

## **RAIL SAFETY (ADOPTION OF NATIONAL LAW) BILL 2012**

18 OCTOBER 2012

Page: 16071

**Bill introduced on motion by Mrs Gladys Berejiklian, read a first time and printed.**

### **Second Reading**

**Ms GLADYS BEREJIKLIAN** (Willoughby—Minister for Transport) [4.01 p.m.]: I move:  
That this bill be now read a second time.

In June 2009, the Council of Australian Governments voted to establish single national regulators for heavy vehicles, rail safety and maritime safety as well as a national rail safety investigator. These reforms form part of the Council of Australian Governments' National Partnership Agreement to Deliver a Seamless National Economy which aims to: Reduce costs incurred by business in complying with unnecessary and inconsistent regulation across jurisdictions, enhance Australia's longer-term growth, improve workforce participation and overall labour mobility, and expand Australia's productive capacity through competition reform, to enable stronger economic growth. The main purpose of this bill is to make the necessary legislative amendments to establish the National Rail Safety Regulator in New South Wales which will introduce more consistent regulatory arrangements for rail operators across the country by applying the Rail Safety National Law.

The bill will enable national reforms relating to rail safety to apply in New South Wales. It will enable a decision of the Council of Australian Governments, to establish a single National Rail Safety Regulator [NRSR], to be introduced in New South Wales to streamline rail safety across Australia, whilst ensuring the current standards which apply to rail safety in New South Wales are maintained and strengthened. The bill also makes amendments to the Transport Administration Act 1988 and the Passenger Transport Act 1990 to support the establishment and operation of the national regulators. The National Rail Safety Law sets out the functions, powers and objectives of the Office of the National Rail Safety Regulator which includes: administering accreditation and registration schemes under the law, working with operators to improve rail safety nationally, monitoring and enforcing compliance, providing information about rail safety and promoting public confidence in freight and passenger transport services.

The Rail Safety National Law follows an applied scheme which requires a host jurisdiction to pass the national law and for other States and Territories to pass legislation applying this law as a law of their own jurisdiction. South Australia, as the jurisdiction chosen to host the National Rail Safety Regulator, passed the national law earlier this year. The majority of jurisdictions, including New South Wales, have agreed to pass applying legislation by the end of 2012 so the regulator can commence activities on 20 January 2013. Despite many jurisdictions passing the national law, only one single national entity will be created—the Office of the National Rail Safety Regulator—which will be established in Adelaide. This

entity will be comprised of the National Rail Safety Regulator a position which has recently been filled by Mr Rob Andrews, as well as two non-executive members which are yet to be appointed. The establishment of a single national regulator builds on earlier steps to achieve greater consistency between jurisdictions in Australia such as the introduction of rail safety model law.

While that reform went some way to implementing a more uniform safety regulation regime, it became clear that a single instrument and national regulating body would provide greater consistency and certainty for industry and the public. In practical terms, a single National Rail Safety Regulator will mean that rail operators who work across multiple jurisdictions will be able to get one certificate for national accreditation instead of having to apply for accreditation in up to seven States and Territories. Furthermore, one set of rules will apply to an operator's safety management system and operators will need to respond to one national regulator, rather than multiple jurisdictional regulators. In New South Wales, rail safety regulation will continue to be provided by the Independent Transport Safety Regulator under a service level agreement with the national regulator. The agreement is currently being finalised and will outline how the national regulator and the Independent Transport Safety Regulator will work together to continue delivering the high standard of rail safety regulation in New South Wales on what is Australia's busiest and most complex rail network.

Members and the public, however, can rest assured that New South Wales stringent safety standards will be maintained under the new laws. In introducing these important reforms to improve the efficiency and productivity of the rail industry, the New South Wales Government is committed to ensuring there is no lowering of rail safety standards in New South Wales. In fact, the opposite will occur, with a strengthening of the Independent Transport Safety Regulator's focus on rail. That is why the service level agreement approach has been chosen for New South Wales, as it will ensure that adequate local resources remain in place while still delivering the national consistency sought by industry. The Government has ensured the strict provisions relating to drug and alcohol testing of rail safety workers, and the strict requirements relating to fatigue management have been maintained. Regarding drug and alcohol testing: Rail operators in New South Wales will continue to be required to test a minimum of 25 per cent of their rail safety workers each year and report positive results to the regulator for investigation and prosecution where appropriate.

Ensuring operators retain minimum testing requirements and report positive results to the regulator sends a strong message that working on the New South Wales rail network with drugs or alcohol in your system will not be tolerated. Having operators undertake drug and alcohol testing is also important as they can be on site after an incident quicker than the regulator or police, meaning testing can occur in a timelier manner. In New South Wales these arrangements were introduced following the special commissions of inquiry into the Waterfall and Glenbrook rail accidents and represent some of the most stringent rail safety requirements in the country. New South Wales will also retain the maximum shift limits and mandatory break periods currently in place for train drivers which are designed to protect passengers, the public and staff themselves from the risks caused by train drivers whose

ability and judgement may be impaired by a lack of rest.

Retaining these provisions does not mean that operators can rely solely on outerlimits to manage fatigue risks. Operators will also be required to consider other potential impacts on fatigue under their safety management system requirements and design work, scheduling practices accordingly. As I have said, the strict New South Wales rules relating to drug and alcohol testing of rail safety workers and the strict requirements relating to fatigue management will remain in place, while still delivering a nationally consistent approach. The Standing Council on Transport and Infrastructure Ministers agreed to retain drug and alcohol testing and fatigue management requirements for New South Wales only in the national regulations, following the position of this Government. As I said in May this year, the New South Wales Government will be taking the necessary steps to ensure the State's current strong fatigue-management and drug-testing standards remain in place.

Implementing the Rail Safety National Law and the other national transport reforms has necessitated a review of New South Wales agency responsibilities to ensure alignment with the national approach to rail safety regulation. As part of this review, Transport for NSW examined the safety regulatory functions of all affected New South Wales transport agencies, taking into account the role and objectives of Transport for NSW and other transport authorities, as well as the role of the national regulators. The changes focus the Independent Transport Safety Regulator's role on rail safety regulation—delivering rail safety regulatory services under a service level agreement with the national regulator. This will allow the Independent Transport Safety Regulator to further specialise on the complex issues surrounding rail safety regulation and on implementing the new National Rail Safety Law and regulators.

The Independent Transport Safety Regulator currently has a range of other transport safety functions under the Transport Administration Act for the strategic co-ordination, evaluation and review of bus, ferry and rail safety regulation, and for monitoring and advising the Minister on the safety performance of New South Wales transport agencies. This bill transfers these functions to Transport for NSW, consistent with its role as the Government agency responsible for managing and shaping the future of the New South Wales transport system. The Independent Transport Safety Regulator will have responsibility for delivering rail regulation in New South Wales for the National Rail Safety Regulator, similarly Roads and Maritime Services [RMS] will have responsibility for delivering regulatory services for buses, coaches and ferries under the national laws overseeing heavy vehicles and commercial vessels.

The changes establish Roads and Maritime Services as the bus safety regulator for New South Wales and transfer responsibility for the administration and enforcement of bus, taxicab, hire car and tourist service accreditation, authorisation and license requirements to Roads and Maritime Services. It is important to note that in transferring these functions from the Independent Transport Safety Regulator to Transport for NSW this bill does not establish another regulator. Transport for NSW will not administer safety legislation, nor will it be

responsible for enforcing compliance of transport service providers with safety legislation.

These functions will remain the responsibility of the national regulators and will be delivered by the Independent Transport Safety Regulator and Roads and Maritime Services in New South Wales. Further, these changes will not provide Transport for New South Wales with a regulatory oversight role. Transport regulators will continue to have autonomy in the delivery of their regulatory functions. In taking on these functions, Transport for NSW will monitor and review the transport safety regulatory framework and its delivery in New South Wales to ensure that it provides for consistency across transport modes and delivers transport safety outcomes for the New South Wales community.

In addition, as the Minister I will continue to access independent advice on transport safety issues from the Office of Transport Safety Investigation [OTSI] and other existing oversight bodies such as the Audit Office of New South Wales by establishing boards of inquiry which enable reviews into specific safety issues or through the engagement of recognised external safety advisers. Importantly, as the Minister I will have the same recourse to request safety advice or request an investigation be undertaken by the National Rail Safety Regulator—through the New South Wales Independent Transport Safety Regulator or Office of Transport Safety Investigation.

The national reforms currently being introduced will also establish a National Rail Safety Investigator to better facilitate the pooling of investigatory resources from all jurisdictions. To achieve this it was agreed to extend the role of the Australian Transport Safety Bureau to operate as the rail safety investigator in all jurisdictions. As New South Wales already has an established and experienced investigator in the Office of Transport Safety Investigation, it was agreed that rail safety investigations in New South Wales will be conducted by the Office of Transport Safety Investigation on behalf of the Australian Transport Safety Bureau through a collaboration agreement.

To better support this arrangement this bill will align the powers of the Office of Transport Safety Investigation with the Commonwealth's Transport Safety Investigation Act 2003 where possible, ensuring a similar approach to all safety investigations undertaken across rail, bus and ferry services. Once the collaboration agreement is in place, the majority of rail safety investigations within New South Wales will be conducted under Commonwealth legislation. States and Territories currently have no powers to direct the Australian Transport Safety Bureau to conduct an investigation under the Commonwealth's Transport Safety Investigation Act.

To address this the Transport Safety Investigation Amendment Bill 2012 was introduced into the Australian Parliament earlier this year, providing State and Territory Ministers with the capacity to request the Australian Transport Safety Bureau to conduct an investigation into a rail transport safety matter under the Act. New South Wales is retaining legislative provisions under the Passenger Transport Act 1990 in order to maintain the necessary powers for the Office of Transport Safety Investigation to conduct investigations for buses and ferries;

maintain the Minister's powers to appoint independent boards of inquiry to investigate New South Wales rail incidents; maintain the Office of Transport Safety Investigation's function to receive and investigate confidential reports of safety concerns by rail workers; and ensure the Office of Transport Safety Investigation has powers to investigate New South Wales rail incidents should the Australian Transport Safety Bureau decline to do so.

The transport reforms that will be introduced in this bill are the culmination of work undertaken over the past three years by Council of Australian Governments members, transport and roads Ministers and agency staff across the country. I acknowledge the role of the Federal Minister for Infrastructure and Transport in that regard. The New South Wales Government engaged Carolyn Walsh as an external safety expert to undertake an independent review of these reforms to ensure the strict safety standards that exist in New South Wales will continue and be strengthened. They are reforms that State, Territory and Commonwealth governments have worked on together to deliver streamlined and simpler safety regulation to those who operate on the transport networks in Australia. I trust honourable members will lend their support to this important bill and the proposed amendments that accompany the bill. I commend the bill to the House.

**Debate adjourned on motion by Ms Anna Watson and set down as an order of the day for a future day.**