

Australia Western Railroad Pty Ltd

Submission on Variations to the National Model Rail Safety Legislation incorporated into the Western Australian Draft Rail Safety Bill 2009

Part and Section of Draft Bill	Comment
Part 6 Section 126 (6)	AWR expresses concern at the provision in the WA Draft Rail Safety Bill that reasonable costs of conducting independent investigations are recoverable from rail transport operator concerned for an independent investigator appointed by the Safety Regulator. In this instance the rail transport operator does not have any control over the costs incurred and notes that annual accreditation fees are payable to cover the costs of regulatory functions.
Part 6 Section 134	AWR expresses concern at the provision in the WA Draft Rail Safety Bill where the Rail Safety Regulator, may direct a rail transport operator in writing, to install safety or protective systems, devices, equipment or appliance as specified in the notice. This provision does not recognise the risk management principle of minimising risks so far as is reasonably practicable. The cost of complying with the direction may be inhibitive to the rail transport operator and does not consider other controls that may reduce or minimise the risk SFAIRP. Furthermore if the direction is of such safety critical nature then consideration should be given to whether the direction should apply to other rail transport operators.
Part 8 Section 188	AWR opposes the provision in the WA Draft Rail Safety Bill that if a body corporate, partnerships, rail safety worker, employee, etc commits an offence is taken to have committed an offence and is punishable accordingly. This is contrary to criminal law and implies reverse onus of proof.
	AWR considers that provision should be made for inclusion of Objects of Act into the WA Draft Rail Safety Bill as contained in Section 3 of the National Model Rail Safety Legislation.
Part 4 Section 76 (2)	The provisions of this section requires the competence of a rail safety to carry out rail safety work to be assessed by reference to any qualification or any units of competence recognised under the regulations applicable to the rail safety work to be carried. Australia Western Railroad Pty Ltd (AWR) meets the national set of standards as contained in the Australian Quality Training Framework and is a Registered Training Organisation with the Training Accreditation Council and requests that AWR be consulted on development of your approach to what may be contained in the regulations.