

# **Transport (Rail Safety) Bill**

## **EXPLANATORY MEMORANDUM**

### **PART 1—PRELIMINARY**

- Clause 1 states the purpose of the Act.
- Clause 2 provides for the commencement of the Act. It states that Part 1 operates on the date of the Royal Assent. Sub-clause (2) states that section 11 of the Act will commence to operate 12 months after section 3. Sub-clause (3) states that the remaining provisions of the Act come into effect on a day or days to be proclaimed. The effect of sub-clause(4) is that if a provision has not been proclaimed to come into operation before 1 January 1998 it will come into operation on that day.

### **PART 2—AMENDMENTS TO THE TRANSPORT ACT 1983**

- Clause 3 inserts a new Division 3—"Accreditation of Railway and Tramway Services" into Part VI of the **Transport Act 1983**.

Proposed section 103 describes the object of Division 3.

Proposed section 104 sets out definitions used in Division 3.

Proposed section 105 provides that Division 3 is to bind the Crown.

Proposed section 106 requires a person to hold an accreditation under the Act in order to manage any rail infrastructure, except the manager of a private siding who is registered to manage the siding under the regulations.

Proposed section 107 sets out the activities that constitute managing rail infrastructure.

Proposed section 108 requires a person to hold an accreditation under the Act in order to provide or operate any rolling stock.

Proposed section 109 defines the activities that constitute providing or operating rolling stock.

Proposed section 110 describes the purpose of the accreditation requirements contained in Division 3.

Proposed section 111 outlines the processes involved in applying for accreditation.

Proposed sections 112, 113 and 114 list the criteria for assessing applications for accreditation as a manager of rail infrastructure or as a provider or operator of rolling stock.

Proposed section 115 lists the minimum criteria to be considered by the Secretary to the Department of Infrastructure in determining whether a person has an appropriate safety management system as required under sections 112, 113 or 114.

Proposed section 116 requires the Secretary to notify an applicant in writing if the Secretary refuses an application for accreditation and to give the reasons.

Proposed section 117 provides for an accreditation to be subject to conditions or restricted in its scope

Proposed section 118 requires an accredited person to observe any conditions of their accreditation.

Proposed section 119 allows the Secretary to vary or revoke a condition or restriction to which an accreditation is subject or impose a new one.

Proposed section 120 provides for the duration of an accreditation.

Proposed section 121 provides for returns of information required from accredited persons.

Proposed sections 122 and 123 provide for the renewal of accreditations.

Proposed section 124 provides that an accreditation is not transferable, but may be surrendered.

Proposed section 125 makes it an offence to provide false or misleading information in an application for accreditation.

Proposed section 126 makes it clear that the granting of an accreditation by the Secretary does not subject the Secretary to any liability.

Proposed sections 127-129A confer on the Secretary various powers to oversight the conduct of accredited persons, including powers to hold an inquiry, and to suspend or take other action in relation to an accreditation.

Proposed section 129B confers a right of review by the Administrative Appeals Tribunal of decisions by the Secretary in relation to accreditations.

Proposed section 129C confers a special right of review on interstate applicants for accreditation, in accordance with the requirements of the Intergovernmental Agreement on Rail Safety.

Proposed section 129D enables the Secretary to appoint authorised officers for the purposes of the Act.

Proposed sections 129E-129Q provide for searches and seizure by inspectors in various situations.

Proposed section 129R details the power of an inspector to require information or documents from a person.

Proposed section 129S maintains a person's privilege against self-incrimination.

Proposed section 129T obliges an accredited person to inquire into accidents and incidents.

Proposed section 129U enables the Minister to require the Secretary or other person to investigate an accident or incident.

Proposed section 129V requires the Secretary to conduct a safety audit of the operations of accredited persons at least once every 12 months.

Proposed section 129W outlines the basis for charging fees for the conducting of safety audits.

Proposed section 129X enables regulations to be made requiring people engaged in defined rail safety work to obtain a certificate of competence before they can carry on that work.

Proposed section 129Y permits regulations to be made.

- Clause 4 removes a number of outdated references in the **Transport Act 1983**.
- Clause 5 inserts a new sub-section (3A) in section 32 of the Transport Act to permit the Chief Executive of the Public Transport Corporation to delegate powers to any officer of the Corporation.
- Clause 6 makes minor consequential amendments to the Transport Act.
- Clause 7 amends the Transport Act to give the power to appoint authorised officers in relation to the enforcement of blood-alcohol controls on workers engaged in rail safety work, to the Secretary instead of to the Chief Executive of the Public Transport Corporation.

- Clause 8 amends the Transport Act to provide that where a prior conviction is relevant under the Act, a prior conviction is to include offences where the person was found guilty but had no conviction recorded because of a good behaviour bond or otherwise.
- Clause 9 amends the Transport Act to allow the Public Transport Corporation to appoint an authorised officer who may require a person to state his or her name and address in particular circumstances. The Corporation may so authorise an officer under existing powers, but such an authorisation presently carries with it a range of other powers, including power to search a person's property or to arrest them. This clause will enable an authorisation by the Corporation to be confined to the power to require name and address.
- Clause 10 substitutes new sections in place of section 219 of the Transport Act. The effect is to bring the power of arrest provisions in the Transport Act in line with the existing requirements in the Crimes Act.
- Clause 11 makes consequential amendments to the tourist railway provisions contained in the Transport Act by removing the Public Transport Corporation's role in certifying the safety status of such railways.
- Clause 12 contains transitional provisions. The effect is to allow a person who was managing any rail infrastructure or providing or operating any rolling stock to continue to do so for up to 12 months.

### **PART 3—AMENDMENT OF PUBLIC TRANSPORT COMPETITION ACT 1995**

- Clause 13 removes outdated references to the former Department of Transport and substitutes references to the Department of Infrastructure.
- Clause 14 removes a limitation on the Secretary's ability to delegate the power to enter into service contracts under the Act.
- Clause 15 repeals spent provisions.

### **PART 4—STATUTE LAW REVISION**

- Clause 16 makes miscellaneous statute law revision changes to the **Transport Act 1983** and the **Road Safety (Miscellaneous Amendments) Act 1995**.