

RAIL SAFETY BILL 2009

Committee

Resumed from an earlier stage of the sitting. The Deputy Chairman of Committees (Hon Jon Ford) in the chair; Hon Simon O'Brien (Minister for Transport) in charge of the bill.

Clause 28: Safety duties of rail transport operators —

Committee was interrupted after clause had been partly considered.

Clause put and passed.

Clauses 29 to 47 put and passed.

Clause 48: Keeping and making available documents for public inspection —

Hon KEN TRAVERS: Does the minister expect that the need to make safety performance reports public will be prescribed? If not, I encourage him to look at making safety performance reports public as one of the items that will be prescribed under this section.

Hon SIMON O'BRIEN: As the member will understand, there are privacy issues involved with publishing reports, particularly in a relatively small industry such as this where parties are easily identified. The answer is no; that was not the government's intention. However, it is its intention to obtain and publish what I might call aggregate reports rather individual reports.

Hon KEN TRAVERS: I understand why in certain circumstances confidentiality needs to be maintained, but I would have thought it would not be unreasonable to table something like a safety performance report, even if it is for an individual company, so that people can be assured that the company is complying with the requirements of the act. I urge the minister to look again at that issue so that people can be confident that all organisations operating under this act are complying with their safety requirements.

Clause put and passed.

Clauses 49 to 57 put and passed.

Clause 58: Exemption from accreditation —

Hon KEN TRAVERS: I will not oppose this clause. I refer to the exemption of private sidings from an operational viewpoint. Many private sidings are operated in Western Australia in the grain and coal industries and the like. There have been problems in the past with the movement of trucks around the trains that are operating, which often cause dust and the rest of it. From time to time, there seems to be confusion about the signals that have been given because the personnel who operate the sidings follow a different method of signalling from those contained within the network rules. I understand there is some confusion about who should accept final responsibility when a problem arises. Often the company that operates the train is not the owner of the siding. I urge some caution; I want to raise those issues at this stage of the debate. I understand why this may be required, but there needs to be some clarity, and this is an area where there can probably be some more work done to ensure that even at an exempt siding, the network rules are still being applied. There also needs to be greater clarity about who is responsible for taking and addressing complaints by employees who are unhappy about the way that safety is operating at a siding. This arises out of the confusion between the owner of a siding and the owner of the rail infrastructure that goes into the siding.

Hon SIMON O'BRIEN: Since the member has raised the issue, it probably merits a response from the government as author of the provision. I want to make it clear that exemption from accreditation that is provided for in clause 58(1) is not intended in any way to weaken the overall regime of rail safety. We rely on clause 58(2) to make that point a reality. The provision requires that where there is a private siding that is connected to an accredited rail system, it must comply with any conditions that are imposed by the rail safety regulator. Although a private siding does not have to have its own stand-alone accreditation—that would be a disproportionate and onerous requirement—it is nonetheless, required to comply with the regime that applies to the accredited railway that it is connected to. I think we have achieved what the member is looking for through that means.

Clause put and passed.

Clauses 59 to 72 put and passed.

Clause 73: Health and fitness management programme —

Hon KEN TRAVERS: With the indulgence of the house, I will make some general comments about both clause 73 and clause 76 because they are, to some degree, related. They are about the general health and wellbeing of

transport operator staff. Obviously, clause 73 relates to health and fitness management programs and clause 76 relates to fatigue management programs. The intent of both clauses is to require operators to put in place health and fitness programs for rail safety workers and to prepare and implement a program to deal with the management of fatigue. I understand why it would be by prescription, but I would appreciate it if the minister would advise to what degree he sees the prescription being applied in this area. I should congratulate the Public Transport Authority because, as I understand, it provides gym facilities. However, I have not been able to ascertain whether any other operators in Western Australia provide much in the way of health and fitness programs. I have had feedback to the effect that fatigue management in some areas is not always to a high standard. Can the minister give us some indication of what sort of standards he intends to set by way of prescription? I have lumped the two clauses together in the interest of speeding up the progress of the legislation, because I think they are pretty closely related.

Hon SIMON O'BRIEN: The member has asked for a general indication, and I can advise that generally we are probably looking at a health and fitness program, an alcohol and drug management program, and a fatigue management program, which is probably on a par with that applied to heavy vehicle operators. I can also advise that it was the intention of the creators of the national model regulations for the health and fitness management program, so far as reasonably practicable, to be consistent with volumes 1 and 2 of the National Standard for Health Assessment of Rail Safety Workers—a document with which I am sure the member is familiar. In respect of the other programs referred to by the member, a national agreement has not yet been arrived at as to what those requirements should be. To the extent that there are local requirements in place, they will continue; otherwise the types of programs that will be established will be decided by what comes out of the national agreement in due course.

Clause put and passed.

Clauses 74 to 77 put and passed.

Clause 78: Identification for rail safety workers —

Hon SIMON O'BRIEN: Clause 78 relates to identification for rail safety workers. The onus is cast on a rail transport operator to ensure that each of his rail safety workers carrying out rail safety work in relation to the rail transport operator's railway operations has a form of identification. The form of identification has to be sufficient to enable the type of competence and training of the rail safety worker for that rail safety work to be checked by a rail safety officer. Penalties are prescribed for those committing this offence. There is a further provision under clause 78 that a rail safety worker who is carrying out rail safety work must, when requested by a rail safety officer to do so, produce the identification to which I have just referred. The Standing Committee on Uniform Legislation and Statutes Review drew attention to this part of clause 78 in its forty-sixth report, which gave rise to recommendation 4. Recommendation 4 can be found on page 19 of the report if members wish to refer to it. The report itself contains discussion about this measure, but in particular it zeroed in on the capacity of the rail safety worker to be able to produce his identification on the spot and whether that was reasonable. The committee invited us to compare this requirement with that of clause 26(4), which requires the rail safety officer to carry his identification card, but which allows him to produce it as soon as practicable. It referred us also to clause 140(3), which allows an independent investigator or authorised officer to produce his or her certificate of appointment as soon as practicable after being requested to do so. The committee invites us to consider whether it is reasonable to expect that a rail safety worker should physically have his identification ready for immediate production when challenged to produce it. For example, what happens if a rail safety worker has left his identification in his car or at home or when he is in a remote place and it is not immediately available? Should he be subjected, notionally at least, to a penalty in the form of a fine? The committee discussed this and members can read the report. Recommendation 4 suggests that an amendment be made by inserting a new subclause (3). It reads —

- (3) If it is not practicable for a rail safety worker to produce the identification on being requested to do so, the rail safety worker must produce it as soon as practicable after the request is made.**

I do not know whether, strictly speaking, this is essential to safeguard the interests of people in the workplace. It was the view of those drafting the bill that the normal forces of reason would assist in this matter. However, to put the matter beyond doubt—because this is an issue we want to be practical about and because we do not want anyone to feel unfairly imposed upon—the government is prepared to agree to the spirit of the amendment, but in order to do that we have suggested a slightly different form of words. I move —

Page 67, after line 18 — To insert —

- (b) If it is not practicable for a rail safety worker to produce the identification on being requested to do so, the rail safety worker may produce it within a period considered reasonable by the requesting rail safety officer.

There is a slight change in the wording, which achieves the more precise outcome that is desired. Furthermore, we believe that the placement of the words in paragraph (b) rather than in their own stand-alone subclause is the appropriate place in the construction of the legislation.

Hon ADELE FARINA: Why is the term “as soon as practicable” too vague in application for a rail safety worker yet not too vague for a rail safety officer or the other positions that have been identified?

Hon SIMON O'BRIEN: Who says it is too vague? I did not say that.

Hon ADELE FARINA: It is contained in the document that I have. Given that the minister did not say that, I will rephrase the question. Why is the issue of a penalty for the non-production of ID an issue for rail safety workers but not rail safety officers?

Hon SIMON O'BRIEN: We have to consider the reason that the identification cards respectively are required. In the case of rail safety workers, as the honourable member knows, the identification card carries not only basic identification, but also qualifications for the rail safety worker to perform a range of tasks on rail safety equipment. I believe it is accepted by all that a person doing those tasks must be qualified to do so, for obvious reasons. Therefore, when a rail safety officer needs to establish that that competence exists, he must be able to ascertain that fact. He will do so by reference to the qualifications that are being carried and he will make sure that the rail safety worker is not unauthorised to be doing the work that he is doing. That is very important. It is also something that needs to be decided on the spot. It must be demonstrated to people engaged in rail safety work that they must know what they are doing and that they are qualified to do the task. That is why they need to have that identification at all times, and most particularly not to proceed with rail safety work if they are not able to demonstrate that they have the qualifications.

We are agreeing, though, that if this amendment achieves the purpose I have just described, a little flexibility can be granted in circumstances when a brief delay is necessary for the production of those qualifications. Nonetheless the point of the clause is that the qualifications must be produced. So that is one aspect and I do not believe any member disagrees with that.

I mention those matters for rail safety workers so that we can now contrast them with the role of rail safety officers. A question has been put that they also must display identification. Why must they do that? Rail safety officers must do that typically because they are departmental officers who perform an inspectorate role, and they are invested by this legislation with certain powers as well as certain responsibilities and must be taken notice of. It is therefore only right and proper that they should have and display the appropriate identification so that when someone else they are dealing with, for example a rail safety worker, will know that the person is a rail safety officer and that means that the rail safety worker must comply with certain directions or produce things, or whatever it might be.

It is a quite different prospect to suggest that rail safety officers who do not have the capacity to produce identification on the spot should be fined. Government officers, for example, are often equipped with identification so that they can identify themselves and do their job, but their ID is for a quite different purpose than the purpose for which rail safety workers are required to have identification.

Hon ADELE FARINA: I am still trying to understand why the government continues to make a distinction between a rail safety worker and a rail safety officer for the requirement to have an ID card. As I understand it, if an incident occurs, workers are required on-site to address the safety issues on-site, and they are engaged to undertake that task. My understanding is that at the point of engagement employers would know the skill set of the workers and they would employ them for their skill set for a particular task that needs to be carried out. I am not sure what additional information to the rail safety officer the ID card provides, because that information should be readily available to the officer. Obviously there is a need for rail safety workers to produce an ID card before they get on-site; therefore, the ID card needs to be produced fairly quickly. As the minister has indicated, rail safety officers are usually already employed by the department, so that it would be easy to ensure that they already had an ID card identifying them as rail safety officers.

Hon Simon O'Brien: Yes.

Hon ADELE FARINA: So there should not be any hassle involved in rail safety officers having an ID card on their person at all times. In the case of an incident such as we are discussing, the rail safety worker is required to follow the directions issued by the rail safety officer. A rail safety worker who does not comply with the directions commits an offence under the act and a penalty of \$28 000 can be imposed on the worker. In those

circumstances it would be reasonable to expect that rail safety officers would be required to have identification on their person at all times so that when the rail safety officer gives a direction to a worker who does not know the officer—it could be a person unknown to the worker because the worker has just been employed to handle the specific incident—the worker understands that the officer is a person in authority and that if the worker does not follow the direction given by that person in authority, it could result in an offence under the act and the imposition of a quite significant penalty. From my point of view, therefore, in that incident it is important that the rail safety officer has identification.

The issues of identification and the skills set of rail safety workers occur at the point of employment. I am sure that if a rail safety worker were asked by a rail safety officer to undertake a particular task for which that worker did not have the qualifications, the worker would say, “Look, I’m not qualified to do that”, and the rail safety officer would find someone who was qualified.

It just seems odd to me to be saying that it is okay for the officer to provide identification “as soon as practicable”, but that set of words is not sufficient for a rail safety worker. And what is more, if the worker does not produce identification, as required under the act, a penalty of \$2 000 will be imposed on the worker. That is a substantial amount of money in terms of a penalty imposed on a worker, and I have concerns with that.

The problem with the words “within a period considered reasonable by the requesting rail safety officer”, which the minister proposes in his amendment, is that the time period could vary from incident to incident.

Hon Simon O’Brien: Yes, it could.

Hon ADELE FARINA: It could vary from situation to situation within an incident and it is very subjective. There is therefore no standard practice. For example, a rail safety officer could tell a rail safety worker, “You are required to deliver your ID within four hours.” Yet, his colleague might say, “No, no; last time I forgot mine. I didn’t have to produce it until the next day, so don’t worry, you’ll be fine.” Then the first rail safety worker could find himself with a penalty of \$2 000 as a result of that.

I believe we are creating a greater problem by stating “within a period considered reasonable by the requesting rail safety officer” because it is too subjective, it could vary from situation to situation and worker to worker, and it could create a lot of confusion about what is required of the worker. The reality is that workers talk to each other. In a workplace situation someone could say, “No, no, that’s not right. When I forgot mine, I had 24 hours or 48 hours to produce it”, and confusion arises.

I believe in terms of consistency in approach it is best to use the same words that are used for every other officer within the legislation. We will create greater confusion by inserting a different set of words, and I am sure that is not the intention of the minister in doing so.

I appreciate that the minister is trying to reflect the concerns that the committee has raised. I am not too sure that the words that appear in this amendment are better; my fear is that they might result in more confusion. I am still not satisfied with the explanation that the minister has given about why the words “as soon as practicable after the request is made” cannot be consistently applied to everyone in that work situation.

Hon SIMON O’BRIEN: I assure the member that there is not some sort of class warfare going on.

Hon Adele Farina: It feels like it.

Hon SIMON O’BRIEN: I do not think the member understands the workplace to which this legislation is intended to apply.

Hon Adele Farina: Explain it to me.

Hon SIMON O’BRIEN: Perhaps we could just work that through and the member will have a much greater sense of ease about what the respective clauses she is concerned about are intended to do. Firstly, the member’s concern about this is based on a misapprehension as to the relationship between a rail safety worker and a rail safety officer. It is not some sort of boss–employee relationship at all—in fact, it specifically is not. It is not a case of someone being put upon because they are a worker and the mean old boss does not have the same standards applied to him. I can assure the member that is not the case.

Hon Adele Farina: It is about an imposition of a penalty on a worker.

Hon SIMON O’BRIEN: The question of production of identification for people performing those respective roles is a very different question for each of those officers. In looking at why they need identification, let us look firstly at what a rail safety worker is. That is described in clause 3, and I mentioned that when I was last on my feet. A rail safety officer is someone who is appointed by the rail safety regulator; he or she is a government-appointed officer. At the outset, there is no relationship between the rail safety worker and the rail safety officer.

They do not know each other. That is an important part of understanding what we are trying to achieve here. The first thing we need to look at here is subclause (1), which requires the rail safety worker to have identification disclosing his qualifications so that he can demonstrate that whatever he is involved in doing in relation to the rail safety equipment that he is working on is being done in a competent and qualified manner. The consequences of him not doing being qualified are potentially very serious. That is why a rail transport operator has to ensure that each rail safety worker carrying out that work has that form of identification. The operator, if you will, is the employer. Hon Adele Farina is concerned that a rail safety officer ought to know when a worker turns up to do his rail safety work that he is qualified.

Hon Adele Farina: That is not what I said.

Hon SIMON O'BRIEN: The member must have misspoken, because that is what she said. The rail transport operator would know that, but a rail safety officer, almost by definition, would not and could not be expected to know that.

Hon Adele Farina: The rail safety operator can inform the rail safety officer of that.

Hon SIMON O'BRIEN: I do not care about the operator. It is the rail safety officer who requires the rail safety worker to produce his identification. That is the point of this clause, which the member does not seem to understand.

Hon Adele Farina: I do understand it. The question is why the onus is put on the rail safety worker.

The DEPUTY CHAIRMAN (Hon Jon Ford): Order! Members, if we could debate according to the rules, which are that one member sits down and one stands up. It is very hard for Hansard. Who would like the call?

Hon ALISON XAMON: Although I share some of the concerns raised by Hon Adele Farina over the apparently differing requirements for rail safety officers and rail safety workers, I want to focus on a slightly different point relating to the minister's amendment, as opposed to the committee's suggested amendment, which Hon Adele Farina has alluded to. I think that we all agree that that identification needs to be carried. No-one has disagreed with that or that it needs to be produced. The issue is the interpretation of "reasonable" in relation to the time frame in which it must be produced. That is where we are becoming a little unstuck. I am a little concerned about the wording in the minister's amendment, in particular the words "within a period considered reasonable by the requesting rail safety officer". I am concerned about that, because how reasonableness is interpreted under the law has a clear meaning as being an independent assessment. The intent is that we would have an expectation that the requesting rail safety officer would still obviously be "reasonable" about the time frame for producing the ID, but I do not think the minister's amendment necessarily reflects that. I do not think we are trying to achieve a different outcome. We want the clause to reflect what we are intending. I am concerned that the minister's proposed amendment puts the responsibility on one individual, who could be anyone, to make his or her own interpretation of what is reasonable. That is stepping outside the legal interpretation of "reasonable". That is why the wording in the committee's recommendation would encapsulate the common law understanding around that word. I am not trying to be confusing, but at the very least if there is not going to be an acceptance by a majority of this house to take on the committee's recommendation as opposed to the minister's amendment, I hope—at least for the purposes of *Hansard*—there would be an understanding of the expectation that the request of the rail safety officer would stick with the normal common law understanding of reasonableness.

Hon SIMON O'BRIEN: The word "reasonable" does have a long history of interpretation by the courts, as we all know. It is also important to understand, of course, that a rail safety officer has a range of people to whom he is accountable in the discharge of his duties. That includes how he exercises reasonableness and whether they are required by law as per this amendment as proposed or simply in the normal course of their duties. The principle of "reasonableness" I can assure the member would be applied to a rail safety officer's actions on a range of occasions. I would have thought that the decision to prosecute a rail safety worker for not being able to produce his or her identification would be examined by a number of people up from the rail safety officer level. The purpose of this legislation is to have a rail safety regime; it is not to go around pinging people because they left their badges at home. There is a real world out there and that is how it works. The words "produce it within a period considered reasonable by the requesting rail safety officer" provide the concession that I think the committee is looking at. For example, the situation in which a rail safety worker for some—dare I say—"reasonable" reason cannot immediately produce his ID: "It's on my jacket over there in the lunch room!" The rail safety officer, depending on the circumstances, might say that he needs to see it because he is doing an inspection. If the fellow asks whether he could go and get his ID, it would be reasonable. Any officer would say, "No worries. Off you go and I'll have a look at it." There might be another circumstance in which somebody says, "My ID is in the office, which has been locked until my supervisor comes back from lunch. I can't get it until he comes back." The reasonable period might then be when the office is accessible. A time after that occurs might be a reasonable period. Who knows? There are so many hypothetical situations.

The aspect of imprecision in the word “reasonable” actually gives the protection to the rail safety worker. If we were to put in the legislation something that says that the identification has to be produced within 30 seconds, it might not apply in all situations. If they had to produce it within a week, it might not be reasonable in all situations. When we try to be prescriptive in legislation, we can get into trouble.

Can members use their own standard and tell me how the term “as soon as practicable” helps to make everybody feel comfortable? What does the term “as soon as practicable” really mean? If members compare that term with the word “reasonable”, they might just think again.

Hon KEN TRAVERS: I will answer the challenge that the minister put to us before I refer to other aspects of this clause. If we accept the minister’s challenge about what “as soon as practicable” means, a problem would arise because in other parts of the legislation people are required to present their identification as soon as practicable. The challenge that I would throw back to the minister is: what would it mean in those circumstances?

Hon Simon O’Brien: It is not described in those other provisions as an offence. That is why it is of more importance.

Hon KEN TRAVERS: That comes down to the nub of the issue. We skipped over clause 77. It is informative to consider the changes that were made to the uniform legislation when we consider clauses 77 and 78. They take us away from what was in the uniform legislation. Clause 77 deals with the assessment of competence. The uniform legislation makes reference to the Australian quality framework by which the assessment of the levels of competency are established. We have not proceeded with that, but have set up an alternative arrangement. The government’s reasons for that was to allow it to deal with heritage and tourism rail. Tasmania dealt with that by saying that everybody must have Australian quality framework, but if they were an off main line or a heritage rail operator they could apply for an exemption from those requirements. We have moved to exempt everybody and then insert assessment measures by prescription.

Clause 78 has two elements. First, it deals with what an operator must do; that is, ensure that a rail safety worker has a form of identification and it is sufficient to enable the rail safety regulator to check the competency and training of that rail safety officer. Clause 78 places an obligation on the operator to ensure that the person is competent and has been trained. From that there is an exception that the operator—that is the reason I mentioned clause 77—has ensured that the person has the level of competency to do that work. That person is then given identification to be able to prove to somebody else that they can do it. I can understand why, for that matter, a penalty would apply.

The second element of clause 78 is that the rail safety officer must be able to provide the identification on request. It is a technical matter and it is useful that the minister tabled the variations from the legislation. If members go to the document that the minister tabled earlier today, which is a summary of variations between the Rail Safety Act and the WA draft Rail Safety Bill, the third dot point on the second page deals with clause 78. That document states that while it is deemed good practice under the RSA, it is now a requirement. From my reading of that, Western Australia will be unique in Australia because it is making it an absolute requirement to provide identification.

I do not have a problem with clause 78(1). However, I do have an issue with clause 78(2), because if a rail safety worker who is carrying out rail safety work does not produce identification when requested by a rail safety officer, it is an offence.

I come back to a more practical example that the minister and I would be familiar with. If a customs officer did an examination of somebody’s premises and the people knew who he was, he would probably be able to walk in without being asked for his ID. However, if the customs officer turns up at somebody’s premises and he is not in uniform and says, “I’m the customs officer”—in the old days when the minister and I were there, we probably would have been asked in and be taken at face value. I suspect that today a customs officer would be asked for some form of ID. If the officer did not have that ID, what would he do?

Hon Simon O’Brien: They would not let him in.

Hon KEN TRAVERS: That is right, but technically they would be in breach of the Customs Act, because they have the right to enter those premises as a customs officer.

Hon Simon O’Brien: Not if they cannot be identified. Then it comes down to reasonable.

Hon KEN TRAVERS: I accept that that is the minister’s argument.

Hon Simon O’Brien: If you go back to the boss and say, “They wouldn’t let me in; let’s prosecute them”, and the boss says, “You didn’t identify yourself”, I know how far he would get.

Hon KEN TRAVERS: I agree with the minister.

Hon Simon O’Brien: Did you ever do that, by the way?

Hon KEN TRAVERS: No. Legally there is probably an argument that the customs officer had the right to enter those premises, but in practical terms he would not enter those premises unless he believed that a criminal offence was occurring at that time. The officer would go back to the office and get his ID and go back to the premises. I agree with that.

Under this clause the rail safety officer does not have to show his ID. He can do it as soon as practicable. The person coming onto the site does not have to show his ID, but the worker who is on the site has to be able to immediately show his ID, or even within a reasonable time frame. What are we trying to achieve? Are we trying to get somebody prosecuted? If the rail safety officer turns up and somebody does not have their rail safety ID, will he allow that person to continue to operate? That is one of the difficulties I see in the way we are amending this clause. We could go down the path of the model legislation, which would capture a lot of the things that we are talking about and put in place a mechanism for managing and operating that within the organisation. That would be self-managed within the organisation. The alternative is to go down the path that we are going and that is where the complicated situations will arise.

The reality is that if people do not have identification on them it will cause a problem. The question is: should people be subject to a penalty of \$2 000 for not having ID? I suspect the answer is about the rail safety officers, the rail workers and the companies having to take into account what is a practical circumstance. If somebody is working on something and the situation is about to blow up if he does not keep working, the officer would probably do a risk assessment and decide to let him continue working without producing his ID. In other circumstances, if he did not have his identification, I would say, "Hang on, stop that work and go and get your ID" and that way the problem would be solved. However, this issue of suddenly trying to bring in a penalty to the process is where I think the real crux of the matter lies. Although I understand what the committee was trying to do, my personal preference would be to return to the draft model legislation for both clause 77 and 78 to set up the framework by which we operate in Western Australia because I think it is a better framework. I suspect that whatever sets of words that we put in place —

Hon Adele Farina: We have passed clause 77.

Hon KEN TRAVERS: I know, but we could always recommit the clause. If the government was of a mind to pick that up, we could recommit clause 77, and also pick up the concerns the government has about providing an exemption for heritage and tourism railways. I think that would be a far better process than the way we are going because I think that we will not find a set of words that accommodate all the needs that we want in this situation. We could write some good words, but in a practical sense I think we would find ourselves having great difficulty with the implementation. When people are out in the field, if the rail safety officer turns up and he does not have his rail safety card, I do not think people will let him onto the site. If the rail safety worker —

Hon Simon O'Brien: That is why the measure for the rail safety officer as prescribed is fine. I agree with you.

Hon KEN TRAVERS: No it is not because —

Hon Simon O'Brien: You're arguing with the rail safety worker.

Hon KEN TRAVERS: I am saying that the same requirement should apply to the rail safety workers because I think in practical terms what will happen is if you turn up there and a rail safety worker does not have his identification on him, my expectation is that the rail safety officer will actually stop the job and ask the worker to get the identification. The rail safety officer will not allow the worker to work on the site, unless of course it is an urgent situation in which case the officer will make a judgement call as to whether it is safer to allow the person to continue operating or to stop him operating. That will be a practical assessment. As I said, if we came back to the Australian quality framework, that would help inform how those decisions are made.

Hon SIMON O'BRIEN: I probably ought to point out that I am not sure what clause members think we are dealing with. The penalty is \$2 000, not \$28 000.

Hon Adele Farina: That's right; we're not suggesting otherwise.

Hon SIMON O'BRIEN: Members opposite did.

Hon Adele Farina: No we didn't; the minister is not listening.

Hon SIMON O'BRIEN: The member referred to a \$28 000 penalty applying.

Hon Ken Travers: She was referring to a —

Hon SIMON O'BRIEN: We are not dealing with another clause; we are dealing with clause 78. The other thing is that we have also heard it said that for some reason we are going our way in respect of having this clause; that it is a variation from the model bill. It is not on the list that I provided. Correct me if I am wrong.

Hon Ken Travers: Minister, if you look at the list you provided, turn over to the second page, the third dot point down, "Identification of Rail Safety Workers", refers to clause 78 of the bill.

Hon SIMON O'BRIEN: Yes, that is right.

Hon Ken Travers: So it is a variation.

Hon SIMON O'BRIEN: It is not a variation from the national model bill.

Hon Ken Travers: From the draft, sorry.

Hon SIMON O'BRIEN: It is not a variation from the national model draft. It is there across the other jurisdictions.

I will move that we report progress in a moment because there is another thing that we have to do. However, some interesting ideas have been raised. I might add that where the debate is now focused is not in any way addressed by the suggested amendment from the committee, which shows that the debate has moved on even though we have been in the committee stage. However, we need to deal with other matters in the house, so I will ask the Deputy Chairman (Hon Jon Ford) to report progress.

Progress reported and leave granted to sit again at a later stage of the sitting, on motion by Hon Simon O'Brien.