

Transport Legislation Amendment (Waterfall Rail Inquiry Recommendations) Bill 2005

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

Overview of Bill

The objects of this Bill are as follows:

- (a) to establish an independent office of Chief Investigator of the Office of Transport Safety Investigations (*the Chief Investigator*) to investigate transport accidents and incidents and to enable the Minister to establish Boards of Inquiry,
- (b) to clarify provisions of the *Rail Safety Act 2002* dealing with safety management systems,
- (c) to apply certain provisions of the *Rail Safety Act 2002* to all operators of railways (rather than just those who are accredited),
- (d) to permit regulations under the *Rail Safety Act 2002* to be made in relation to standards for railway operations, requirements for registers of information held by operators of railways, passenger safety and security, train safety recordings and conditions of accreditation and to prescribe conditions of accreditation and conditions of an exemption from accreditation,
- (e) to provide for the issuing of guidelines under the *Rail Safety Act 2002*,
- (f) to provide for certain regulatory functions that were previously undertaken by the Independent Transport Safety and Reliability Regulator (*the ITSRR*) to be undertaken by the Waterways Authority in relation to public passenger services carried on by means of a ferry and by the Director-General of the Ministry of Transport (*the Director-General*) in relation to public passenger services carried on by means of a bus,
- (g) to permit the ITSRR to enter into information sharing arrangements with certain other agencies in relation to rail operations, and to make similar provision with respect to the Director-General and the Waterways Authority in relation to bus and ferry operations respectively,
- (h) to provide for the appointment of authorised officers,
- (i) to make a number of other minor amendments,
- (j) to provide for savings and transitional matters.

Outline of provisions

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 the date of assent except for certain provisions which are to commence on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the Acts and regulation set out in Schedules 1–4.

Schedule 1 Amendment of Transport Administration

Act 1988 No 109

Schedule 1 [6] removes provisions relating to the Office of Transport Safety Investigations and Chief Investigator from Part 4A of the *Transport Administration Act 1988 (the Act)*. Those provisions established the Office of Transport Safety Investigations and Chief Investigator as part of the ITSRR. **Schedule 1 [13]** establishes the Chief Investigator as an independent office. The Chief Investigator is to be appointed by the Governor on the recommendation of the Minister. The Chief Investigator is to investigate rail and passenger transport accidents or incidents to determine the causes of those accidents or incidents and to report the outcome to the Minister. The Chief Investigator is also to review investigation reports prepared by transport operators. The Chief Investigator is not subject to Ministerial direction and

control in the exercise of his or her investigative and reporting functions. However, the Minister can direct the Chief Investigator to investigate and report on a particular rail or passenger transport accident or incident. The Chief Investigator is permitted to disclose information to any other person if the Chief Investigator thinks it necessary for the safe operation of a transport service. **Schedule 1 [1], [2] and [16]** make consequential amendments. **Schedule 1 [15]** provides that the Chief Investigator may appoint such staff as the Chief Investigator requires to exercise the Chief Investigator's functions. Any such staff are taken to be employed by the Government of New South Wales in the service of the Crown. **Schedule 1 [14]** makes a consequential amendment.

Schedule 1 [3] replaces the definitions of *rail safety inquiry* and *transport safety inquiry* as a consequence of amendments in Schedules 2 and 3 to the proposed Act.

Schedule 1 [4] provides that the ITSRR is to monitor the compliance by transport authorities with any recommendations relating to the safe operation of transport services contained in any report by the Chief Investigator under the Act or any other Act or in a report of a rail safety inquiry or a transport safety inquiry.

Schedule 1 [5] removes a provision requiring ITSRR to refer certain reports to the Independent Transport Safety and Reliability Advisory Board (*the Board*) before the report is published. **Schedule 1 [7]** permits the Board to make use of the staff or facilities of the ITSRR. **Schedule 1 [8]** revises the functions of the Board so that the Board's principal function is to advise and make recommendations to the Minister or the ITSRR about any matter. **Schedule 1 [9]** removes the functions of the Chairperson of the Board in relation to investigations and inquiries.

Schedule 1 [10]–[12] make provision with respect to the Transport Advisory Group. The Group is now to provide its advice to the Director-General of the Ministry of Transport and a member of staff of the Ministry of Transport is to chair the Group.

Schedule 1 [17] and [18] insert a number of savings and transitional provisions.

Schedule 2 Amendment of Rail Safety Act 2002

No 96

Schedule 2 [7] amends the *Rail Safety Act 2002 (the Act)* to require an applicant for accreditation to submit to the ITSRR a document that describes the applicant's safety management system. The applicant must also demonstrate that the applicant possesses the competency and capacity to implement and comply with that safety management system. **Schedule 2 [22]** inserts a new Division into Part 3 of the Act dealing with safety management systems and annual safety reports to make it clear that these are ongoing requirements for accredited persons. It is a condition of a person's accreditation that the person have a safety management system that complies with any requirements prescribed by or under the Act and that the railway operations for which the person is accredited comply with that safety management system. **Schedule 2 [2], [5], [6], [13] and [15]–[17]** make consequential amendments.

Schedule 2 [8] and [12] permit conditions and restrictions to be prescribed by the regulations in relation to accreditation and exemptions from accreditation.

Schedule 2 [9] provides that a condition or restriction of accreditation that is prescribed by the regulations cannot be varied or revoked by the ITSRR.

Schedule 2 [14] permits the ITSRR to revoke an exemption, or revoke a condition or restriction to which an exemption is subject, at any time, by written notice.

Schedule 2 [10] makes it a condition of accreditation that the accredited person comply with any applicable guidelines issued by the ITSRR under the Act.

Schedule 2 [11] and [18] remove requirements for matters relating to accreditation to be referred by the ITSRR to the Independent Transport Safety and Reliability Advisory Board. **Schedule 2 [3]** makes a consequential amendment.

Schedule 2 [20] includes requirements that were previously contained in the regulations in relation to the employment of railway employees by accredited

persons. An accredited person is not to employ a person as a railway employee unless the employee meets any standard contained in guidelines issued by the ITSRR that are applicable to the employee and the accredited person complies with any standard contained in guidelines issued by the ITSRR that are applicable to the accredited person.

Schedule 2 [15] provides that the regulations may specify variations, or classes of variation, that may be made to an accredited person's railway operations or safety management system without the need to apply to the ITSRR for a variation or an approval of a variation.

Schedule 2 [23]–[29] apply Division 1A (Inspections) of Part 3 to all operators of railways rather than accredited persons. The ITSRR is to cause inspections to be carried out to ensure that operators of railways carry out railway operations safely and comply with any applicable conditions or restrictions of accreditation or conditions or restrictions of exemptions from accreditation.

Schedule 2 [31] permits any information collected for the purposes of a rail safety inquiry or an investigation by the Chief Investigator under proposed section 67 to be prescribed by the regulations as part of a train safety record.

Schedule 2 [32] replaces section 64 of the Act that deals with notifiable occurrences. The new provision makes it a condition of a person's accreditation that the person report any occurrence, of a kind prescribed by the regulations as a notifiable occurrence, that occurs on railway premises relating to railway operations for which the person is accredited. **Schedule 2 [57]** makes a consequential amendment.

Schedule 2 [34] provides for the investigation of, and inquiry into, railway accidents or incidents and other matters that may affect the safe carrying out of railway operations. Inquiries will no longer be conducted by the ITSRR or the Chairperson of the Board, but will instead be conducted by the Chief Investigator.

The Chief Investigator will be able to require an operator of a railway to investigate, and report on, any railway accident or incident that may affect the safe carrying out of railway operations for which the person is responsible. The report of the investigation is to be provided to the Chief Investigator and the ITSRR and the Chief Investigator is to notify the Minister of the report. The investigation is to be on a "no blame" basis, in that any information the Chief Investigator or the ITSRR obtains by way of a report may not be used in evidence in any civil or criminal proceedings against the operator of a railway, unless a court directs that it is in the public interest to do so. In determining the public interest, the court is to take into account the adverse impact that use of the information may have on future disclosures by operators of railways.

The Chief Investigator is also provided with a power (previously exercised by the ITSRR and the Chairperson of the Board) to investigate any railway accident or incident that may affect the safe carrying out of railway operations. The Chief Investigator may, in relation to such an investigation, require a person to attend any place to answer questions and to produce documents or other things. The Chief Investigator is to provide the Minister with a written report of any such investigation. The Minister is to table the report in each House of Parliament. The Chief Investigator may appoint a person as a transport safety investigator for the purposes of an investigation. The Minister can require the Chief Investigator to investigate and report to the Minister on any railway accident or incident that may affect the safe carrying out of railway operations or the personal security of any railway employee or member of the public using a railway or in or on railway premises.

The Minister is also able to constitute one or more persons as a Board of Inquiry to conduct an inquiry into any railway accident or incident or any other event, occurrence, practice or matter that may affect the safe carrying out of railway operations (a **rail safety inquiry**). A Board of Inquiry is to determine its own procedures and is to sit with assessors if any are appointed by the Minister. A Board

of Inquiry may summon persons to appear at a rail safety inquiry and may require persons to answer questions and produce documents. A Board of Inquiry must prepare a report as to the causes of the accident or incident or prepare a report on the other event, occurrence, practice or matter into which it was directed to inquire and provide a copy of the report to the Minister. The Minister is to table the report in each House of Parliament.

The Chief Investigator may, if he or she considers it to be appropriate in the circumstances, give a written notice to the Minister requesting a rail safety inquiry be conducted in relation to any railway accident or incident or certain other events, occurrences, practices or matters. After receiving such a request the Minister is to comply with the request or is to provide the Chief Investigator with written reasons for not doing so and is to table the Chief Investigator's request and the Minister's reasons for refusing in each House of Parliament. **Schedule 2 [1], [2], [4], [30], [33], [35]–[43], [45], [46], [49], [50], [51] and [58]** make consequential amendments.

Schedule 2 [44] removes offences of providing false and misleading information as these matters are covered by offences in Division 3 of Part 5 of the *Crimes Act 1900*.

Schedule 2 [47] provides for the ITSRR to be able to enter into an information sharing arrangement with other agencies to permit certain information to be exchanged between the ITSRR and that other agency. An information sharing arrangement has effect despite any other Act or other law of the State.

Schedule 2 [48] provides that the ITSRR may appoint authorised officers for the purposes of the Act. **Schedule 2 [56]** permits the regulations to provide for the authorisation of persons (including authorised officers) for purposes relating to drug and alcohol testing. **Schedule 2 [1]** makes a consequential amendment.

Schedule 2 [52] provides that the ITSRR may issue guidelines for or with respect to any matter for which guidelines may be issued under the Act. Guidelines may be amended or replaced by the ITSRR and any guideline, amendment or revocation takes effect on the date of publication in the Gazette or any later date specified in the guideline. **Schedule 2 [19] and [21]** make consequential amendments.

Schedule 2 [53] clarifies that regulations made with respect to the safe construction, operation and maintenance of sidings may apply to private sidings.

Schedule 2 [54] permits regulations to be made in relation to standards for railway operations, the requirements for registers of information kept by operators of railways, passenger safety and security, train safety recordings and conditions and restrictions of accreditation.

Schedule 2 [55] permits the regulations to provide for the adoption or issuing of guidelines in relation to certain matters in respect of which regulations may be made.

Schedule 2 [59] and [60] insert a number of savings and transitional provisions.

Schedule 3 Amendment of Passenger Transport

Act 1990 No 39

Schedule 3 [2]–[4], [8], [10], [13], [17]–[22] and [25] amend the *Passenger Transport Act 1990 (the Act)* to standardise references to regulators in relation to public passenger services carried on by means of buses or ferries. The role of regulator is to be carried out solely by the Director-General in relation to a public passenger service carried on by means of a bus and the Waterways Authority in relation to a public passenger service carried on by means of a ferry.

Schedule 3 [2] also inserts definitions of **transport safety employee** and **transport safety work** for the purposes of the Act as these definitions are currently contained in a number of different places throughout the Act. **Schedule 3 [7], [9], [14], [15], [26], [27] and [35]** make consequential amendments.

Schedule 3 [5], [6] and [29] make amendments by way of statute law revision.

Schedule 3 [11] provides for the investigation of, and inquiry into, transport accidents or incidents that may affect the safe provision of a public passenger service carried on by means of a bus or ferry. Inquiries will no longer be conducted by the

ITSRR or the Chairperson of the Board, but will instead be conducted by the Chief Investigator.

The Chief Investigator is provided with a power (previously exercised by the ITSRR and the Chairperson of the Board) to investigate any transport accident or incident that may affect the safe provision of a public passenger service carried on by means of a bus or ferry. The Chief Investigator may, in relation to such an investigation, require a person to attend any place to answer questions and to produce documents or other things. The Chief Investigator is to provide the Minister with a written report of any such investigation. The Minister is to table the report in each House of Parliament. The Chief Investigator may appoint a person as a transport safety investigator for the purposes of an investigation. The Minister can require the Chief Investigator to investigate and report to the Minister on any transport accident or incident that may affect the safe provision of a public passenger service carried on by means of a bus or ferry. A regulator (the Director-General in the case of buses and the Waterways Authority in the case of ferries) is required to make available to the Chief Investigator all information provided to the regulator under section 46A of the Act (Provision of information relating to safety to regulator).

The Minister is also able to constitute one or more persons as a Board of Inquiry to conduct an inquiry into any transport accident or incident or any other event, occurrence, practice or matter that may affect the safe provision of a public passenger service carried on by means of a bus or ferry (a **transport safety inquiry**). A Board of Inquiry is to determine its own procedures and is to sit with assessors if any are appointed by the Minister. A Board of Inquiry may summon persons to appear at a transport safety inquiry and may require persons to answer questions and produce documents. A Board of Inquiry must prepare a report as to the causes of the accident or incident or prepare a report on the other event, occurrence, practice or matter into which it was to inquire and provide a copy of the report to the Minister. The Minister is to table the report in each House of Parliament.

The Chief Investigator may, if he or she considers it to be appropriate in the circumstances, give a written notice to the Minister requesting a transport safety inquiry be conducted in relation to any transport accident or incident or certain other events, occurrences, practices or matters. After receiving such a request the Minister is to comply with the request or is to provide the Chief Investigator with written reasons for not doing so and is to table the Chief Investigator's request and the Minister's reasons for refusing in each House of Parliament. **Schedule 3 [1]–[3], [12], [14], [31], [32] and [37]** make consequential amendments. **Schedule 3 [28]** provides that the Minister, in consultation with the Waterways Authority, may direct a person who carries on a public passenger service by means of a ferry to comply with a recommendation contained in a report of the Chief Investigator or a Board of Inquiry. Failure to comply with a direction is an offence (maximum penalty \$110,000).

Schedule 3 [11] also provides that persons who carry on public passenger services by means of buses or ferries are required to report to the regulator or other prescribed person any occurrence, of a kind prescribed by the regulations as a notifiable occurrence, affecting the public passenger service. Failure to do so is an offence (maximum penalty \$11,000).

Schedule 3 [23] provides that a regulator may appoint authorised officers for the purposes of the Act. **Schedule 3 [1] and [16]** make consequential amendments.

Schedule 3 [36] permits the regulations to provide for the authorisation of persons (including authorised officers) for purposes relating to drug and alcohol testing.

Schedule 3 [24] provides for a regulator to be able to enter into an information sharing arrangement with other agencies to permit certain information to be exchanged between the regulator and that other agency. An information sharing arrangement has effect despite any other Act or law of the State.

Schedule 3 [30] removes offences of providing false and misleading information as these are covered by offences in Division 3 of Part 5 of the *Crimes Act 1900*.

Schedule 3 [33] and [34] insert a number of savings and transitional provisions.

Schedule 4 Amendment of other Acts and regulation

Schedule 4 makes consequential amendments to other Acts and a regulation.