

Rail Safety (Amendment No. 2) Bill

Amendment No. 2 of Rail Safety Model Provisions 10 April 2006

Interface Co-ordination— *Final Draft 18/7/07*

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 section 4

(1) In section 4 of the Principal Bill, insert the following definitions:

"Australian Road Rules means the Road Rules—Victoria published in the Government Gazette (Periodical Gazette No. 2) on 28 October 1999, as those Rules have effect for the purposes of regulation 201(1) of the Road Safety (Road Rules) Regulations 1999; [*Local variations*]

footpath has the same meaning as in the dictionary at the end of the Australian Road Rules;

interface agreement means an agreement in writing about managing risks to safety identified and assessed under Division 4 of Part 4 that includes provisions for-

- (a) implementing and maintaining measures to manage those risks; and
- (b) the evaluation, testing and, where appropriate, revision, of those measures; and
- (c) the respective roles and responsibilities of each party to the agreement in relation to those measures; and
- (d) procedures by which each party to the agreement will monitor compliance with the obligations under the agreement; and
- (e) a process for keeping the agreement under review and its revision;

level crossing has the same meaning as in the dictionary at the end of the Australian Road Rules;

public road has the same meaning as in section 17 of the **Road Management Act 2004**; [*local variations*]

railway crossing means-

- (a) a level crossing;

- (b) any area where a footpath or shared path crosses a railway or tram tracks at substantially the same level;

responsible road manager, in relation to a public road, has the same meaning as responsible road authority has in the **Road Management Act 2004**; [*local variations*]

road has the same meaning as in the **Road Management Act 2004**; [*local variations*]

road infrastructure has the same meaning as in the **Road Management Act 2004**; [*local variations*]

road manager-

- (a) in relation to a public road, has the same meaning as road authority has in the **Road Management Act 2004**; and
- (b) in relation to a road other than a public road, means the owner of, or person responsible for, the road; [*local variations*]

rail or road crossing means a railway crossing, a bridge carrying a road over a railway or a bridge carrying a railway over a road [and includes parallel road/rail – *local variations*];

shared path has the same meaning as in the dictionary at the end of the Australian Road Rules;

tram tracks has the same meaning as in the dictionary at the end of the Australian Road Rules;".

- (2) In section 4 of the Principal Bill, in the definition of **safety**, after "railways," **insert** "users of rail or road crossings".

4 Amendment of section 46

Section 46 of the Principal Bill, as amended by the Amendment No. 1 Bill submitted to the Transport Agencies Chief Executives (TACE) on 17 November 2006 and subsequently approved by them, is further amended as follows:

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

Note: These amendments correct an error made in section 12(2) of the Amendment No. 1 Bill which, in error, re-numbered the last two paragraphs in section 46 as (e) and (f).

5 Amendment of section 56

- (1) For subsection (1) of section 56 of the Principal Bill **substitute-**

"(1) A rail infrastructure manager of a private siding -

- (a) is not required to be accredited under this Part in respect of railway operations carried out in the private siding; and

(b) except to the extent that the regulations or a condition referred to in sub-section (2) otherwise provides, is not required to comply with Division 4, 5 or 6 in relation to the private siding."

(2) After section 56(2) of the Principal Bill **insert-**

"(3) Conditions and regulations referred to in subsection (2) may establish requirements that are the same as, or similar to, any provisions of Division 4, 5 or 6."

6 Amendment of section 57(1)

In section 57(1)(f) of the Principal Bill, for subparagraph (i) **substitute-**

"(i) measures to manage risks to safety identified under section 61, 61A or 61B; and"

7 New sections 61 and 61A to 61G substituted

For section 61 of the Principal Bill, **substitute-**

"61 Interface co-ordination – rail transport operators

(1) A rail transport operator -

(a) must identify and assess, so far as is reasonably practicable, risks to safety that may arise from railway operations carried out by or on behalf of the operator because of, or partly because of, railway operations carried out by or on behalf of any other rail transport operator; and

(b) must determine measures to manage, so far as is reasonably practicable, those risks; and

(c) must, for the purpose of managing those risks, seek to enter into an interface agreement with the other rail transport operator or rail transport operators.

(2) Except to the extent that the regulations otherwise provide, subsection (1)(c) does not apply if none of the rail transport operators is a rail infrastructure manager.

61A Interface co-ordination – rail infrastructure manager – public roads

A rail infrastructure manager-

(a) must identify and assess, so far as is reasonably practicable, risks to safety that may arise from railway operations carried out on or in relation to the manager's rail infrastructure and that may so arise because of, or partly because of, the existence or use of any rail or road crossing that is part of the road infrastructure of any public road; and

- (b) must determine measures to manage, so far as is reasonably practicable, those risks; and
- (c) must, for the purpose of managing those risks, seek to enter into an interface agreement with the responsible road manager in relation to that road.

Note: Local variations for NT to recognise protocols made under the
Australasia Railway (Special Provisions) Act

61B Interface co-ordination – rail infrastructure manager – roads other than public roads

A rail infrastructure manager-

- (a) must identify and assess, so far as is reasonably practicable, risks to safety that may arise from railway operations carried out on or in relation to the manager's rail infrastructure and that may so arise because of, or partly because of, the existence or use of any rail or road crossing that is part of the road infrastructure of any road, other than a public road; and
- (b) must consider whether it is necessary to manage those risks in conjunction with the road manager in relation to that road and-
 - (i) if the rail infrastructure manager is of the opinion that it is necessary that those risks be managed in conjunction with the road manager, must give written notice of that opinion to the road manager and must determine measures to manage, so far as is reasonably practicable, those risks; or
 - (ii) if the rail infrastructure manager is of the opinion that the management of those risks does not need to be carried out in conjunction with the road manager, must keep a written record of that opinion; and
- (c) unless paragraph (b)(ii) applies, must, for the purpose of managing those risks, seek to enter into an interface agreement with the road manager in relation to that road.

Note: Local variations for NT to recognise protocols made under the
Australasia Railway (Special Provisions) Act

61C Interface co-ordination - road manager – public roads and other roads

- (1) The responsible road manager in relation to a public road—
 - (a) must identify and assess, so far as is reasonably practicable, risks to safety that may arise from the existence or use of any rail or road crossing that is part of the road

infrastructure of that public road because of, or partly because of, railway operations carried out on or in relation to any rail infrastructure; and

- (b) must determine measures to manage, so far as is reasonably practicable, those risks; and
 - (c) must, for the purpose of managing those risks, seek to enter into an interface agreement with the rail infrastructure manager of the rail infrastructure.
- (2) If, under section 61B(b), a rail infrastructure manager gives a written notice to a road manager in relation to a road that is not a public road of an opinion that certain risks need to be managed in conjunction with the road manager, the road manager—
- (a) must identify and assess, so far as is reasonably practicable, risks to safety that may arise from the existence or use of any rail or road crossing that is part of the road infrastructure of the road because of, or partly because of, railway operations; and
 - (b) must determine measures to manage, so far as is reasonably practicable, those risks; and
 - (c) must, for the purpose of managing those risks, seek to enter into an interface agreement with the rail infrastructure manager.
- (3) Nothing in this section authorises or requires a road manager to act inconsistently with, or without regard to, the functions, obligations or powers conferred on it by or under an Act other than this Act.

Note: Subject to local provisions (if any) that provide protection from civil liability for road managers – eg NSW Civil Liability Act 2002 s. 45

61D Identification and assessment of risks

A rail transport operator, rail infrastructure manager or road manager which is required under section 61, 61A, 61B or 61C to identify and assess risks to safety that may arise from operations carried out by another person may do so-

- (a) by itself identifying and assessing those risks; or
- (b) by identifying and assessing those risks jointly with the other person; or
- (c) by adopting the identification and assessment of those risks carried out by the other person.

61E Scope of interface agreements

An interface agreement under this Division-

- (a) may be entered into by two or more rail transport operators or by one or more rail transport operators and one or more road managers;
- (b) may include measures to manage any number of risks to safety that may arise because of, or partly because of, any railway operations;
- (c) may include measures to manage any number of risks to safety that may arise from any railway operations because of, or partly because of, the existence or use of any road infrastructure;
- (d) may make provision for or in relation to any matter by applying, adopting or incorporating any matter contained in any document;
- (e) may consist of two or more documents.

61F Appointed person may give directions

- (1) In this section, "**appointed person**" means [*eg Director of Public Transport Safety (Vic), Rail Safety Regulator, person appointed by the Minister- Note that other Acts may require amendment to confer necessary powers*].
- (2) This section applies if the appointed person is satisfied that a rail transport operator, rail infrastructure manager or road manager referred to in section 61, 61A, 61B or 61C-
 - (a) is unreasonably refusing or failing to enter into an interface agreement with another person as required under this Division; or
 - (b) is unreasonably delaying the negotiation of such an agreement.
- (3) The appointed person may issue a written notice to the rail transport operator, the rail infrastructure manager or the road manager, as the case requires, and the other person that-
 - (a) warns of the appointed person's powers under this section, including the power to issue a direction under subsection (4) at any time after a specified date; and
 - (b) includes a copy of this section; and
 - (c) may contain suggested terms for inclusion in an interface agreement.

- (4) If the appointed person issues a notice under subsection (3) to a rail transport operator, rail infrastructure manager or road manager, the appointed person may, in writing, request the manager to provide such information as the appointed person reasonably requires for the purposes of making a direction under sub-section (5).
- (5) If a notice is issued under subsection (3) and an interface agreement has not been entered into by or on the date specified in the notice, the appointed person-
 - (a) may determine the arrangements that are to apply in relation to the management of risks to safety referred to in section 61, 61A, 61B or 61C, as the case requires; and
 - (b) may direct either or both persons to whom the notice is issued to give effect to those arrangements; and
 - (c) must specify by when a direction must be complied with.
- (6) A direction under subsection (5)-
 - (a) must be in writing; and
 - (b) must set out any arrangements determined by the appointed person under that subsection.
- (7) A person to whom a direction under subsection (5) is given must comply with the direction.

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

Note: local variations

61G Register of interface agreements

- (1) A rail transport operator must maintain a register of-
 - (a) interface agreements to which it is a party; and
 - (b) arrangements determined by the appointed person under section 61F-

that are applicable to its railway operations.
- (2) A road manager must maintain a register of-
 - (a) interface agreements to which it is a party; and
 - (b) arrangements determined by the appointed person under section 61F-

that are applicable to any road in relation to which it is the road manager.

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