



# NSW Legislative Assembly Hansard

## Transport Legislation Amendment (Implementation of Waterfall Rail Inquiry Recommendations) Bill

Extract from NSW Legislative Assembly Hansard and Papers Thursday 24 February 2005.

### Second Reading

**Mr JOHN BROGDEN** (Pittwater—Leader of the Opposition) [10.15 a.m.]: I move:

That this bill be now read a second time.

On 31 January 2003 seven people died as a result of the incompetence and negligence of the Carr Labor Government's administration of the CityRail network. Those seven people were Mark Hudson, John Raymond Burt, Marie Genevieve Goder, Andrew Ludmon, James Ritchie, Yi Zhang and Herman Zeides, who, as we know, was the driver of the train. It is critical to understand that the Government has failed to put in place the independent recommendations of Justice McInerney that were tabled last month.

Despite having Justice McInerney conduct the inquiry into the accident at Waterfall in a very detailed manner and make his recommendations, the Carr Government has failed to act. Its response has been pathetic. Justice McInerney made 127 solid recommendations to improve the safety of the CityRail network for the nearly one million people who use the service every day, and Bob Carr chose to ignore some of those recommendations—he rejected five recommendations and he put another 14 of them on the backburner. The reality is that this Government is not committed to rail safety. The reality is that this Premier is not committed to rail safety.

The Government's only option is to fully implement in a timely manner every single recommendation made by Justice McInerney. If the Government will not do it the Opposition will. Today we are putting before the Parliament legislation that requires the Transport Legislation Act in this State to be amended in order to implement within a 12-month period each of the 127 recommendations of Justice McInerney's inquiry into the Waterfall rail disaster. The best this Government can do is respond over a three-year period which, if it can be trusted to adhere to that timeframe, means that five years after seven people died at Waterfall this Government will have implemented only 114 of 127 recommendations. That is simply not good enough.

This Government is refusing to respond to the clarion call of Justice Peter McInerney to improve rail safety to give the commuters of Sydney and New South Wales the safest rail network in the world. As the House knows, Justice McInerney was put in charge of the inquiry into the Glenbrook rail disaster where another seven people died. I want to go through some of the critical things that Justice McInerney said in relation to the Glenbrook and Waterfall matters. In his final report on the Waterfall inquiry he said:

The first such inquiry related to the rail accident at Glenbrook and I made many recommendations in my final report into that accident—many of which were not implemented by the time of the Waterfall accident and remain unimplemented.

The final report continues:

Had these recommendations in the Glenbrook Inquiry Final Report been implemented, NSW would be at the forefront of rail accident and incident investigation.

In an article in the *Daily Telegraph* of 28 January Justice McInerney went on to say:

This is the second occasion in four years in which, after conducting a Special Commission of Inquiry, I have conducted a coroner's inquest in relation to the death of seven passengers in respect of catastrophic rail accidents. The first such inquiry related to the rail accident at Glenbrook and I made many recommendations in my final report into that accident—many of which were not implemented by the time of the Waterfall accident and which remained unimplemented.

Justice McInerney is saying that if the Government had put in place all of his recommendations from the Glenbrook inquiry the chances are that the Waterfall accident may never have happened. He is saying that the Government's refusal to take rail safety seriously led, in part, to the disaster at Waterfall. He is saying that the seven people who died in the Glenbrook rail accident meant nothing to the Government—it allowed another seven people to die in the Waterfall rail accident. Therefore the House must treat seriously each and every one of the 127 recommendations of Justice McInerney. Yesterday and the day before we saw an appalling, heartless performance by the Premier. He criticised the Opposition for supporting Justice McInerney's recommendations and argued that some of them cost too much.

Obviously, in New South Wales under the Premier, the cost of rail safety is too expensive. The Liberal-Nationals Coalition in New South Wales believes in putting safety first and that saving people's lives is worth every cent it might cost. We want the 4.7 million people in this city to know—and nearly a million people catch trains every day—that the rail system will be safe. But under the Premier it really does not matter whether the recommendations from the final report of the Glenbrook inquiry or the Waterfall inquiry are implemented. The Premier does not care. The challenge is whether his backbenchers care that under this Government a fully independent rail safety watchdog will not be appointed.

In an institutional sense Justice McInerney made a critical recommendation that a fully independent rail safety regulator be

appointed. The Government's press release indicates that it has rejected that recommendation. Instead the rail safety regulator will be employed by the Minister for Transport, on contract to him, answerable to him and reporting to him. The only difference is that the report will come to the Parliament on a quarterly basis. Ultimately the rail safety regulator will owe his job to the Minister for Transport. How can we achieve genuine independence if the rail safety regulator is not prepared to upset the Minister for fear of not having his contract renewed? But that is what will happen.

In contrast, the Independent Commission Against Corruption is an independent body. Yes, it is appointed by the Government of the day and overseen by a parliamentary committee, but it is answerable to the Parliament not the Premier. The Commissioner of the Independent Commission Against Corruption is appointed for one term only. The same applies to the Auditor-General and the Ombudsman. I wish I could say that the same applies to the Police Integrity Commission [PIC] but the Government has indicated that the PIC has a close relationship with the Government. We want more from the Government: we want an independent rail safety regulator. It is not good enough for the regulator and the Minister to have a cosy relationship.

I do not trust this Government. It will move heaven and earth to cover up on rail accidents. We know that prior to the election the former Minister, Carl Scully, covered up the fact that the Menangle railway bridge should have been closed because it was not safe. He kept that quiet because, right after the Waterfall accident, he could not sustain another potential rail crisis. He took part in a cover-up and directed a cover-up of all the information relating to the Menangle railway bridge so that he was not subjected to further criticism. The former Minister rang the editors around town, the chiefs of staff of the newsrooms, and begged them to go soft on him. He used the line, "Look, seven people died in a rail accident, but seven people die on the roads of this State every week." The Government does not care about rail safety.

The other recommendations are considerable, and involve expenditure of funds to ensure that signalling is up to date. But the Government's failure to implement all of the recommendations is unacceptable. What galls me the most is that the Minister for Transport, John Watkins, issued a media release stating that an independent rail safety regulator would be appointed when that is simply not the case: an independent rail safety regulator will not be appointed. On Tuesday, the day the Government responded to the Justice McInerney's report, I met with Christine Ludmon, the widow of Andrew Ludmon who died in the Waterfall accident. She is the mother of three young boys. Most traumatically for her no doubt, and for her family, is the fact that when her husband died at Waterfall she was three weeks pregnant with their third son. He did not know about the pregnancy. The child will never see his father. I will read a letter she sent to the Premier dated 8 February and which she copied to me, a letter to which the Premier still has not replied but to which we replied directly. The letter states:

My name is Christine Ludmon and I am the widow of Andrew Ludmon who was killed in the Waterfall Rail Disaster. I know we have had correspondence in the past and I thank you for your attention on this matter.

I am writing to you today once again out of frustration and anger relating to the recent release of the final report and your government's lack of commitment to implement Justice McInerney's recommendations.

My husband was killed in my opinion by your government's total incompetence by allowing a system and a culture to exist that firstly permitted a person in that medical condition to be driving a train, a guide to be asleep on the job and most importantly, people to be in a positions where they can hold that much power to choose to ignore major safety warnings. People within State Rail knew about the problem with the deadman's brake 8 years before the accident happened, but chose to do nothing about it.

Getting on a train in NSW is like playing Russian Roulette, and unfortunately for my husband, he paid the ultimate price. If you would have implemented the recommendations from Glenbrook, my husband would have been here to see his sons start school, start soccer which he loved so much and even see one of them born!

It is not good enough to say you will "consider" the recommendations. If my incompetence killed 6 innocent people, I would have been locked up and the key thrown away.

I am strongly committed to ensuring that the problems are fixed and to doing my bit in the hope that no other family has to experience what I am. The way certain people within State Rail and their respective legal team have treated both myself and my family in relation to this matter is absolutely disgusting. I not only had to bring a child into the world on my own, but have been left to raise 3 small boys, 6 and under, and to deal with the full ramifications of this loss on my own. Anyone would think that I caused the accident with the things they expect me to deal with.

I personally would like to see you and your government publicly commit to implementing all 127 of Justice McInerney's recommendations within an acceptable time period which should be specified and monitored by an authority independent of the State Government. Built into this plan should be key responsibilities for specified individuals, including yourself, and appropriate consequences if responsibilities are not performed.

I am extremely angry to think that my husband died at the hands of "your" government and think the least you can do is firstly accept responsibility for what happened secondly, commit to implementing all of Justice McInerney's recommendations and thirdly, address the inappropriate manner in which compensation claims are being dealt with in regards to this accident.

I cannot put it more eloquently than Christine Ludmon. I cannot imagine how difficult her life has been. I can say that she is a very brave person who, with the love of her family and friends, has coped exceptionally well with an enormous tragedy. She is a very intelligent woman and she is a very forceful woman. If the Premier and the Labor Party in New South Wales are willing to refuse her plea that they do not continue to ignore her husband's memory and that of the six other people who

died in the Waterfall accident and the seven people who died in the Glenbrook accident by their refusal to implement fully the 127 recommendations of Justice McInerney, then let it be on their heads.

A three-year time frame to implement 90 per cent of the recommendations is not good enough. The rejection of five recommendations is not good enough. Putting the other recommendations on the backburner is not good enough. The lives of the seven people who died at Waterfall and the seven people who died at Glenbrook mean nothing to Bob Carr and they mean nothing to the Labor Party in New South Wales, given their refusal to implement every recommendation of Justice McInerney. We thank God that Justice McInerney was tough on the Government. We are grateful to him and his team, who worked so hard to make sure this matter was properly dealt with. But his work and the memory of those who died are worthless unless the Parliament supports this legislation to require a 12-month time frame to implement all the recommendations of the Justice McInerney inquiry, the Waterfall inquiry. Be it on this Government's head if anyone else dies in the rail system because of its failure to implement these recommendations