

## **Rail Safety (Amendment No. 1) Bill**

### **Amendment No. 1 of Rail Safety Model Provisions 10 April 2006**

#### **General Amendments**

##### **1. Purpose**

The purpose of this Bill is to amend the **Rail Safety Bill**.

##### **2. Principal Bill**

In this Bill, the Rail Safety Bill, being the Model Provisions dated 10 April 2006 and approved by the Australian Transport Council on 2 June 2006, is called the Principal Bill.

##### **3. Amendment of footnote to definition**

In section 4 of the Principal Bill, after the definition of "relevant concentration of alcohol", **insert** the following note:

"Note: See note to s. 28(2)(c)."

##### **4. Amendment of section 8**

In section 8 of the Principal Bill, for sub-section (2) **substitute-**

Penalty: "(2) Work, or any class of work, prescribed by the regulations not to be rail safety work is not rail safety work for the purposes of this Act."

##### **5. Amendment of note to Part 2**

In the note under the heading to Part 2 of the Principal Bill, for "Division" **substitute** "Part".

##### **6. Amendment of section 28**

(1) After section 28(2)(c) of the Principal Bill, **insert** the following note-

*'Draft Note: Local variations – include "more than" if the relevant concentration is zero. Note also that the defined term may be 'prescribed concentration' rather than 'relevant concentration' if the concentration is a positive amount.'*

(2) In section 28(3)(a) of the Principal Bill, for "use, installation, modification, design, construction, commissioning, maintenance" **substitute** "design, construction, commissioning, use, installation, modification, maintenance, repair, cleaning".

(3) In section 28(4)(b) of the Principal Bill, for " maintenance, commissioning, modification, construction, repair or cleaning of rolling stock is" **substitute**



## 9. Amendment of section 33

In section 33(2) of the Principal Bill -

- (a) **omit** paragraph (c); and
- (b) for "(d)" **substitute** "(c)";
- (c) for "(e)" **substitute** "(d)".
- (d) for "(f)" **substitute** "(e)".

## 10. Amendment of sections 37 and 38

(1) In section 37 of the Principal Bill-

- (a) in sub-section (1)(a) **omit** "in the prescribed form";
- (b) in sub-section (2) **omit** "must be in the prescribed form and".

(2) In section 38 of the Principal Bill, for "an applicant" **substitute** "a person".

## 11. Amendment of sections 44 and 45

(1) In section 44 of the Principal Bill-

- (a) in sub-section (1)(a)(i), after "conditions" **insert** ", or to comply with the restrictions,";
- (b) in sub-section (2)(b), after "wholly" **insert** "or in part";
- (c) in sub-section (4), after "wholly" **insert** "or in part".

(2) After section 44(2) of the Principal Bill **insert-**

"(3) The Rail Safety Regulator may withdraw a suspension of the accreditation of a person by written notice given to the person.".

(3) In section 44 of the Principal Bill -

- (a) for "(3) Before" **substitute** "(4) Before";
- (b) in renumbered sub-section (4)(a)(ii), for "make representations" **substitute** "make written representations".
- (c) for "(4)" **substitute** "(5)";
- (d) for "(5)" **substitute** "(6)".

(4) In section 45(1)(a) of the Principal Bill-

- (a) in sub-section (1)(a) after "wholly" **insert** "or in part";
- (b) in sub-section (2) after "wholly or in part" **insert** "or in respect of particular railway operations";
- (c) in sub-section(4)(a)(ii) for "make representations" **substitute** "written representations".

**12. Amendment of section 46**

- (1) In section 46(1) of the Principal Bill, for paragraphs (a) and (b) **substitute-**
- "(a) if the operator is an accredited person or has an exemption under this Part, the current notice of accreditation or exemption under this Part; and
  - (b) if the operator is a rail infrastructure manager of a private siding registered with the Rail Safety Regulator, the notice of registration; and
  - (c) any other document prescribed by the regulations for the purposes of this section-".
- (2) In section 46 of the Principal Bill-
- (a) for "(b)" **substitute** "(d)";
  - (b) for "(c)" **substitute** "(e)";
  - (c) for "(d)" **substitute** "(f)".

**13. Amendment of section 49**

In section 49(1)(a) of the Principal Bill, **omit** "in the prescribed form".

**14. Amendment of sections 52 and 53**

- (1) In section 52 of the Principal Bill-
- (a) in sub-section (2), for "accreditation and section 33" **substitute** "variation of accreditation and section 47";
  - (b) in sub-section (3), after "consider the application and" **insert** ", if satisfied as to the matters referred to in sections 34 and 35, so far as they are applicable to the proposed variation,".
- (2) In section 53(2) of the Principal Bill, after paragraph (b) **insert-**
- "; and
  - (c) consider any representations made under paragraph (b) and not withdrawn."
- (3) In section 53(4)(a) of the Principal Bill, for "(iii)" **substitute** "(ii)".

**15. Amendment of section 56**

- (1) For section 56(1) of the Principal Bill **substitute-**
- "(1) A rail infrastructure manager of a private siding is not required-
  - (a) to be accredited under this Part in respect of railway operations carried out in the private siding; or
  - (b) to comply with Division 4, 5 or 6."
- (2) After section 56(2) of the Principal Bill, **insert-**

- "(3) The Rail Safety Regulator must issue a notice of registration to a rail infrastructure manager who registers a private siding with the Rail Safety Regulator.
- (4) If the regulations so prescribe, the Rail Safety Regulator must make the register kept for the purposes of sub-section (2) available for public inspection at the Rail Safety Regulator's office or a prescribed place, during ordinary business hours."

**16. Amendment of section 57**

In section 57 of the Principal Bill-

- (a) in sub-section (1), after "management system for railway operations" **insert** "(other than railway operations in respect of which the operator is not required to be accredited)";
- (b) in sub-section (2), after "system in relation to railway operations" **insert** "in respect of which the operator is required to be accredited".

**17. Amendment of section 59**

In section 59 of the Principal Bill, for all words and expressions after "regulations" **substitute-**

"at such times or within such periods as are prescribed or, if no times or periods are prescribed, at least once each year or at such other time as is agreed between the rail transport operator and the Rail Safety Regulator.

Penalty: In the case of a natural person:  
In the case of a body corporate:".

**18. Amendment of section 60**

In section 60(3) of the Principal Bill, for "longer" **substitute** "other".

**19. Amendment of sections 62 and 63**

- (1) At the end of section 62 of the Principal Bill, **insert-**

"Penalty: In the case of a natural person:  
In the case of a body corporate:".

- (2) In section 63 of the Principal Bill-

- (a) for "emergency plan" wherever occurring in the heading and in sub-sections (1) and (2), **substitute** "emergency management plan";

- (b) at the end of sub-section (1) **insert-**

"Penalty: In the case of a natural person:  
In the case of a body corporate:";

- (c) at the end of sub-section (3) **insert-**

"Penalty: In the case of a natural person:  
In the case of a body corporate:".

## 20. Amendment of section 68

For section 68(1), (2) and (3) of the Principal Bill, **substitute-**

"(1) A rail transport operator must ensure that each rail safety worker who is to carry out rail safety work in relation to the rail transport operator's rail infrastructure or rolling stock has the competence to carry out that work.

Penalty: In the case of a natural person:

In the case of a body corporate:

(2) For the purposes of sub-section (1), the competence of a rail safety worker to carry out rail safety work must be assessed-

(a) by reference to-

(i) any qualification and any units of competence recognised under the Australian Quality Training Framework within the meaning of the Skilling Australia's Workforce Act 2005 of the Commonwealth applicable to the rail safety work to be carried out; or

(ii) if sub-paragraph (i) does not apply, the prescribed provisions applicable to the rail safety work to be carried out; and

(b) by reference to the knowledge and skills of the rail safety worker that would enable the worker to carry out the rail safety work safely.

(3) A certificate purporting to have been issued to a rail safety worker certifying that the worker has certain qualifications or units of competence is evidence that the worker has those qualifications or units of competence."

## 21. Amendment of section 72

For section 72(1) of the Principal Bill **substitute-**

"(1) A rail transport operator must provide to the Rail Safety Regulator, in a manner and form approved by the Rail Safety Regulator, at the prescribed times and in respect of prescribed periods-

(a) information concerning-

(i) measures taken by the rail transport operator to promote rail safety; and

(ii) other matters, including matters relating to the financial capacity or insurance arrangements of the rail transport operator, relating to rail safety or the accreditation of the rail transport operator that the Rail Safety Regulator reasonably requires; and

(b) the prescribed information.

Penalty: In the case of a natural person:  
In the case of a body corporate:".

## 22. Amendment of sections 73 and 74

(1) In section 73(1) of the Principal Bill, **omit** "form and".

(2) After section 73(4) of the of the Principal Bill, **insert-**

"(5) A rail transport operator to whom a requirement under sub-section (3) applies must comply with the requirement.

Penalty: In the case of a natural person:  
In the case of a body corporate:".

## 23. Amendment of Part 4, Division 7

(1) In the heading to Division 7 of Part 4 of the Principal Bill, **omit** "**and Inspections**".

(2) In the heading to section 75 of the Principal Bill, for "**Inspection**" substitute "**Audit**".

(3) For section 75(1) of the Principal Bill **substitute-**

"(1) The Rail Safety Regulator—

(a) may audit the railway operations of a rail transport operator; and

(b) may prepare and implement a program ("**an audit program**") for each year for inspecting the railway operations of rail transport operators; and

(c) may, for the purposes of an audit, inspect the railway operations of a rail transport operator whether or not under an audit program."

(3) In section 75 of the Principal Bill-

(a) in sub-section (2), for "sub-section (1)(a)" **substitute** "sub-section (1)(b)";

(b) in sub-section (4), **omit** "and inspections".

(4) After section 75(4) of the Principal Bill, **insert-**

"(5) In this section "**rail transport operator**" includes a person, not being an employee employed to carry out railway operations, who undertakes railway operations on or in relation to rail infrastructure or rolling stock of a rail transport operator."

## 24. Amendment of Part 5

In Part 5 of the Principal Bill-

(a) in section 84(4), for "regulation sunder" **substitute** "regulations under";

- (b) in section 86(5) for "sub-section (1) of (3)" **substitute** "sub-section (1) or (3)";
- (c) in section 90(4)(a), for "be in the form, or contain the particulars," **substitute** "contain the particulars";
- (d) in section 98(2), for "subsection (1)" **substitute** "sub-section (1)".

## 25. Amendment of Part 6

In Part 6 of the Principal Bill-

- (a) in item 1 of the Table set out in section 117, for "Section 36(3)" **substitute** "Section 36(4)";
- (b) in item 10 of the Table set out in section 117, for "plan" **substitute** "system";
- (c) in the heading to section 119, for "*or court*" **substitute** "*or appeal to court*".

## 26. Amendment of section 146

In section 146 of the Principal Bill, for "Penalty:" **substitute**-

"Penalty: In the case of a natural person:  
In the case of a body corporate:".

## 27. Amendment of Part 8

In Part 8 of the Principal Bill-

- (a) in section 151(3)(a) for "section [ ]" **substitute** "section [*to be specified*]";
- (b) in the heading to section 156, **omit** "or guidelines";
- (c) in section 156(1), **omit** "or guidelines";
- (d) in section 160, for "Penalty:" **substitute**-  
"Penalty: In the case of a natural person:  
In the case of a body corporate:".

## 28. Amendment of section 162

In section 162 of the Principal Bill-

- (a) in sub-section (1) **omit** paragraph (a);
- (b) in sub-section (1), for "(b)" **substitute** "(a)";
- (c) in sub-section (1), before paragraph (c) insert-  
"(b) forms for the purposes of this Act;";
- (d) in sub-section (1)(c), after "necessary" **insert** "[*or convenient – local variations*]";
- (e) in sub-section (2)(g) for "not exceeding [ ]" **substitute** "not exceeding [*to be specified*]".