

**RAIL SAFETY NATIONAL LAW (TASMANIA) BILL 2012**

**CLAUSE NOTES**

## **PART 1 - PRELIMINARY**

<b>Clause 1</b>	<b>Short title</b>
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<b>Clause 2</b>	<b>Commencement</b>
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The Act commences on a day to be proclaimed.

<b>Clause 3</b>	<b>Interpretation</b>
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This clause provides that a reference to the Rail Safety National Law (Tasmania) is a reference to the provisions that are applied by clause 4. It also provides that the terms used in the Bill have the same meaning as in the national law that is being adopted.

## **PART 2 – ADOPTION OF RAIL SAFETY NATIONAL LAW**

### **Clause 4                      Application of Rail Safety Law**

This clause formally applies the Rail Safety National Law, which exists in a Schedule to the South Australian Act, as a law of Tasmania.

### **Clause 5                      Interpretation of certain expressions**

Subclause (1) defines certain terms used in the Rail Safety National Law in order to give them a particular meaning in this jurisdiction.

Subclause (2) makes it clear that the Office of the National Rail Safety Regulator (ONRSR) is not a State entity (and therefore not a Tasmanian Entity) and is not an agency or instrumentality of the Tasmanian Crown. Employees of the ONRSR are not State Service officers or State Service employees. This is to ensure that only one national entity is established in accordance with section 9 of the Rail Safety National Law.

**Clause 6****No double jeopardy**

Where an offence has been committed and punished under the law of a participating jurisdiction and the offence is also an offence under the Rail Safety National Law (Tasmania), the offender cannot be punished again for that same offence under the Rail Safety National Law (Tasmania).

**Clause 7****Exclusion of legislation of this jurisdiction**

This clause excludes a number of oversight laws of Tasmania from the National Rail Safety Law (Tasmania) or to instruments made under that law. The Rail Safety National Law and the National Rail Safety Regulator are hosted in South Australia. Therefore the oversight laws of South Australia will apply (see section 263 of the RSNL). Interpretation provisions are also included in Schedule 2 of the RSNL, along with Part 3 of this Bill.

The Acts referred to in this clause apply to a State entity or an employee of a State entity exercising a function under the Rail Safety National Law (Tasmania). For example under a service level agreement.

**Clause 8****Amendments to National Law**

Any amendments to the Rail Safety National Law will be tabled in each house of Parliament within 10 sitting days from the date on which the amendment receives the Royal Assent in South Australia. This clause does not affect the operation of the amendment.

## **PART 3 – NATIONAL REGULATIONS**

### **Clause 9**

#### **Procedure with respect to national law regulations**

Under Part 10 Division 9 of the RSNL, the Governor of South Australia, acting with the advice and consent of the Executive Council of South Australia, is nominated as the designated authority to make the national regulations, on the unanimous recommendation of the responsible Ministers for each of the participating jurisdictions.

This clause provides that the national regulations will be notified in the Gazette and laid before each House of the Tasmanian Parliament.

If either House of Parliament passes a resolution to disallow a regulation, the regulation does not cease to have effect in this jurisdiction unless it is disallowed in a majority of participating jurisdictions.

## **PART 4 – PROVISIONS RELATING TO DRUG AND ALCOHOL TESTING**

### **Clause 10                      Testing for drugs and alcohol**

This clause makes provision for carrying out drug and alcohol testing by the National Rail Safety Regulator in Tasmania. While the power enabling the Regulator to test rail safety workers for the presence of a drug or alcohol is set out in Part 3 Division 9 of the RSNL, the testing procedures are included in each jurisdiction's application Bill.

Subclause (1) aligns testing procedures in Tasmania with the *Road Safety (Alcohol and Drugs) Act 1970*. By adopting this approach it is not necessary to replicate in this Bill a separate alcohol and drugs testing procedure for rail safety workers.

Subclause (2) applies the provisions specified in subclause 1 to rail safety workers carrying out, or attempting to carry out rail safety work.

Subclause (3) specifies the appropriate modifications for the purposes of the application of the *Road Safety (Alcohol and Drugs) Act 1970* to rail safety workers carrying out, or attempting to carry out rail safety work.

**Clause 11**

**Concentration of alcohol in breath taken to indicate  
concentration of alcohol in blood.**

This clause establishes a conversion of concentration of alcohol in breath to an equivalent concentration in blood.



## **PART 5 – TRANSITIONAL PROVISIONS**

### **Clause 12**

#### **Interpretation**

Defines the terms “Rail Safety National Law or Law”, “relevant day” and “repealed Act” for the purpose of this Part.

### **Clause 13**

#### **Accreditation**

Accreditations, applications for accreditation and suspensions of accreditation made under the repealed Act will continue under the Rail Safety National Law

**Clause 14****Registration**

Registrations of Private Sidings made under the repealed Act will continue under the Rail Safety National Law. The Regulator may, in writing, impose a variation or new condition on the rail infrastructure manager of the private siding.

**Clause 15****Notifiable occurrences**

A report of a notifiable occurrence under the repealed Act will continue to have effect as if it were a report of a notifiable occurrence under the Rail Safety National Law.

An investigation into a notifiable occurrence under the repealed Act will continue as if it were an investigation under the Rail Safety National Law.

**Clause 16****Notices**

Embargo notices, directions, improvement notices, prohibition notices, infringement notice and enforceable voluntary undertakings made under the repealed Act continue as if they were made under the Rail Safety National Law.

**Clause 17****Review and appeals**

The period within which an applicant could have applied for a review of a decision made under the repealed Act is maintained. Within this period the applicant may apply for a review of the decision under the Rail Safety National Law as if the decision had been made under it.

**Clause 18****Provision of information and assistance by Rail Safety Regulator**

This clause authorises the Rail Safety Regulator under the repealed Act to provide information and assistance (including information given in confidence) to the Office of the National Rail Safety Regulator (ONRSR) for the purpose of the Rail Safety National Law.

**Clause 19****Regulations – saving and transitional provisions**

Provides the ability to make regulations in Tasmania containing provisions of a transitional nature, including matters of an application or savings nature arising as a result of this Act.

**Clause 20****Rail safety officers**

This clause preserves the appointment of Rail Safety Officers under the repealed Act so they can perform the functions and exercise the powers of a Rail Safety Officer under the Rail Safety National Law. This is limited to a period of 6 months or until appointed as a Rail Safety Officer under section 135 of the Rail Safety National Law (whichever occurs first).

**Clause 21****Existing Operators under the repealed Act.**

Transition provisions under Part 15 of the repealed Act continue for existing operators for the period they would have continued under the repealed Act. These are:

- Interface co-ordination plans between rail infrastructure managers and road owners.
- Assessment of rail safety worker competence.



## **PART 6 – MISCELLANEOUS**

### **Clause 22                      Administration of Act**

The administration of this Act is assigned to the Minister for Infrastructure and the department responsible to that Minister in relation to administration of this Act is the Department of Infrastructure, Energy and Resources

### **Clause 23                      Consequential amendments**

Schedule 1 lists the consequential amendments. These replace references to the *Rail Safety Act 2009* with a reference to the *Rail Safety National Law (Tasmania) Act 2012*:

Section 7A(2) of the *Boundary Fences Act 1908*

Section 3(1) and section 4(3)(a) of the *Emu Bay Railway (Operation and Acquisition) Act 2009*

Section 87(1)(b)(xiv) of the *Local Government Act 1993*

Section 3(1) of the *Police Offences Act 1935*

Section 4 of the *Rail Company Act 2009*

Section 3(1) of the *Rail Infrastructure Act 2007*

### **Clause 24                      Legislation repealed**

This repeals the *Rail Safety Act 2009*.

### **Clause 25                      Legislation rescinded**

This rescinds the *Rail Safety Regulations 2010*.

**Clause 26****Legislation revoked**

This revokes:

*Rail Safety (Guidelines) Order 2010.*

*Proclamation under the Rail Safety Act 2009.*

*Rail Safety (Fees) Notice 2012.*