



THIRTY-NINTH PARLIAMENT

REPORT 91

**STANDING COMMITTEE ON UNIFORM
LEGISLATION AND STATUTES REVIEW**

RAIL SAFETY NATIONAL LAW (WA) BILL 2014

Presented by Hon Kate Doust MLC (Chair)

March 2015

STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES REVIEW

Date first appointed:

17 August 2005

Terms of Reference:

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

“6. Uniform Legislation and Statutes Review Committee

- 6.1 *A Uniform Legislation and Statutes Review Committee* is established.
- 6.2 The Committee consists of 4 Members.
- 6.3 The functions of the Committee are –
- (a) to consider and report on Bills referred under Standing Order 126;
 - (b) on reference from the Council, to consider or review the development and formulation of any proposal or agreement whose implementation would require the enactment of legislation made subject to Standing Order 126;
 - (c) to examine the provisions of any treaty that the Commonwealth has entered into or presented to the Commonwealth Parliament, and determine whether the treaty may impact upon the sovereignty and law-making powers of the Parliament of Western Australia;
 - (d) to review the form and content of the statute book; and
 - (e) to consider and report on any matter referred by the Council.
- 6.4 In relation to function 6.3(a) and (b), the Committee is to confine any inquiry and report to an investigation as to whether a Bill or proposal may impact upon the sovereignty and law-making powers of the Parliament of Western Australia.”

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EXECUTIVE SUMMARY AND RECOMMENDATIONS FOR THE
REPORT OF THE STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES
REVIEW
IN RELATION TO THE
RAIL SAFETY NATIONAL LAW (WA) BILL 2014

EXECUTIVE SUMMARY

- 1 The Rail Safety National Law (WA) Bill 2014 (**Bill**) forms part of a national scheme for the regulation of rail safety.
- 2 The Bill arises from Western Australia having signed the Intergovernmental Agreement on Rail Safety Regulation and Investigation Reform (**the IGA**). The IGA provides the legislative and governance framework for all participating Australian jurisdictions.
- 3 The Bill proposes repealing the *Rail Safety Act 2010* and enacting, in mirror form, as a law of Western Australia, the Rail Safety National Law. This is contained in the Schedule to the Bill and provides for the application of the national scheme in Western Australia.
- 4 The Committee has inquired into the Bill and considered issues of parliamentary sovereignty and law-making powers.
- 5 The Committee recognises the greater protection afforded to parliamentary sovereignty and law-making powers by the Bill adopting the mirror approach to uniform legislation. Nevertheless, the Committee has identified a number of provisions and aspects of the Bill it considers may have an adverse impact on parliamentary sovereignty and law-making powers. These include:
 - the application in Western Australia, by reference, of various South Australian legislation which cannot be amended by the Parliament of Western Australia;
 - two Henry VIII clauses in the Bill and the Rail Safety National Law; and
 - the power of the South Australian Minister to appoint an Acting Regulator who will have all the powers of the Regulator to affect rail safety in Western Australia.

RECOMMENDATIONS

6 Recommendations are grouped as they appear in the text at the page number indicated:

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Recommendation 1: The Committee recommends that the Parliamentary Secretary representing the Minister for Transport advise the Legislative Council the process by which the Intergovernmental Agreement on Rail Safety Regulation and Investigation Reform will be reviewed.

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Recommendation 2: The Committee recommends that, following any review pursuant to section 47 of the Intergovernmental Agreement on Rail Safety Regulation and Investigation Reform, the Government table a copy of the review in the Legislative Council.

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Recommendation 3: The Committee recommends that the Parliamentary Secretary representing the Minister for Transport notify the Legislative Council of any withdrawal by any party from the Intergovernmental Agreement on Rail Safety Regulation and Investigation Reform.

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Recommendation 4: The Committee recommends that the Parliamentary Secretary to the Minister for Transport introduce an amendment to clause 50 of the Rail Safety National Law (WA) Bill 2014 to provide for regulations made under clause 50 to expire after a period of no more than 3 years.

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Finding 1: The Committee finds that there is a concerning trend in the increasing use of Henry VIII clauses in national scheme legislation.

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Recommendation 5: The Committee recommends that the Government take action to effect an amendment to the Rail Safety National Law to provide for the Transport and Infrastructure Council to approve the appointment of an Acting National Rail Safety Regulator and advise the Legislative Council accordingly.

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Finding 2: The Committee finds that, given the impact of the Rail Safety National Law (WA) Bill 2014 on the sovereignty and law-making powers of the Parliament of Western Australia, the Rail Safety National Law (WA) Bill 2014 should contain a periodic review clause. This is to enable an assessment to be made of whether the Rail Safety National Law (WA) Bill 2014 is serving the interests of rail safety in Western Australia.

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Recommendation 6: The Committee recommends that the Parliamentary Secretary representing the Minister for Transport introduce an amendment to the Bill which will require the legislation to be reviewed within 4 years from the date of commencement and at the expiry of each 4 yearly interval after that anniversary, with a copy of each review to be tabled in both the Legislative Assembly and Legislative Council.

**REPORT OF THE STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES
REVIEW**

IN RELATION TO THE

RAIL SAFETY NATIONAL LAW (WA) BILL 2014

1 REFERENCE AND PROCEDURE

- 1.1 On 27 November 2014 the Rail Safety National Law (WA) Bill 2014 (**Bill**) was referred to the Standing Committee on Uniform Legislation and Statutes Review (**Committee**) for inquiry and report by 24 March 2015.

2 INQUIRY PROCEDURE

- 2.1 The Committee called for submissions by contacting 49 stakeholders directly and also by way of an advertisement in *The West Australian* on Saturday 6 December 2014. Submissions closed on Tuesday 23 December 2014, with 10 submissions received. All submissions are available on the Committee's website.
- 2.2 The Committee held a hearing with the Department of Transport (**Department**) on 8 December 2014. At this hearing Mr Graeme Doyle, Miss Melissa Bouverie and Ms Sue Hellyer of the Department briefed the Committee on the Bill. A copy of the transcript of the hearing is available on the Committee's website.¹
- 2.3 The Committee also posed a number of written questions to the Department² on clauses in the Intergovernmental Agreement on Rail Safety Regulation and Investigation Reform (**the IGA**),³ the Bill and the Rail Safety National Law (**National Law**), which is attached as the Schedule to the Bill. The Committee was concerned about their impact on the sovereignty and law-making powers of the Parliament of Western Australia. The Department provided responses on 6 February 2015⁴ and 5 March 2015.⁵

¹ <http://www.parliament.wa.gov.au/parliament/commit.nsf/WCurrentCommitteesByName>.

² Letter from Hon Kate Doust MLC to Mr Reece Waldock, Director General, Department of Transport, 17 December 2014; Letter from Hon Kate Doust MLC to Mr Reece Waldock, Director General, Department of Transport, 17 February 2015.

³ This is available on the Council of Australian Governments website at <https://www.coag.gov.au/node/55> (viewed 10 March 2015).

⁴ Document from the Department of Transport entitled "*Standing Committee on Uniform Legislation and Statutes Review, Questions on Notice*", received 6 February 2015.

⁵ Document from the Department of Transport entitled "*Standing Committee on Uniform Legislation and Statutes Review, Further Questions on Notice*", received 5 March 2015.

2.4 Details of stakeholders invited to make a submission and submissions received are contained in **Appendix 1**.

2.5 The Committee wishes to thank all submitters and witnesses who made themselves available.

3 UNIFORM LEGISLATION

3.1 The Bill adopts *Structure 2 – Model Legislation*. This approach, also known as mirror legislation, involves the enactment in Western Australia of legislation with local variations necessary to achieve the agreed uniform national policy.⁶ Local variations on a number of matters are included in the Bill and are detailed in section 7.

4 SUPPORTING DOCUMENTS

4.1 The Minister for Transport, the Hon Dean Nalder MLA, provided the Committee with the following documentation pursuant to Ministerial Office Memorandum MM2007/01:⁷

- the IGA;
- a statement as to any timetable for the implementation of the legislation;
- the Government’s policy on the Bill;
- advantages and disadvantages to the State as a participant in the relevant scheme or agreement;
- relevant constitutional issues;
- an explanation as to whether and by what mechanism the State can opt out of the scheme;
- the mechanisms by which the Bill, once enacted, can be amended; and
- a draft regulatory impact statement.⁸

4.2 When the Bill was introduced into the Legislative Council on 27 November 2014 the Committee received the Second Reading Speech, the Explanatory Memorandum and the Bill.

⁶ See Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 64, *Information Report on Uniform Scheme Structures*, 31 August 2011, p17.

⁷ A copy is available on the Committee’s website.

⁸ Letter from Hon Dean Nalder MLA, Minister for Transport, 4 December 2014.

5 BACKGROUND TO THE BILL

Generally

- 5.1 In 2006, the National Transport Commission developed a model rail safety law with the aim of ensuring a consistent co-regulatory approach to rail regulation across Australia. All Australian jurisdictions have made laws based to some extent on the model law.
- 5.2 Western Australia's legislation, the *Rail Safety Act 2010 (Act)*, went some way to implementing a more uniform safety regulation regime. It was clear, however, that actions could still be taken to achieve greater consistency and certainty for industry and the community.⁹
- 5.3 The genesis of the Bill is the Council of Australian Government's (COAG) program of reforms called the National Partnership Agreement to Deliver a Seamless National Economy.
- 5.4 In July 2009, as part of the Federal Government's Seamless National Economy agenda, the COAG agreed to national transport regulation reforms including the establishment of a national rail safety law and national rail safety regulator.¹⁰ The Australian Transport Safety Bureau (ATSB) was also to expand its role to cover national rail safety investigations.
- 5.5 COAG then agreed, in December 2009, that South Australia would host the national rail safety regulator, to be operational in January 2013.¹¹
- 5.6 The rail reforms aimed to resolve a century of inconsistent regulatory practices between the States and Territories that had constrained rail transport operators across jurisdictional borders. The practical benefits of national rail safety regulation proposed by these reforms included:
- a single national accreditation for rail transport operators;
 - removing duplication of auditing;

⁹ Hon Jim Chown MLC, Parliamentary Secretary to the Minister for Transport, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 27 November 2014, p8955 – Second Reading Speech. The *Rail Safety Act 1998 (WA)* was the predecessor to the *Rail Safety Act 2010* and was introduced following the privatisation of the State's railways. It referred to an Australian Rail Safety Standard as a basis for assessing the suitability of safety management systems of submitted by railway organisations as part of their applications for accreditation in Western Australia.

¹⁰ Council of Australian Governments meeting – Communiqué, Darwin, 2 July 2009, pp8-9, http://archive.coag.gov.au/coag_meeting_outcomes/2009-07-02/docs/20090702_communique.pdf (viewed 12 March 2015).

¹¹ http://www.infrastructure.gov.au/rail/legislation/ntc_ris.aspx (viewed 11 December 2014).

- monitoring and inspection processes; and
- the improved availability of resources and specialist knowledge to inform decision making and safety investigations.¹²

5.7 The Bill is one of three major reforms:

In a major step forward in improving the efficiency of transport regulation, COAG agreed on 19 August 2011 to three new Intergovernmental Agreements on heavy vehicles, rail and maritime safety. The signing of Intergovernmental Agreements represents a landmark microeconomic reform through establishment of national standards, which when complete will significantly reduce the number of regulators.

*National transport regulators are to be in place for heavy vehicles, rail and maritime safety by January 2013. The heavy vehicle regulator reforms alone are worth up to \$30 billion to the national economy over 20 years.*¹³

5.8 In August 2011, COAG signed the IGA to establish a national system of rail safety regulation and investigation. It was fundamental to the national system that there should be some core text upon which the relevant jurisdictions could agree. That text was the Rail Safety National Law, which was enacted in South Australia.

5.9 For the most part, the other jurisdictions proceeded by adopting the National Law as enacted by South Australia. They also committed to adopt amendments agreed to by the Transport and Infrastructure Council (**TIC**) (formally the Standing Council on Transport and Infrastructure), which is composed of the transport ministers from each of the participating jurisdictions.

5.10 It was noted, however, at the time of agreement that Western Australia would adopt a different approach to implementation, with the aim being to ensure that the Western Australian Parliament could consider any amendments to the Rail Safety National Law.¹⁴ This is the mirror approach described in paragraph 3.1.

¹² http://www.infrastructure.gov.au/rail/legislation/ntc_ris.aspx (viewed 11 December 2014).

¹³ Council of Australian Governments, Seamless National Economy-Improving the Efficiency of National Transport Regulation, http://www.coag.gov.au/a_seamless_national_economy (viewed 11 December 2014).

¹⁴ Hon Jim Chown MLC, Parliamentary Secretary to the Minister for Transport, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 27 November 2014, p8955 – Second Reading Speech.

- 5.11 In June 2012, the TIC appointed an inaugural National Rail Safety Regulator (**Regulator**). Two non-executive members of the national regulator were appointed by Ministers in November 2012.
- 5.12 On 13 September 2012, the Commonwealth Parliament passed the *Transport Safety Investigation Amendment Act 2012*, supporting the role of the ATSB as the national rail safety investigator. The ATSB's expanded role commenced from 20 January 2013.

The Rail Safety Act 2010

- 5.13 In 2010, the Committee tabled a report into the Rail Safety Bill 2009,¹⁵ which contains additional background information and an overview of key clauses.
- 5.14 The Act commenced operation on 1 February 2011 along with the Rail Safety Regulations 2011.¹⁶
- 5.15 Key differences between the Act and the National Law were outlined by the Minister for Transport on 13 November 2014.¹⁷

6 THE INTERGOVERNMENTAL AGREEMENT

Generally

- 6.1 On 19 August 2011, the Premier of Western Australia, Hon Colin Barnett MLA signed the IGA with the Commonwealth, States and Territories. The IGA is intended to establish a national system of rail safety regulation and investigation. It also provides for uniform regulation and a single national rail safety regulator and national rail safety investigator.
- 6.2 The IGA was due to expire on 31 December 2013 but was extended at a meeting of the TIC on 15 November 2013, attended by responsible Ministers of each Party to the IGA.¹⁸

¹⁵ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 46, *Rail Safety Bill 2009*, 1 April 2010. Further information can be obtained from the explanatory memorandum for the Rail Safety Bill 2009, accessible at: [http://www.parliament.wa.gov.au/Parliament/Bills.nsf/F8333D56EBC12526C8257650001FD424/\\$File/EM%2B083-1.pdf](http://www.parliament.wa.gov.au/Parliament/Bills.nsf/F8333D56EBC12526C8257650001FD424/$File/EM%2B083-1.pdf).

¹⁶ <http://www.transport.wa.gov.au/freightrail/office-of-rail-safety-overview.asp> (viewed 5 March 2015).

¹⁷ Hon Dean Nalder MLA, Minister for Transport, Western Australia, Legislative Assembly, *Parliamentary Debates (Hansard)*, 13 November 2014, pp8149-8150. See also Tabled Paper TP2 tabled by the Department of Transport at a hearing on 8 December 2014, p8, which is available on the Committee's website.

¹⁸ Transport and Infrastructure Council, Decision Making (Voting) Protocol, p1 (available at http://www.transportinfrastructurecouncil.gov.au/publications/files/Council_voting_protocol.pdf).

6.3 The Committee notes the following sections of the IGA which are relevant to parliamentary sovereignty and law-making powers of the Parliament of Western Australia and draws them to the attention of the Legislative Council.

Section 16 of the IGA

6.4 This section provides that the National Law, as agreed by the TIC, will be enacted in the South Australian Parliament, with other jurisdictions adopting this legislation as legislation of the jurisdiction. Any subsequent amendments will also be enacted by the South Australian Parliament.

6.5 The Committee asked the Department:

- about the method by which any amendments to the National Law will be made;
- the timeframe in which any amendments to the National Law passed in South Australia will be considered by the Parliament of Western Australia; and
- whether any amendments to the National Law have been recently proposed that will necessitate an amendment in Western Australia.¹⁹

6.6 The Department provided the following feedback.

The normal legislative amendment procedure will apply in WA to any amendments to the RSNL in WA whereby an amendment Bill will be introduced into the Parliament to amend the RSNL (WA) legislation.

...

Amendments to the RSNL are progressed in consultation with the RSNL Maintenance Group, which includes representatives of all jurisdictions and key rail industry organisations.

Drafting of any amendments to the Rail Safety National Law (WA) Act would commence immediately following passage of amendments to the RSNL in SA and presented to Parliament as soon as practicable.

...

Yes, draft amendments were unanimously endorsed by the Ministers of the Transport and Infrastructure Council in November 2014.

¹⁹ Email to Mr Graeme Doyle, Miss Melissa Bouverie and Ms Sue Hellyer of the Department of Transport, 3 December 2014.

*It is proposed that the amendment bill will be introduced and passed in the South Australian Parliament during the first half of 2015.*²⁰

- 6.7 The Committee recognises that the Executive Government has committed to introducing an amendment Bill as soon as possible after the passing of the relevant legislation in South Australia to ensure consistency with the National Law.²¹

Section 17 of the IGA

- 6.8 This section provides for regulations to be agreed by the TIC, made in each jurisdiction and disallowed in accordance with the processes in the national rail safety legislation. The Committee notes the following passage from the Explanatory Memorandum:

*In the other participating jurisdictions the national regulations are to be made by the Governor of South Australia and are to be adopted by each participating jurisdiction. The Bill provides for the Governor of Western Australia to make the relevant regulations in WA. In other participating jurisdictions a majority disallowance has been included which, in effect, will mean that a regulation made under the legislation may only be disallowed if a majority of jurisdictions vote against it. In WA there will be no majority disallowance clause; Parliament will retain its power to allow, disallow or amend the national regulations in line with the Interpretation Act 1984.*²²

- 6.9 Accordingly, the Governor of Western Australia will make all regulations (the national regulations as well as those applying locally).²³ This is a safeguard of parliamentary sovereignty given that the Houses will retain the standard power of disallowance relating to regulations made by the Governor in Council.

Sections 26 to 28 of the IGA

- 6.10 These clauses outline the roles of the Commonwealth, South Australia and the other States and Territories.
- 6.11 Specifically, subsection 27(f) provides as follows:

²⁰ Tabled Paper TP2 tabled by the Department of Transport at a hearing on 8 December 2014, p7.

²¹ The Rail Safety National Law (South Australia) (Miscellaneous) Amendment Bill 2015 was introduced into the South Australian House of Assembly on 26 February 2015. It makes a number of amendments to the National Law, such as substituting the word ‘cancel’ for the word ‘revoke’; regarding annual fees; the waiver of fees; the provision of annual activity statements to the Regulator and the power to direct the production of documents.

²² Rail Safety National Law (WA) Bill 2014, *Explanatory Memorandum*, pp1-2.

²³ Graeme Doyle, Acting Deputy Director General, Department of Transport, *Transcript of Evidence*, 8 December 2014, p6.

27. *The State of South Australia will:*

- (f) *on recommendation by the Standing Council, appoint the Regulator/Chief Executive and Assistant Commissioners in accordance with the national rail safety law and Schedule A (National Rail Safety Regulator Arrangements) and Schedule C (Role and Procedural Arrangements of the Standing Council);*

6.12 The Committee has made some observations in paragraphs 7.52 to 7.58 on the impact of this subsection combined with subsections 17(2) and 18(1) of the National Law on state sovereignty with respect to the appointment of an Acting Regulator by the South Australian Minister.

Section 29 of the IGA

6.13 This section records New South Wales as the jurisdiction for the publication of the national regulations.

Section 34 of the IGA

6.14 This section identified December 2012 as the implementation milestone for the States and Territories passing enabling legislation.

Section 47 of the IGA

6.15 This section provided for a review of the IGA by 30 June 2013 regarding progress made by the parties in achieving agreed outcomes.

6.16 The Committee asked the Department to provide it with a copy of any review undertaken pursuant to clause 47 of the IGA. The Department responded as follows:

As the National Rail Safety Regulator had commenced operations in January 2013, the IGA was not reviewed or renewed. However, on 15 November 2013 the Ministers of the Transport and Infrastructure Council endorsed specific parts of the IGA to continue beyond 31 December 2013.²⁴

6.17 The Committee notes there is no provision in the IGA for any such review to be tabled in the Parliament of Western Australia. In the absence of such a requirement, the Parliaments of participating jurisdictions are denied an opportunity to scrutinise the

²⁴ Tabled Paper TP2 tabled by the Department of Transport at a hearing on 8 December 2014, p8.

review and determine whether it is in the best interests of that jurisdiction to continue to participate in the National Scheme.²⁵

6.18 The Committee therefore makes the following recommendations.

Recommendation 1: The Committee recommends that the Parliamentary Secretary representing the Minister for Transport advise the Legislative Council the process by which the Intergovernmental Agreement on Rail Safety Regulation and Investigation Reform will be reviewed.

Recommendation 2: The Committee recommends that, following any review pursuant to section 47 of the Intergovernmental Agreement on Rail Safety Regulation and Investigation Reform, the Government table a copy of the review in the Legislative Council.

Sections 48 and 49 of the IGA

6.19 These sections provide for any variation of the IGA to be by agreement in writing between the parties. Termination of the IGA can be at any time by one party notifying all other parties in writing.

6.20 While this section recognises state sovereignty, the Committee is of the view that the Parliament of Western Australia should be notified of any withdrawal from the IGA by any party to the IGA and makes the following recommendation.

Recommendation 3: The Committee recommends that the Parliamentary Secretary representing the Minister for Transport notify the Legislative Council of any withdrawal by any party from the Intergovernmental Agreement on Rail Safety Regulation and Investigation Reform.

Schedule A, subsection A13(c) of the IGA

6.21 This subsection provides that the Regulator must prepare an Annual Report for the TIC which is to be tabled in the South Australian Parliament.

6.22 The Committee notes clause 43(4) of the Bill provides:

43. Annual report

²⁵ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 52, *Health Practitioner Regulation National Law (WA) Bill 2010*, 22 June 2010, p62.

- (4) *The responsible Ministers must make arrangements for the tabling of ONRSR's annual report in the Parliament of each participating jurisdiction.*

6.23 This respects parliamentary sovereignty by ensuring the Parliament of Western Australia is notified about the Annual Report.

Schedule C, section C4 of the IGA

6.24 This section provides that votes on the National Law, the regulations and any amendments are decided by the unanimous agreement of Ministers.

6.25 The IGA also refers to the *Transport Safety Investigation Act 2003 (TSI Act)* which deals with investigations into rail safety. Section 13 of the National Law refers to the ATSB, established under the TSI Act, as a prescribed authority with whom the Regulator shares information.

7 THE BILL

Overview

7.1 The objectives of the Bill are:

- To provide for a national scheme for the regulation of rail safety, by enacting the National Law in mirror form as a law of Western Australia.
- To provide for the making of national regulations supporting the National Law in Western Australia. In the other participating jurisdictions:
 - a) the national regulations are made by the Governor of South Australia and are to be adopted by each participating jurisdiction; and
 - b) a majority disallowance has been included which, in effect, will mean that a regulation made under the legislation may only be disallowed if a majority of jurisdictions vote against it.²⁶
- To provide local provisions for alcohol and drug testing that accord with those found in the local road traffic legislation (in particular the *Road Traffic Act 1974* and its subsidiary legislation).
- To repeal the *Rail Safety Act 2010* and regulations made under the Act.

²⁶ See the extract from the Explanatory Memorandum to the Bill in paragraph 6.8 as well as paragraph 6.9 regarding the Governor of Western Australia making all regulations.

-
- To make consequential amendments to other legislation and provisions of a transitional nature consequent on the enactment of the Bill.²⁷
- 7.2 The National Law, attached as the Schedule to the Bill, sets out the functions and powers of the Regulator and provides for the effective management of safety risks associated with railway operations.
- 7.3 The National Law also covers the following:
- accreditation;
 - registrations;
 - safety management;
 - provision of rail safety information, investigation and reporting by rail transport operators;
 - train safety recordings;
 - auditing of railways operations;
 - compliance and enforcement measures;
 - review of decisions; and
 - general liability and evidentiary provisions.²⁸

Structure

- 7.4 The Bill comprises 5 parts, two schedules and 265 clauses.
- 7.5 Part 1 contains preliminary clauses, such as the commencement clause and definition of terms used.
- 7.6 Part 2:
- a) applies the National Law as a law of Western Australia, subject to specified modifications;
 - b) defines generic terms in the National Law for the purposes of Western Australia; and

²⁷ Rail Safety National Law (WA) Bill 2014, *Explanatory Memorandum*, pp1-2.

²⁸ Hon Jim Chown MLC, Parliamentary Secretary to the Minister for Transport, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 27 November 2014, p8955 – Second Reading Speech.

- c) provides for the exclusion of the application of various Western Australian legislation to the National Law, including:
 - i) *Freedom of Information Act 1992*;
 - ii) *Interpretation Act 1984*, apart from sections 41 and 42 dealing with the tabling and disallowance of regulations;
 - iii) *Auditor General Act 2006*;
 - iv) *Financial Management Act 2006*;
 - v) *Parliamentary Commissioner Act 1971*;
 - vi) *Public Sector Management Act 1994*; and
 - vii) *State Records Act 2000*.

7.7 Part 3 applies provisions specific to Western Australia relating to alcohol and drug testing. The original reforms based on the 2006 model allowed for drug and alcohol testing by way of urine sampling and analysis. New South Wales and Western Australia were the only jurisdictions to provide for it and have opted to continue to do so.

7.8 The experience of Western Australia Police has been that urine testing, although perhaps not essential, can be a valuable investigation and enforcement tool. Further, it is possible that there will be advances by which urine testing becomes a more attractive option in that respect. Accordingly, the Bill includes terms specifically directed to ensuring that it remains available as an option.²⁹

7.9 Part 3 also provides for the making of local regulations by the Governor.

7.10 Part 4 provides for the repeal of the Act as well as various transitional provisions.

7.11 Part 5 provides for various consequential amendments.

7.12 The Schedule contains the National Law and Schedule 2 contains miscellaneous provisions relating to interpretation.

²⁹ Hon Jim Chown MLC, Parliamentary Secretary to the Minister for Transport, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 27 November 2014, p56 – Second Reading Speech.

Submissions on the Bill

7.13 There was broad support for the Bill from witnesses who made submissions to the Committee.³⁰

7.14 For example, in its submission to the Committee, SCT Logistics stated:

*It is SCT's view that the Bill strikes a good balance between preserving the sovereignty of the Western Australian Parliament and economic, efficient rail operations.*³¹

7.15 In its submission to the Committee, the Regulator stated:

*WA has chosen to progress implementation of the RSNL as 'mirror' legislation (rather than 'application' legislation) in order to retain its sovereignty, whilst supporting the objectives of COAG. In doing this, the sovereignty of the WA Parliament is upheld and any future changes to the law must be approved by the WA Parliament.*³²

Clauses which may impact upon the sovereignty and law-making powers of the Parliament

7.16 While the Committee supports the mirror legislation approach to uniform legislation which has been taken in the Bill, the Committee has identified the following clauses as potentially impacting upon the sovereignty and law-making powers of the Parliament of Western Australia. The Committee draws these to the attention of the Legislative Council.

Clause 8 of the Bill

7.17 This clause provides:

Exclusion of legislation of this jurisdiction

(1) Except as provided in subsection (2), the following Acts of this jurisdiction do not apply to the Rail Safety National Law (WA) or to the instruments made under that Law —

(a) the Freedom of Information Act 1992;

³⁰ Submission No 3 from the National Rail Safety Regulator, 22 December 2014; Submission No 4 from SCT Logistics, 23 December 2014; Submission No 5 from Australian Rail Track Corporation Ltd, 6 January 2015 and Submission No 7 from Australian Railway Association, 14 January 2015.

³¹ Submission No 4 from SCT Logistics, 23 December 2014, p3.

³² Submission No 3 from National Rail Safety Regulator, 22 December 2014, p1.

(b) the Interpretation Act 1984.

(2) The Interpretation Act 1984 sections 41 and 42 apply to regulations made under the Rail Safety National Law (WA).

(3) The following Acts of this jurisdiction do not apply to the Rail Safety National Law (WA) or to the instruments made under that Law (except as applied under the Law) —

(a) the Auditor General Act 2006;

(b) the Financial Management Act 2006;

(c) the Parliamentary Commissioner Act 1971;

(d) the Public Sector Management Act 1994; and

(e) the State Records Act 2000.

(4) The Acts referred to in subsection (3) apply to a public sector body as defined in the Public Sector Management Act 1994 section 3(1), and an officer or employee of the body, performing a function under the Rail Safety National Law (WA).

7.18 The Department provided the Committee with a comparison between the Western Australian and South Australian legislation listed above, which is available on the Committee's website.³³ The comparison reveals various differences between the legislation. For instance, with respect to the freedom of information legislation, the Department stated there were 'differences in relation to fees charged, timeframes, the type of information collected and general scope'.³⁴

7.19 This clause raises a number of issues which are addressed in the following paragraphs.

Exclusion of the Freedom of Information Act 1992 (WA)

7.20 The exclusion of the *Freedom of Information Act 1992* (WA) is sought to be justified in the Explanatory Memorandum as follows.

Subclause (1) will provide that the Freedom of Information Act 1992...[does] not apply to the Rail Safety National Law (WA) or to

³³ Document from the Department of Transport entitled "*Standing Committee on Uniform Legislation and Statutes Review, Questions on Notice*", received 6 February 2015, Attachments 1 and 2.

³⁴ Id.

*instruments made under that Law. [It] is considered enough that the South Australian equivalent applies.*³⁵

- 7.21 The Committee notes that in the Second Reading debate and Consideration in Detail stage of the Bill in the Legislative Assembly, the Minister for Transport stated:

*The South Australian Freedom of Information Act will singularly apply directly to the Office of the National Rail Safety Regulator, otherwise each jurisdiction would have differing freedom of information and other oversight laws.*³⁶

...

*The freedom of information legislation in Western Australia and South Australia are broadly consistent.*³⁷

- 7.22 The Committee asked the Department why, given this broad consistency, the *Freedom of Information Act 1992* (WA) could not apply to the regulation of rail safety under the National Law in Western Australia. The Department responded as follows:

The purpose of the IGA was to implement a single National Rail Safety Regulator to reduce the regulatory burden by providing one set of Regulations rather than industry having to comply with different Regulations in each jurisdiction.

The Freedom of Information Act 1992 (WA) has not been applied to the regulation of rail safety under the Rail Safety National Law in Western Australia to ensure that only one set of Freedom of Information laws apply to people performing duties under the Rail Safety National Law (e. g. Office of the National Rail Safety Regulator employees regardless of their physical branch location).

The oversight laws of South Australia were chosen because South Australia was the Host jurisdiction for the Office of the National Rail Safety Regulator. It is to be noted that the Office of the National Rail Safety Regulator will progress all freedom of information requests through its central South Australian Office rather than through the

³⁵ Rail Safety National Law (WA) Bill 2014, *Explanatory Memorandum* p7.

³⁶ Hon Dean Nalder MLA, Minister for Transport, Western Australia, Legislative Assembly, *Parliamentary Debates (Hansard)*, 13 November 2014, p8150.

³⁷ Hon Dean Nalder MLA, Minister for Transport, Western Australia, Legislative Assembly, *Parliamentary Debates (Hansard)*, 25 November 2014, p8729.

*local branch offices, allowing branch staff to focus on delivering their core functions.*³⁸

7.23 The Parliament of Western Australian does not have the power to amend the *Freedom of Information Act 1991* (SA). The Committee has remarked in previous reports on the impact this has upon parliamentary sovereignty and law-making powers of the Parliament of Western Australia.³⁹

7.24 The fact there are differences between the Western Australian and South Australian legislation raises questions about employees of different State public sector bodies undertaking roles with respect to rail safety in Western Australia being subject to different processes and entitlements regarding access to information. It also creates uncertainty surrounding Ministerial accountability to the Parliament of Western Australia arising from the South Australian Minister overseeing legislation applying to rail safety in Western Australia.

7.25 In his submission to the Committee, the Information Commissioner stated:

For the purposes of these inquiries, the Committee may wish to consider the matters raised in my Issues Paper ‘COAG Regulatory Reform Agenda: Potential Impact on State Oversight Laws and Mechanisms’ provided to the Committee with my letter dated 14 December 2011. A further copy of the Issues Paper is enclosed for the Committee’s reference.

*To the best of my understanding the matters identified in the Issues Paper have not been resolved.*⁴⁰

7.26 The Committee is of the view that the Information Commissioner’s concerns regarding the fragmentation of oversight arrangements outlined in his issues paper are applicable to the Bill.⁴¹ This is because the *Freedom of Information Act 1981* (SA) will apply to the activities of the Regulator in Western Australia whereas the *Freedom of Information Act 1992* (WA) applies to other State public sector bodies performing functions under the National Law.

³⁸ Document from the Department of Transport entitled “*Standing Committee on Uniform Legislation and Statutes Review, Questions on Notice*”, received 6 February 2015.

³⁹ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 71, *Education and Care Services National Law 2012*, 3 May 2012, pp9 and 13; Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 89, *Gene Technology (Western Australia) Bill 2014*, 10 March 2015, p20.

⁴⁰ Submission No 2 from Mr Sven Bluemmel, Western Australian Information Commissioner, 17 December 2014. See also Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 75, *National Health Funding Pool Bill 2012*, 16 October 2012, pp14-15.

⁴¹ See Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 71, *Education and Care Services National Law 2012*, 3 May 2012, pp8-9 and Appendix 3.

- 7.27 The Department stated both Western Australian and South Australian freedom of information legislation will apply to documentation arising out of any service agreement entered into between the Regulator and Western Australia pursuant to section 15(1) of the National Law.⁴² This is another example of the type of fragmentation of concern to the Information Commissioner. The Committee shares these concerns.
- 7.28 In its scrutiny of clause 8, the Committee also identified a gap in the intended coverage of the *Freedom of Information Act 1992* (WA) to State public sector bodies. This arose from it not having been included in the list of legislation set out in subclause 8(3), which applies, by virtue of subclause 8(4), to employees of public sector bodies performing a function under the National Law. The Department acknowledged this gap.⁴³
- 7.29 The Committee understands that the Government intends to introduce amendments to clause 8 to address this issue via a *Supplementary Notice Paper*. The Committee supports the making of these amendments to the Bill, which it considers will address this technical oversight.

Exclusion of the Interpretation Act 1984 (WA)

- 7.30 The exclusion of the *Interpretation Act 1984* (WA) is sought to be justified in the Explanatory Memorandum as follows:

*Subclause (1) will provide that the... Interpretation Act 1984 [does] not apply to the Rail Safety National Law (WA) or to instruments made under that Law... As to the Interpretation Act 1984, as the Rail Safety National Law is a South Australian Act, many of its terms have to be understood in the light of the South Australian equivalent.*⁴⁴

- 7.31 Schedule 2 to the National Law contains miscellaneous provisions relating to the interpretation of the National Law. It also standardises the interpretation of the National Law across all jurisdictions to achieve uniformity.
- 7.32 The Committee notes the differences between the *Interpretation Act 1984* and the provisions in Schedule 2 of the National Law referred to in the comparison provided by the Department of Transport for the information of the Legislative Council.⁴⁵

⁴² Document from the Department of Transport entitled “*Standing Committee on Uniform Legislation and Statutes Review, Questions on Notice*”, received 6 February 2015.

⁴³ Ibid.

⁴⁴ Rail Safety National Law (WA) Bill 2014, *Explanatory Memorandum* p7.

⁴⁵ As stated in paragraph 7.17, subclause 8(2) of the Bill provides that sections 41 and 42 of the *Interpretation Act 1984* apply to regulations made under the Rail Safety National Law (WA). Accordingly, the usual disallowance processes apply.

Exclusion of other Western Australian accountability legislation

7.33 The Committee notes:

- a) the lack of certainty surrounding ministerial accountability to Parliament;
- b) as a consequence of different accountability legislation applying to employees in different public sector bodies undertaking roles with respect to rail safety in Western Australia, such employees may be subject to different entitlements resulting from any variations between the South Australian and Western Australian legislation;
- c) the inability of the Parliament of Western Australia to amend the relevant South Australian accountability legislation; and
- d) the Parliament of Western Australia will have no role in scrutinising the activities of the agencies undertaking roles under the relevant South Australian accountability legislation,⁴⁶

and the impact of these consequences on the sovereignty and law-making powers of the Parliament of Western Australia.

7.34 The Committee acknowledges that one approach to achieving uniformity is to ensure the same laws apply across every Australian jurisdiction. However, its impact on parliamentary sovereignty remains. Applying the laws of another jurisdiction which the Parliament of Western Australia cannot amend or repeal and which may be inconsistent with the equivalent Western Australia legislation, is inconsistent with state parliamentary sovereignty.⁴⁷ It is also inconsistent with ministerial accountability as discussed above.

Subclause 50(2) of the Bill

7.35 This subclause provides:

⁴⁶ See Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 71, *Education and Care Services National Law 2012*, 3 May 2012, p11 at paragraph 8.25. See also Hon Dean Nalder MLA, Minister for Transport, Western Australia, Legislative Assembly, *Parliamentary Debates (Hansard)*, 27 November 2014, p28, where the Minister stated:

The Office of the National Rail Safety Regulator's annual report will include any details of audits of the national regulator undertaken by the South Australian Auditor-General.

⁴⁷ See Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 88, *Gene Technology (Western Australia) Bill 2014*, 10 March 2015, pp24-25 at paragraphs 7.27-7.28 and 7.30.

Transitional regulations

(2) *Regulations made under subsection (1) may provide that specific provisions of the Rail Safety National Law (WA) —*

(a) *do not apply; or*

(b) *apply with specific modifications, to or in relation to any matter.*

7.36 The Explanatory Memorandum for the Bill states:

Transitional regulations

This clause will provide for regulations to be made to address transitional matters.

Subclause (1) will provide for the Governor to make transitional regulations where there is no sufficient provision in the Act.

Subclause (2) will provide that regulations under subclause (1) can disapply provisions in the Rail Safety National Law (WA), or apply them with modifications.⁴⁸

7.37 This is a Henry VIII clause as it enables the National Law to be amended by regulation rather than an Act of Parliament.

7.38 The Committee's position on Henry VIII clauses has been well documented in previous Committee reports.⁴⁹ These clauses undermine the legislative sovereignty of the Parliament.

7.39 The Explanatory Memorandum for the Bill does not identify subsection 7(3) as a Henry VIII clause. The Committee repeats what it stated in its Report 89 as follows:

The Executive is accountable to the Parliament as the law-making body in the Westminster system of government. Essential to achieving this accountability is fulfilling its duty to Parliament of full, pro-active disclosure on legislation, ensuring it is fully briefed. A quality

⁴⁸ Rail Safety National Law (WA) Bill 2014, *Explanatory Memorandum* p31.

⁴⁹ For example, see Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 59, *Personal Properties Securities (Commonwealth Laws) Bill 2007 and Personal Properties Securities (Consequential Repeals and Amendments) Bill 2007*, 22 March 2011, p6 and Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 55, *Trade Measurement Legislation (Amendment and Expiry Bill) 2010*, 11 November 2010, pp10-12. A detailed review of Henry VIII clauses is also contained in Western Australia, Legislative Council, Standing Committee on Legislation, Report 19 *Revenue Laws Amendment Bill 2012*, 12 September 2012.

*explanatory memorandum, which should contain an explanation for any provision within a bill that appears to infringe the terms of reference of the relevant parliamentary committee scrutinising the proposed legislation, will assist the Executive in fulfilling this duty.*⁵⁰

7.40 In its Report 55, the Committee made the following recommendation:

*Recommendation 2: The Committee recommends that when introducing a bill to the Legislative Council that proposes a Henry VIII clause, the responsible Minister provide in the Explanatory Memorandum the rationale for that provision.*⁵¹

7.41 In response to a question on notice by the Committee whether there are any plans to make regulations pursuant to clause 50(2) the Department stated there were currently no such plans.⁵² The Department also stated:

*The use of such powers are intended as a safeguard in case any matters are omitted or arise in relation to the transition from the existing State rail safety regime to that provided under the proposed national law. Transitional regulations may only be made within 12 months of the commencement of section 50.*⁵³

7.42 The Committee commented on a similarly worded clause in its Report 71 as follows:

*While this is for the purpose of transitional regulations only, so may not be considered an issue (Part 15 of the National Law contains transitional provisions), the need for this power in clause 19(2) has not been explained. The law-making power question is whether this delegation is appropriate in its application to the whole of the National Law and its unlimited duration. While the regulations must be made within 12 months, there is no limit on the period of their effect.*⁵⁴

7.43 The above comment applies with equal force to subclause 50(2) of the Bill.

⁵⁰ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 89, *Gene Technology (Western Australia) Bill 2014*, 10 March 2015, p18.

⁵¹ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 55, *Trade Measurement Legislation (Amendment and Expiry Bill) 2010*, 11 November 2010, p12.

⁵² Tabled Paper TP2, p14, tabled by the Department of Transport at a hearing on 8 December 2014.

⁵³ Id.

⁵⁴ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 71, *Education and Care Services National Law 2012*, 3 May 2012, p12. See also Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, *Trade Measurement Legislation (Amendment and Expiry) Bill 2010*, Report No 55, 11 November 2010, pp38-41 for a discussion of a similar clause.

7.44 The Committee has previously noted that the Legislative Council has made amendments to similar provisions, in order to provide a check and balance, to ensure that:

- a) the power to make regulations expires after a certain period of time; and/or
- b) the regulations themselves expire after a certain period of time.⁵⁵

7.45 While regulations must be made within 12 months after the day on which the clause commences pursuant to subclause 50(6) of the Bill, there is no limit on the period of their effect. Given their transitional nature, the Committee is of the view that it would be appropriate to provide for such a limit and makes the following recommendation.

Recommendation 4: The Committee recommends that the Parliamentary Secretary to the Minister for Transport introduce an amendment to clause 50 of the Rail Safety National Law (WA) Bill 2014 to provide for regulations made under clause 50 to expire after a period of no more than 3 years.

Subsection 7(3) of the National Law

7.46 This subsection provides:

Railways to which this Law does not apply

(3) Despite subsection (2)(b), the national regulations may prescribe a specified railway of a class referred to in that paragraph to be a railway to which or in relation to which this Law applies.

7.47 Subsection 7(2)(b) provides:

(2) This Law does not apply to or in relation to the following railways

—

(b) a railway that —

(i) is used only for the purposes of an amusement structure;
and

(ii) is operated only within an amusement park; and

⁵⁵ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 3, *Trade Measurement Bill 2005 and Trade Measurement Administration Bill 2005*, 19 October 2005, p11; Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 55, *Trade Measurement Legislation (Amendment and Expiry) Bill 2010*, 11 November 2010, pp39-40.

(iii) *does not operate on or cross a public road; and*

(iv) *is not connected with another railway in respect of which a rail transport operator is required to be accredited or registered under this Law.*

7.48 This is a Henry VIII clause as it enables the National Law to be amended by regulation.

7.49 The Department provided an example of a railway to which subsection 7(3) may apply, namely, a railway of sufficient scale and complexity that public safety would be compromised if it were not regulated.⁵⁶

7.50 The Committee refers to its comments at paragraphs 7.39 to 7.40 relating to Henry VIII clauses⁵⁷ and makes the following finding.

Finding 1: The Committee finds that there is a concerning trend in the increasing use of Henry VIII clauses in national scheme legislation.

Subsections 17(2) and Subsection 18(1) of the National Law

7.51 These subsections provide:

17. Appointment of Regulator

(2) *The Regulator will be appointed for a term not exceeding 5 years on terms and conditions determined by the South Australian Minister acting on the unanimous recommendation of the responsible Ministers.*

⁵⁶ Document from the Department of Transport entitled “*Standing Committee on Uniform Legislation and Statutes Review, Questions on Notice*”, received 6 February 2015. The Department cited ‘an “amusement structure” that consists of a railway within an amusement park may share many similar risk issues as a regular railway, but are not automatically included in the Acts coverage’ which would be ‘regulated under the WA *Occupational Safety and Health (OSH) Act 1984*.’

⁵⁷ See the Committee’s reports detailed at footnote 49 as well as Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 71, *Education and Care Services National Law 2012*, 3 May 2012, pp12-13; Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 75, *National Health Funding Pool Bill 2012*, 16 October 2012, pp17-18; Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 84, *Medicines, Poisons and Therapeutic Goods Bill 2013*, 18 February 2014, p40; Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 89, *Gene Technology (Western Australia) Bill 2014*, 10 March 2015, pp16-18.

18. Acting National Rail Safety Regulator

(1) The South Australian Minister may appoint an Acting National Rail Safety Regulator (who may, or may not, be a non-executive member or a member of the staff of ONRSR) to act in the office of the Regulator and a person so appointed has, while so acting, all the functions and powers of the Regulator.

7.52 Subclause 27(5) of Schedule 2 of the National Law provides:

Acting appointments

(5) The appointee must not act for more than 1 year during a vacancy in the office.

7.53 The combined effect of these provisions is that the South Australian Minister has the sole power to appoint an Acting Regulator, who will have all the powers of the Regulator and who may be in post for up to a year. These powers include making decisions that affect rail safety in Western Australia.

7.54 In the Committee's view, this raises a state sovereignty issue as the TIC, of which the Western Australian Minister is a member, will have no input into the appointment of an Acting Regulator. It also diminishes Ministerial accountability to Parliament.

7.55 The Committee asked the Department:

- a) whether subclause 18(1) was consistent with section 27(f) of the IGA; and
- b) why the unanimous recommendation of the responsible Ministers is not required before the appointment of an Acting Regulator by the South Australian Minister pursuant to subclause 18(1), as is the case for the appointment of the National Rail Safety Regulator pursuant to section 17(2)?⁵⁸

7.56 The Department responded as follows:

The IGA did not contemplate an Acting Regulator role, therefore section 18(1) is required for that eventuality.

It is considered necessary for operational reasons for the South Australian Minister to be able to act independently in certain circumstances to provide a fast temporary response to appoint an Acting Regulator. As the Ministers of the Transport and Infrastructure Council formally meet on a biannual basis there may

⁵⁸ Letter from Hon Kate Doust MLC to Mr Reece Waldock, Director General, Department of Transport, 17 February 2015.

be times when a quicker response is required for the appointment of an Acting Regulator and it is not practical to wait for all responsible Ministers to agree unanimously on the person nominated to hold the 'Acting' National Regulator role. For example, the need for an acting appointment to be made may arise where there is a vacancy in the office of the Regulator, when the Regulator is absent or unable to exercise the duties of the office or if the Regulator is disqualified from acting in a particular matter. In these instances it would be necessary to appoint an Acting Regulator to undertake the functions of the Regulator and this may occur outside of the pre-determined sitting dates of the Transport and Infrastructure Council or where one or more responsible Ministers are unable to vote on a matter out-of-session at short notice.⁵⁹

7.57 The Committee is of the view there is no reason why the TIC could not meet, outside of its bi-annual cycle, to either approve or confirm the appointment of an Acting Regulator. The potential length of an appointment of up to a year reinforces this view.

7.58 The Committee therefore makes the following recommendation.

Recommendation 5: The Committee recommends that the Government take action to effect an amendment to the Rail Safety National Law to provide for the Transport and Infrastructure Council to approve the appointment of an Acting National Rail Safety Regulator and advise the Legislative Council accordingly.

8 REVIEW OF THE ACT

8.1 The Committee notes there is no clause in the Bill providing for a review to be undertaken.

8.2 The Committee notes that it is now standard drafting practice for legislation to provide for periodic review. Review clauses are now regarded as a standard mechanism for parliamentary accountability and oversight of the operation of legislation.

8.3 Accordingly, the Committee makes the following finding and recommendation.

Finding 2: The Committee finds that, given the impact of the Rail Safety National Law (WA) Bill 2014 on the sovereignty and law-making powers of the Parliament of Western Australia, the Rail Safety National Law (WA) Bill 2014 should contain a periodic review clause. This is to enable an assessment to be made of whether the Rail Safety National Law (WA) Bill 2014 is serving the interests of rail safety in Western Australia.

⁵⁹ Document from the Department of Transport entitled "Standing Committee on Uniform Legislation and Statutes Review, Questions on Notice", received 6 February 2015.

Recommendation 6: The Committee recommends that the Parliamentary Secretary representing the Minister for Transport introduce an amendment to the Bill which will require the legislation to be reviewed within 4 years from the date of commencement and at the expiry of each 4 yearly interval after that anniversary, with a copy of each review to be tabled in both the Legislative Assembly and Legislative Council.

9 CONCLUSION

- 9.1 While the Committee supports the mirror approach to uniform legislation which has been taken in the Bill, the Committee has identified a number of aspects of the Bill which impact on the sovereignty and law-making powers of the Parliament of Western Australia.
- 9.2 The Committee has highlighted some of the consequences of adopting legislation which provides for the application of legislation of another Australian jurisdiction which cannot be amended by the Parliament of Western Australia.
- 9.3 The Committee has also drawn attention to two Henry VIII clauses in the Bill and the National Law as well as the sovereignty implications of the power of the South Australian Minister to appoint an Acting Regulator who will have all the powers of the Regulator to affect rail safety in Western Australia.



Hon Kate Doust MLC
Chair

24 March 2015

APPENDIX 1
STAKEHOLDERS INVITED TO PROVIDE A SUBMISSION
AND SUBMISSIONS RECEIVED

APPENDIX 1

STAKEHOLDERS INVITED TO PROVIDE A SUBMISSION AND SUBMISSIONS RECEIVED

Stakeholders invited to provide a submission

1. Mr Rob Burrows, Director, Rail Safety, Department of Transport, Office of Rail Safety
2. Mr Reece Waldock, Chief Executive Officer, Public Transport Authority
3. Mr Tim Woolerson, General Manager, TransWA
4. Mr Tim Dawson, State Secretary, Transport Workers Union of WA
5. Mr Philip Woodcock, WA Branch Secretary, Australian Rail Tram and Bus Industry Union
6. Mr Sven Bluemmel, Information Commissioner, Office of the Information Commissioner
7. Ms Cathrin Cassarchis, Executive Director, State Records, State Records Office of Western Australia
8. Mr Chris Field, Ombudsman of Western Australia
9. Mr Konrad de Kerloy, President, Law Society of Western Australia
10. Mr Rob Andrews, Chief Executive, Office of the National Rail Safety Regulator
11. Mr Ian Watson, Standards and Training Manager, Australian Western Railroad (Aurizon)
12. Mr John Fullerton, Chief Executive Officer, Australian Rail Track Corporation Ltd
13. Mr Matthew Dowd, General Manager Rail Operations, BHP Billiton Iron Ore Pty Ltd
14. Mr Cu Phan, Production Manager, BHP Billiton Nickel West Pty Ltd
15. Ms Jan Sperling, Regional Operations Manager WA, BP Australia Pty Ltd
16. Mr Paul Larsen, Chief Executive Officer, Brookfield Rail Pty Ltd
17. Mr Brad Lemmon, Regional Executive General Manager WA/NT, Cockburn Cement Limited

18. Mr David Crane, Chief Executive Officer, Co-operative Bulk Handling Limited
19. Mr Ian Hansen, Chief Operating Officer, Wesfarmers, CSBP Pty Ltd
20. Mr David Howarth, Executive General Manager, Downer EDI Works Pty Ltd
21. Mr Carl Delany, Operations Manager, EDI Rail – BT
22. Mr John McArthur, Managing Director, Freightliner Australia Pty Ltd
23. Mr Geoff Thorn, Executive General Manager, Gemco Rail Pty Ltd
24. Mr Greg Pauline, Managing Director, Genesee and Wyoming Australia Pty Ltd
25. Mr Chris Tallent, Chief Executive Officer, Great Southern Railway Ltd
26. Mr Neil Backer, SVP Safety Health and Environment, Interail Australia Pty Ltd
27. Mr Jim Stevenson, General Manager, Intermodal Link Services
28. Mr Bill Plakias, National Rail Safety Manager, John Holland Group Pty Ltd
29. Mr Dale Harris, Chief Executive Officer, Karara Rail Pty Ltd
30. Mr Peter Klein, Chief Executive Officer, Mid West Ports Authority
31. Mrs Jodie Talone, Safety Audit Manager, Pacific National Pty Ltd
32. Mr Ian Willis, General Manager, Pemberton Tramway Co Pty Ltd
33. Ms Zara Fisher, General Manager Rail Operations, Pilbara Iron Pty Ltd
34. Mr Mark Burgess, Managing Director, Public Transport Authority
35. Mr John Freeland, National Rail Safety and Compliance Manager, Qube Logistics (Rail) Pty Ltd
36. Mr Matthew Fentiman, General Manager Business Services, R C Sadleir Pty Ltd
37. Mr Barry Fitzgerald, Chief Executive Officer, Roy Hill Infrastructure Pty Ltd
38. Mr Brian McNaught, National Rail Accreditation and Compliance Manager, Specialised Container Transport
39. Mr Ron Dagostino, General Manager Rail, The Pilbara Infrastructure
40. Mr Bruce Skipworth, Head of WA Operations, United Group Rail Services Limited

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41. Mr Jim Griffiths, Chief Operating Officer, Watco Rail WA Pty Ltd
 42. Mr Darryl Green, Chief Executive Officer, Busselton Jetty Environment and Conservation Association Inc
 43. Ms Sue Graham, Chairperson, Carnarvon Heritage Group Inc
 44. Mr Oliver Darby, Director Engineering and Works Services, City of Busselton (Jetty Railway)
 45. Mr Ian Willis, General Manager, Hotham Valley Tourist Railway (WA) Inc
 46. Mr Rick Mitchell-Collins, Chief Executive Officer, Kojonup Shite - Kojonup Tourist Railway
 47. Mr Mike Stuckey, President, Perth Electric Tramway Society
 48. Ms Jody McDonald, Holiday Activities Manager, Rottnest Island Authority
 49. Mr Jamie Wallis, Chairman, Western Australian Light Railway Preservation Association Inc.

Submissions received

1. Ms Sue McCarrey, Chief Executive, Office of the National Rail Safety Regulator
2. Mr Sven Bluemmel, Information Commissioner, Office of the Information Commissioner
3. Mr Brian McNaught, National Accreditation and Compliance Manager, SCT Logistics
4. Mr Geoff Taylor, private citizen
5. Mr B Fitzgerald, Chief Executive Officer, Roy Hill Infrastructure Pty Ltd
6. Mr Bryan Nye OAM, Chief Executive, Australasian Railway Association
7. Mr Tim Ryan, Executive General Manager, Enterprise Services, Australian Rail Track Corporation Ltd
8. Mr Ross Parker, Vice Chairman, Western Australian Light Railway Preservation Association Inc
9. Mr Neil Backer, Vice President Safety, Health & Environment, Aurizon Holdings Limited
10. Mr Paul Larsen, CEO, Brookfield Rail