

RAIL SAFETY NATIONAL LAW APPLICATION BILL 2023

Introduction and First Reading

Bill introduced, on motion by **Ms R. Saffioti (Minister for Transport)**, and read a first time.

Explanatory memorandum presented by the minister.

Second Reading

MS R. SAFFIOTI (West Swan — Minister for Transport) [10.29 am]: I move —

That the bill be now read a second time.

The Rail Safety National Law Application Bill 2023 will apply the rail safety national law, with modifications, as a law of Western Australia and repeal the Rail Safety National Law (WA) Act 2015 and subsidiary legislation. This reform will provide for greater consistency with the national rail safety law as it applies in this state. The bill will minimise legislative inconsistencies relating to rail safety and supports the timely application of rail safety amendments so that rail operations are regulated consistently and seamlessly across Australia. This will provide greater certainty to rail operators, rail safety workers, the national regulator and the national investigator, which will encourage industry participants to better understand their shared safety responsibilities and accountabilities.

The bill will update the rail safety national law in Western Australia to incorporate amendments made to the national legislation between 2015 and 2023. It will also reduce the delay between the time that future amendments to the rail safety national law apply in all other Australian jurisdictions and when those amendments apply in Western Australia. Historically, every state and territory 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 Australian jurisdictions made laws based on this model law. This significant reform went some way to implementing a more uniform rail safety regulation regime in Australia. However, to deliver improved safety, provide consistency and certainty for industry and the community, it was clear that more needed to be done.

In 2011, the Council of Australian Governments endorsed the Intergovernmental Agreement on Rail Safety Regulation and Investigation Reform and agreed to establish a national system of rail safety regulation and investigation. In 2012, the Office of the National Rail Safety Regulator was established under the rail safety national law in South Australia. Unlike other participating jurisdictions that applied the rail safety national law as a law of their jurisdiction as it existed from time to time, Western Australia chose to implement the rail safety national law using mirror legislation and, in November 2015, passed the Rail Safety National Law (WA) Act 2015. WA's mirror law approach requires the Parliament of Western Australia to pass laws that mirror those passed by the South Australian Parliament and has proven to be ineffective in maintaining a seamless national rail safety system.

I will now expand on the key reforms included in this 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 systems and compliance and enforcement measures. Part 2, division 1, of the bill includes an applied legislation mechanism that provides for the timely application of changes to the Rail Safety National Law (South Australia) Act to the rail safety national law of Western Australia. The bill will use an applied law adoption mechanism to preserve the sovereignty of the WA Parliament. This approach of moving from mirror law to applied law for rail safety is consistent with the recommendations of the Legislative Council's Standing Committee on Uniform Legislation and Statutes Review for other national scheme laws operating in Western Australia, including the Legal Profession Uniform Law Application Act 2022, the Fair Trading Amendment Act 2022 and the Marine (Domestic Commercial Vessel National Law Application) Bill.

The applied law mechanism in the bill will encourage the uniformity important in any national scheme so that all rail operators and rail safety workers will not be disadvantaged by having to meet different requirements in Western Australia, which increases complexity of regulation and costs. Importantly, the bill will preserve the sovereignty of the WA Parliament by providing for the tabling of amendments made to the national law by the South Australian Parliament and the capacity for either house of Parliament to disallow those amendments following appropriate scrutiny.

The bill will apply the national law as a law of WA as it exists prior to 20 June 2023, rather than as amended from time to time. This will result in WA's rail safety national law being consistent with laws operating in other jurisdictions. Going forward, the bill will provide for an amending act that operates after the bill's introduction—that is, a South Australian act that subsequently amends the national law—to be laid before each house of Parliament within 18 sitting days of the house after the day on which the amending act receives royal assent in South Australia. The amending act will not become a law of Western Australia until there is an opportunity for the amending act to scrutinised by the Parliament and, if necessary, disallowed.

Part 2, division 1, of the bill deals with the application of rail safety national law regulations. Subsidiary legislation made under the South Australian national law will operate in Western Australia when made in South Australia. However, the bill will also provide for a mechanism for the disallowance of this subsidiary legislation. The Parliament of Western Australia will therefore retain the power to either accept or reject both primary and subsidiary rail safety national laws. A number of amendments have been made to the Rail Safety National Law (South Australia) Act since the Rail Safety National Law (WA) Act 2015 was passed in WA. Clauses 5 and 6 of the bill propose to apply those amendments when these clauses take effect.

The amendments to the national law contained in the South Australian acts made from 1 July 2015 and May 2023 will then apply in Western Australia. The amendments are contained in the following seven South Australian acts: the Rail Safety National Law (South Australia) (Miscellaneous) Amendments Act 2015; the Rail Safety National Law (South Australia) (Miscellaneous No 2) Amendments Act 2016; Rail Safety National Law (South Australia) (Miscellaneous No 3) Amendments Act 2017; the Rail Safety National Law (South Australia) (Miscellaneous) Amendments Act 2019; the Rail Safety National Law (South Australia) (Rail Safety Work) Amendments Act 2020; the Rail Safety National Law (South Australia) (Alcohol and Drug Offence) Amendment Act 2021 (No. 30 of 2021); the Rail Safety National Law (South Australia) (Miscellaneous) Amendment Act 2023; and the Rail Safety National Law (Fees) Amendments Act 2023.

Part 3 of the bill sets out local provisions for alcohol and drug testing. The participating jurisdictions acknowledged from the outset that there would be local provisions tailored to suit specific situations within their jurisdictions. All 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. Testing will also take place in other circumstances in which information indicates it is warranted. Such information might relate to a specific person or to a more general set of circumstances, identified from information gathered from rail safety data. 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 programs will have a strong monitoring and preventive aspect.

The local provisions in this bill were drafted to align with the drug and alcohol provisions under the Road Traffic Act 1974 so the Western Australia Police Force does not face additional operational burdens. This approach also takes into account the possibility that a significant incident on a railway might involve road traffic, such as at level crossings.

Part 4 of this bill will repeal the Rail Safety National Law (WA) Act 2015 and subsidiary legislation. Part 4 of the bill also sets out the transitional provisions to facilitate the change from the Rail Safety National Law (WA) Act 2015 mirror legislation to the rail safety national law application legislation, and preserve existing rights and obligations of the regulator and participants under the new law. For example, the transitional provisions will provide for the preservation of existing applications for accreditation or registration to the regulator and any requirement or direction made by the regulator, existing rights of review of reviewable decisions by the regulator, existing rights of appeal, time periods within which a person may apply for a review or appeal and the requirement for the entity determining any undecided review or appeal to continue to hear and decide the appeal under the new law. The bill will also provide for transitional regulations that have a two-year sunset provision to deal with transitional matters not otherwise provided for in the bill.

In conclusion, this bill will ensure that Western Australia's rail transport operators and rail safety workers will benefit from the efficiencies of a consistent and seamless national rail safety regime. The bill contains mechanisms that make amendments transparent to members and the general public through the tabling of amendments to the national law, and it will ensure that the Western Australia Parliament has the final say in whether amendments to the national law will become laws of Western Australia. These dual benefits have already been seen in recent laws passed by this Parliament.

I commend the bill to house.

Debate adjourned, on motion by **Ms M. Beard**.