

LEGISLATIVE ASSEMBLY

RAIL SAFETY BILL

(Amendments to be moved by Mr Batchelor)

1. Heading to clause 3, after "Definitions" insert "and interpretation".
2. Clause 3, line 15, before "In" insert "(1)".
3. Clause 3, page 3, line 30, omit "a person" and insert "the rail safety worker".
4. Clause 3, page 12, after line 22 insert—
 - "() For the purposes of this Act, a rail infrastructure manager is deemed to carry out rail infrastructure operations supplied to the rail infrastructure manager by—
 - (a) a rail contractor engaged directly or indirectly by the rail infrastructure manager to supply those operations to the rail infrastructure manager; or
 - (b) a sub-contractor of the rail contractor referred to in paragraph (a).
 - () For the purposes of this Act, a rolling stock operator is deemed to carry out rolling stock operations supplied to the rolling stock operator by—
 - (a) a rail contractor engaged directly or indirectly by the rolling stock operator to supply those operations to the rolling stock operator; or
 - (b) a sub-contractor of the rail contractor referred to in paragraph (a).
 - () For the purposes of this Act—
 - (a) an accredited rail operator is deemed to carry out rail infrastructure operations or rolling stock operations supplied to the accredited rail operator by—
 - (i) a rail contractor engaged directly or indirectly by the accredited rail operator to supply those operations to the accredited rail operator; or
 - (ii) a sub-contractor of the rail contractor referred to in sub-paragraph (i); and
 - (b) rail infrastructure operations or rolling stock operations referred to in paragraph (a) are deemed to be accredited rail operations."
5. Heading to clause 11, after "Objects" insert "and principles of rail safety".
6. Clause 11, line 11, omit "safety—" and insert "safety.".
7. Clause 11, lines 12 and 13, omit all words and expressions on these lines.

8. Clause 11, lines 14 to 16, omit sub-section (2) and insert—

"() The Parliament does not intend by Part 2 to create in any person any legal right or give rise to any civil cause of action."
9. Clause 12, line 18, before "This" insert "(1)".
10. Clause 12, after line 21, insert—

"() To avoid doubt, the Crown is a body corporate for the purposes of this Act or the regulations."
11. Clause 14, lines 21 and 22, omit "That person is the rail operator carrying out those operations."
12. Clause 20, lines 6 to 8, omit "the rail infrastructure manager's rail infrastructure operations" and insert "rail infrastructure operations carried out by the rail infrastructure manager".
13. Clause 21, lines 9 and 10, omit "the rolling stock operator's rolling stock operations" and insert "rolling stock operations carried out by the rolling stock operator".
14. Clause 22, page 24, line 25, after "operations" (where secondly occurring) insert "to a rail operator".
15. Clause 33, line 13, omit "(2)" and insert "(3)".
16. Clause 33, lines 15 to 31, omit all words and expressions on these lines and insert—

"() If—

 - (a) a rail operator is carrying out, or proposes to carry out, rail operations on land on which there are works of a utility or within the immediate vicinity of the works of a utility; and
 - (b) the Safety Director reasonably believes the rail operations threaten, or are likely to threaten, the works or the safe provision by the utility of (as the case requires) gas, electricity or other like services—

the Safety Director may give the rail operator a written direction to stop, alter or not to start the rail operations.

() If the utility referred to in sub-section (1) or (2) is a utility that provides, or intends to provide, gas, electricity or other like services, the Safety Director must consult with Energy Safe Victoria before giving a direction under either of those sub-sections."
17. Clause 33, page 34, line 1, omit "refuse to comply with," and insert "refuse, to comply with".
18. Clause 33, page 34, lines 8 and 9, omit "refuse to comply with, a direction under sub-section (3)" and insert "refuse, to comply with a direction under sub-section (2)".

19. Clause 35, lines 8 and 9, omit "competency and capacity to manage the risks associated with major incidents" and insert "competence and capacity to manage the risks to safety associated with the rail operations for which accreditation was sought".
20. Clause 39, omit this clause.
21. Clause 40, page 40, line 1, omit "competency" and insert "competence".
22. Clause 40, page 40, line 5, omit "complied" insert "taken all reasonable steps to comply".
23. Clause 40, page 40, lines 8 and 9, omit ", so far as it relates to major incidents,".
24. Clauses 49 to 51, omit these clauses.
25. Clause 53, line 17, after "accredited" insert "rail".
26. Heading to clause 65, omit "assessment" and insert "management".
27. Clause 65, line 16, omit "they comply with Division 3" insert "the accredited rail operator has taken all reasonable steps to comply with the requirements in sections 50 to 52".
28. Heading to clause 66, omit "assessment" and insert "management".
29. Clause 97, omit this clause.
30. Division heading preceding clause 101, omit "3" and insert "4".
31. Clause 101, line 30, after "under" insert "Division 2 or 3 of".
32. Clause 101, page 128, omit sub-section (2) and insert—

"Note: See also section 51 of the **Interpretation of Legislation Act 1984**.

 - () If a provision of this Act or the regulations made under this Act is inconsistent with a provision of the **Occupational Health and Safety Act 2004** or the regulations made under that Act, the **Occupational Health and Safety Act 2004** or the regulations made under it prevail to the extent of the inconsistency.
 - () Compliance with this Act or the regulations made under this Act, or with any requirement imposed under this Act or the regulations, is not in itself a defence in any proceedings for an offence against the **Occupational Health and Safety Act 2004** or the regulations made under that Act.
 - () Evidence of a relevant contravention of this Act or the regulations made under this Act is admissible in any proceedings for an offence against the **Occupational Health and Safety Act 2004** or the regulations made under that Act."
33. Clause 104, line 11, omit "Order" and insert "instrument".

34. Division heading preceding clause 105, omit "4" and insert "5".
35. Clause 105, after line 6 insert—

"(b) annual accreditation fees and additional fees for the late payment of annual accreditation fees;"
36. Clause 105, line 7, omit "(b)" and insert "(c)".
37. Clause 117, page 152, line 15, omit "Act; and" and insert "Act."
38. Clause 117, page 152, lines 16 and 17, omit all words and expressions on these lines.
39. Clause 125, page 177, after line 19 insert—

"228SA. Crown to be bound

 - (1) This Division binds the Crown, not only in right of Victoria but also, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.
 - (2) To avoid doubt, the Crown is a body corporate for the purposes of this Division."
40. Clause 127, page 233, lines 22 to 29, omit all words and expressions on these lines and insert—

"Note: See also section 51 of the **Interpretation of Legislation Act 1984**.

 - (2) If a relevant rail safety duty law is inconsistent with a provision of the **Occupational Health and Safety Act 2004** or the regulations made under that Act, the **Occupational Health and Safety Act 2004** or the regulations made under it prevail to the extent of the inconsistency.
 - (3) Compliance with a relevant rail safety duty law, or with any requirement imposed under a relevant rail safety duty law, is not in itself a defence in any proceedings for an offence against the **Occupational Health and Safety Act 2004** or the regulations made under that Act.
 - (4) Evidence of a relevant contravention of a relevant rail safety duty law is admissible in any proceedings for an offence against the **Occupational Health and Safety Act 2004** or the regulations made under that Act."
41. Clause 127, page 234, line 3, omit "and 2" and insert "to 3".
42. Clause 127 page 234, line 11, omit "and 2" and insert "to 3".
43. Clause 157, page 244, line 18, after "works," insert "or the safe provision by the electricity corporation of electricity or other like services,".
44. Clause 158, page 247, line 8, after "works," insert "or the safe provision by a gas distribution company or gas transmission company of gas or other like services,".

NEW CLAUSES

45. Insert the following New Clause to follow clause 38—

"AA. Criteria on which accreditation applications by rail infrastructure managers are to be assessed

The Safety Director must accredit a rail infrastructure manager in respect of the rail infrastructure operations the rail infrastructure manager carries out if the Safety Director is satisfied that—

- (a) the rail infrastructure manager—
 - (i) is accredited in another State or a Territory of the Commonwealth to carry out rail infrastructure operations of a similar kind in that State or Territory; or
 - (ii) has the competence and capacity to carry out those operations safely; and
- (b) the rail infrastructure manager has—
 - (i) taken all reasonable steps to comply with Division 3; and
 - (ii) demonstrated to the Safety Director that—
 - (A) the rail infrastructure manager's safety management system complies with Division 4 of Part 3; and
 - (B) the rail infrastructure manager has complied with section 26; and
 - (iii) the financial capacity, or has public risk insurance arrangements, to meet reasonable potential accident liabilities arising from the carrying out of rail infrastructure operations."

46. Insert the following New Clauses to follow the heading to Division 3 of Part 5—

'BB. Application of Division

- (1) This Division applies to every rail infrastructure manager and rolling stock operator who applies under Division 2 to be accredited under this Part in respect of (as the case requires) the rail infrastructure operations or rolling stock operations they carry out or intend to carry out.
- (2) The rail infrastructure manager or rolling stock operator must, as part of their application, include information, in writing, that evidences that they have taken all reasonable steps to comply with the requirements of this Division.

CC. Identification of incidents and hazards, and risk assessment

- (1) A rail infrastructure manager must—
 - (a) identify all incidents which could occur on or at rail infrastructure or while carrying out rail infrastructure operations; and
 - (b) identify all hazards that could cause, or contribute to causing, those incidents.
- (2) A rolling stock operator must—

- (a) identify all incidents which could occur while carrying out rolling stock operations; and
 - (b) identify all hazards that could cause, or contribute to causing, those incidents.
- (3) A rail infrastructure manager or rolling stock operator must document all aspects of any identification required by (as the case requires) sub-section (1) or (2), including the methods and criteria used for identifying the incidents and hazards.
- (4) A rail operator must conduct a comprehensive and systematic assessment in relation to all possible incidents and all hazards identified in accordance with (as the case requires) sub-section (1) or (2).
- (5) An assessment must involve an examination and analysis of the hazards and incidents identified in accordance with (as the case requires) sub-section (1) or (2) that provide the rail operator with a detailed understanding of all aspects of risk to safety associated with the incidents, including—
 - (a) the nature of each hazard and incident; and
 - (b) the likelihood of each hazard causing an incident; and
 - (c) in the event of an incident occurring—
 - (i) its magnitude; and
 - (ii) the severity of its consequences of the incident; and
 - (d) the range of control measures considered.
- (6) In conducting an assessment, the rail operator must—
 - (a) consider hazards cumulatively as well as individually; and
 - (b) use assessment methodologies (whether quantitative or qualitative, or both) that are appropriate to the hazards being considered.
- (7) The rail operator must document all aspects of the assessment, and the documentation must—
 - (a) describe the methodology used in the examination and analysis; and
 - (b) state all the matters specified in sub-section (5)(a) to (d); and
 - (c) contain judgments as to the matters specified in sub-section (5)(a) and (b), and reasons for those judgments; and
 - (d) contain, in relation to the range of control measures considered—
 - (i) statements as to their viability and effectiveness; and
 - (ii) reasons for selecting certain control measures and rejecting others.
- (8) In this section—

"incident" includes major incident.

DD. Measures to control likelihood, magnitude and severity of consequences of incidents

A rail operator must adopt measures that eliminate or, if it is not practicable to eliminate, that reduce, so far as is reasonably practicable—

- (a) the likelihood of an incident referred to in section 50 occurring; or
- (b) in the event of an incident referred to in section 50 occurring—
 - (i) the magnitude of the incident; and
 - (ii) the severity of the consequences of the incident.'.

47. Insert the following Division heading and New Clause to follow clause 100—

'Division 3—Proceedings against the Crown

EE. Responsible agency for the Crown

- (1) If proceedings are brought against the Crown for an offence against this Act or the regulations the responsible agency in respect of the offence may be specified in any document initiating, or relating to, the proceedings.
- (2) In this section, the **"responsible agency"** in respect of an offence is the agency of the Crown—
 - (a) whose acts or omissions are alleged to constitute the offence; or
 - (b) if that agency has ceased to exist, that is the successor of that agency; or
 - (c) if that agency has ceased to exist and there is no clear successor, that the court declares to be the responsible agency.
- (3) The responsible agency in respect of an offence is entitled to act in proceedings against the Crown for the offence and, subject to any relevant rules of court, the procedural rights and obligations of the Crown as the accused in the proceedings are conferred or imposed on the responsible agency.
- (4) The person prosecuting the offence may change the responsible agency during the proceedings with the court's leave.
- (5) In this section—

"agency" includes the Director within the meaning of the **Transport Act 1983**.'.