragraphs.

Consistency between the Two Sets of Bylaws

5. Both sets of bylaws were critically examined to identify material inconsistencies. All such inconsistencies have been identified and will be eliminated during the process of drafting which will take place after this Subcommittee is satisfied with the results of the bylaw review as set out in this paper.

6. The review concluded that both sets of existing bylaws should be retained although consideration was given to a possible amalgamation. The Corporation operates two entirely different systems, one is the Light Railway system, being an open system with feeder buses, the other is the Mass Transit Railway system, being a closed system and with cross border freight and passenger services. Each of them has unique features from an operational perspective and thus warrants its own set of bylaws.

7. During the deliberations, the Subcommittee expressed views in relation to specific bylaws which, in its opinion, warranted particular attention. We have taken into account such views and have proposed amendments to most of those bylaws, examples include the bylaws on “Loitering” which the Corporation will repeal and the bylaws on “Disposal of lost property” which the Corporation will extend the retention period from 1 month to 3 months.

8. One bylaw was identified as being obsolete namely MTR Bylaw 3A which deals with authorized crossings. Such crossings ceased to exist when electrification of East Rail came into being in 1983. The remaining bylaws are found to be appropriate and necessary albeit that in certain instances an amendment will be warranted. The review supports this conclusion.

9. A summary of the above is at Annex I.

Penalties

10. There are currently 61 MTR Bylaws and 31 NWR Bylaws carrying penalties. The current penalty regime provides for penalties ranging from \$1,000 to \$5,000 and periods of imprisonment from 2 to 6 months. Penalties imposed for both sets of bylaws were reviewed having regard to the nature and seriousness of each offence, and the associated maximum penalty levels for a similar offence in other legislation as suggested by the subcommittee. In addition the Corporation was, in coming to its conclusions, mindful of the need to ensure that in each instance the penalty imposed did constitute an effective deterrent.

11. The review:

- (a) established that whilst current penalties were in most instances appropriate having regard to the nature and seriousness of an offence, a number of penalties were inappropriate;
- (b) identified a number of inconsistencies in terms of penalties between the two sets of bylaws for the same or similar offences. To a degree there was similarity with the penalty regime widely adopted for summary offences in Hong Kong, namely the application of Schedule 8 to the Criminal Procedure Ordinance (Cap 221)(CPO), which has been adopted by the Airport Authority, Ocean Park, Tung Chung Cable Car, Tai Lam Tunnel and the Western Harbour Crossing bylaws. There were however a number of penalties which were not regarded as commensurate with the nature and seriousness of the offences. These were the subject of critical examination; and
- (c) did consider whether a breach of any of the bylaws should result in imprisonment. It concluded that such a deterrent was only necessary where the consequence of a person's conduct, be it deliberate or grossly negligent, was such that railway operations and passenger safety would be seriously at risk in the event of contravention.

12. In order to ensure consistency between the two sets of bylaws, the Corporation proposes a 4 tier offence and penalty schedule

which models on Schedule 8 to the Criminal Procedure Ordinance by classifying the nature of bylaw offences as follows-

Tier and the corresponding classification of offences	Criminal Procedure Ordinance “level” (maximum penalty)
<p>Class 1</p> <p>As a consequence of contravention, the risk of prejudicing operational integrity and passenger safety (including passenger well-being) is low.</p>	<p>Level 1 (\$2,000)</p>
<p>Class 2</p> <p>As a consequence of contravention, there is at least a reasonable risk of prejudice to operational integrity and passenger safety (including passenger well-being) or revenue.</p>	<p>Level 2 (\$5,000)</p>
<p>Class 3</p> <p>As a consequence of contravention, there is a risk of serious prejudice to operational integrity and passenger safety (including well-being).</p>	<p>Level 2 and imprisonment (\$5,000 and 6 months’ imprisonment)</p>
<p>Class 4</p> <p>Contravention will have no impact on operational integrity or passenger safety (including passenger well-being) but will impact the Corporation’s ability to manage the railways.</p>	<p>Level 1 (\$2,000)</p>

13. If the proposed 4 tier offence and penalty schedule is adopted there will be a number of adjustments to penalties which currently apply. There will be 15 increases* and 16 decreases due to a reassessment of the nature and seriousness of each offence. Penalties for 4 bylaws will be removed. There will however be an exception. As a consequence of aligning MTR Bylaw 35 and NWR Bylaw 31 which deals with the failure of a vehicle driver to comply with traffic signs, with the Road Traffic (Traffic Control) Regulations, the penalty will be \$5,000

* 9 increases are due to minimum penalty being raised from \$1,000 to \$2,000.

and 3 months imprisonment for first conviction and \$5,000 and 6 months imprisonment for second and subsequent convictions, which falls outside the 4 tiers.

14. During its deliberations the Subcommittee expressed views in relation to specific bylaws which, in its opinion, warranted particular attention. The Corporation has already addressed them all, examples include reducing penalty level of the bylaws on “Use of Abusive Language” from \$5,000 to \$2,000; removing imprisonment for the bylaws on “Bill posting” and “Hawking”. Details can be found in Annex II.

15. Prosecution policy and enforcement guidelines have been reviewed. Amendments to the guidelines have improved clarity in order to ensure that officials have a clear understanding as to how the bylaws are to be enforced. In terms of enforcement emphasis is placed on a practical and educational approach designed to prevent bylaw contraventions as opposed to prosecution.

16. The Subcommittee urged the Corporation to review notices posted on railway premises with a view to enhancing greater public awareness and facilitate compliance by providing greater clarity. Wherever possible standardised internationally accepted pictographs will continue to be used. Where applicable brief notations in Chinese and English which will make it clear to passengers the nature of the offence and the relevant penalty, shall be included on notices relating to any bylaw infringement or prohibition.

Others

17. There were two other matters raised by the Subcommittee namely the provision of an Octopus refund device which would allow passengers to secure a refund of the first class premium if they chose not to travel first class and nuisance created by audio-visual broadcasts in carriages and promotional activities at stations. The Corporation has reviewed both these matters and concluded, in the case of Octopus refund devices, that installation of such devices is not warranted given that there are very few requests for such refunds, approximately twenty per annum. In the case of audio-visual broadcasts the Corporation has adopted a set of guidelines designed to ensure that the noise created by such broadcasts does not exceed acceptable noise levels. With regard to commercial activities, where these create a nuisance to passengers, the Corporation has the right to cease such activities.

Way Forward

18. The Corporation seeks Members' endorsement of the results of the review as set out in this paper. Upon receipt of Members' endorsement of the proposals contained herein, the Corporation will proceed to drafting the required amendments and formally submit to the Legislative Council amended Mass Transit Railway Bylaws and Mass Transit Railway (North-West Railway) Bylaw, for its approval.

MTR Corporation Limited
January 2009

(I) Responses to concerns raised by the Subcommittee

	Bylaws/Offences	Responses
1.	Wrongfully entering or leaving trains MTR Bylaw 9(2) NWR Bylaw 16(c)	Will provide for an exemption in situation where there is an accident or an emergency.
2.	Compliance with notices MTR Bylaw 21(1) NWR Bylaw 18 (1)	The Corporation proposes that all notices relating to an infringement or contravention will in future have a written reference to not only the relevant bylaw but also the applicable penalty.
3.	No Eating or drinking MTR Bylaw 27(b) NWR Bylaw 25(b)	Will delete “attempt to consume” from the MTR bylaw to avoid confusion.
4.	Queuing MTR Bylaw 28C(3) and 28C(4)	Section 34 of the MTR Ordinance provides that the Corporation can make bylaws to regulate the conduct of members of the public using the railway or on railway premises. Hence, MTR bylaw 28C is not ultra vires and no amendments will be made.
5.	Intoxication MTR Bylaw 28F NWR Bylaw 23	Both bylaws will be amended by replacing “as determined by an official in his absolute discretion” with “determination by an official in accordance with his belief or reasonable cause to believe”. The adoption of language which refers to a state of intoxication “resulting from consuming or abusing alcohol, medicine or drug” in the MTR bylaw into the NWR bylaw to better define “intoxication”.

	Bylaws/Offences	Responses
6.	Abusive language MTR Bylaw 28H(1)(a) NWR Bylaw 22(1)(a)	Will not provide exemption for use of abusive language in private conversation given that the possibility of private conversation being caught by the Bylaw is very remote as only abusive language which manifests itself as a disturbance to other passengers will be caught by this provision. Penalty being reduced (see item 3 of Annex II)
7.	Loitering MTR Bylaw 31 NWR Bylaw 28	To be repealed.
8.	Bill posting, etc., unauthorised display of materials for the purpose of advertisement, etc. MTR bylaw 32 MTR bylaw 32A NWR Bylaw 26	No amendment as it is inappropriate to limit the scope of the bylaw since non-commercial promotion activities can also affect smooth passenger flow.
9.	Disposal of lost property MTR Bylaw 41(1)(c) NWR 36(1)(b)	Extend the lost property retention period from 1 months to 3 months.

(I) Other Amendments proposed by MTRCL pursuant to the review

- **Authorized crossing places and conditions of crossing (MTR Bylaw 3A)**
This is an obsolete provision and will be repealed since there is no longer designated crossing for animals, etc.
- **Firearms (MTR Bylaw 38)**
There is no equivalent provision in the NWR Bylaw. In the interests of consistency it is proposed to adopt the MTR Bylaw into the NWR Bylaw.
- **Nuisance (MTR Bylaw 25)**
There is no equivalent in the NWR Bylaw. In the interests of consistency it is proposed to adopt the MTR Bylaw into the NWR Bylaw.
- **Damage to Railway Premises (MTR Bylaw 5, NWR Bylaw 16(e))/Improper Operation of Equipment (MTR Bylaw 28A, NWR Bylaw 16(e))**
Whilst the importance of these bylaws cannot be under-estimated the Corporation, upon review, accepts that an exception should be made for persons who genuinely acted in the belief that there was an emergency or that the damage sustained was the result of a genuine accident.

(I) Responses to concerns raised by the Subcommittee

	Bylaw/Offences	Existing penalty		Proposed amendments
		MTR Bylaws	NWR Bylaws	
1.	Playing radios, cassettes, musical instruments in railway premises	Bylaw 26,26A \$2000 fine	Bylaw 24 \$2000 fine	Exempt noise created by mobile phone ringtones generated from incoming calls.
3.	Use of abusive language	Bylaw 28H(1)(a) \$5000 fine	Bylaw 22(1)(a) \$5000 fine	Penalty to be reduced to \$2000.
4.	Hawking	Bylaw 30 \$5000 fine and 6 months imprisonment	Bylaw 27 \$5000 fine and 6 months imprisonment	The Corporation has considered a two-tier penalty adopted under the Public Health and Municipal Services Ordinance (Cap 132), but decided to reduce the penalty level by removing imprisonment instead.
5.	Loitering	Bylaw 31 \$2000 fine	Bylaw 28 \$2000 fine	To be repealed.
6.	Bill posting, unauthorized display of material for the purpose of advertisement, etc.	Bylaw 32 - Bill posting, etc. Penalty - \$5000 fine and 3 months imprisonment Bylaw 32A - Unauthorised display of material for the purpose of advertisement, etc. Penalty - \$5000 fine	Bylaw 26 - Unauthorized bill posting, advertising and touting Penalty - \$5000 fine	To reduce the penalty level by removing imprisonment. The Corporation has considered confining the scope, but decided to maintain status quo as it is necessary to regulate all kind of promotional activities at station to ensure a smooth flow of passengers.

(II) Other Amendments proposed by MTRCL pursuant to the review

- **Improper dressing (MTR bylaw 28G, NWR bylaw 23)**

The Corporation has re-assessed the nature and in the event of a breach the extent of this bylaws potential prejudice to passengers. It considers the current penalty of \$5000 can be further reduced to \$2000.

- **Failure to comply with signs (MTR Bylaw 35 and NWR Bylaw 31)**

In order to maintain consistency with Hong Kong's road traffic laws the bylaws are to be amended to align them with the Road Traffic (Traffic Control) Regulations (Cap 374). (i.e. from \$4000 and 2 months imprisonment (MTR bylaw) and \$5000 and 3 months imprisonment (NWR bylaw) to both \$5,000 and 3 months imprisonment for first conviction and \$5,000 and 6 months imprisonment for second and subsequent convictions.)

- **Spitting and littering (MTR 24 and NWR bylaw 21)**

The Corporation has re-assessed the nature and in the event of a breach the extent of this bylaws prejudice to passengers and the Corporation. It considers the current penalty of \$5000 can be further reduced to \$2000.