



# Legislative Assembly

## Rail Safety Bill Hansard

### Extract

31/10/2002

#### Second Reading

**Mr SCULLY** (Smithfield—Minister for Transport, and Minister for Roads) [4.50 p.m.]: I move:

That this bill be now read a second time.

Rail service provision in New South Wales is a complex and difficult task. Last year we carried more than 276 million passenger journeys along 2,080 kilometres of track, stopping at 306 stations. Millions of passengers use the system and thousands work in the industry delivering services. Rail safety must deliver for these people. Recent safety incidents such as those at Hexham and Bargo are of concern to me and to many others. As an industry, we need to learn from these incidents and make every effort to ensure that they do not happen again. That is what this bill is about. Honourable members will recall that in early September I advised the House that I was tabling an exposure draft of the Rail Safety Bill to enable further public consultation. At that time I outlined how the bill achieved four major ends to implement the legislative changes agreed to by the Government in response to the McInerney inquiry: a new risk-management based accreditation model, increased penalties and powers for enforcing rail safety, a new multi-tiered statutory framework for rail investigations, and expanded drug and alcohol testing powers.

I am pleased to inform the House that the fundamental structure and intent of the legislation was well received and broadly supported by industry, unions and other stakeholders during consultation. I sought extensive consultation in recognition of the importance of this legislation and to ensure that all stakeholders have the opportunity to contribute to these key rail safety reforms. This latest round of consultation concludes the process that commenced in 1999 and has substantially followed the recommendations of the McInerney inquiry. The past eight weeks have demonstrated the strong public interest in the legislation. The Transport NSW web site was accessed more than 7,500 times and many submissions were received. Submissions were received from a range of stakeholders, including large and small private operators, infrastructure owners and unions. I particularly thank the Rail, Bus and Tram Union and the Australian Manufacturing Workers Union for pointing out some important issues from a work force perspective. I am pleased to inform the House that a number of changes they proposed are included in the revised bill.

The submissions reflected a depth of interest and understanding that is indicative of an industry that is evolving and is keen to engage with government. The level of consultation in negotiations that has occurred in the development of this bill reflects this engagement. I am also pleased to advise that, in the spirit of bipartisanship, the honourable member for Vaucluse twice accepted my offer to be briefed on the bill. I thank him for his interest in engaging in a detailed policy discourse on this important matter, and I am pleased to say that so far he has recognised the importance of pursuing new rail safety legislation in that same spirit of bipartisanship. I record today my appreciation of his role.

There has been fundamental reform in the rail industry over the past decade. The rail environment has become increasingly complex, with a range of operators undertaking fundamentally different rail tasks. The CityRail network is now one of the busiest in the world, with more than 900,000 passengers carried every weekday. Some 70 million tonnes of coal are moved each year on the Hunter Valley coal network. In addition, general freight traffic continues to grow. The number of operators continues to grow as the national freight market develops. The challenge is to develop a rail safety framework that delivers the safety outcomes expected by passengers and the community as a whole while enabling operators to run their businesses effectively. This bill is the final step in the establishment of that framework and enacts the Government's response to Justice McInerney's report.

Before I expand on the proposal in the bill I will outline the structural arrangements that have been implemented progressively over the past 10 months. In November 2001 I announced the establishment of the Rail Safety Regulator within the Department of Transport. The regulator is accountable through the director-general to the Minister for Transport. This model recognises that ultimately the public holds the Minister for Transport accountable for road safety. Central to the decision to locate the regulator in the department is the desire to avoid the creation of yet another rail agency. I have stated previously in this Chamber that rail institutional arrangements must deliver clear, transparent and unambiguous lines of accountability. The experience both in Australia and overseas supports this. The director-general, through the regulator, will be responsible for discharging the functions proposed in this bill. The new public reporting requirements will ensure accountability and promote vigilance and public scrutiny of both the activities of the regulator and the broader industry.

Accreditation will continue to be the prime means of industry regulation. However, the system has been strengthened, with an emphasis on risk management. This is consistent with Justice McInerney's recommendations. Each operator will submit a safety management plan that outlines how all the systems and processes—be they managerial, mechanical, electrical, training or otherwise—combine to manage safety. If the Rail Safety Regulator endorses this plan, the operator will be held accountable for its full implementation. This responsibility will be

enforceable. Failure to comply with an element of the plan can result in prosecution. This is a significant change from the current Act, which does not recognise sufficiently the role of managerial systems and training in safety management. If rail organisations are to build a safety culture effectively, that culture must start at the top. This bill recognises that rail safety is as much the responsibility of the board and senior management as it is trackside workers. All operators will be required to provide the regulator with an annual report on progress against their safety management plans.

Further, the regulator will have the power to set performance standards, which the operators must also report against. This information will form the basis of the annual industry safety report, which I will table in Parliament. The revised accreditation system will impose additional requirements on operators in response to particular industry or community concerns. For example, all passenger operators will be required to demonstrate how they will manage passenger security. There will also be a formal requirement for operators to manage their interfaces, both between operators and between an operator and the contractors. These interfaces must be documented and a management plan submitted to the regulator. This will ensure that there is effective management in circumstances where there are overlapping responsibilities and accountabilities. This was a key theme in Justice McInerney's report. Also recommended by Justice McInerney was the requirement that employers, not the regulator, must be responsible for issuing certificates of competency. This recognises that it is industry that is best placed to assess and certify an employee's competency—although, in response to work force concerns, the bill now includes audit powers for the regulator and sanctions if competency standards are not maintained appropriately.

I turn now to compliance and enforcement activities. Effective safety management requires a proactive approach. The bill includes powers to issue improvement and probation notices supported by an escalating system of penalties that can be applied if an operator fails to comply. It is also proposed to enable the regulator to downgrade an operator's accreditation in response to deteriorating safety standards and to require the accredited party to publish reasons for this. The ultimate sanction is removal of accreditation. Appeal rights to the Administrative Decisions Tribunal exist for the review of these sanctions.

Although these reforms promote corporate accountability consistent with occupational health and safety and environmental legislation, a strengthened and robust system of offences and penalties will also be introduced. Maximum penalties of up to \$825,000 for corporations and, for individuals, \$82,000 with two years in prison will apply in cases of failure to maintain safety systems. Senior managers will no longer be able to plead ignorance when defending themselves against charges. This is about driving safety outcomes at all levels of rail organisations.

The bill proposes significant reforms to the management of rail safety investigations. These changes are in response both to Justice McInerney's recommendations and to reforms occurring at a national level. As I previously stated, the rail industry is becoming increasingly national. The Commonwealth Government is currently enacting legislation which will enable the Australian Transport Safety Bureau [ATSB] to undertake investigations into any accidents on the interstate network. In New South Wales, this is the network from Sydney north to the Queensland border, south to the Victorian border and west to Broken Hill. At this point, I want to say that I welcome the leadership shown by my Commonwealth colleague John Anderson in progressing this legislation. I can assure him that New South Wales will work with the ATSB to manage the interface between our two investigative regimes.

This bill details a multi-tiered investigation system, which provides for independent investigation of all major rail accidents and interfaces with the new Commonwealth legislation. There will be an appropriate level of investigation for each level of seriousness of incident. The Government has the power to appoint a royal commission or judicial special commission of inquiry in the most serious of cases, as was the case in the Glenbrook tragedy. For most major incidents on interstate track, the Commonwealth ATSB will have the first right of refusal to conduct an investigation. If that body elects not to investigate, or if a major accident occurs outside the interstate network, an independent Rail Accident Investigation Panel will investigate the accident or incident. For less serious incidents, the Rail Safety Regulator will have the power to investigate. For the least serious incidents, an operator will conduct an internal review. To preserve the panel's independence, the Governor will appoint the chair for a three-year term. While not wanting to have a proliferation of rail agencies, a statutory independent panel chair is vital to ensuring continued community confidence in the rail system.

For each accident investigation the chair will be provided with the specialist expertise he or she requires. The ATSB may also be asked to join the panel. The chair will have a self-referral power to investigate all major rail accidents, which are defined in the bill using wording which captures the Australian Standard definition of a major incident. The Minister or director-general may also refer investigations to the panel. To preserve the integrity of the panel, all investigations will be funded directly by Treasury. The panel will be independent not only of the rail operators, but also the Rail Safety Regulator. This will enable the activities of the regulator also to be reviewed and for recommendations to be made. This provides an effective check on the regulator to ensure that all statutory responsibilities are being effectively undertaken.

Reports of the panel will be tabled in Parliament, and also published on both the parliamentary web site and the regulator's web site. Investigations undertaken by the ATSB will be published on its web site. Reports of investigations by the Rail Safety Regulator will be published on the regulator's web site. The existing provisions which protect witnesses from self-incrimination will be retained. The primary focus of rail investigations is to identify causes and to address management and system problems, not to apportion blame to frontline workers. However, in undertaking investigations both the panel and the regulator will have expanded powers to compel witnesses to attend, and to demand production of documents. They will also have powers of entry to railway property or places where rail safety documents are stored. There will also be penalties for false and misleading statements. Rail safety workers have a critical role in identifying safety problems. This bill enforces an employee's right to report safety

problems directly to the regulator, and provides protection for employees against victimisation for reporting safety problems.

I now turn to the issue of fatigue management. I must acknowledge the advocacy of the Rail, Bus and Tram Union [RBTU], which has argued that protecting its members from fatigue is vital to the safe operation of the railways. The RBTU requested that the Government protect commuters, staff and the integrity of railway infrastructure by legislating fatigue management standards. I agreed that fatigue management was a key concern for all transport operators and staff, particularly in an industry that is undergoing continual change and facing ever-increasing economic demands. We need to be proactive in the management of our workers health. As such, the bill sets out maximum train driver working hours. While the hours of duty and rest model will not by itself ensure that train crew do not become fatigued, it does address the main risk factors associated with fatigue. I understand that some operators are active in the management of fatigue amongst their employees, and not only are dealing with hours of duty and rest but also are looking at issues such as time of day when duty and rest are undertaken and home life issues. I support and encourage those actions. I encourage all operators to surpass the standards provided for the bill.

Justice McInerney noted with concern that the current Rail Safety Act does not provide for random drug and alcohol testing of employees while at work. While he indicated that there was no evidence of any serious problem in the rail industry, there is a strong public expectation that our public transport employees will not be effected by alcohol or drugs while working. The bill provides for the introduction of random alcohol and drug testing for safety critical workers across the rail industry. To complement this reform and to ensure consistency across the transport industry, the Passenger Transport Act will also be amended to provide for the testing of operators and employees of both public and private sector bus and ferry passenger services, and other ferry services such as charter services, long-distance service and tourist services.

This testing program is aimed at improving the health and safety of employees at work and the safety of the general community. In recognition of the fact that drug and alcohol problems require counselling and support—as well as disciplinary action where necessary—I welcomed suggestions from the Australian Manufacturing Workers Union [AMWU] that fair procedures and education and assistance for railway employees be a requirement of guidelines for testing. This legislation is about encouraging employees to take responsibility for their behavior and health, not about trapping those employees who have a genuine alcohol or drug problem. I know in State Rail there is a strong commitment to assisting employees who voluntarily come forward and advise that they have a problem. These employees benefit from comprehensive and on-going education programs and assistance in terms of specialist counselling and rehabilitation. Nevertheless, I do not resile from the need to introduce random testing.

The provisions of the bill are similar to those adopted by the NSW Police for its officers. The bill sets out the power to undertake testing. The regulations, which will be developed over the next few months, will set out testing methodologies, management of testing and security issues. My department will work closely with all stakeholders when developing these regulations to ensure that they are workable and reflect the needs of workers and the rail, bus and ferry industries. As I said at the outset, this bill is about delivering safety outcomes for our passengers, employees and the transport industry. I take this opportunity to thank Justice McInerney for his work on the inquiry following the tragedy of Glenbrook. His recommendations, insights and observations have significantly informed this legislation. The bill will drive the future of rail safety in New South Wales, and while we still have much work to do to continue to improve our safety, this legislation provides an effective framework to guide that work. I commend the bill to the House.