

Act No. 293

**TRANSPORT AUTHORITIES (RAILWAY SAFETY)
AMENDMENT BILL 1987***

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The following Bills are cognate with this Bill:

Crimes (Railway Safety) Amendment Bill 1987;

Government Railways (Railway Safety) Amendment Bill 1987.

The object of this Bill is to introduce a scheme (similar to that applying to the drivers of motor vehicles) for the breath and other testing of employees of the State Rail Authority engaged in certain railway safety work to avoid dangers to public safety associated with the carrying out of that work while under the influence of alcohol or other drugs.

The principal features of the scheme are as follows:

- (a) to apply the scheme to train drivers, guards, observers, enginemen, station-masters, signal operators, shunters, fettlers, gangers and certain other railway employees engaged in work which may affect the safe operation of the railway system;
- (b) to create an offence if an employee carries out railway safety work with a concentration of alcohol in the blood of 0.02% or more;
- (c) to enable the random breath testing, before they commence duty, of employees engaged in railway safety work (employees found under the influence in such circumstances would be liable only to disciplinary proceedings);
- (d) to enable the breath and other testing of employees carrying out railway safety work who are suspected of being under the influence or who are involved in an accident or irregular incident;
- (e) to enable the taking of blood or urine samples from employees who are admitted to hospital as a result of an accident in carrying out railway safety work or who are suspected of being under the influence of a drug while carrying out that work; and

* Amended in committee—see table at end of volume.

Transport Authorities (Railway Safety) Amendment 1987

- (f) to empower specially authorised officers of the State Rail Authority and members of the police force to conduct the breath and other testing and to require the taking of blood or urine samples.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act is to commence on a date to be appointed by proclamation.

Clause 3 amends the Transport Authorities Act 1980 by inserting a new Part IVA containing the following proposed sections:

Proposed section 55A inserts appropriate definitions. "Drug" is defined as meaning alcohol or certain other narcotic drugs. "Prescribed concentration of alcohol" is set at 0.02 grammes of alcohol in 100 millilitres of blood. "Railway safety work" is defined to include work carried out by the railway employees specifically mentioned in paragraph (a) above and also by other railway employees whose work relates to the movement of trains or who carry out repair, maintenance etc. work on or about railway tracks.

Proposed section 55B empowers the State Rail Authority to appoint officers of that Authority as authorised officers for the purposes of the new provisions.

Proposed section 55C creates the offence of carrying out railway safety work with the prescribed concentration of alcohol in the employee's blood (penalty: \$1,000 or 6 months' imprisonment, or both).

Proposed section 55D transfers to the new Part the existing offence in the Government Railways Act 1912 of carrying out railway safety work while under the influence of alcohol or any other drug (but increases the monetary penalty in line with the penalty under proposed section 55C).

Proposed section 55E ensures that a railway employee is not convicted of both an offence under proposed section 55C and an offence under proposed section 55D in respect of the same incident.

Proposed section 55F authorises random breath testing, before they commence duty, of employees engaged in railway safety work (employees found under the influence would be liable only to disciplinary proceedings).

Proposed section 55G authorises breath testing of employees carrying out railway safety work who are suspected of being under the influence of alcohol or who are involved in an accident or irregular incident in carrying out any such work.

Proposed section 55H enables an assessment of sobriety to be carried out if a breath testing device is not readily available.

Proposed section 55I provides for the breath analysis (by the use of the same specially approved instruments as are used in the case of motor vehicle drivers) of railway employees who are detected to be under the influence after a breath test or assessment or who refuse to undergo that test or assessment. A railway employee may be arrested by an authorised officer or member of the police force for the purposes of a breath analysis.

Proposed section 55J authorises the taking of blood or urine samples from railway employees admitted to hospital as a result of an accident while carrying out railway safety work. A medical practitioner is required to take a sample only if requested to do so. A similar requirement applies to hospital patients injured in motor vehicle accidents, but no request is necessary.

Proposed section 55K enables a blood or urine sample to be taken if a breath analysing instrument is not readily available.

Transport Authorities (Railway Safety) Amendment 1987

Proposed section 55L enables a blood or urine sample to be taken if an employee is suspected of being under the influence of a drug while carrying out railway safety work but the breath test does not indicate the presence of alcohol (a similar provision has been introduced in the case of the drivers of motor vehicles by the Motor Traffic (Road Safety) Amendment Act 1987).

Proposed section 55M imposes restrictions (similar to those applying in the case of the drivers of motor vehicles) on requirements for breath testing, breath analysis, the taking of samples etc. under the proposed new provisions.

Proposed section 55N deals with the action to be taken by medical practitioners in dealing with blood or urine samples.

Proposed section 55O provides for the analysis of blood or urine samples by analysts appointed under the Motor Traffic Act 1909.

Proposed section 55P protects medical practitioners from liability in similar terms to those applying to medical practitioners under the Motor Traffic Act 1909.

Proposed section 55Q creates an offence of failing to undergo a breath test or an assessment of sobriety.

Proposed section 55R creates an offence (similar to that in the Motor Traffic Act 1909) of taking alcohol or other drugs for the purpose of interfering with the result of an analysis of blood or urine for the presence of alcohol or other drug.

Proposed section 55S creates offences in relation to the taking of samples by medical practitioners.

Proposed section 55T provides (in similar terms as in the Motor Traffic Act 1909) for certificate evidence relating to the testing for alcohol and the concentration of alcohol in the blood of an employee carrying out railway safety work, as determined by breath analysis.

Proposed section 55U provides for similar certificate evidence of the concentration of alcohol as determined by the analysis of a railway employee's blood.

Proposed section 55V provides for similar certificate evidence in the case of the analysis of blood or urine for the presence of drugs.

Proposed section 55W provides for certificate evidence of the due appointment of an authorised officer.
