

SECOND READING SPEECH

THE HON GRAEME STURGES, MINISTER FOR INFRASTRUCTURE

RAIL SAFETY BILL 2009

Mr Speaker

I move that the Bill now be read a second time.

Mr Speaker, the Bill before the House today implements the National Model Rail Safety Legislation developed pursuant to an Inter-Governmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport. The inter-governmental agreement, to which Tasmania is a signatory, tasked the National Transport Commission with developing reforms to improve and strengthen the co-regulatory system for rail safety across Australia.

The Council of Australian Governments has agreed to this reform priority to harmonise rail safety regulation to achieve a nationally consistent approach to rail safety regulation. Tasmania has committed to do this by 31 December 2009.

Mr Speaker, while rail is considered to be one of the safer modes of transport, the effectiveness and efficiency of the Australian rail system has been impacted by inconsistencies in the provisions and interpretation of rail safety regulation between the various State and Territory jurisdictions.

Development of the *Rail Safety Bill 2009*, which is based on that National Model Bill, developed by the National Transport Commission has involved consultation with relevant Tasmanian government departments and rail organisations, as well as union representatives and the Local Government Association of Tasmania. The Bill builds upon and enhances the framework of the *Rail Safety Act 1997* to ensure that the Tasmanian rail industry is served by best practice regulation.

Mr Speaker, the overarching principles underpinning the *Rail Safety Bill 2009* are to provide for improvement of the safe carrying out of railway operations and the management of risks associated with those operations, to make special provision for the control of particular risks arising from railway operations and to promote public confidence in the safety of transport of persons or freight by rail.

Turning now to the provisions of the Bill, I advise the House that the main changes introduced by the Bill relate to focussing the requirements of accreditation onto rail infrastructure managers and rolling stock operators, who are defined as “rail transport operators”, and to the introduction of general duties to ensure public safety in relation to railway operations.

The rationale for limiting accreditation to infrastructure managers and rolling stock operators is to funnel accountabilities and responsibilities for safety back to the principal accredited party. This approach is consistent with the principle that safety cannot be contracted out. In practice, this will mean that infrastructure managers and rolling stock operators need to be able to demonstrate that their contractors' practices fit with, and form part of their, safety management systems. It will also be

an offence for a contractor not to comply with the safety management system of the rail transport operator to whom they are contracted to perform rail safety work.

The introduction of general duties for the rail industry, similar to general duties provided in the *Workplace Health and Safety Act 1995*, will provide a positive additional duty on those carrying out railway operations to ensure, so far as is reasonably practicable, the safety of rail operations. It will be an offence to fail to discharge that duty. The extension of general duties to cover the providers of rail infrastructure and rolling stock, such as those who design, commission, manufacture, supply, install or erect rail infrastructure or rolling stock, will ensure sufficient powers and safeguards exist to regulate parties in the supply chain. Duties of care will also apply to rail safety workers carrying out rail safety work. The inclusion of general duties will also complement and clarify the function of the system of accreditation in the rail industry by making it clear that gaining accreditation is a threshold requirement only, and not a certification of safety.

The granting of accreditation simply indicates that, in the opinion of the Rail Safety Regulator, the operator has demonstrated the competency and capacity to manage risks associated with those railway operations. It will also mean that the Rail Safety Regulator will be able to enforce the general duty to ensure safety in relation to railway operations, and not just the obligations to develop and implement documented safety and risk management systems.

The Tasmanian workplace health and safety law will continue to apply to Tasmanian rail operators, including their duties around workplace safety. However, where there

may be overlap or conflict between the occupational health and safety provisions and the Rail Safety provisions, the occupational health and safety legislation will apply. The Rail Safety Regulator and Workplace Standards Tasmania will continue to have arrangements in place to ensure that the most appropriate agency leads any investigation into breaches of safety obligations that overlap occupational health and safety and rail safety legislation.

I now turn to the provisions of the Bill that set out requirements for rail transport operators to have and review safety management systems. These provisions are largely consistent with current requirements in Tasmania for a safety management system. In implementing a safety management system, rail transport operators will need to comply with requirements to be prescribed in regulations, to identify and assess risks to safety arising from railway operations, and to specify controls and monitor procedures relating to those risks. Railways are also obligated to consult with all stakeholders in developing and implementing their safety management system.

The safety management system is also to include a number of other important matters, including interface agreements to manage risks to safety between two or more rail transport operators and between rail infrastructure managers and roads authorities, a security management plan, an emergency management plan, a health and fitness management program, a drug and alcohol program and a fatigue management program. The Bill provides for new obligations on rail infrastructure managers and roads authorities to jointly manage risks arising from rail or road crossings, such as level crossings, road over rail bridges and rail over road bridges.

This obligation extends the current obligation on railway operators to enter into interface agreements for managing risks to safety with other railway operators. A transitional period will apply to these requirements.

The Bill builds on the range of compliance and enforcement powers currently included in the *Rail Safety Act 1997*, such as the power to issue improvement and prohibition notices or to bring prosecutions for contraventions of the Act.

It is important to note that Tasmania intends to maintain provisions for the random and post incident testing of a person who is carrying out rail safety work for the presence of drugs or alcohol. The testing protocols are aligned with the current alcohol and drug testing procedures under the *Road Safety (Alcohol and Drugs) Act 1970*.

A rail transport operator is also required to ensure that each rail safety worker who carries out rail safety work has the competency to do so and to keep records of competency. In addition, the Bill sets out procedures for assessing the competency of rail safety workers in accordance with the qualifications and competencies set out by the Australian Qualification and Training Framework.

Tasmania has an important tourist and heritage railway industry, and it has been necessary to provide some flexibility to the competency requirements of the National Model Bill to ensure that this valuable sector of the industry continues to operate safely but at the same time it is not unduly burdened in relation to their scale and scope of operation. It is important to recognise that safety will not be compromised

in providing this flexibility, and that it will not be extended to any operations on the mainline Tasmanian Rail Network. The Rail Safety Unit of the Department of Infrastructure, Energy and Resources will work with industry stakeholders to develop guidance material on where flexibility may be appropriate. Importantly, in determining an application for an alternative approach to the competency requirements the Rail Safety Regulator will need to undertake consultation with interested parties.

Rail transport operators will be required to provide rail safety workers with a form of identification sufficient to enable the worker's competence and training to be checked by a rail safety officer. It will be an offence for a worker, without reasonable excuse, not to produce the form of identification on request by a rail safety officer.

Mr Speaker, the Bill incorporates the existing Rail Safety Act provisions relating to independent 'no blame' investigations, as distinct from compliance investigations undertaken by regulatory staff. An Independent investigation may be launched after an accident or incident resulting in a person's death, serious personal injury, property damage or as deemed necessary.

This form of investigation does not seek to apportion blame but seeks to discover the reasons for an occurrence taking place, and to make recommendations to avoid a similar occurrence happening again. The findings of the investigation report are required to be made public.

The Bill also introduces a number of checks and balances on the Rail Safety Regulator to ensure regulatory processes are timely, transparent and nationally consistent. In accordance with this approach, the Rail Safety Regulator is required to prepare an annual report on the safety performance of the Tasmanian rail industry. Railways are also required to provide an annual report on their safety performance.

A suite of national guidelines has also been developed by the National Transport Commission and the National Rail Safety Regulators Panel to assist the Rail Safety Regulator, industry stakeholders and other relevant parties to understand and comply with the requirements of the Bill.

Mr Speaker, I can advise members of this House that National Model Rail Safety Regulations have also been developed and will be finalised in consultation with industry stakeholders prior to implementation in Tasmania. The model regulations address a range of matters, including the accreditation requirements and the requirements for a safety management system.

As I said at the outset, this Bill builds upon and enhances the existing principles and safety requirements of the *Rail Safety Act 1997*. Through participation in the national rail safety reform process, the Tasmanian Government has been able to shape the national processes to secure improved safety outcomes for Tasmania. The Bill also represents an important step in co-operative federalism whereby jurisdictions are able to work together to improve rail safety outcomes irrespective of State borders.

Mr Speaker, the Government remains committed to improving the safety of railway operations in Tasmania to help ensure the efficient, sustainable and safe operation of the rail industry into the future.

I therefore commend this Bill to the House.