



## NSW Legislative Council Hansard

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

Extract from NSW Legislative Council Hansard and Papers Wednesday 22 June 2005.

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#### Second Reading

**The Hon. HENRY TSANG** (Parliamentary Secretary) [4.08 p.m.]: I move:

That this bill be now read a second time.

I seek leave to incorporate the second reading speech in *Hansard*.

#### Leave granted.

Today I bring forth the Transport Legislation Amendment (Waterfall Inquiry Recommendations) Bill 2005.

One of the first of the major challenges the Minister faced coming into the Transport portfolio was responding to the Final Report of the Special Commission of Inquiry into the Waterfall rail accident.

As Members are aware the Government provided a detailed response to Justice McInerney's report on the 22nd of February.

Of the 127 recommendations in the report, 114 were supported by the Government, 8 required further detailed review and 5 were not supported.

The five recommendations not supported concern the regulatory framework around the Independent Transport Safety and Reliability Regulator (ITSRR) and do not affect the addition of any recommended new safety systems.

The Government's response required some legislative amendments. These are contained in this bill.

This bill is another step in the implementation of the Government's response to the Waterfall rail accident and is part of our commitment to the victims and their families, and the people of NSW to deliver a safer and more reliable rail system.

The bill also makes changes identified in the legislative review of the rail safety legislation enacted by the Government in 2003. This review was tabled in another place on Tuesday the 24th of May.

In November 2003 the Government introduced legislative reforms which included the establishment of ITSRR—the Independent Transport Safety and Reliability Regulator.

ITSRR was established to regulate the safety of rail operators and provide the Government with independent advice in relation to the reliability and safety performance of public passenger transport services.

At that time, however, the Government was conscious of concerns that these reforms may pre-empt the Final Report of the Waterfall Special Commission of Inquiry.

Therefore the Government committed to reviewing the 2003 safety legislation to consider the final report handed down by the Justice McInerney in January this year. This has been done.

The Legislative Review suggests a number of legislative changes to implement the Government's response to Waterfall.

The Transport Legislation Amendment (Waterfall Rail Inquiry Recommendations) Bill 2005 will achieve a number of outcomes intended by Justice McInerney's final report.

The bill will remove the Office of Transport Safety Investigation (OTSI) from ITSRR and establish a new, statutory position of the OTSI Chief Investigator who will be independent from ITSRR.

Consistent with recommendation 79 of the Special Commission of Inquiry, the Chief Investigator will be given powers to initiate investigations into transport accidents or incidents.

The Chief Investigator will be responsible for "just culture" type investigations of transport safety accidents or incidents. That means investigations are conducted for the purpose of advancing transportation safety – not to

assign fault or determine civil or criminal liability. The Chief Investigator will report directly to the Minister for Transport.

The Chief Investigator will not be subject to Ministerial direction and control in his investigative and reporting functions.

The Chief Investigator will deliver his reports directly to the Minister consistent with recommendation 81 of the Commission's Final Report. These investigation reports will continue to be tabled in Parliament.

Consistent with recommendation 80 the bill provides for information sharing agreements to be entered into between the Chief Investigator and ITSRR to ensure that any findings made by the OTSI can be quickly reported to the ITSRR.

The bill provides scope for officers from the federal agency, the Australian Transport Safety Bureau —ATSB— to be involved in the investigation of rail accidents or incidents in NSW.

The bill also includes new provisions designed to reinforce the independence of ITSRR.

ITSRR will no longer be required to seek the advice of the Advisory Board before it may exercise certain statutory functions. The bill removes the management role of the Chair of the Advisory Board in relation to accident investigations.

The Government did not support the recommendations for the complete abolishment of the Advisory Board. Instead the Board will be retained as a valuable source of expert advice to both the ITSRR and the Minister.

ITSRR now has greater autonomy in the exercise of its functions, but can at the same time seek the advice from the experts on the Advisory Board.

The Government did not accept the Waterfall recommendation that ITSRR be removed from the transport portfolio. As the Minister for Transport is responsible for the safety and reliability of public transport in NSW and it is entirely appropriate that the Regulator should report to me.

ITSRR makes a substantial contribution to the portfolio in terms of overall transport safety and in particular it allows for better co-ordination of safety policy across all other transport modes such as buses and ferries.

The Regulator reporting to the portfolio Minister is also consistent with international practice in jurisdictions such as the United Kingdom and Canada.

A number of consequential amendments have also been included to support the above initiatives.

The bill sets out much clearer processes for the conduct of investigations by the Chief Investigator and inquiries. The separation of OTSI and ITSRR necessitated a number of changes to the existing provisions relating to inquiries.

The Legislative review defines an " investigation" as the gathering of physical, scientific and other evidence outlining the sequence of events leading up to and including an accident.

An "inquiry" is described as the conduct of formal process to obtain witness inputs, documentary evidence and other relevant materials and may consider evidentiary material gathered by an investigative team. An inquiry will culminate in a report on the outcomes to the Government.

The inquiry provisions are not new—both the Passenger Transport Act and the Rail Safety Act have had provisions for inquiries in relation to transport safety accidents or incidents.

However some structural changes were required to ensure these provisions work better with the new institutional arrangements for OTSI's transport accident investigations.

The bill makes it clear that inquiries are a part of the investigative process, but are not always required.

In most cases, transport accidents and incidents will only require investigation and report by the Chief Investigator without the need for the investigation to be elevated to the inquiry level.

The Government will also retain the option of holding a Special Commission of Inquiry or Royal Commission in relation to any transport accident.

The new arrangements for transport safety investigations and the functions of the Chair of the Advisory Board mean that new " triggers" for the calling of an inquiry are required.

This function needs to be separate to ITSRR's compliance and enforcement role and the Chair's investigation functions which have been transferred to the Chief Investigator of OTSI.

The function also needs to be separated from the Chief Investigator, as his investigation may form part of the overall evidence to be submitted to any particular inquiry much like a police investigation may constitute evidence at any Coronial inquiry.

Therefore the Minister will have the responsibility for calling inquiries. This is consistent with the inquiry model for mine safety investigations where the portfolio Minister can establish an inquiry into any mining accident.

The Chief Investigator may recommend that an inquiry should be held. If there was ever a case where the Minister of the day did not agree, then the reasons supporting that decision must be tabled in Parliament. This is a further protection of the Independence of OTSI.

The bill also includes a number of additional regulation making powers in the Rail Safety Act and provisions clarifying the obligations of rail operators with respect to their safety management systems.

Commissioner McInerney made specific recommendations concerning the need for regulations specifying requirements for safety managements systems (Recommendation 121). The amendments ensure that these requirements can be prescribed and if necessary supported by relevant guidelines made by ITSRR.

These new regulation powers will ensure that ITSRR can prescribe standards applying to such matters as train communications, rolling stock, passenger security and safety and rail infrastructure. ITSRR will be able to provide more explicit guidance for industry as to expectations of safety performance.

Justice McInerney recommended that changes be made regarding rolling stock, data loggers and train communications. This bill provides a better basis for such regulations to be made and supported by prescribed conditions of accreditation.

The bill also makes a number of other amendments as a consequence of the Legislative Review.

These amendments clarify the regulatory responsibility for safety in other transport modes and make some amendments in relation to the membership and functions of the Transport Advisory Group (the TAG) established under the Transport Administration Act.

The current requirements provide for the TAG to be chaired by the Chair of the ITSRR Advisory Board. Given that the Chair no longer has a separate statutory role other than being part of the Advisory Board, this is no longer appropriate.

The bill provides for the TAG be chaired by a person appointed by the Director-General of the Ministry of Transport. This is consistent with the statutory role of the TAG in relation to the setting of performance standards that transport operators are required to comply with.

Reporting requirements have also been modified. The TAG will report to the Director-General of the Ministry of Transport. This is appropriate given the TAG's advisory role in relation to setting of performance standards for contracted transport service providers.

The bill has been drafted with key input from ITSRR and consultation with industry and employees representatives.

The amendments proposed in the bill represent a more workable framework for the delivery of the key safety recommendations of the Waterfall Commission of Inquiry.

I commend the bill to the House.