RAIL SAFETY BILL 2008

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Bill introduced on motion by Mr David Campbell.

Agreement in Principle

Mr DAVID CAMPBELL (Keira—Minister for Transport, and Minister for the Illawarra) [5.08 p.m.]: I move:

That this bill be now agreed to in principle.

The Rail Safety Bill 2008 implements national model rail safety legislation developed from an intergovernmental agreement for regulatory and operational reform in road, rail and intermodal transport. The intergovernmental agreement, to which New South Wales is a signatory, tasked the National Transport Commission with developing reforms to improve and strengthen the co-regulatory system for rail safety across Australia. The bill builds on significant rail safety reforms that this Government has introduced in New South Wales since 2002 in response to the special commissions of inquiry into the Glenbrook and Waterfall rail accidents.

The Council of Australian Governments has also committed to this reform priority to harmonise rail safety regulation to achieve a nationally consistent approach to interstate rail safety regulation. The New South Wales Government has committed to do this by 31 December 2008. The nationally consistent approach to rail safety regulation will mean reduced regulatory burden for the rail industry. Through participation in the national rail safety reform process, the New South Wales Government has been able to shape the national processes and to secure improved safety outcomes for New South Wales. The bill also represents an important step in cooperative federalism whereby jurisdictions are able to work together to reduce regulatory inefficiency while improving rail safety outcomes, irrespective of State borders.

The New South Wales Independent Transport Safety and Reliability Regulator [ITSRR] has taken an active role in the national reform process, consistent with recommendation 120 of the Waterfall inquiry. The ITSRR's involvement has ensured that any proposals lead to improved safety management, and are consistent with safety reforms already adopted in recent years to strengthen the regulation of rail safety in New South Wales. The ITSRR's chief executive has chaired a national steering committee, comprising senior transport officials and rail regulators from the Commonwealth, the States and the Northern Territory, as well as senior representatives of the Australasian Railway Association and the Rail, Tram and Bus Union [RTBU], charged with providing policy advice to the National Transport Commission in relation to the development of the rail safety reforms.

Through participation in the national reform process, the New South Wales Government has been able to ensure that the more stringent safety requirements promoted by the special commission of inquiry into the Waterfall rail accident are extended nationally, as well as to secure improved safety outcomes for New South Wales. I am pleased to inform the House that the adoption of national model rail safety legislation will enable all jurisdictions to work together to improve the standard of safety on railways throughout the country. There has been significant consultation with the RBTU and Unions NSW, and those on this side of the House believe that unions are instrumental in providing important advice on safety issues. That is why, I am pleased to inform the House, this bill has the support of both the RBTU and Unions NSW.

Turning now to the provisions of the bill, I advise the House that the main changes introduced by the Rail Safety Bill relate to channelling the requirements of accreditation to rail infrastructure managers and rolling stock operators, who are defined as rail transport operators, and introducing general duties to ensure public safety in relation to railway operations. The rationale for limiting accreditation to infrastructure managers and rolling stock operators is to funnel accountabilities and responsibilities for safety back to the accredited party. This approach is consistent with the principle that safety cannot be contracted out. In practice, this will mean that infrastructure managers and rolling stock operators need to be able to demonstrate that their contractors' practices fit with, and form part of, their safety management systems. It will also be an offence for a contractor not to comply with the safety management system of the rail transport operator.

The Rail Safety Bill also provides new criteria under which applications for accreditation will be considered. An application for accreditation will not be granted unless, among other requirements, the ITSRR is satisfied that the applicant has the competence and capacity to manage risks to safety associated with the railway operations and has the competency and capacity to implement the proposed safety management system. The remaining process for granting accreditation is much the same as under the current Rail Safety Bill. Accreditation may be granted subject to conditions or restrictions imposed by the ITSRR, and other conditions and restrictions may be imposed by regulations. The ITSRR may also revoke or suspend accreditation with reason.

Importantly, the bill provides a mechanism to achieve nationally consistent outcomes in decisions on applications for accreditation and related processes, where the applicant operates, or is applying to operate, in two or more jurisdictions. The rail safety regulators in each jurisdiction must consult with each other prior to determine the application, with the aim of coordinating decision making between jurisdictions. Rail safety regulators must also take into account guidelines issued for the purposes of this provision. These guidelines are intended to facilitate nationally consistent outcomes in decisions, and to improve the transparency and timeliness of decision making in relation to such applications. If the rail safety regulator does not act consistently with the guidelines, the rail safety regulator must provide the applicant with reasons for not doing so.

The introduction of general duties in the rail industry, similar to general duties provided in the Occupational Health and Safety Act, will provide a positive duty on those carrying out railway operations to ensure, so far as is reasonably practicable, the safety of rail operations. It will be an offence to fail to discharge that duty. The extension of general duties to cover the providers of rail infrastructure and rolling stock, such as those who design, commission, manufacturer, supply, install or erect rail infrastructure or rolling stock, will ensure sufficient powers and safeguards to regulate all parties in the supply chain. Duties of care will also apply to rail safety workers carrying out rail safety work. The inclusion of general duties will also complement and clarify the function of the system of accreditation in the rail industry by making it clear that gaining accreditation is a threshold requirement only, and not a certification of safety.

The granting of accreditation simply indicates that, in the opinion of the rail safety regulator, the operator has demonstrated to the ITSRR the competency and capacity to manage risks associated with those railway operations. It will also mean that the ITSRR will be able to enforce the general duty to ensure safety in relation to railway operations, and not just the obligations to develop and implement documented safety and risk management systems. General duties will further provide the necessary regulatory reach for the ITSRR in relation to other persons who carry out railway operations, such as those who may not otherwise be required to be accredited. To ensure national consistency, the Rail Safety Bill will introduce complementary duties of safety in relation to railway operations based on the national model rail safety legislation. That is, the general duties of safety in the Rail Safety Bill will have the element of "reasonable practicability" in the body of the general duty offence.

Consistent with the national model rail safety law, clause 6 of the New South Wales bill will include guidance on what is required by a duty holder to ensure safety so far as is reasonably practicable. Under the New South Wales bill it will be for the defendant to prove, on the civil standard, that they did everything reasonably practicable in eliminating or minimising risks to the safety of their railway operations. The New South Wales occupational health and safety law will continue to apply to New South Wales rail operators, including in relation to their duties around workplace safety. However, where there is any overlap or conflict between the occupational health and safety provisions and the Rail Safety provisions the occupational health and safety legislation will apply. The ITSRR and WorkCover will continue to have arrangements in place to ensure that the most appropriate agency leads any investigation into breaches of safety obligations that overlap occupational health and safety legislation.

I now turn to the provisions of the Rail Safety Bill that set out requirements for rail transport operators to have and review safety management systems. These provisions are largely consistent with current requirements in New South Wales for a safety management system. In implementing a safety management system, rail transport operators will need to comply with requirements to be prescribed in regulations, to identify and assess risks to safety arising from railway operations, and to specify controls and monitor procedures relating to those risks.

The safety management system is also to include a number of other important matters, including interface agreements to manage risks to safety between two or more rail transport operators and between rail infrastructure managers and roads authorities, a security plan, an emergency plan, a health and fitness management program, a drug and alcohol program and a fatigue management program. The bill provides for new obligations on rail infrastructure managers and roads authorities to jointly manage risks arising from rail or road crossings, such as level crossings, road over rail bridges and rail over road bridges. This obligation extends the current obligation on railway operators to enter into interface agreements for managing risks to safety with other railway operators. A transitional period will apply to these requirements.

To address concerns raised by councils during consultation the bill clarifies that the protection for roads authorities provided by the Civil Liability Act 2002 remains. It is important to note that, unlike the National Model Rail Safety Legislation, New South Wales intends to maintain regulations providing for the random testing of a person who is carrying out rail safety work for the presence of drugs or alcohol. New South Wales also intends to maintain existing fatigue management provisions prescribing the outer hours of work for train drivers in a schedule to the Act. The Government has a longstanding policy in relation to drug and alcohol testing and fatigue management in the rail industry and does not intend to impose reduced rail safety outcomes in New South Wales by removing these requirements.

Before establishing, reviewing or varying a safety management system, a rail transport operator is required to consult with a range of persons likely to be affected by the safety management system, including trade unions, or

other employee organisations, representing any such person. A rail transport operator is also required to ensure that each rail safety worker who carries out rail safety work has the competence to do so and to keep records of competence. In addition, the bill sets out procedures for assessing the competence of rail safety workers. Rail transport operators will be required to provide rail safety workers with a form of identification sufficient to enable the worker's competence and training to be checked by a rail safety officer. It will be an offence for a worker, without reasonable excuse, not to produce the form of identification on request by a rail safety officer.

Turning now to the issue of private sidings, the bill exempts rail infrastructure managers of private sidings from accreditation, the requirements of a safety management system, unless required to comply by way of regulation, and certain notification requirements. However, managers of private sidings will be required to register the private siding with the Independent Transport Safety and Reliability Regulator [ITSRR] and to comply with any conditions imposed by ITSRR, as well as to have systems and processes to meet the general safety duty. As there is currently no requirement in New South Wales to register private sidings, it is intended to provide a two-year transitional period in which to manage the implementation of this provision.

The bill builds on the range of compliance and enforcement powers currently included in the Rail Safety Act, such as the power to issue improvement and prohibition notices or to bring prosecutions for contraventions of the Act. For example, the proposed sections 141 and 142 set out a scheme whereby ITSRR may accept an undertaking from the alleged offender as an alternative to prosecution. Such undertakings, if not complied with, are enforceable by a court of law. Similarly, the bill includes additional court-based sanctions. For instance, it will be possible for a court to make a commercial benefit order requiring the person to pay, as a fine, an amount not exceeding three times the gross commercial benefit that the person received from the commission of the offence.

For systematic or persistent offenders against rail safety laws, a court will be able to make a supervisory intervention order requiring the person to take specified actions for a specified period not exceeding one year. The specified actions a court may ask a person to undertake include actions to improve compliance with rail safety laws, to carry out specified practices and to appoint persons with specific compliance responsibilities. If a supervisory intervention order is not appropriate the bill provides that a court may make an exclusion order prohibiting a systematic or persistent offender from carrying out particular or all railway operations, or from being involved in the management of a corporation involved in managing rail infrastructure or operating rolling stock. It will be an offence to contravene such orders.

These provisions will provide the ITSRR with a useful tool with which to remove recalcitrant operators from the rail industry, and thus in conjunction with general duties, will provide the regulatory reach required to ensure all persons carrying out railway operations, whether or not they are accredited, will be subject to sanctions should they operate unsafely. These provisions will further improve the hierarchy of sanctions and enforcement powers currently available to the ITSRR, providing not only improved compliance incentives to the rail industry but also greater regulatory effectiveness.

Proceedings for offences under the bill are to be brought in a Local Court constituted by an industrial magistrate and the Industrial Relations Commission in Court Session. This court currently has jurisdiction to hear matters arising under the Occupational Health and Safety Act. The referral of proceedings to this jurisdiction will ensure consistent judicial treatment of safety matters in the railway context. Similarly, the bill provides for appeals against the ITSRR's decision to review an improvement notice or prohibition notice to be made to a local court constituted by an industrial magistrate.

The current provisions of the Rail Safety Act relating to the functions of the chief investigator of the Office of Transport Safety Investigation, including provisions directed at investigations and rail safety inquiries will be retained in this bill. I advise honourable members that National Model Rail Safety Regulations have also been developed. The model regulations address a range of matters, including the accreditation requirements and the requirements for a safety management system. This will mean that all existing regulations will need to be remade consistent with the national model regulations. The Government has already commenced the task by releasing late last year draft New South Wales rail safety regulations for public consultation.

As I said at the outset, the bill builds on rail safety reforms that the Government has introduced since 2002. Through participation in the national rail safety reform process the New South Wales Government has been able to shape the national processes and to secure improved safety outcomes for New South Wales. The bill also represents an important step in cooperative federalism whereby jurisdictions are able to work together to improve rail safety outcomes irrespective of State borders. I commend the bill to the House.