

Transport (Rail Safety) Bill 2010

Explanatory Notes for Amendments to be moved during consideration in detail by the Honourable Rachel Nolan MP

Short title

The short title of the Bill is the Transport (Rail Safety) Bill 2010.

Objective of the amendments

The objective of the amendments is to allow for private isolated line rail transport operators to be exempted from provisions of the Bill either absolutely or subject to conditions.

Reasons for the objective

That the Bill be amended so that it does not apply to private railways which are not "open to the public".

How objectives are achieved

Passage of the Bill including the amendments to be moved during consideration in detail will achieve the Government's policy objectives.

Alternative method of achieving the policy objectives

There are no alternatives to the passage of the Bill including the amendments to be moved during consideration in detail that would achieve the Government's policy objectives.

Consistency with Fundamental Legislative Principles

The amendments potentially breach the fundamental legislative Principle that legislation should have sufficient regard to the institution of Parliament (*Legislative Standards Act 1992* Section 4(2)(b)), by allowing an administrative decision to exempt a rail transport operator from the

requirement to be accredited for all or stated railway operations relating to a private isolated railway.

The amendments authorise the Rail Safety Regulator to exempt a rail transport operator undertaking certain railway operations from certain provisions of the Bill.

This amendment is considered though to be in the public interest as it ensures those operators who do not interact with other railway operations or the public are not unnecessarily subjected to the time and expense of having to comply with those parts of the Bill that are not affected by their operations.

The amendments also potentially breach the fundamental legislative principle that legislation should have sufficient regard to the rights and liberties of individuals (*Legislative Standards Act 1992* Section 4(2)(a)) by allowing the chief executive to extend a 6 month period that is set by the Act.

The chief executive's accountability to decide applications made by rail transport operators within a reasonable period is called into question in clauses 94, 106 and 111. The Transport (Rail Safety) Bill 2010 authorises the regulator to extend this period. This amendment also authorises the regulator to extend this period.

The presence of cooperative and collaborative relationships between parties is widely acknowledged as being critical to the establishment and maintenance of a safety culture.

If the six month period is extended, it will be as a result of the parties working together to resolve issues involved in the rail transport operator's application

Consultation

The Department of the Premier and Cabinet has been consulted and supports the amendments.

Notes on Provisions

1 Clause 41A-41J

Amendment 1 inserts a new subdivision 3A into the Bill. New subdivision 3A contains clauses 41A-41J which detail the manner in which an application for exemption is to be made to, and decided by the chief executive, and the effects of the exemption, as well as the rights of review available to an applicant seeking a review of the chief executive's decision.

Clause 41F details the effects of any exemption that is granted. Clause 41G states an operator must not contravene a condition of the exemption. Clauses 41H and 41I detail the grounds and procedure for varying, suspending or revoking the exemption. Clause 41J details the circumstances when the chief executive may suspend the exemption immediately.

Any application for exemption would be decided after taking into consideration the scope and nature of a railway operation in relation to such criteria as:

- The scope and nature of the railway operations
- Operations on a track that is not connected to any other rail network or across a road; and is privately owned or operated on a not for reward basis
- Railway operations that are conducted for personal enjoyment or pleasure on private property and not open to the general public
- Low speed rolling stock operations
- Movement of rollingstock in daylight hours only
- No opposing train movements
- No operation of movement or rolling stock while members of the public are on site.

2 Clause 51

Amendment 2 confirms that an exempt rail transport operator pursuant to new subdivision 3A does not need to apply for an exemption notice issued under this clause.

3 Clause 63(2)

Amendment 3 corrects a typographical error by inserting the word “manager” into clause 63(2) which deals with a rail infrastructure manager’s obligation relating to rail or road crossing for a public road.

4 Clause 86

Amendment 3 states that a rail transport operator exempted from the requirement to be accredited must keep and make available for inspection the notice of exemption issued to them.

5 Clause 100

Amendment 5 corrects a typographical error in clause 100 by omitting “applicant” and inserting “person”.

6 Schedule 2

Amendment 6 amends schedule 2 which details the internal and external reviews available to a person whose interests are affected by a decision.

7 Schedule 3

Amendment 7 amends the dictionary by omitting a reference to an exemption notice and inserting new definitions for the purposes of Part 4, Division 2, Subdivision 3A.