



New South Wales

# Rail Safety (Adoption of National Law) Bill 2012

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The objects of this Bill are as follows:

- (a) to apply as a law of this State the Rail Safety National Law which is contained in the Schedule to the *Rail Safety National Law (South Australia) Act 2012* of South Australia. The enactment of this Bill is part of a uniform scheme of legislation applying that Law (which relates to the accreditation of rail transport operators and rail safety) in the States and Territories (*participating jurisdictions*),
- (b) to enable the Independent Transport Safety Regulator (the *ITSR*) to exercise the functions of the National Rail Safety Regulator under that Law,
- (c) to confer on Transport for New South Wales (*TfNSW*) functions relating to the strategic co-ordination of safety regulatory frameworks in relation to transport authorities and other related functions,
- (d) to confer on Roads and Maritime Services (*RMS*) functions relating to the accreditation of bus operators and other related enforcement and licensing functions, as well as safety functions,

(e) to make consequential amendments to other Acts and provision of a savings and transitional nature consequent on the enactment of the Bill,

(f) to repeal the *Rail Safety Act 2008* and regulations under that Act.

The Rail Safety National Law scheme provides for the following matters:

(a) the establishment of the National Rail Safety Regulator,

(b) the safety duties of rail transport operators (including rail infrastructure managers and rolling stock operators) and of designers, manufacturers and suppliers of rolling stock and rail infrastructure,

(c) the accreditation by the National Rail Safety Regulator of rail transport operators for the purposes of railway operations,

(d) the registration of rail infrastructure managers of private rail sidings,

(e) requirements for safety management systems for rail transport operators, including interface agreements relating to rail and roads,

(f) requirements for other safety plans and programs for rail transport operators,

(g) training requirements for, and drug and alcohol testing of, rail safety workers,

(h) the appointment and powers of rail safety workers for the purposes of enforcement of the Law,

(i) enforcement measures, including improvement and prohibition notices, non-disturbance notices, injunctions, court-based sanctions and infringement notices and enforceable voluntary undertakings.

National regulations supporting the Rail Safety National Law are to be made by the Governor of South Australia and are to be adopted by each participating jurisdiction.

The Rail Safety National Law, as applied by this Bill in New South Wales, will replace the *Rail Safety Act 2008*.

## Outline of provisions

### Part 1 Preliminary

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation. Different days may be appointed for the commencement of different provisions of the Rail Safety National Law.

**Clause 3** defines certain words and expressions used in the proposed Act.

### Part 2 Application of Rail Safety National Law

**Clause 4** applies the Rail Safety National Law as a law of this jurisdiction, to be called the *Rail Safety National Law (NSW)*, with the modifications set out in Schedule 1 to the proposed Act.

**Clause 5** defines certain words and expressions used in the *Rail Safety National Law (NSW)*.

**Clause 6** excludes the application of specified laws of New South Wales, including the *Government Information (Public Access) Act 2009*, the *Interpretation Act 1987*, the *Subordinate Legislation Act 1989* and the *State Records Act 1998* to the applied provisions and the instruments made under the applied provisions. It also applies certain laws of South Australia to those provisions and instruments.

**Clause 7** enables regulations made under the Rail Safety National Law to be disallowed in New South Wales only if they are disallowed by a majority of the jurisdictions that have applied that Law.

### **Part 3 Provisions relating to drug and alcohol testing and train communications**

#### **Division 1 Drug and alcohol testing**

**Clause 8** contains a power to make regulations for or with respect to matters relating to the drug and alcohol testing of rail safety workers, including the conduct of testing, accreditation of analysts and associated evidentiary matters. Provision is made under the Rail Safety National Law for such matters to be dealt with separately by participating jurisdictions.

#### **Division 2 Train communications**

**Clause 9** contains a power to make regulations with respect to requirements for train communication systems.

### **Part 4 Miscellaneous**

**Clause 10** enables the Governor to make regulations for the purposes of the proposed Act. In particular, the regulations may amend the schedule of modifications to the Rail Safety National Law and modify the regulations made under that Law. Regulations may also be made under the proposed Act that are contemplated by that Law as being made under the proposed Act.

**Clause 11** enables regulations containing provisions of a savings or transitional nature to be made consequent on the enactment of the proposed Act.

**Clause 12** provides for the manner in which proceedings for offences against regulations made under the proposed Act are to be dealt with.

**Clause 13** authorises the ITSr to provide the National Rail Safety Regulator with information and assistance for the purposes of the *Rail Safety National Law (NSW)*.

**Clause 14** repeals the *Rail Safety Act 2008*, the *Rail Safety (General) Regulation 2008* and the *Rail Safety (Drug and Alcohol Testing) Regulation 2008*.

## **Schedule 1      New South Wales changes and additions to Rail Safety National Law**

**Schedule 1** contains amendments to the Rail Safety National Law for the purposes of its application in New South Wales. The Schedule modifies that Law as follows:

- (a) to include applicable New South Wales definitions,
- (b) to confer jurisdiction on the Local Court, District Court and Industrial Court in relation to offences under that Law and on the Administrative Decisions Tribunal and the Industrial Relations Commission in relation to the review of certain decisions under that Law,
- (c) to enable preliminary breath tests or breath analyses or urine screening tests to be required after an accident or irregular incident when rail safety work is being carried out,
- (d) to apply drug testing provisions to urine tests,
- (e) to provide for other matters relating to such testing, so as to maintain current New South Wales safeguards.

## **Schedule 2      Amendment of Acts**

**Schedule 2.1–2.10 and 2.12** amend the Acts specified in those Subschedules as a consequence of the repeal of the *Rail Safety Act 2008*.

### **Schedule 2.11 Passenger Transport Act 1990 No 39**

#### **Changes in functions of transport authorities**

**Schedule 2.11 [6]** confers the power to accredit bus services on RMS, rather than TfNSW. **Schedule 2.11 [1]–[5], [7]–[12], [91] and [97]** make consequential amendments.

**Schedule 2.11 [13]** confers the power to issue authorities to drive buses used for public passenger services on RMS, rather than TfNSW. **Schedule 2.11 [14]–[17]** make consequential amendments.

**Schedule 2.11 [19]** confers the power to accredit persons to carry on taxi-cab services on RMS, rather than TfNSW. **Schedule 2.11 [18] and [20]–[26]** make consequential amendments.

**Schedule 2.11 [27]** confers the power to licence taxi-cabs on RMS, rather than TfNSW. **Schedule 2.11 [28]–[37]** make consequential amendments.

**Schedule 2.11 [38]** confers the power to issue authorities to drive taxi-cabs used for public passenger services on RMS, rather than TfNSW. **Schedule 2.11 [39]–[43]** make consequential amendments.

**Schedule 2.11 [44]** confers the power to authorise the operation of taxi-cab networks on RMS, rather than TfNSW. **Schedule 2.11 [45]–[50]** make consequential amendments.

**Schedule 2.11 [51]** enables RMS, rather than TfNSW, to accept nominations of directors or managers for corporations seeking authorities for taxi-cabs.

**Schedule 2.11 [52]** enables RMS, rather than TfNSW, to exempt a taxi-cab operator from accreditation or licensing requirements.

**Schedule 2.11 [53]** confers the power to accredit persons to carry on private hire vehicle services on RMS, rather than TfNSW. **Schedule 2.11 [54]–[58]** make consequential amendments.

**Schedule 2.11 [59]** confers the power to licence private hire vehicles on RMS, rather than TfNSW. **Schedule 2.11 [60]–[66]** make consequential amendments.

**Schedule 2.11 [67]** confers the power to issue authorities to drive private hire vehicles on RMS, rather than TfNSW. **Schedule 2.11 [68]–[72]** make consequential amendments.

**Schedule 2.11 [73]** enables RMS, rather than TfNSW, to accept nominations of directors or managers as designated directors or managers for corporations seeking authorities for private hire vehicles.

**Schedule 2.11 [74]** makes RMS, rather than TfNSW, the body that determines the market value of a taxi-cab licence for the purposes of determining the tax on the transfer of the licence.

**Schedule 2.11 [75]** requires information about public passenger service safety to be provided to RMS.

**Schedule 2.11 [76]** requires information about transport accidents that may affect the safety of a public passenger service to be provided by RMS to the Chief Investigator. **Schedule 2.11 [77]** makes a consequential amendment.

**Schedule 2.11 [78]** requires reports about notifiable occurrences affecting public passenger service safety to be provided to RMS.

**Schedule 2.11 [93]** confers on RMS, rather than TfNSW, powers to cause inspections to be carried out to ensure that the operator of a public passenger service is complying with the terms of the person's accreditation.

**Schedule 2.11 [95]** retains the power of TfNSW to cause inspections to be carried out to ensure that the operator of a public passenger service by means of a bus is complying with the terms of the person's service contract. **Schedule 2.11 [94] and [96]** make consequential amendments.

**Schedule 2.11 [118]** enables both TfNSW and RMS to appoint authorised officers for enforcement and compliance purposes in respect of their respective functions. **Schedule 2.11 [119]** makes a consequential amendment.

**Schedule 2.11 [120]** provides for the notification by RMS of reviewable decisions made by RMS, in addition to TfNSW, as a result of the transfer of some TfNSW functions to RMS by the proposed Act.

**Schedule 2.11 [121]** provides for the review by the Administrative Decisions Tribunal of licence decisions by RMS, as a result of the transfer of the decision-making functions from TfNSW to RMS by the proposed Act.

**Schedule 2.11 [122]** enables RMS, rather than TfNSW, to enter into an arrangement to share or exchange information concerning safety and other matters with WorkCover, the Chief Investigator and any other person or body prescribed by regulations. **Schedule 2.11 [123]** makes a consequential amendment.

**Schedule 2.11 [124] and [125]** make RMS the body to which suspended or cancelled accreditations, authorities and licences, as well as number-plates for suspended or cancelled licences, must be returned. **Schedule 2.11 [126]** makes a consequential amendment.

**Schedule 2.11 [127]** confers on TfNSW, rather than RMS, the power to approve guidelines for the matters to be included in drug and alcohol programs for ferry services.

**Schedule 2.11 [131]** enables RMS, rather than TfNSW, to recover fees, charges or taxes payable under the *Passenger Transport Act 1990* or regulations made under that Act.

**Schedule 2.11 [132]** requires RMS, which will now have accreditation and licensing functions, to keep records related to accreditation, licences and authorities. **Schedule 2.11 [133] and [135]** make consequential amendments.

**Schedule 2.11 [134]** requires TfNSW to keep records relating to service contracts.

### **Investigation powers**

**Schedule 2.11 [79]** confers power on the Chief Investigator to investigate transport accidents or incidents involving railway operations (a *transport safety investigation*).

**Schedule 2.11 [81]** makes it clear that the Chief Investigator may conduct a transport safety investigation in the manner the Chief Investigator thinks fit and may also investigate all relevant preceding events and circumstances.

**Schedule 2.11 [82]** enables the Chief Investigator to discontinue investigations.

**Schedule 2.11 [83]** inserts a reference to a defined term.

**Schedule 2.11 [84]** requires a notice to attend and answer questions, or produce documents or other things, given by the Chief Investigator to specify a time and place for doing so and also enables the Chief Investigator to require evidence to be given on oath or affirmation.

**Schedule 2.11 [85]** provides for reports on transport safety investigations and enables the Chief Investigator to provide copies of draft reports or proposed recommendations to the Minister or other persons before finalising a report. **Schedule 2.11 [80], [89] and [128]** make consequential amendments.

**Schedule 2.11 [86]** extends the power of the Minister to constitute a Board of Inquiry to transport accidents or incidents involving railway operations.

**Schedule 2.11 [87]** enables the Chief Investigator to request the Minister to constitute a Board of Inquiry into a transport accident or incident involving railway operations.

**Schedule 2.11 [88]** provides that the Chief Investigator or a person who is or was a transport safety investigator is not obliged to comply with a subpoena or similar direction in civil proceedings if the Chief Investigator certifies that the person concerned is or was involved in a transport safety investigation. It also provides that a person who is or was a member of a Board of Inquiry or an authorised officer is not obliged to comply with a subpoena or similar direction in civil proceedings if the Minister certifies that the person concerned is or was involved in a transport safety inquiry.

**Schedule 2.11 [90]** extends to rail safety workers a scheme that enables employees to make confidential reports to the Chief Investigator about matters that may affect public transport safety.

**Schedule 2.11 [92]** makes an amendment consequential on the removal of the power of authorised officers to deal with transport safety investigations.

**Schedule 2.11 [98]** inserts a definition and creates a new Division as a result of the application of certain provisions to transport safety investigators. **Schedule 2.11 [101], [102], [103], [104], [111] and [113]** make consequential amendments.

**Schedule 2.11 [99]** enables a transport safety investigator to use reasonably necessary force when exercising functions.

**Schedule 2.11 [100]** requires a transport safety investigator to do as little damage as possible when exercising functions.

**Schedule 2.11 [105]** excludes police officers from the requirement to have a written authority to enter premises when exercising powers as authorised officers.

**Schedule 2.11 [106]–[110]** confer on transport safety investigators the power to obtain assistance and facilities from the occupier of premises in accordance with notice issued by the Chief Investigator.

**Schedule 2.11 [112]** provides that an occupier will be taken to have obstructed a transport safety inspector (and liable under the obstruction offence) if the person fails to comply with a requirement to provide assistance and facilities.

**Schedule 2.11 [115]** enables a transport safety investigator to apply for a search warrant to enter premises on which the investigator has reasonable grounds to believe there is evidence or a thing that is relevant to a transport safety investigation. **Schedule 2.11 [114], [116] and [117]** make consequential amendments.

**Schedule 2.11 [129]** extends offences relating to obstructing authorised officers to the same acts in relation to transport safety investigators. **Schedule 2.11 [130]** makes a consequential amendment.

**Schedule 2.11 [137]** provides for the following matters relating to transport safety investigators:

- (a) the appointment of transport safety investigators by the Chief Investigator,
- (b) requirements for carrying and producing identity cards and their return by former investigators,
- (c) powers to enter premises, including circumstances when a warrant is required,

- (d) powers on entry to premises,
- (e) the rights of occupiers to be present during a search,
- (f) power to secure accident sites,
- (g) power to stop and detain vehicles,
- (h) powers to retain seized documents and other seized things.

### **Savings and transitional provisions**

**Schedule 2.11 [136]** inserts savings and transitional provisions consequent on the enactment of the proposed Act.

### **Schedule 2.13 Transport Administration Act 1988 No 109**

#### **Changes in functions of transport authorities**

**Schedule 2.13 [1]** inserts a definition.

**Schedule 2.13 [2]** prevents TfNSW from being able to give a direction to RMS about a review by RMS of the likely impact of a direction by TfNSW to a transport authority on the safety management system of the transport authority.

**Schedule 2.13 [3]** confers on RMS, rather than the ITSr, the function of reviewing such a direction when it relates to bus services.

**Schedule 2.13 [6]** omits and inserts definitions as a consequence of the removal of functions from the ITSr.

**Schedule 2.13 [7]** limits the safety objectives of the ITSr to promoting the safety of railway operations. Currently, it extends to promoting the safety of transport services generally.

**Schedule 2.13 [8]** revises the principal functions of the ITSr to remove its strategic co-ordination functions and other functions relating to the safe operation of transport services generally, while retaining functions relating to the review and evaluation of and advising on the safety of railway operations. It also removes the function of accrediting rail transport operators (now to be covered by the *Rail Safety National Law (NSW)*). The ITSr will have functions relating to the review and evaluation of railway operations and functions conferred on it under that Law or by arrangement with the National Rail Safety Regulator under that Law. **Schedule 2.13 [9] and [14]** make consequential amendments.

**Schedule 2.13 [10]** limits the power of the ITSr to disclose or publish certain information to circumstances in which it is necessary or desirable for the safe operation of railway operations. Currently, this power extends in relation to the safe operation of transport services generally. **Schedule 2.13 [11]** makes a consequential amendment.

**Schedule 2.13 [16]** repeals provisions establishing the Independent Transport Safety Advisory Board and also repeals a spent review provision. **Schedule 2.13 [13] and [15]** make consequential amendments.



**Schedule 2.13 [18]** enables the Chief Investigator to investigate and advise the Minister on any matter related to the safe operation of transport services if requested to do so by the Minister.

**Schedule 2.13 [19]** makes it clear that it is not a function of the Chief Investigator to apportion blame for transport safety matters, to provide the means to determine liability in respect of such matters, to assist in court proceedings (unless required to do so under an Act) or to allow any adverse inference to be drawn from a person's involvement in a transport safety matter.

**Schedule 2.13 [23]** enables the Chief Investigator to enter into arrangements with the Australian Transport Safety Bureau to perform services in connection with the Bureau's functions, to exercise the Bureau's functions or to provide staff.

**Schedule 2.13 [24]** confers on RMS functions relating to monitoring the safe operation of bus services and compliance with recommendations arising out of inquiries. It also confers power to conduct safety audits and to disclose information if necessary for the safety of bus services.

**Schedule 2.13 [27]** removes the power of the ITSR to require an inquiry into and report on a bus or ferry accident.

**Schedule 2.13 [28]** extends the protection from personal liability for acts done in good faith under the *Passenger Transport Act 1990* and other Acts to Boards of Inquiry established under that Act.

**Schedule 2.13 [29]** confers on TfNSW functions currently exercised by the ITSR, including strategic co-ordination of safety regulation for transport authorities, reviewing and advising on safety matters and on the implementation of recommendations of reports on transport accidents or incidents and other matters.

**Schedule 2.13 [30]** omits provisions relating to the constitution and procedure of the Independent Transport Safety Advisory Board.

#### **Rail Safety National Law (NSW)**

**Schedule 2.13 [4], [5], [25], [26], [31] and [32]** update references to the *Rail Safety Act 2008* (which is to be repealed by the proposed Act) to references to the appropriate provisions of the *Rail Safety National Law (NSW)*.

**Schedule 2.13 [6]** inserts definitions as a result of the repeal of the *Rail Safety Act 2008*.

**Schedule 2.13 [12], [17] and [20]–[22]** omit references to the *Rail Safety Act 2008*.

**Schedule 2.13 [15]** omits a reference to the delegation of functions under the *Rail Safety Act 2008*.

#### **Savings and transitional provisions**

**Schedule 2.13 [33]** enables regulations containing provisions of a savings or transitional nature to be made consequent on the enactment of the proposed Act.

**Schedule 2.13 [34]** inserts savings and transitional provisions consequent on the enactment of the proposed Act.