

**RAIL SAFETY BILL 2009**

*Committee*

The Deputy Chairman of Committees (Hon Max Trenorden) in the chair; Hon Simon O'Brien (Minister for Transport) in charge of the bill.

**Clause 1: Short title —**

**Hon KEN TRAVERS:** I note that in the forty-sixth report of the Standing Committee on Uniform Legislation and Statutes Review the committee finds that the bill is substantially consistent with its supporting documentation. I thought that somewhere as well the committee basically made reference to the fact that this does fit generally with the model national legislation. However, in light of the fact that there are a number of changes—I indicated this to the minister last night—for the benefit of the chamber it would be useful if the minister could table the document that has been provided by the department that outlines the main variations of this legislation from the national model rail safety legislation.

**Hon SIMON O'BRIEN:** There are some variations between the Rail Safety Act 1998, which is our current legislation, and the bill before us now. There are also some variations between the national model rail safety legislation and how it has been incorporated into the bill that is before us now. The latter is probably of less interest to members, but of interest nonetheless. I have caused copies of the summary of those variations to be made. I would now like to ask an attendant to distribute them to members. I table two documents. The first is "Summary of Variations between the Safety Act 1998 (RSA) and the Western Australia and Draft Safety Bill 2009" and the second is "Summary of Variations to the National Model Rail Safety Legislation incorporated into the Western Australian Draft Rail Safety Bill 2009".

[See paper 2054.]

**Hon SIMON O'BRIEN:** I thank Hon Ken Travers for his suggestion. I think it does help. These variations were touched on in the second reading debate and in the report. There is nothing wrong with having variations to suit what we need here in Western Australia, but it is instructive to know what we have had changed to assert our local needs, requirements and sovereignty.

**Hon ADELE FARINA:** I would like to go back to the issue I raised during the second reading debate about the national panel of rail safety regulators, who are required to meet and decide on what is a notifiable occurrence, as outlined under clause 3. Part of their job is to take such occurrences to the Australian Transport Council for endorsement, and then from the ATC to the National Transport Commission to be drafted as a regulation or an addition to the current model regulation. It seems to me that they have a critical role to play in the proposed national scheme. Also, the principal regulator will form the first port of call in this new system and will work with other regulators in other jurisdictions to ensure some consistency in the conditions that are set across the jurisdictions with the registration of operators. These two administrative aspects appear to be critical to the functioning of the national scheme, yet there is no mention of the rail safety regulators' panel or the principal regulator, so there is no mention or establishment of either of those positions in the bill. I find that to be an extraordinary situation—that an administrative arrangement and process that is so critical to the functioning of the national scheme is not incorporated in the national bill before us. I would appreciate the minister explaining to the committee why these two critical roles are omitted from the national bill altogether, how they will function and the extent of their powers and responsibilities under this national scheme.

**Hon SIMON O'BRIEN:** The matter raised by the member is not straightforward. That is why I wanted to pause to collect my thoughts, so that I could provide an answer to a very comprehensive question in the simplest way that I feel I can. It is true that the role of a principal regulator, which is being contemplated at a national level, is administrative in nature and is not established or defined in legislation. It is fair to say that the reason there is no provision for that in this bill at this time is that we will have a national regulator in the future—a few years down the track when we have moved to a full national regulation system or it reaches full maturity. For the present, we will have a regulator in this state and in each of the other jurisdictions. The regulators will have the carriage of all these matters. It is not proposed at this time, and it is not before us now, to pass on those powers to a national regulator. That will be subject to the will of the Parliament in due course. The role of principal regulator at this time would purely be of an administrative nature with no capacity to direct the regulator here in Western Australia. That last comment goes directly to the nub of the question which the member raised in the committee's report and to which she devoted some time in her contribution to the second reading debate last night—that is, her concern about state sovereignty in these matters. We are not moving, by way of this bill, to create a national regulator to exercise certain prerogatives. That is why it is not reflected in this bill. It might be something that is contemplated at another time, but that is a debate and an issue for another day.

**Hon ADELE FARINA:** I thank the minister. I am not suggesting that we are proposing to have a national regulator at this time. I fully understand that that is not the intention in this model bill. The panel of regulators is intended to be a panel of state regulators who meet to talk about the sorts of conditions that should be imposed on rail operators that operate in a range of jurisdictions. That suggests that there is not a need for a national regulator, because the state regulators will come together and will seek to reach an agreement. The role of the principal regulator, as outlined to the committee, would be to undertake the substantial work of the accreditation process. The other states would then effectively tick off the accreditation in their states because the substantial analysis work will have been done by the principal regulator on the basis that the same conditions will be imposed in all states. A statement made during the hearings by a senior legal officer of the Department of Planning can be found on page 7 of the committee's report, and reads —

That is one of the whole reasons for the model bill—to try to stop having different accreditation conditions in each jurisdiction.

If that is the object of the bill, as stated by that officer and in the documents provided to the committee, what is the process for ensuring that the accreditation conditions are the same in each jurisdiction if that does not occur through that panel?

**Hon SIMON O'BRIEN:** I want to assist the member but I am having a little trouble identifying how I might do that and what is the actual issue. Perhaps I will just assert my understanding and, if that does not satisfy the member's question, it might at least help identify the bit that I need to focus on.

The reference that the member made to comments put to the committee is noted. It seems to me that the concern is that a principal regulator, presumably from another jurisdiction, will somehow be capable of exercising some sort of mandated influence over our regime in Western Australia. I think that is the concern, and it is a legitimate concern.

**Hon Adele Farina:** That is a concern, but it wasn't the question I put to you.

**Hon SIMON O'BRIEN:** I am having trouble working out what the problem is. The role of a principal regulator sitting within a panel of regulators is to assist in communication and to facilitate agreement and uniformity between several jurisdictions across which a rail operator might operate—nothing more and nothing less. That is not a role that needs to be mandated. That is the sort of thing that one would expect to happen, and it does happen in many ways when states try to implement a uniform system. They talk to each other; they come together and work through issues. I think this is what the member is concerned about, so my answer is meant to reassure the member. We are not about setting up a principal regulator in some other way beyond this process to have any sway over what Western Australian interests decide. The legislation before us is the entirety of what we are considering, and no other regime will be set up—no other regime can be set up—apart from this Parliament to make the law in Western Australia.

**Hon ADELE FARINA:** The issue is that the object of this model bill is to provide some comfort and assurance to rail operators operating in multiple jurisdictions that, as a result of the adoption of this model scheme, the same conditions will be applied to the licences under which they operate. In that way, they will not have to go through separate registration processes in each state that impose a lot of different conditions on them, and they will not have to produce separate documentation for each state, which is costly and time consuming.

The object of this bill is to provide an arrangement whereby there is an agreement on the sorts of conditions and requirements that need to be met and one set of documents can be produced by the rail operator, which can then be provided for accreditation to each of the jurisdictions in which the rail operator operates. It does not appear to me from the way in which the legislation is currently written that the mechanism for achieving that is contained in the bill. It is not clear to me where in the bill there is a mechanism that will ensure that that objective is met—that is, that a rail operator will have confidence that the issue of having to produce only one set of licensing documents for consideration and approval will be achieved through this bill. It seems to me that, on the one hand, the minister is saying that each jurisdiction will have complete autonomy to do whatever it wants and impose whatever conditions it believes are necessary for the circumstances within that jurisdiction, yet, on the other hand, the object of the bill before us is to ensure that that is not what occurs. The operator needs to have some comfort in knowing that there will be some uniformity in the conditions that are set across the jurisdictions and that the operator will not have to prepare separate documentation for the accreditation process in each state, as one set of documentation will be able to meet the operator's needs in each state. It seems to me that the two are mutually exclusive; we cannot have one and the other. If the minister is saying that the uniformity object of this model scheme will be achieved through this legislation, I would like him to point out to me the provision in the legislation that provides the mechanism for achieving that.

**Hon SIMON O'BRIEN:** I thank the honourable member for bearing with me and giving that further explanation. I think I now have a clear understanding of what she is seeking. I appreciate the point that she is making. I think in large part I can say in response that, yes, she is right. In response to the question about how this bill will achieve the uniform outcomes so that whenever a rail operator goes to a different jurisdiction, the operator will not have to repeat the accreditation process as generally there will be a uniform set of conditions to operate under and so forth, the member is right; that is the purpose of the bill and she will find the way that we hope to achieve that in the totality of the bill. The purpose of the bill is largely to ensure that the processes of accreditation are consistent across the jurisdictions and that the ambit of accreditation is consistent across the jurisdictions. It will not—as I have said, the member is quite right—enshrine in law the role of some principal regulator. Some work towards that may be done in due course. However, the system of uniformity that is sought to be created through this bill will establish a regime whereby the regulators—the one in each jurisdiction—have to work consistently under this legislation. That is what the bill will essentially achieve. It does not have recourse to a principal regulator, which the member has identified as some sort of need; it is not a mandated requirement under this bill. In the material that I have provided and in the clauses of this bill, the member will see also how Western Australia has asserted its individual requirements in a number of areas. Indeed, the honourable member praised a former minister for asserting at the time that those differences and variations needed to be made. All of those things mitigate against total uniformity—they always have; they always do. That applies in a lot of schemes that my portfolio is involved with from time to time. Nonetheless, I do not think it is a fatal flaw that we do not have a mandated provision in the bill to deal with this question of a principal regulator. It is about the regulators having a framework they can work in amongst themselves to work towards the uniformity that we seek. I do not know how else I can express it, except to say yes, the member is right; there is no requirement here for a principal regulator, and we did not intend to have one.

**Hon ADELE FARINA:** I am sorry I made reference to the “principal regulator” because I seem to have confused the debate by doing so. My issue at this point is to focus on the panel of regulators, which is the mechanism through which uniformity of conditions can possibly be achieved. There is no reference to that mechanism in the bill. I find that very curious. The only way we can achieve uniformity of conditions—which is what we are holding out this bill to rail operators as doing—is through the operations of that panel. Representatives of each of the state rail safety regulators will be on that panel. They will meet to try to reach an agreement on the conditions that need to be set. One would think, given the critical role that that panel will play, that it should have a higher status than simply an administrative process. It should be enshrined in the bill, as it frequently is in other pieces of legislation when the role of a group, a committee or a board is as critical as this is. Without that panel, we cannot achieve what this bill seeks to do. In those circumstances it is right and appropriate that the establishment of the panel and how that panel operates should be detailed in the bill for a range of legal reasons in terms of its operation and the influence that it can have. I am curious to know from the minister why that has not been enshrined in the bill. Why will it not come before the Parliament, for the Parliament to have some scrutiny of and input into how it should operate? That would ensure, through the operation of the panel, that there is no abrogation of state sovereignty. That is the issue here. The issue is: it is not in the bill; it is an administrative arrangement. The state Parliament does not get to comment on it at all in terms of its functions and operations, yet it affects the whole object of the bill, in which case it should be enshrined in the bill.

**Hon SIMON O'BRIEN:** I again thank the honourable member for her thoughtful and positive contribution. In respect to the panel, which she has asked me to focus on, the model bill does not contain any provision for a panel either. The concept of a panel arose after the model legislation was created, for the reasons that we have already canvassed—as a way that regulators can come together and seek ways to maintain consistency in their various regulations to the greatest extent we can and in the spirit of a harmonised system. As in other interjurisdictional forums, the panel is a way to enable communication—ideas can be swapped and consensus can possibly be achieved. The member referred to sovereignty of the state and how that needs to be overseen by our Parliament rather than done in some meeting room —

**Hon Adele Farina:** It cannot be. When the mechanism to establish the panel is not included in the bill, then the capacity for the Parliament to oversee that whole operation does not exist.

**Hon SIMON O'BRIEN:** This bill does not contemplate a panel, as the member points out. This Parliament will have no direct input into any such group that may form. I might add that the proposed legislation before us does not say they have to do that. How I think I can give comfort here is by saying this: if a group of regulators were to form a panel or some sort of conference to say, “We’ve got a problem with achieving uniformity across our jurisdictions in this aspect of rail operation”, they might come to some consensus as to the best way ahead having regard to each jurisdiction’s requirements and having heard from those states that are concerned that we do not find our standards reduced to the lowest common denominator. When it is proposed by such a group that they go back to their home jurisdictions and seek to implement those changes to assist, they have to go to the

responsible minister—which, in this case, would be me—and indicate they need some legislative or regulatory change. They may say, “We now put our recommendation to the minister that he take this course of action or make these changes.” As support for that, I have no doubt they would refer to a conference that has been had amongst the other regulators, because of course I would want to make sure that we were not departing from a harmonised or a nationally consistent model in endorsing those recommendations. It may even go to forums of ministers such as the Australian Transport Council. Either way, if we are to have legislative or regulatory change initiated by the minister of the day, regardless of where it has come from—whether it is just a bright idea from industry or a bright idea from the department, or the regulator putting up an idea or indeed a panel of regulators putting up the idea—that is the mechanism by which this Parliament will still have an ultimate influence over what it adopts.

**Hon KEN TRAVERS:** I thank the minister for that explanation. I think I understand what the minister has said. A panel, if it is established, will not be very dissimilar from many of the panels that are established under the Council of Australian Governments—that is, a panel that agrees to work amongst state governments to work towards uniformity. This bill sets up the framework so that we have national uniformity in terms of the framework that we operate under. In terms of any detail of regulation, this committee—if there is one established—will be no different from any other COAG-style committee that seeks the cooperation of each jurisdiction. Ultimately, any final decision will come back to this house, be it by way of disallowance of regulations or amendment of legislation. That is my understanding of what the minister has said. I am quite comfortable if that is what the minister has said to us.

**Hon SIMON O'BRIEN:** That is 100 per cent what I tried to convey. Hon Ken Travers has worked his usual magic by grasping that! One of the difficulties, of course, that we have with this question is that I am here to discuss what is in the bill at clause 1 and I am having to discuss what is not in the bill. That is still an important question. I am glad we have worked through it. I thank the member for his support.

**Hon KEN TRAVERS:** It is interesting that the minister raised the question of what is not in the bill! One of the comments made by Hon Adele Farina related to what is the object of this bill. One thing I note in this legislation is that it does not have an objects clause. I understand that in a number of other jurisdictions the rail safety legislation has an objects clause. The WA Occupational Safety and Health Act contains an objects clause.

**Hon Kate Doust:** A very good objects clause!

**Hon KEN TRAVERS:** It relates to this whole debate, and maybe it would relate to the very valid comments made by Hon Adele Farina. I would have thought that a lot of those issues that she raised may have been resolved by the Rail Safety Bill 2009 having an objects clause. I am intrigued to know why the minister chose not to include an objects clause when, as I understand it, other rail jurisdictions do.

**Hon SIMON O'BRIEN:** It is not normal practice in every single case, I think, to draft Western Australian legislation to always include an objects clause. In my observation, the long title of the bill is generally the means by which we convey the objects and general purpose of a bill. In this case the long title states that it is —

**A Bill for**  
**An Act to make provision for rail safety and other matters that form**  
**part of a system of nationally consistent rail safety laws and as a**  
**consequence to —**

- **repeal the *Rail Safety Act 1998*; and**
- **amend certain other Acts,**

**and for other purposes.**

That is the normal way that we identify the objects of a bill. When it comes to the detail, they are matters that are found in the construct of the various clauses and subclauses of the bill, rather than in an objects clause. I think it is probably just a matter of drafting practice in Western Australia. I was not privy to it myself, but I understand that there might have been discussion at the time the bill was being drafted about whether to include in our bill the objects clause contained in the model bill. The view amongst draftsmen in Western Australia was that, firstly, it was not necessary and it did not add anything that was not already going to be there; and, secondly, it was not our normal custom and practice.

**Hon KEN TRAVERS:** I thank the minister for that explanation, although I place on the record that there are examples, as I have mentioned, in Western Australia.

**Hon Simon O'Brien:** Yes, there are some.

**Hon KEN TRAVERS:** In view of the nature of this legislation, it may have been useful—it may have been a decision made before Hon Simon O'Brien became the minister, from what the minister just said—to include it. From my own observations, I can see that there may have been some benefits, and it may have assisted the

debate that we have just had. The minister mentioned earlier that he had another round of consultation to specifically make sure that he was comfortable with this legislation.

**Hon Simon O'Brien:** You are right in saying that, and the bill was substantially as it is now. I have mentioned some changes that were made after final consultation, but it was basically already drafted.

**Hon KEN TRAVERS:** The final area I just wanted to cover was the area about principal regulators and panels. The minister mentioned that there may be a principal regulator in the future. We have to be a little bit careful in this area with our language because, as I understand it, when the National Transport Commission was considering all of this information, there was an option of going to a national regulator, which is different from a model that has a principal regulator under a national model, and that is why I am asking this question. The proposal is to go to a national model based around a particular state's legislation that will then apply across the whole country. The minister was suggesting that we may be considering a principal regulator at some point in the future. I want to have this clarified, because that would be a different proposal from my understanding of the general direction in which this legislation is going. As I understand it, the concept of a principal regulator was considered by the NTC as part of its considerations on all of these matters and rejected. I am intrigued to know whether there has been any change of heart or whether the long-term intention is to go to a national regulator model as opposed to a principal regulator model. I would like that clarified, because I understand that sometimes loose language may have been used, but in this case there are quite significant differences between the two.

**Hon SIMON O'BRIEN:** Mr Chairman, the member is right—semantics matter when we are at the table of the house and they can make a very big difference indeed. Again, we are talking about something that has not really got any status. The principal regulator concept is not in this bill, as we have already established. The concept of a principal regulator, I think, was raised in the debate in the Standing Committee on Uniform Legislation and Statutes Review. It is not something that I would be seeking to raise. A move has been in train—no pun intended—for some years along a track, headed towards a national regulator. That would supplant the principal regulator idea anyway, so whether or not there is an interim administrative arrangement, I do not know. But I am not putting that up to the house on this occasion, and in due course the house will have to consider very seriously—as will the government—the question of the next legislative step. It is part of a process that has been going on for a number of years, and it is being progressed at the forums of the Council of Australian Governments and the Australian Transport Council, as exemplified by our progressing with this bill.

**Hon KEN TRAVERS:** I appreciate that answer, but I just want to be very clear. I know the explanation I gave before on the difference between a national regulator and a principal regulator was longwinded, but I thought it was important for the house to understand the difference between a national regulator and a principal regulator. Will the minister confirm that at this stage it is not the government's intention to be pushing for a principal regulator model; it is still the government's intention to work towards a national regulator for rail safety across the country?

**Hon SIMON O'BRIEN:** I think the answer is yes.

**Hon Ken Travers:** That is what I wanted to hear.

**Hon SIMON O'BRIEN:** I can elaborate if the member wishes.

**Hon ADELE FARINA:** Can the minister clarify for members whether the object of the bill is to discontinue different accreditation conditions in each jurisdiction across the state?

**Hon SIMON O'BRIEN:** To characterise the object, which is a question being asked in the clause we refer to as the short title, I have to refer to the long title. That refers very much to making provision for rail safety and other matters that form part of a system of nationally consistent rail safety laws. The object is to achieve that consistency across jurisdictions, but—it is an important “but”—there is a real world out there and this national system recognises that there may be some departure from that, and rightly so, to recognise local conditions or individual circumstances. Yes, the object of the bill is quite clear—it is to achieve consistency across jurisdictions.

**Hon ADELE FARINA:** Given that the object of the bill is to achieve consistency, but also to have regard for regional differences and circumstances that might arise in different states, the issue of rolling stock lights was raised by Western Australia in those negotiations as a variation on which Western Australia placed a very high value to ensure rail safety in this state. Given that the minister has acknowledged that even though consistency is the objective, it is not to be the objective over everything else, and that there is a need to also recognise regional differences and circumstances, is it the minister's intention to pursue the issue of rolling stock lights in this state?

**Hon SIMON O'BRIEN:** The matter that the member refers to I think was raised in paragraph 5.3 of the committee's report. The committee noted that a dozen proposed variations had been put forward, of which the National Transport Council accepted nine. One of the three variations that was not accepted was the proposal

relating to rolling stock lights. I think the committee established that information in the course of its hearing. Is that the case?

**Hon Adele Farina:** That is correct.

**Hon SIMON O'BRIEN:** I will clarify the situation for the benefit of members. The advice that I have been given is that the reason that was put forward for this variation was that it would make rolling stock more visible by day or by night. That was in response to a terrible incident involving fatalities that had occurred in Western Australia. Although collisions do take place at rail level crossings from time to time, we are not used to such things happening in Western Australia. The particular incident that I think gave rise to the proposal for this variation was particularly tragic. As a consequence of the raising of this variation, a lot of research has been done on how to make rolling stock more obvious to those who might be in the vicinity of a level crossing. I have reviewed this information in great detail. It has also been raised with me by members of the public. But the bottom line is that there has been a change of view about the need for this proposed variation, so it has not been proceeded with. What sometimes happens when people suggest a response to a tragedy is that when we do the research, we find out—as we have in this case—that a whole lot of money would be spent for a whole lot of rolling stock that is used on Western Australian rail lines, with no actual benefit.

**Clause put and passed.**

**Clauses 2 to 4 put and passed.**

**Clause 5: Railways to which this Act does not apply —**

**Hon KEN TRAVERS:** Subclause (1) states that this act does not apply to the following. It then lists a number of items in paragraphs (a) to (e). I am particularly interested in paragraph (e). I also note the comments of the committee on page 14 of the report about this clause of the bill. As I understand it, a number of railways are currently exempted under the Rail Safety Act 1998. I am interested in an issue that may arise from the potential amalgamation of Rio and BHP Billiton. I think that because of previous amalgamations, one of those companies is no longer exempted, but the other is still exempted. If the proposed merger does go ahead, I am interested to know whether the minister's intention is that both these companies will be exempted, or both these companies will be included; or does the minister intend to use subclause (1)(e) to exempt them both?

**Hon SIMON O'BRIEN:** The member is right. This is a pertinent question. One of the companies to which the member referred, Rio, did change its entity, and it therefore became subject to the accreditation provisions of the Rail Safety Act 1998. BHP Billiton Iron Ore is not required to be accredited under that act. However, that is not to say that other legislative provisions do not apply to it, as the member would know. The simple answer to the member's question about what would happen in the hypothetical case that Rio and BHP Billiton were to merge to form a new entity is that that new entity would be subject to accreditation under this new regime.

**Hon KEN TRAVERS:** I welcome the minister's answer. However, if that is the case, can the minister indicate to the chamber any other circumstances in which he would envisage prescribing that a railway would not be covered by this act?

I note that the committee said that the delegation is appropriate. Actually, that was with respect to clauses 2 to 4. I am keen to get some indication of the circumstances in which the minister would seek to prescribe a railway.

**Hon SIMON O'BRIEN:** The member raised another pertinent point. I could answer it in two ways so I will give him both barrels. BHP Billiton is currently exempt from accreditation. As the member knows, I do not like to mention individual private companies in this place but I am sure the big Australian will not mind me mentioning that. It is working towards accreditation and it will be exempted under clause 5, or section 5 as I hope it will become, because nobody can predict the order in which this bill and the accreditation process will fall across the respective finish lines. If there is a gap, I will be employing this provision to give it an interim exemption until accreditation is achieved.

The principal part of the question asked where I would be applying exemptions. Apart from that example, I cannot think of any offhand. The provision would apply in situations in which a railway is used in such a way that it is not appropriate or reasonable for the act to be applied to it. A concrete example in clause 5(1)(a) is of underground railways. They are a of different character from the regular aboveground railway that this bill targets. Separate regulatory regimes apply to mines. We do not talk about slipways, but plenty of slipways have a little railway that is used when pulling a vessel out of the water and up the slip. Plenty of other types of slips do not use that process of a little trolley-like frame. Clearly, they are not intended to be treated as railways and be accredited under the act. A couple of other examples are given in that clause of aerial cables and other guided systems. When it comes down to something that I might prescribe under clause 5(1)(e), I cannot think of anything off the top of my head, but it is important that it be included in the bill in case an anomaly comes to light.

**Hon KEN TRAVERS:** Subclauses (2) to (6) set out the ways we go about it. I understand it is not in the model bill. The minister, by way of notice published in the *Government Gazette*, has the capacity to exempt either from the act or specified provisions of the act specified persons or persons of a specified class or specified railways or railways of a specified class. I think it is important to put on the public record why we believe it is necessary to have that provision in Western Australia when it is not part of the model legislation.

**Hon SIMON O'BRIEN:** This is a case in which Western Australian requirements have to be asserted. We also want to ensure that BHP Billiton, a fairly significant rail operator in this jurisdiction, comes on board with the system under which other rail operators operate. Some consideration is given there. It is not just a case of wanting national uniformity; we want some state uniformity as well. I am pleased to say that we are working towards that. I think the member is right. All I can say is yes, this is a specific provision for WA that recognises that BHP Billiton has been long established. Indeed, the regulations that govern that company do not even go as far as does the Rail Safety Act 1998. They predate all of that, so it has not been caught up in that ambit. It will be in the future. This provision exists for no other reason than as a transitional arrangement to ensure that it is captured by something and its passage to accreditation under the common scheme is facilitated. I do not know whether this might be applied to any other applications, but it certainly does have one application. I suspect it will fall into abeyance after that. As the member asked earlier, if the company that it is targeted for were to change its entity anyway, it would become redundant.

**Clause put and classed.**

**Clauses 6 to 13 put and passed.**

**Clause 14: No double jeopardy —**

**Hon KEN TRAVERS:** An issue relating to this clause has been raised with me. I do not have a problem with the concept of double jeopardy. One should be charged under either this act or the Occupational Safety and Health Act 1984, not both. I have been told that people in a workplace situation often do not seem to be able to understand how it is decided that an investigation be carried out when an accident occurs. The sense that people in the workplace have is that it is just an informal process to determine whether an accident will be investigated under the OSH legislation or the rail safety legislation. Could the minister give us a brief explanation of how he would envisage those decisions will be taken once this bill is passed? Will matters be investigated under OSH legislation or under the Rail Safety Act?

**Hon SIMON O'BRIEN:** The question is pertinent to those who will be involved in the consequences of this legislation. In providing a brief answer, which the member asked for, I refer members to part 2, in the context of which clause 14 should be examined. In particular, clause 11 provides —

If a provision of this Act is inconsistent with a provision of the *Occupational Safety and Health Act 1984*, the provision of that Act prevails to the extent of any inconsistency.

That establishes the hierarchy. The question from the member contemplates the very real situation in which it is not necessarily clear who has to pick up a certain matter, where responsibility lies or where a crack might form between different government offices or inspectors. As with the current legislation, I think we could find some comfort in a memorandum of understanding between the Office of Rail Safety and WorkSafe, which currently exists to address this question and which will be re-established, it is intended, under this bill if it becomes an act. I think that work is actually already being done towards that.

**Hon ALISON XAMON:** What the minister has just said is obviously consistent with what he said in his second reading response last night. Picking up on the issue of the MOU, could I get an idea of the time frame for it and when it is likely to be completed? I understand, of course, that the minister is first waiting to see whether this legislation passes, but could I get an indication of how long he thinks it will be?

**Hon SIMON O'BRIEN:** It is a pertinent question. We would need to make sure, and it would be my expectation, that this sort of measure would need to be developed forthwith. That is why some people might be doing some work behind the scenes in the hope that there will be some coincidence of this bill becoming law and other provisions being put in place. I do not imagine that it would impact on the declaration of this legislation or anything like that, but we try to get it coincident. Mr Chairman, I would never seek to pre-empt what the chamber might decide, because this might not become law. Perhaps I could just say, with all that in mind, to reassure the honourable member that it would happen, I would expect, in the fullness of time, at the appropriate juncture and after all matters had been duly considered. I always wanted to say that in this place!

**Clause put and passed.**

**Clauses 15 to 27 put and passed.**

**Clause 28: Safety duties of rail transport operators —**

**Hon ADELE FARINA:** I note that clause 28 of the bill does not contain an absolute prohibition against alcohol in the workplace and that the intention is that the concentration of alcohol permitted will be prescribed in the regulations. Is the minister able to indicate what that prescribed level will be?

**Hon SIMON O'BRIEN:** I understand it is proposed to be .02 per cent.

**Hon ADELE FARINA:** Under clause 28, the rail transport operator is required to do a number of things, including ensuring that, as far as reasonably practicable, rail safety workers do not carry out rail safety work in relation to the operator's railway operations and are not on duty when they have present in their blood an amount of alcohol greater than the prescribed amount. What sort of measures would need to be put in place by the rail transport operators to meet that requirement in the legislation?

**Hon SIMON O'BRIEN:** I refer members to clause 74, which provides that a rail transport operator must prepare and implement an alcohol and drug management program for rail safety workers to carry out railway operations et cetera. Regulations will be developed to prescribe what has to be in those programs, such as a system of breath tests for alcohol or whatever it might be. This sort of regime that is contemplated is not unlike, and I imagine it would be very similar to, many regimes that already exist in a transport-related work environment, or in a mining or industrial environment, so there would be nothing there that is intended to be extraordinary by the prevailing standards of our time.

**Hon ADELE FARINA:** Would the minister please indicate to members how the office of the Rail Safety Regulator will ensure that those requirements are complied with?

**Hon SIMON O'BRIEN:** Under the provisions for a drug and alcohol management program, which we have already discussed, such matters as the member has raised can be prescribed; so part of a program can include, for example, returns to indicate compliance with certain standards or specifications. I would also draw the member's attention to clause 44, which provides the periodic returns to be provided in respect of matters that may be prescribed from time to time. There is a power to actually require that that be done.

**Hon ADELE FARINA:** Is it the minister's intention to require that a return be provided on an annual basis in relation to this matter?

**Hon SIMON O'BRIEN:** It is contemplated that a general return on this matter that we are discussing would be required on a quarterly basis.

**Hon Adele Farina:** On the drug and alcohol program?

**Hon SIMON O'BRIEN:** Yes.

**Hon KEN TRAVERS:** While we are on this clause, I thought I would ask a couple of quick questions. I note the comment the minister has made about alcohol and drug management plans and how they would be implemented. As I understand it, the National Transport Commission will actually be doing some work during the second half of this year on trying to get national conformity in these areas. I just want to place this on the record. I note the comment that the minister made about the .02 per cent as the likely prescription. I think that one of the other things we must remember when we are discussing these matters is the nature of the work, whereby people are often called back at odd hours of the day and night. I think that someone attending for work is one thing, but if people are called out at an odd hour or at odd times, obviously if they have been drinking too much, they should declare it and say that they could not attend, but I think that with some of these issues we do need to be cognisant of that potential.

**Hon Simon O'Brien:** Those are problems that confront anyone who might be on call, or required to drive or something.

**Hon KEN TRAVERS:** Yes, but I think that when they are developing legislation and a framework to deal with these matters we do need to take those things into account. At the same time we must remember safety. We do not want people impaired by alcohol in the workplace. I think it is about trying to find a balance. Obviously, the way in which someone attends for work would be very different—I think we need to recognise that—from someone who is certainly called out at three o'clock in the morning and may have had what the minister and I might consider a reasonable evening of a meal and a couple of glasses of wine. I hope some of those issues will be taken up as part of the National Transport Commission's work on this. I know that trying to get the balance right between them is very complex.

*Sitting suspended from 1.00 to 2.00 pm*

**Progress reported and leave granted to sit again at a later stage of the sitting, on motion by Hon Norman Moore (Leader of the House).**

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