

RAIL SAFETY BILL 1993*

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to promote the safe construction, operation and maintenance of railways in the State. To facilitate the achievement of this object, the Bill provides for:

- (a) the accreditation of the owners and operators of railways and the certification of the competency of railway employees who perform railway safety work by the Director-General of the Department of Transport; and
- (b) the development, and monitoring, of safety performance standards for and with respect to the safe construction, maintenance and operation of railways; and
- (c) the carrying out of regular safety compliance inspections, the reporting of notifiable occurrences, the holding of inquiries into railway accidents and other incidents and the adoption of other measures aimed at securing rail safety.

PART 1—PRELIMINARY

This Part (clauses 1–10) contains provisions of a machinery nature dealing with the citation and commencement of the proposed Act.

The Part sets out the object of the proposed Act (which is as stated above).

Various key concepts, including railway, infrastructure of a railway and rolling stock are explained as is the meaning of the terms “owner”, “operator” and “operate a railway,” for the purposes of the proposed Act. A railway includes a light railway, monorail and tramway.

The Part provides that the proposed Act applies to:

- 1 any railway within, or partly within, the State with a railway track gauge equal to or greater than 600 mm; and
- any other system for transporting passengers or freight or both declared by the regulations to be a railway for the purposes of the proposed Act,

and to the operation of any such railway.

* Amended in committee—see table at end of volume.

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The proposed Act does not apply to railways in mines or amusement parks or to aerial, cable operated transportation systems.

The Part declares that the proposed Act binds the Crown and that it applies to the construction, operation and maintenance of railways carried on in the State by Australian National Railways, the National Rail Corporation Limited and the State Rail Authority and to any other railway owned or operated by the State, the Commonwealth or another State or Territory.

The Part provides that the words and expressions used in the proposed Act that are defined in the dictionary at the end of the proposed Act have the meanings set out in the dictionary. Words and expressions defined in the dictionary include “credentials”, “notifiable occurrence”, “railway safety work” and “safeworking systems”.

PART 2—CREDENTIALS OF OWNERS, OPERATORS AND RAILWAY EMPLOYEES

Division 1—Accreditation of owners and operators

This Division (clauses 11–27) requires that owners and operators of railways must be accredited. Failure to comply constitutes an offence punishable (in the case of a corporation) with a maximum penalty of 2,500 penalty units (currently, \$250,000) or (in any other case) with a maximum penalty of 1,000 penalty units (currently, \$100,000) or 12 months’ imprisonment, or both.

This Division provides that the purpose of accreditation is to attest:

- the fitness and competency of accredited owners to safely construct and maintain, or construct or maintain, the infrastructure of railways and of accredited operators to safely operate railways and construct and maintain, or construct or maintain, their rolling stock or both in the case of persons who are accredited as owners and operators; and
- that the standards proposed by accredited persons for such construction, operation and maintenance, or such construction, operation or maintenance, have been accepted by the Director-General (subject to the Director-General’s power under Division 3 to amend, vary, suspend and cancel or cancel accreditations).

Applicants for accreditation are required to provide the Director-General with the information necessary to enable their applications to be determined, to submit comprehensive safety management plans in relation to their proposed railway operations and, if they are accredited, to revise the plans annually.

Applicants are required to provide details of railway performance in hauling freight and passengers and, if accredited, to continue to provide this information. (The Minister may rely on this information to fix annual fees under the proposed Act.)

Applicants are required to demonstrate their competency and capacity to safely construct, operate and maintain, or safely construct, operate or maintain, railways to the satisfaction of the Director-General. Applicants for accreditation as operators who do not own the railways on which they propose to operate must establish that they are entitled to use the infrastructure specified in their applications. Applicants intending to use steam locomotives or other units of rolling stock that utilise pressure vessels as a means of transporting, loading or discharging goods must provide appropriate pressure vessel certificates for the rolling stock.

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Applicants must describe, and identify the owners of, infrastructure specified in their applications and, if they do not own the infrastructure, must establish their entitlement to control and manage it. Applicants must identify the owners of rolling stock specified in their applications and describe the railways on which the rolling stock is to be used. Applicants for accreditation as operators must mark their rolling stock in an approved manner to show who is accredited to operate it and to enable the individual units to be identified, or provide an inventory of their rolling stock.

The Director-General may accredit applicants as owners or operators of railways or as both owners and operators. Interim accreditation may be granted for appropriate purposes such as site preparation of a disused railway or renovation of rolling stock.

Accreditations are to be in writing, may be general or limited in various ways and may be given subject to conditions and restrictions fixed by the Director-General.

The Director-General may exempt applicants from requirements of the Division for a specified period and subject to conditions if satisfied that the systems and methods to be employed by them in their operations are likely to achieve an appropriate level of safety for the railways concerned.

Owners of private railway sidings are not required to be accredited. However, if the owners wish the private sidings to be or remain connected with railways owned by accredited owners, they must register the private sidings with the Director-General and comply with the provisions of any regulations dealing with the safe construction, operation and maintenance of sidings.

The Director-General may waive compliance with certain requirements of the Division by applicants who buy or otherwise acquire railways from accredited persons. Such applicants must however satisfy the Director-General as to their personal fitness and competency for the purposes of the Division.

Division 2—Certificates of competency

This Division (clauses 28–33) makes it an offence for the owner or operator of a railway to employ, or enter into a contract with, a person to perform rail safety work who does not hold an appropriate certificate of competency. A maximum penalty of 200 penalty units (currently, \$20,000) applies to this offence.

The purpose of certification under the Division is to attest:

- the health and fitness of the person certified to perform rail safety work; and
- that the person certified has sufficient responsibility and aptitude to perform the applicable railway safety work in accordance with standards submitted by the accredited owner or operator of the relevant railway and accepted by the Director-General (subject to the Director-General's power under Division 3 to amend, vary, suspend and cancel or cancel certification).

Applicants for certification must meet any criteria set out in the regulations and satisfy the Director-General as to any matter concerning their fitness and suitability for Certification that the Director-General considers relevant.

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The Director-General, or an authorised agent of the Director-General, may grant certification for the category or grade of certification concerned for a specified period. Only persons who the Director-General considers have sufficient experience and expertise in safeworking systems may be appointed as authorised agents for the purpose of granting, amending or varying certifications under the Part. Certification is to be in writing and must specify the functions that the person concerned is certified as capable of performing.

Division 3—Amendment, variation, suspension or cancellation of credentials

This Division (clauses 34-37) empowers the Director-General or, in the case of certification, an authorised agent of the Director-General, to amend or vary Credentials after issue. The holder of credentials may request the amendment or variation of the credentials under this provision.

An accredited person who proposes to add to or otherwise alter the railway specified in the person's accreditation in a manner that the accreditation does not cover must apply for an amendment or variation of the accreditation before taking the action proposed.

The Director-General may suspend and cancel, or cancel, a person's accreditation or certification. Credentials may be suspended and cancelled, or cancelled, because, among other reasons, a person contravenes the requirements of the proposed Act, the regulations or the conditions attached to the credentials. Credentials may be suspended in an emergency which involves an immediate and significant safety threat without compliance with certain of the requirements of Division 4 but only for a period of 28 days or less.

Division 4—Procedures before amendment, variation, suspension or cancellation of credentials

This Division (clauses 38-43) requires the Director-General to take into consideration any relevant standards and criteria before credentials are amended, varied, suspended or cancelled. The Director-General or authorised agent must also follow the procedures set out in the Division before amending, varying, suspending and cancelling or cancelling a person's credentials.

Division 5—Review of decisions

This Division (clause 44) enables the making of appeals to the Supreme Court against decisions of the Director-General or an authorised agent of the Director-General.

Division 6—Fees

This Division (clauses 45-49) requires an applicant for credentials or registration of a private siding to pay the application fee fixed by the Minister. In addition, an accredited person or registered owner of a private railway siding must pay an annual fee fixed by the Minister on the basis of specified criteria. Annual fees may be paid in a manner negotiated with the Director-General. Different fees may be fixed for different kinds of credentials and minimum fees and additional fees for late payment of fees may be fixed.

PART 3—SAFETY COMPLIANCE INSPECTIONS, REPORTING OF OCCURRENCES, INQUIRIES AND OTHER SAFETY MEASURES

This Part (clauses 50-63) requires the Director-General to cause safety compliance inspections to be carried out at appropriate intervals (but no less frequently than once every 12 months) of

- the track, other infrastructure and rolling stock of accredited persons; and
- the construction, operation and maintenance of railways by such persons; and
- the performance of railway employees,

to ensure compliance with the terms of accreditations.

The Director-General may also, at appropriate times, inspect documents held by accredited persons relating to matters subject to safety compliance inspections, the acquisition, disposal, renovation or repair of infrastructure or rolling stock, the preparation and implementation of railway safeworking systems or other matters considered by the Director-General to be relevant to the safe construction, operation or maintenance of railways by accredited persons.

The Director-General may require an accredited person to carry out remedial safety work. If the person fails to do this and the cost of the work is unlikely to exceed a specified amount, the Director-General may cause the work to be carried out at the person's expense. The Director-General may also require accredited persons who have failed to comply with safety requirements to provide a program and timetable for the performance of remedial safety work. Failure to provide the program is punishable by a maximum penalty of 5 penalty units (currently, \$500). Accredited persons are required once every 12 months to declare whether they are aware of any circumstance that may cause them to require an amendment or variation of their accreditations in the forthcoming year and, if so, to apply for amendment or variation of their accreditations under Division 3 of Part 2.

Accredited persons are required to provide the Director-General with information, when requested, concerning measures taken by them to promote rail safety and to provide an annual safety report concerning their railway safety activities. In addition, accredited persons must report notifiable occurrences that happen on railways owned or operated by them to the Director-General in a specified manner and time. Notifiable occurrences that must be reported are described in Schedule 1 to the proposed Act. It is an offence punishable by a maximum penalty of 20 penalty units (currently, \$2,000) to fail to report a notifiable occurrence or to fail to report a notifiable occurrence in the specified time.

Accredited persons are required to inquire into, and report to the Director-General on, any railway accident or other incident that may affect the safe construction, operation or maintenance of a railway owned or operated by them. Failure to comply with this requirement constitutes an offence punishable by a maximum penalty of 20 penalty units (currently, \$2,000). The Minister may also require the Director-General or a person or body nominated by the Minister to inquire into and report on any such accident or incident.

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Accredited persons must ensure that railway employees performing railway safety work are adequately trained for, and are of appropriate health and fitness to perform, the work for which they are certified. Accredited persons must also ensure that such railway employees are not under the influence of alcohol or other drugs when about to carry out, or while carrying out, railway safety work. The Director-General is empowered to cause random testing of railway employees carrying out railway safety work to be conducted to ensure that accredited persons are complying with the terms of their accreditations. Provision is made by Schedule 2 to the proposed Act for the testing of railway employees for the presence of alcohol and other drugs. The provisions of Schedule 2 re-enact (with minor variations) the existing provisions of Schedule 4 to the Transport Administration Act 1988 relating to alcohol and other drug offences committed by certain staff of the State Rail Authority of New South Wales ("the SRA") and the testing of such staff to detect offences. (Schedule 4 to the Transport Administration Act 1988 is repealed by the proposed Act.)

The Director-General may direct accredited persons to install, within a specified time, protective or safety devices (such as bells, lighting, boom gates, brakes or carriage door locks) on the infrastructure of railways or on rolling stock that they own or operate. Failure to comply with such a direction constitutes an offence punishable by a maximum penalty of 200 penalty units (currently, \$20,000). The Director-General may also direct an accredited person to close any level-crossing, bridge or other structure for crossing or passing over or under a railway. A similar power, enabling the SRA to close crossings on its railways, is retained in the Transport Administration Act 1988.

PART 4—ENFORCEMENT**Division 1—Power of entry**

This Division (clauses 64–75) contains provisions relating to entry on to land. The Director-General may authorise a person (in writing) to enter land at any reasonable hour or at any hour during which the construction, operation or maintenance of a railway is in progress or is usually carried out on the land. The authorised person may carry out an inspection, inquiry or investigation on the land and may also take possession of, copy or take statements concerning documents.

The owner or occupier of the land must be given reasonable notice before the authorised person enters the land unless notice would defeat the purpose of the inspection, is made with the consent of the owner or occupier or is effected in an emergency.

Provision is made for the use of reasonable force to gain entry. Care must be exercised to ensure that as little damage as is possible occurs during an inspection, inquiry or investigation. Compensation for damage is payable except where caused during an inspection that reveals a contravention of the proposed Act or of any other Act.

The Director-General is authorised to recover the reasonable costs of entry and inspection (other than the costs of a routine safety compliance inspection) from the accredited person concerned.

This Division prohibits entry to premises used for residential purposes except with the permission of the occupier or under the authority of a search warrant.

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Division 2—Offences and proceedings

This Division (clauses 76-90) creates certain offences relating to credentials. Offences relating to wrongfully obtaining or forging or fraudulently altering credentials are punishable by a maximum penalty of 2,500 penalty units (currently, \$250,000) in the case of a corporation or, in any other case, 1,000 penalty units (currently, \$100,000) or 12 months' imprisonment or both. Offences relating to contravention of conditions or restrictions attached to credentials are punishable by a maximum penalty of 200 penalty units (currently, \$20,000).

The offence of failing to maintain safety systems, devices or appliances in accordance with an accreditation attracts a maximum penalty of 100 penalty units (currently, \$10,000). The offence of tampering with or disabling railway safety or operational control equipment renders an offender liable to a similar maximum penalty.

Only an accredited operator may move a train to or from a private siding. Contravention of this requirement constitutes an offence with a maximum penalty of 2,500 penalty units (currently, \$250,000) or (in any other case) with a maximum penalty of 1,000 penalty units (currently, \$100,000) or 12 months' imprisonment, or both. Operation of a railway on a private siding that is not registered attracts a maximum penalty of 20 penalty units (currently, \$2,000).

Offences of failing to provide identification (maximum penalty 5 penalty units—currently, \$500) and obstruction (maximum penalty 50 penalty units—currently, \$5,000) are also created.

The Division deals with offences by corporations, double jeopardy, the taking of proceedings for offences against the proposed Act, the issue of penalty notices, recovery of amounts due under the proposed Act and the production of certificate evidence as to certain matters.

PART 5—GENERAL**Division 1—Administration**

This Division (clauses 91–95) sets out the functions of the Director-General under the proposed Act, provides for the use of the staff of the transport authorities constituted by the Transport Administration Act 1988 for the purposes of the proposed Act, enables the delegation of certain functions and excludes specified persons and the State from legal liability.

Division 2—Miscellaneous

This Division (clauses 96–103) declares that nothing in the proposed Act affects the operation of the Occupational Health and Safety Act 1983, associated occupational health and safety legislation or the functions of the WorkCover Authority of New South Wales. The Division also provides that nothing in the proposed Act affects the Darling Harbour Authority Act 1984 in relation to the operation of certain leases and licences for transport facilities, including that for the monorail transport system, to which the proposed Act applies. (Owners and operators of such transport facilities are, however, required to obtain accreditation under the proposed Act.)

Provision is also made as to the form of applications, the service of documents and the making of regulations for the purposes of the proposed Act.

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The Division gives effect to Schedule 3 which contains consequential amendments to the Construction Safety Act 1912, the Justices Act 1902, the Search Warrants Act 1985 and the Transport Administration Act 1988 and also gives effect to Schedule 4 which contains savings and transitional provisions. The Division also requires the Minister to review the operation of the proposed Act as soon as possible after the period of 5 years from the date of assent to the Act.

SCHEDULE 1—NOTIFIABLE OCCURRENCES

This Schedule describes the notifiable Occurrences that are required by clause 56 of the proposed Act to be reported to the Director-General. The Schedule is in 2 parts. Part 1 deals with Occurrences directly affecting persons (those involving death, permanent or temporary incapacitating injuries and other Occurrences involving persons) while Part 2 deals with occurrences affecting railway infrastructure or rolling stock (collisions, fires and explosions).

SCHEDULE 2—RAILWAY EMPLOYEES—ALCOHOL OR OTHER DRUGS

This Schedule contains the provisions relating to railway employees (alcohol and other drugs) mentioned in relation to Part 3.

SCHEDULE 3—CONSEQUENTIAL AMENDMENT OF OTHER ACTS

This Schedule contains the consequential amendments to Acts that are described above.

SCHEDULE 4—SAVINGS AND TRANSITIONAL PROVISIONS

This Schedule contains provisions of a savings or transitional nature. It also enables regulations of a savings or transitional nature to be made to supplement the other provisions of the Schedule.

DICTIONARY OF WORDS AND EXPRESSIONS

The dictionary defines certain words and expressions used in the proposed Act.
