



Monday, 15 June 2009

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Dear Phil,

Submission from Asciano on the draft WA Rail Safety Bill (2009)

Asciano refers to your request of 18 May 2009 for comments on the draft Rail Safety Bill 2009. Asciano has similar concerns and issues to those expressed by the industry body, the ARA. We confirm our view as follows:

Asciano supports the concept of consistency of legislation for rail safety across all jurisdictions and was involved in the development of the AC approved national model bill, however, whilst supporting the draft WA Bill we note that we have significant concerns with some provision of the draft Bill.

Draft section 126 (2): Asciano is of the view that the power to initiate and appoint an independent investigation of rail safety matters should only vest in the Minister or the chief executive of the portfolio. The current drafting of the section in the draft Bill would allow ad hoc and indiscriminate investigations initiated by the Regulator without tests or boundaries, and, when read in conjunction with the proposed draft Section 126(6) (see further comments below), have the potential to impose additional unnecessary costs on rail operators. Asciano is of the opinion that this provision should be deleted.

Draft section 126 (6): As noted above, Asciano is of the view that any independent investigations initiated by the Minister under the legislation, should be paid for by government. The accreditation fees paid by all rail operators provide the funds for undertaking regulatory functions such as audits and investigations. We agree with the ARA's comments that where investigations are undertaken for reasons of public benefit, the costs of those investigations should be borne by government, thus truly reflecting the public interest concept and independent nature of the investigation.

We also concur with the ARA's views that the ability to pass on such costs to the rail operators in an uncapped or unrestrained manner imposes additional commercial burdens on rail operators.

The other concerns raised by the ARA on behalf of the industry relating to the

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impracticality of recovering costs or apportioning them between multiple parties are reiterated by Asciano.

The costs of investigations instigated by other regulatory authorities such as the police and the workplace safety authorities are not recoverable from the parties the subject of the investigations.

Asciano requests the deletion of the section.


Draft section 188: Asciano supports the ARA's opposition to the provisions concerning offences by bodies corporate, partnerships, and employees etc which apply a "reverse onus of proof." Asciano reiterates that these provisions are onerous and contrary to both criminal law and to the trend to change this requirement in OHS legislation. Under section 55(1) of the current WA Act directors and managers liability has to be proven by the prosecution. This provision in the draft Bill should be reviewed and replaced by the provision in the current WA legislation. Asciano has supported the industry raising this issue with ATC Ministers in the context of the model Bill and will oppose it in any legislation developed by jurisdictions.

Asciano supports the ARA's view on the other matters raised by it as follows:

Page 2: The draft Bill does not include the 'clause 3 Objects of Act' provision contained in the model Bill. Industry considers these objects are desirable – if WA parliamentary drafting practice precludes them, industry recommends the sense of the objects be included in the Explanatory Memorandum accompanying the WA Bill.

Page 67 section 76 (2): The draft Bill intends to assess the competence of a worker by reference to qualifications etc "recognised under the regulations." This is different to the model Bill which refers to qualifications etc recognised under the Australian Quality Training Framework. Industry should be consulted as you develop the approach to be specified in the regulations.

Yours sincerely,



Brian M'Naught
General Manager Rail Compliance