

**RAIL SAFETY BILL 2009**

*Receipt and First Reading*

Bill received from the Assembly; and, on motion by **Hon Simon O'Brien (Minister for Transport)**, read a first time.

*Second Reading*

**HON SIMON O'BRIEN (South Metropolitan — Minister for Transport)** [10.02 pm]: I move —

That the bill be now read a second time.

I am pleased to introduce the Rail Safety Bill 2009. This bill demonstrates the government's continuing commitment to the development in Western Australia of a safe and efficient rail system. The objective of developing this bill is to improve current rail safety regulation by providing for the safer operation of railways and ensuring greater efficiencies in the rail industry through regulatory harmonisation across jurisdictions.

This bill is to replace the existing Rail Safety Act 1998. However, in doing so, it is not seen as a significant divergence from current practices. Rail safety regulation will continue to be based on a co-regulatory structure, with rail organisations being primarily responsible for managing risk, while promoting public confidence. This will result in the control of risk by those most capable to do so, and in the most appropriate and cost-effective way.

Due in part to a number of rail accidents across the country, the Australian Transport Council agreed in 2004 to progress the development of model national rail safety regulation. Through consultation with the Australasian Railway Association, the Australian Rail, Tram and Bus Industry Union and rail safety regulators across jurisdictions, and from the rail industry organisations themselves, model national legislation was developed and agreed on by the Australian Transport Council in 2006.

The Western Australian vote at the Australian Transport Council carried a number of conditions or variations that are reflected in this bill. The model national legislation was further supported by the Council of Australian Governments. In 2006, COAG agreed that governments will, as a matter of high priority, together explore measures to implement a nationally consistent rail safety regulatory framework.

In December 2008, the Prime Minister and Premiers signed the Intergovernmental Agreement on Federal Financial Relations, which identifies arrangements under the National Partnership Agreement to Deliver a Seamless National Economy. Under this latter agreement, national rail safety regulation is listed as a deregulation priority milestone.

This bill reflects a number of principles agreed to by Australian Transport Council ministers. The first principle is shared responsibility—the people who form the rail safety chain of responsibility share the responsibility for safety so far as is reasonably practicable. The second principle is accountability—managing the infrastructure and rolling stock risks is the responsibility of the people best able to control that risk. The third principle is integrated risk management—if managing risks impacts on other railways or networks, the best practicable rail safety outcome should be sought. The fourth principle is transparency and consistency—rail regulatory decision-making processes should be timely, transparent and nationally consistent. The fifth principle is participation, consultation and involvement—because responsibility is shared, so too should participation and involvement in the management of the risks. The sixth principle is proportionate, consistent and fair enforcement—enforcement proportionate to the seriousness of the non-compliance; a consistent approach maintained for similar situations; and compliance and enforcement undertaken with impartiality, balance and integrity.

The bill enforces accreditation requirements that ensure rail operators have demonstrated the competence and capacity to manage risks to safety associated with their railway operations. The general duties for rail operators are extended in the chain of responsibility to include, for example, designers, contractors and manufacturers to ensure that the safety of railway operations is carried out so far as is reasonably practicable.

The bill ensures that rail transport operators' safety management systems are based on industry best practice and include consultation with other rail operators, rail safety workers and relevant unions in the development of such systems. Occupational health and safety obligations are consistent with the Occupational Safety and Health Act 1984 to ensure that double jeopardy between the legislation is avoided. When a conflict arises, the Occupational Safety and Health Act 1984 will prevail.

Compliance codes are addressed by the bill allowing certainty for rail operators to be deemed to have complied with certain regulatory obligations, in particular smaller organisations to have the flexibility to determine the most cost-effective means of doing so. There are also complementary obligations on road managers to develop,

implement and maintain interface coordination plans for road and rail intersections to improve railway level crossing safety.

Administratively, the bill includes provisions to support independence in rail safety regulation and investigation by creating the position of Director Rail Safety under the Public Sector Management Act 1994, who will be the Rail Safety Regulator. The Rail Safety Regulator is not subject to direction from the minister or the agency director general in respect of the exercise of the Rail Safety Regulator's powers under the act. The minister can direct the agency director general to appoint an independent investigator to investigate a particular rail occurrence, but cannot direct how to conduct that investigation or the outcome of the investigation, or direct the agency director general to stop an investigation.

As the safety scheme in the bill is designed to work conjointly with the Occupational Safety and Health Act 1984, a memorandum of understanding to ensure effective coordination and cooperation between the Office of Rail Safety and the Department of Commerce will be developed to address policy matters and the enforcement of safety law on railways, tramways and other guided transport systems in this jurisdiction.

The Office of Rail Safety will operate on a full cost-recovery basis, with the revenue coming from rail safety accreditation fees. This regulatory reform in rail safety will result in a small additional cost to the rail industry, and so fees will change in line with this increase.

Development of the rail safety legislation reform started in 2004, and has involved extensive consultations with industry, governments and unions, and the assistance of a steering committee established by the Standing Committee on Transport and the National Transport Council's Rail Legislation Advisory Panel. There have been four rounds of public information sessions held in Western Australia on the legislation reform. All rail operators, including the smaller tourist and heritage rail operators, were consulted. As I have indicated earlier, the Western Australian vote on the model national legislation at the Australian Transport Council was subject to a number of conditions, or variations. These conditions include the Western Australian government retaining a number of sections from its current Rail Safety Act 1998. To allow public comment on the variations made in this bill, a fifth public consultation session was held in June 2009 with the rail industry.

The most significant variation from the model national legislation is the strengthened independent investigations provisions, which reflect current best practice and will provide the ability to gather information on a no-blame basis to resolve rail incidents that would otherwise go unresolved. Added to this is the provision for the Rail Safety Regulator to direct the installation of safety or protective devices as a result of such an investigation. Other variations in the bill include an option for the minister to exempt persons or railways from application of the act as exists under current legislation; the assessment of competence of rail safety workers to allow for the unique circumstances encountered by the tourism and heritage sector; the temporary closure of railway crossings to take a more practical and less regulatory approach to the operational implications of this task; the restoration of rail infrastructure or rolling stock to original condition to be an obligation of the Rail Safety Regulator; and the periodic returns for rail safety data to allow normalisation of rail safety data. These changes enhance the model national legislation to maintain the high standard of rail safety currently employed in Western Australia.

A number of the provisions in the model national bill are classified as "non-core", whereby implementation is not essential for nationally consistent rail safety outcomes, but these are considered valuable and desirable provisions for inclusion in best practice national rail safety legislation. The model national bill also allows for local variations, whereby it is expected that certain provisions will be varied to enable conformity with local legal requirements and legislative drafting practice. Examples of non-core provisions and local variations in this bill include offences by bodies corporate, partnerships, associations and employees; relation to the Occupational Safety and Health Act 1984 to enable consistency between the two acts; appointment and designation of the Rail Safety Regulator and rail safety officers; interface coordination plans to manage railway crossings to include railways that are contained within roadways; and exemption from personal liability for officers acting under the act. A detailed report of these variations will be provided to the Standing Committee on Uniform Legislation and Statutes Review.

The model national legislation is one part of a broader package of reforms that includes model regulations covering security and emergency management plans; health and fitness and fatigue management programs; testing for drugs and alcohol; and drug and alcohol management programs. It also includes nationally approved guidelines to support consistent regulatory practice across jurisdictions on rail safety management systems; management of fatigue; compliance and enforcement; accreditation and uniform administration of accreditation; and meaning of the duty of "so far as is reasonably practicable". Implementation of this broader package of reforms will be needed to achieve the improvements in regulatory efficiency and effectiveness that will be sought once this bill is enacted.

Arrangements to transition from the current Rail Safety Act 1998 to the new legislation are provided as follows. Railway owners and operators are to operate for 12 months under existing arrangements before having to comply with the new regime; there will be a period of two years for rail safety workers and contractors to be assessed and provided with appropriate identification; and there will be a period of three years for interface sites to be identified and appropriate plans drafted and registered.

The bill makes consequential amendments to the Government Railways Act 1904, the Mines Safety and Inspection Act 1994, the Public Transport Authority Act 2003, the Rail Freight System Act 2000, and the Railways (Access) Act 1998 to ensure consistency of references to the current Rail Safety Act 1998.

The Model National Bill Regulatory Impact Statement estimates that improvements in rail safety will yield benefits totalling \$338 million in net present value terms over 10 years, and that the model national legislation will contribute significantly to this improvement. The model national legislation that this bill follows has moderated the extreme positions that existed across jurisdictions and industry, resulting in a major cultural change towards safety across the Australian railway network. Achieving the more robust co-regulatory outcome that Western Australia was seeking, and incorporating extended investigatory powers from the existing Rail Safety Act 1998, this bill will deliver a better outcome for safety, efficiency and national consistency of the rail industry, and provide greater public confidence in our rail system.

I commend the bill to the house.

Debate adjourned and bill referred to the Standing Committee on Uniform Legislation and Statutes Review, pursuant to standing orders.