

RAIL SAFETY NATIONAL LAW (WA) BILL 2014

Introduction and First Reading

Bill introduced, on motion by **Mr D.C. Nalder (Minister for Transport)**, and read a first time.

Explanatory memorandum presented by the minister.

Second Reading

MR D.C. NALDER (Alfred Cove — Minister for Transport) [12.09 pm]: I move —

That the bill be now read a second time.

I am pleased to introduce the Rail Safety National Law (WA) Bill 2014. Historically, every state and territory has regulated its railways independently, resulting in inconsistencies between jurisdictions and inefficiencies for industry. In 2006, the National Transport Commission developed the model rail safety law with the aim of ensuring a consistent co-regulatory approach to rail regulation across Australia. Apart from the Australian Capital Territory, all the Australian jurisdictions made laws based to some extent on the model law. Western Australia's legislation, the Rail Safety Act 2010, is among the most consistent with the model law. That wave of reforms went some way to implementing a more uniform safety regulation regime. It was clear, however, that actions could still be taken to achieve greater consistency and certainty for industry and the community. As a result, in June 2009 the Council of Australian Governments voted to establish a single national regulator for rail safety. This is part of the Council of Australian Governments' National Partnership Agreement to Deliver a Seamless National Economy, which aims to decrease compliance costs to business by reducing the level of unnecessary regulation and inconsistent regulation across jurisdictions.

In August 2011, the Council of Australian Governments signed the Intergovernmental Agreement on Rail Safety Regulation and Investigation Reform to establish a national system of rail safety regulation and investigation. It was fundamental to the national system that there should be some core text that the relevant jurisdictions could agree upon. That text was the Rail Safety National Law, which was enacted in South Australia. For the most part, the other jurisdictions proceeded by adopting that text as enacted by South Australia and by committing to adopt amendments to the Rail Safety National Law agreed to by the Transport and Infrastructure Council. The council is composed of the transport ministers from each of the participating jurisdictions. It was noted, however, at the time of agreement that Western Australia would adopt a different approach to implementation, with the aim being to ensure that the Western Australian Parliament could consider any amendments to the Rail Safety National Law.

In line with the intergovernmental agreement, to which Western Australia is a signatory, the main purpose of this bill is to establish the Western Australian component of a national scheme for the regulation of rail safety. The Rail Safety National Law is reproduced in a schedule to the bill. The Rail Safety National Law sets out the functions and powers of the National Rail Safety Regulator and provides for the effective management of safety risks associated with railway operations. The Rail Safety National Law covers, amongst other things, accreditation; registrations; safety management; provision of rail safety information; investigation and reporting by rail transport operators; train safety recordings; auditing of railway operations; compliance and enforcement measures; review of decisions; and general liability and evidentiary provisions.

One example of the benefits of having a single regulator working in a uniform scheme is that it will eliminate the requirement for rail operators who work across multiple jurisdictions to apply for accreditation in each of those jurisdictions. Another example of the benefits is the regulatory and administrative efficiencies that will come with pooling information and experience within a single regulatory entity. The Office of the National Rail Safety Regulator is based in Adelaide. However, the Western Australian rail industry and wider community can be assured that a permanent staffing presence will be retained in Western Australia. The national regulator commenced in January 2013 and is now in operation in South Australia, New South Wales, the Northern Territory, Victoria and Tasmania.

The Rail Safety National Law builds upon the 2006 national model rail safety legislation that Western Australia implemented through the Rail Safety Act 2010. Accordingly, much of the text found in the Rail Safety Act 2010 is reproduced in this bill. It is expected that the resulting consistency in policy and language will mean that there will be few transitional issues for rail operators in Western Australia.

The participating jurisdictions acknowledged from the outset that local provisions would be tailored to suit specific situations within the jurisdictions. Specifically, the relevant jurisdictions agreed that they would retain drug and alcohol procedures consistent with local practice. Therefore, the bill provides that testing under these procedures will be conducted by authorised officers, including police. As one would expect, drug and alcohol testing will follow significant safety incidents. It will also take place when there is particular information to

suggest that it should take place. Such information might relate to a specific person when warranted or it might relate to a more general set of circumstances, knowledge of which is derived from information gathered from rail safety data analysis. It is expected that the more general data will be the basis of the drug and alcohol testing programs planned by the national regulator. These will have a strong monitoring and preventive aspect. The bill was drafted to accord with the drug and alcohol provisions under the Road Traffic Act 1974. This was done to minimise the possibility of police being faced with any additional operational burdens. This approach also takes into account the possibility that a significant incident on a railway might involve road traffic.

There are some other points of difference in Western Australia. The original reforms based on the 2006 model allowed for drug and alcohol testing by way of urine sampling and analysis. New South Wales and Western Australia were the only jurisdictions to provide for it and have opted to continue to do so. The experience of Western Australia Police has been that urine testing, although perhaps not essential, can be a valuable investigation and enforcement tool. Further, it is possible that there will be advances by which urine testing becomes a more attractive option in that respect. Accordingly, the bill includes terms specifically directed to ensuring that it remains available as an option.

Other jurisdictions have a majority disallowance clause whereby a regulation made under the legislation may be disallowed only if a majority of jurisdictions subsequently vote against it. The view that has been taken in this state has been that such a provision may compromise the sovereignty of the state. In contrast, therefore, the bill provides that national regulations are to be tabled in the Western Australian Parliament and provides Parliament with the power to allow, disallow or amend the national regulations in line with the Interpretation Act 1984. The bill is therefore similar to recent national reforms such as the Health Practitioner Regulation National Law (WA) Act 2010, in which a majority disallowance clause was not adopted in Western Australia.

The employment conditions of the current Western Australian public sector staff affected by the reform will be respected. Consenting employees from the Office of Rail Safety will be seconded to the Office of the National Rail Safety Regulator. The Public Sector Management Act 1994 provides for such secondment arrangements to be made by the relevant employing authority if it considers it to be in the public interest to do so. Administrative arrangements have been made under which each affected employee will have the ability to voluntarily transfer their employment directly to the Office of the National Rail Safety Regulator should the employee so wish. Barring that, they will all be found positions in accordance with the established procedures under the Public Sector Management Act.

I hope the bill will receive the support of all members so that it may pass in a timely manner. I am sure that members will agree that Western Australian rail operators should be allowed to benefit from the efficiencies of a seamless national economy that this reform aims to deliver.

I commend the bill to the house.

Debate adjourned, on motion by **Mr D.A. Templeman**.