



Transportation Legislation Amendment (Safety And Reliability) Bill.

Second Reading

The Hon. MICHAEL COSTA (Minister for Transport Services, Minister for the Hunter, and Minister Assisting the Minister for Natural Resources (Forests)) [5.25 p.m.]: I move:

That this bill be now read a second time.

On 8 April this year I announced the Government's intention to put in place a range of reforms to focus the full resources of the State's public transport system on safety, reliability and cleanliness. The first priority is safety. A clean, safe and reliable system will be achieved only if accountabilities and responsibilities are clear to its operators, the Government and the public. The Ministry of Transport has now been established. Preparations for the merger of State Rail and the metropolitan functions of the Rail Infrastructure Corporation are well advanced and I will be bringing legislation before Parliament in future to give effect to the merger. This bill establishes an Independent Transport Safety and Reliability Regulator. The regulator will be independent of the Ministry of Transport and transport operators. It will have the authority to regulate and audit the safety of transport services, investigate transport accidents, and advise on the reliability and performance of transport service providers. This bill builds on the Rail Safety Act, strengthens its provisions and extends its principles across the other transport modes.

The Independent Transport Safety and Reliability Regulator will have as its principal objective the safety of transport services in New South Wales, including bus and ferry passenger services, and rail passenger and freight services. The rail safety powers under the Rail Safety Act will transfer to the new Independent Transport Safety and Reliability Regulator. Within the regulator, there will be an Office of Transport Safety Investigation, headed by a chief investigator who will report directly to the chair to avoid any conflict of interest with the compliance functions of the regulator. Within the regulator, the audit and investigation functions are independent, with accountabilities separated. One of the new regulator's priorities will be to review all previous accident investigation and safety reports of transport agencies and operators to ensure appropriate action had been taken. Rail agencies have already started identifying all relevant documents from the past 7 to 10 years. This process will complement the review of safety critical infrastructure by Fellows Medlock and Associates commissioned by the Co-ordinator General of Rail earlier this year.

Independence is critical for the regulatory and investigative functions to be effective. That is why the regulator will be a stand-alone statutory authority, independent of other transport agencies and the Ministry of Transport. It will report to Parliament through the Minister for Transport Services. This bill establishes the Independent Transport Safety and Reliability Regulator as the central focus of transport safety in New South Wales. There is no ambiguity as to its primacy and role. The bill also makes clear the safety responsibilities of transport operators and the regulator's role in enforcing these. This will prevent the competing priorities and unclear responsibilities that have developed in transport safety management in other countries.

To ensure the regulator remains independent, the bill provides for strict limitations on ministerial control and direction. The Minister will have no control or power of direction regarding accreditation decisions to prosecute, investigate or audit the conduct of any investigation or audit, or the contents of any report or recommendation. The Minister will, however, be able to direct that an investigation be undertaken, consistent with the traditions of ministerial responsibility. The limitations over ministerial direction and control are similar to legislation establishing the Australian Transport Safety Bureau and the New Zealand Transport Accident Investigation Commission, and other similar regulatory agencies within New South Wales, such as the Health Care Complaints Commission and the Casino Control Authority.

The corporate governance provisions of this bill will provide a further protection in regard to the independence of the new regulator. The bill provides for the creation of an advisory board consisting of a chairperson, the chief executive officer of the regulator and three independent members. The board will have a key role in reviewing the organisation's decisions and outputs, and provide quality assurance on the reports and recommendations made. It will provide the regulator with greater access to technical and industry expertise, and ensure strong mechanisms to review the rigour of its activities. Importantly, the bill provides that the chairperson of the Independent Regulator must have experience in transport safety management systems. Other members of the board must collectively have experience in areas such as safety management, safety science, customer service, accident investigation and public administration. In this regard, I remind the House that Mr Ron Christie has been advising me on the establishment of the Independent Regulator and has taken an active leadership role in this process. As I indicated publicly yesterday, I intend to recommend to the Governor that Mr Christie be appointed the chair of the Independent Regulator upon its establishment.

I am committed to transparency in the operations of the transport agencies. Honourable members need only look at the range of reports and information now made available on the transport agency web sites to see my commitment to

transparency. I believe we can go further. Nowhere is the need for transparency more important than in the area of safety—people are entitled to know whether their mode of transport is safe, what the issues are and what is being done to make transport safer. That is why I am committed to providing the public with more information about our public transport system. Taxpayers will now be able to access performance and safety data not previously available. This means both greater transparency and improved accountability. The more educated the public becomes, the more confident it will become in the integrity of the transport system.

As I mentioned earlier, the Rail Safety Act 2002 significantly strengthened the regulatory powers for rail safety and the requirements for open and transparent reporting of rail safety issues. The Act requires the Rail Safety Regulator to prepare an annual industry safety report and to report to the Minister on all accident investigations undertaken by it. The bill extends these public reporting requirements to other transport modes, including buses and ferries. The new regulator will be required to provide an annual report to the Minister on both the safety and reliability of transport services across all modes—rail, bus and ferry. These reports, along with any transport accident investigation report, must be tabled by the Minister in the Parliament no later than 28 days after their receipt. In addition, the Independent Regulator has the express function under the proposed legislation to publicly report on safety and reliability issues as they arise. These reports will be posted on its web site. This public reporting will be the basis of its transparency and underlines its independence. Effective regulation involves more than reporting.

This bill also strengthens the requirements of operators of transport services in relation to their provision of safe services for the people of New South Wales. This includes the requirement for bus and ferry operators to have and maintain a safety management system to underpin their operations; providing the Office of Transport Safety Investigations with the power to undertake investigations into bus and ferry, as well as rail, accidents; and enabling the regulator to provide government with advice on the reliability and performance of all modes of transport services. Implementation of an effective and responsive safety management regime, supported by appropriate accreditation, is the required mechanism by which operators demonstrate that management systems are in place to deliver safe outcomes.

The Rail Safety Act 2002 introduced a specific requirement for rail operators to have and maintain a safety management system to underpin their operations. This bill introduces a similar requirement for bus and ferry operators. This should not be seen as a regulatory regime that will unnecessarily burden these operators. In fact, many bus and charter vessel operators should already have a safety management system or be moving towards the implementation of one as required under the Occupation Health and Safety Act. The bill provides a transition period of 12 months for operators to ensure their systems are in place. The new regulator will work with the Ministry of Transport's Operations Division, the Roads and Traffic Authority and the Waterways Authority to assist the bus and ferry industries in introducing the required systems. Commercial bus operators will be required to have a risk-based safety management system, commensurate with the size and complexity of their business, in order to achieve accreditation with the Ministry of Transport as a public bus operator.

Ferry and commercial vessel operators will be required to have safety management systems aligned with the proposed National Standard for Commercial Vessels to maintain their licence with the Waterways Authority. The regulator will work with industry to ensure that the costs of implementation are appropriate to the risk and size of the operator. This rigorous and consistent approach to safety management across mass transport in New South Wales will be backed up with budgetary and staffing resources to enable the Independent Regulator to enforce this approach. Robust governance and organisational arrangements have been developed for the new entity. The Independent Regulator will have four divisions: Transport Safety Regulator, Service Reliability, Corporate Strategy, and an Independent Office of Transport Safety Investigations, headed up by a chief investigator, within the organisation.

A chief executive officer will be responsible for the day-to-day operations of the Independent Regulator and will hold delegated responsibility for all safety and performance responsibilities, excluding investigations. The chief investigator will report to the chair, not to the chief executive officer. This quarantines the investigations function from the remainder of the functions of the regulator. There will also be significant enhancement in the number, skill level and expertise of staff. There will be more resources for audits and inspections of operators, a dedicated team of investigators within the Office of Transport Safety Investigations, and a significant increase in resources available to collect and analyse transport safety data and other information, such as investigation reports from other Australian and overseas jurisdictions. The proposed structure will also provide a senior level support structure to support the chief executive, and will enable accountabilities to be clear and properly defined.

Under the bill different reporting accountabilities separate safety regulation and investigation functions within the same agency, whilst maximising the practical benefits of sharing resources and, in particular, technical expertise. The concern with vertical separation of agencies both in New South Wales and internationally is that the splitting of functions across separate organisations reduces communication, spreads scarce technical expertise and leads to ambiguities in accountabilities and responsibilities. In the safety context this could result in valuable industry intelligence and safety information being lost rather than shared. It is recognised that accreditation and investigation are fundamentally different functions and that there may be a need for the activities of the regulator to be reviewed as part of an investigation. For this reason, the chief investigator and the Office of Transport Safety Investigations will be functionally separate from the regulator.

The chairman will have responsibility for appointing the chief investigator and for overseeing accident investigations. In turn, the chief investigator will report directly to the chair and not to the chief executive of the regulator. This will enable

the investigator to provide frank advice to the chair, including advice on the activities of the regulator. An investigation team may draw on the technical expertise within the regulator, or indeed in the industry. However, the conduct of its investigation, its findings and its report will be independent of both.

The Government recognises that conflicts between performance and safety functions can arise when the same organisation has the same responsibility for setting and funding performance and regulating safety. To avoid this conflict the regulator will not set service standards or control funding to service providers. Funding and standard setting responsibilities will remain with the Minister through the Ministry of Transport's contracts with service providers. The regulator's role will be to provide independent expert advice on whether operators are meeting the performance standards Government has set. This performance monitoring role will enable the regulator to identify problems and notify the Government of them before they become safety critical—in other words, predict safety issues; not simply respond to them after they have happened.

Recent experience has shown there can be a long lag between a deterioration in asset maintenance and its impact on safety. Monitoring performance in this area will help the regulator anticipate likely safety issues. This arrangement will ensure responsibility for safety is not compromised or overridden by responsibility for driving performance. The regulator will also advise Government and the public as to how the transport system is working. It will gather detailed information for performance benchmarking with other comparable systems in other jurisdictions. In that way the commuters of New South Wales will know how their system compares with others in Australia and around the world. Given its importance, and the establishment of new transport agencies, the Government wants to set up the new regulator promptly. We will review the legislation in 12 months time.

This review will provide an opportunity to consider the final outcomes of the Waterfall inquiry. It is important to understand the terms of reference for the commission of inquiry. There are three. The first is the cause of the railway accident at Waterfall on 31 January 2003 and the factors which contributed to it. We expect the interim report on this term of reference in late November. The second is the adequacy of the safety management systems applicable to the circumstances of the railway accident. The third is any safety improvements to rail operations considered necessary as a result of findings under the first two matters. An extension until April next year has been granted for reporting on the second and third terms of reference. Now, it is the second and third terms of reference that seek recommendations for systemic and organisational changes.

In granting his extension the Premier has advised Justice McInerney that the Government is proceeding with its legislation and would reconsider safety legislation following the receipt of the final report. This means the Government can consider recommendations from the commission of inquiry on the second and third terms of reference at that time. I refer to the notice of motion that the Leader of the Opposition moved in the House today. As I said to him this morning, I am happy for Ron Christie and Kent Donaldson to brief members on the establishment of the new regulator. However, given the importance of rail safety, the Government cannot afford to delay the setting up of the new independent regulator. I commend the bill to the House.

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