



PUBLIC TRANSPORT AUTHORITY SUBMISSION:
Draft WA Rail Safety Bill 2009

The Public Transport Authority broadly supports the draft Bill, noting that it is fairly consistent with the National Model Rail Safety Bill agreed at the Australian Transport Council and Council of Australian Governments.

There are, however, some sections of concern to the PTA in the draft WA legislation, which we would like to see reconsidered and/or improved upon as follows:

Part 6, Division 1, s.126: Appointment of Independent Investigator

PTA acknowledges the need for an independent investigator to be appointed, from time to time, to investigate critical rail safety incidents. However, this process should be reserved for the most serious of occurrences on the initiative of the Minister, as detailed in s.126(1). PTA is strongly opposed to the Rail Safety Regulator having unfettered power to initiate independent investigations into any occurrence whatsoever, as currently provided by s.126(2).

PTA submits that the power to initiate independent investigations should be vested in the Minister and CEO only. One need only look at other industries (or other areas of the transport industry, such as aviation) to see that, in the most serious of incidents, the regulator is often a subject of investigation along with the operator(s) involved. As such it is more appropriate, and more transparent, for this power to be restricted to the Minister. If the Rail Safety Regulator does retain any power to initiate independent investigations, this should not be on an unconstrained, indiscriminate basis, but should be subject to the same limitations currently provided in s.126(1) – ie. death, serious personal injury or major property damage.

In addition to this, PTA opposes the provision in s.126(6) for costs associated with an independent investigation to be recovered from the operator. Section 127(1)(a) states that the aim of these investigations is “not to apportion blame... or determine the liability... in respect of any rail safety matter”, yet charging the cost of the investigation to the operator(s) implies some liability. There is also no direction provided in the draft Bill as to how costs would be apportioned between multiple parties. This presents many challenges:

- an even split between parties may not fairly represent the level of involvement each had in the incident;
- costs cannot be apportioned based on fault without contradicting the “no blame” aim of the investigation; and
- in situations where there are non-rail parties involved, such as level crossing incidents, it is unreasonable to charge the rail operator for all costs associated with the investigation.

All accredited rail organisations pay annual fees to the Rail Regulator and any costs associated with administering the new Act, including the conduct of independent investigations, should be funded via this process and the Rail Regulator’s budget as a government body.

Part 8, Division 1, s.188 & s.190: Reverse Onus of Proof

The sections of the draft Bill providing for a reverse onus of proof in proceedings for an offence against the Act are unacceptable. A presumption of guilt is contrary to principles of natural justice, as well as WA’s current Occupational Safety & Health Act (1984) and the recent National Guidelines for Model Occupational Health & Safety Legislation.

The notion of reverse onus of proof is also at odds with the tone of the rest of the draft Bill, which has taken the positive step of including provisions for investigations not geared to apportion blame and protection from self-incrimination. PTA strongly advocates the Bill be brought in line with criminal law, the existing OSH Act and the guidelines for new, nationally consistent OSH legislation, by assigning burden of proof to the prosecutor.