



New South Wales

Transport Legislation Amendment (Implementation of Waterfall Rail Inquiry Recommendations) Bill 2005

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Transport Administration Act 1988*, the *Rail Safety Act 2002*, the *Passenger Transport Act 1990*, the *Marine Safety Act 1998* and the *Rail Safety (Drug and Alcohol Testing) Regulation 2003* for the following purposes:

- (a) to require the Minister for Transport (the **Minister**), the Independent Transport Safety and Reliability Regulator (the **ITSRR**) and RailCorp to ensure that all of the 127 recommendations contained in the Final Report of the Special Commission of Inquiry into the Waterfall Rail Accident dated 17 January 2005 (the **Final Report**) are implemented,
- (b) to require the ITSRR to monitor and report quarterly on the progress of the implementation of the recommendations contained in the Final Report,
- (c) to make the ITSRR independent of the Minister,
- (d) to give the ITSRR the power to make special reports to Parliament,
- (e) to abolish the Independent Transport Safety and Reliability Advisory Board,

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- (f) to establish a parliamentary joint committee (named the Independent Transport Safety Regulator Oversight Committee) to monitor and review the exercise by ITSRR of its functions, including its performance in respect of implementing the recommendations contained in the Final Report,
- (g) to allow the Chief Investigator of the Office of Transport Safety Investigations (being a Division of ITSRR) to initiate and conduct a rail safety inquiry or transport safety inquiry or to be appointed as an investigator for the purposes of an investigation under the *Marine Safety Act 1998*,
- (h) to require the Chief Investigator to provide a report of any such inquiry to the Minister and ITSRR,
- (i) to require an applicant for accreditation as a railway operator to comply with any regulations or guidelines issued by ITSRR in respect of communications protocols and procedures,
- (j) to limit the grant of an accreditation as a railway operator to a period of 3 years and to require an accredited person to re-apply for accreditation after the expiry of the accreditation period,
- (k) to require an accredited person, as a condition of that accreditation, to implement a safety management system and comply with any regulations that prescribe the requirements for safety management systems,
- (l) to require an accredited person, as a condition of that accreditation, to implement certain communications protocols and procedures and comply with any regulations that prescribe the requirements for communications protocols and procedures,
- (m) to make it clear that the offence of tampering with railway equipment, contained in section 93 of the *Rail Safety Act 2002*, applies with respect to the tampering with emergency doors,
- (n) to make alcohol and drug testing mandatory for any train driver or guard involved in an accident or irregular incident,
- (o) to extend the general regulation-making power in the *Rail Safety Act 2002* to allow regulations for standards relating to medical examinations required for the employment of railway employees and the issue of certificates of competency.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent.

Clause 3 is a formal provision that gives effect to the amendments to the Acts set out in Schedules 1–4.

Clause 4 is a formal provision that gives effect to the amendment to the *Rail Safety (Drug and Alcohol Testing) Regulation 2003* set out in Schedule 5.

Schedule 1 Amendment of Transport Administration Act 1988 No 109

Schedule 1 [4] amends section 42D of the Act to make it clear that the ITSRR is responsible for the oversight of rail safety in this State.

Schedule 1 [6] and [21] amend section 42E of the Act and insert Part 5A (proposed sections 45A–45C) respectively, with the effect described above in paragraphs (a) and (b) of the overview.

Schedule 1 [7], [8] and [12] amend section 42G and omit section 42P of the Act, with the effect described above in paragraph (c) of the overview.

Schedule 1 [18] substitutes Division 6 of Part 4A of the Act, with the effect described above in paragraphs (d)–(f) of the overview.

Schedule 1 [1]–[3], [5], [9]–[11], [13]–[17], [19], [20] and [22]–[25] contain consequential amendments.

Schedule 1 [26] and [27] contain savings and transitional provisions.

Schedule 2 Amendment of Rail Safety Act 2002 No 96

Schedule 2 [3] inserts proposed section 13A of the Act, with the effect described above in paragraph (i) of the overview.

Schedule 2 [4] inserts proposed section 18 (3A) and (3B) of the Act, with the effect described above in paragraph (j) of the overview.

Schedule 2 [8] inserts proposed sections 43A and 43B of the Act, with the effect described above in paragraphs (k) and (l) of the overview.

Schedule 2 [10] substitutes section 67 of the Act, with the effect described above in paragraphs (g) and (h) of the overview.

Schedule 2 [16] amends section 93 of the Act, with the effect described above in paragraph (m) of the overview.

Schedule 2 [24] amends section 117 of the Act, with the effect described above in paragraph (o) of the overview.

Schedule 2 [1], [2], [5]–[7], [9], [11]–[15], [17]–[23] and [25]–[27] contain consequential amendments.

Schedule 2 [28] and [29] contain savings and transitional provisions.

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Schedule 3 Amendment of Passenger Transport Act 1990 No 39

Schedule 3 [3] and [4] amend section 46B of the Act, with the effect described above in paragraphs (g) and (h) of the overview.

Schedule 3 [1], [2], [5]–[9] and [11]–[13] contain consequential amendments.

Schedule 3 [10] contains savings and transitional provisions.

Schedule 4 Amendment of Marine Safety Act 1998 No 121

Schedule 4 [3] amends section 105 of the Act, with the effect described above in paragraph (g) of the overview.

Schedule 4 [1], [2] and [4] contain consequential amendments.

Schedule 4 [5] contains savings and transitional provisions.

Schedule 5 Amendment of Rail Safety (Drug and Alcohol Testing) Regulation 2003

Schedule 5 substitutes clause 9 of the Regulation, with the effect described above in paragraph (n) of the overview.



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Transport Legislation Amendment (Implementation of Waterfall Rail Inquiry Recommendations) Bill 2005

No. , 2005

A Bill for

An Act to amend the *Transport Administration Act 1988*, the *Rail Safety Act 2002*, the *Passenger Transport Act 1990* and other transport legislation to implement the recommendations of the Special Commission of Inquiry into the Waterfall Rail Accident.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Transport Legislation Amendment (Implementation of Waterfall Rail Inquiry Recommendations) Act 2005</i> .	3 4
2 Commencement	5
This Act commences on the date of assent.	6
3 Amendment of Acts	7
The Acts specified in Schedules 1–4 are amended as set out in those Schedules.	8 9
4 Amendment of Rail Safety (Drug and Alcohol Testing) Regulation 2003	10
The <i>Rail Safety (Drug and Alcohol Testing) Regulation 2003</i> is amended as set out in Schedule 5.	11 12

Schedule 1	Amendment of Transport Administration Act 1988 No 109	1
		2
	(Section 3)	3
[1] Section 3 Definitions		4
	Insert in alphabetical order in section 3 (1):	5
	<i>Chief Investigator</i> means the Chief Investigator of the Office of Transport Safety Investigations appointed under section 42S.	6 7
	<i>Joint Committee</i> means the joint committee called the Independent Transport Safety Regulator Oversight Committee, constituted under this Act.	8 9 10
[2] Section 3 (1), definition of “Independent Transport Safety and Reliability Advisory Board”		11 12
	Omit the definition.	13
[3] Section 42A Definitions		14
	Omit the definitions of <i>Board</i> and <i>Chief Investigator</i> .	15
[4] Section 42D General functions of ITSRR		16
	Insert after section 42D (2) (h):	17
	(i) without limiting any other functions conferred or imposed on it, to be the body responsible for the oversight of rail safety in this State.	18 19 20
[5] Section 42E ITSRR may advise on and monitor safety and reliability		21
	Omit “Chairperson of the Board” from section 42E (2) (c).	22
	Insert instead “Chief Investigator”.	23
[6] Section 42E (2) (e)		24
	Insert after section 42E (2) (d):	25
	(e) the implementation of the recommendations contained in Chapter 25 of the Final Report of the Special Commission of Inquiry into the Waterfall Rail Accident dated 17 January 2005.	26 27 28 29
[7] Section 42G Reports to Parliament on performance		30
	Omit “the Minister” in section 42G (1) and (3) wherever occurring.	31
	Insert instead “each House of Parliament”.	32

[8] Section 42G (4)	1
Insert after section 42G (3):	2
(4) Section 42ZA applies to a report to each House of Parliament under this section in the same way as it applies to a report by the Joint Committee.	3 4 5
[9] Section 42H Referral of reports to Independent Transport Safety and Reliability Advisory Board	6 7
Omit the section.	8
[10] Section 42J Duties of authorities and owners and operators to co-operate with ITSRR	9 10
Omit “Chairperson of the Board” and “Chairperson” from section 42J (c). Insert instead “Chief Investigator”.	11 12
[11] Section 42M Chief Executive of ITSRR	13
Omit section 42M (2).	14
[12] Section 42P Limitations on Ministerial control of ITSRR	15
Omit the section.	16
[13] Section 42S Chief Investigator	17
Omit “on the recommendation of the Chairperson of the Board” wherever occurring in section 42S (2) and (4).	18 19
[14] Section 42S (3)	20
Omit the subsection.	21
[15] Section 42S (6) (a)	22
Insert “, including the initiation of any such inquiry by the Chief Investigator” after “rail safety inquiry”.	23 24
[16] Section 42S (6) (b)	25
Insert “, including the initiation of any such inquiry by the Chief Investigator” after “transport safety inquiry”.	26 27
[17] Section 42S (6) (c) and note	28
Omit the paragraph and note. Insert instead:	29
(c) functions relating to an investigation under the <i>Marine Safety Act 1998</i> .	30 31

[18] Part 4A, Division 6	1
Omit Divisions 6 and 7. Insert instead:	2
Division 6 Parliamentary accountability	3
42T Special reports	4
(1) The ITSRR may, at any time, make a special report to the Presiding Officer of each House of Parliament and must also provide the Minister with a copy of the report (but only after providing a copy to the Presiding Officer) on any matter arising in respect of the discharge of the ITSRR's functions.	5 6 7 8 9
(2) The ITSRR may include in a report under subsection (1) a recommendation that the report be made public forthwith.	10 11
(3) Section 42ZA applies to a special report to each House of Parliament under this section in the same way as it applies to a report by the Joint Committee.	12 13 14
42U Constitution of Joint Committee	15
(1) As soon as practicable after the commencement of this Division, a joint committee of members of Parliament, to be known as the Independent Transport Safety Regulator Oversight Committee, is to be appointed.	16 17 18 19
(2) The Joint Committee has and may exercise the functions conferred or imposed on it by or under this or any other Act.	20 21
42V Functions	22
(1) The Joint Committee has the following functions under this Act:	23
(a) to monitor and to review the exercise by the ITSRR of the functions of the ITSRR under this or any other Act,	24 25
(b) to monitor and to review the progress made with respect to the implementation of the recommendations of the Final Report of the Special Commission of Inquiry into the Waterfall Rail Accident dated 17 January 2005,	26 27 28 29
(c) to report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the ITSRR or connected with the exercise of the functions of ITSRR or connected with the progress of the implementation of the recommendations to which, in the opinion of the Joint Committee, the attention of Parliament should be directed,	30 31 32 33 34 35 36

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(d)	to report to both Houses of Parliament any change that the Joint Committee considers desirable in respect of the functions, structures and procedures of the ITSRR or in respect of the implementation of the recommendations,	1 2 3 4
(e)	to inquire into any question in connection with the Joint Committee's functions which is referred to it by both Houses of Parliament, and to report to both Houses on that question.	5 6 7 8
(2)	Nothing in this Division authorises the Joint Committee:	9
(a)	to reconsider a decision to hold, or not to hold, a rail safety inquiry or a transport safety inquiry, or	10 11
(b)	to reconsider the findings, recommendations or determinations of a person conducting a rail safety inquiry or a transport safety inquiry, the ITSRR or the Chief Investigator in relation to a transport accident or incident.	12 13 14 15
(3)	The functions of the Joint Committee may be exercised in respect of matters occurring before or after the commencement of this section.	16 17 18
42W	Membership	19
(1)	The Joint Committee is to consist of 7 members, of whom:	20
(a)	3 are to be members of, and appointed by, the Legislative Council, and	21 22
(b)	4 are to be members of, and appointed by, the Legislative Assembly.	23 24
(2)	The appointment of members of the Joint Committee is, as far as practicable, to be in accordance with the practice of Parliament with reference to the appointment of members to serve on joint committees of both Houses of Parliament.	25 26 27 28
(3)	A person is not eligible for appointment as a member of the Joint Committee if the person is a Minister of the Crown or a Parliamentary Secretary.	29 30 31
42X	Vacancies	32
(1)	A member of the Joint Committee ceases to hold office:	33
(a)	when the Legislative Assembly is dissolved or expires by the effluxion of time, or	34 35
(b)	if the member becomes a Minister of the Crown or a Parliamentary Secretary, or	36 37

(c)	if the member ceases to be a member of the Legislative Council or Legislative Assembly, or	1 2
(d)	if, being a member of the Legislative Council, the member resigns the office by instrument in writing addressed to the President of the Legislative Council, or	3 4 5
(e)	if, being a member of the Legislative Assembly, the member resigns the office by instrument in writing addressed to the Speaker of the Legislative Assembly, or	6 7 8
(f)	if the member is discharged from office by the House of Parliament to which the member belongs.	9 10
(2)	Either House of Parliament may appoint one of its members to fill a vacancy among the members of the Joint Committee appointed by that House.	11 12 13
42Y	Chairperson and Vice-Chairperson	14
(1)	There is to be a Chairperson and a Vice-Chairperson of the Joint Committee, who are to be elected by and from the members of the Joint Committee.	15 16 17
(2)	A member of the Joint Committee ceases to hold office as Chairperson or Vice-Chairperson of the Joint Committee if:	18 19
(a)	the member ceases to be a member of the Committee, or	20
(b)	the member resigns the office by instrument in writing presented to a meeting of the Committee, or	21 22
(c)	the member is discharged from office by the Committee.	23
(3)	At any time when the Chairperson is absent from New South Wales or is, for any reason, unable to perform the duties of Chairperson or there is a vacancy in that office, the Vice-Chairperson may exercise the functions of the Chairperson under this Act or under the <i>Parliamentary Evidence Act 1901</i> .	24 25 26 27 28
42Z	Procedure	29
(1)	The procedure for the calling of meetings of the Joint Committee and for the conduct of business at those meetings is, subject to this Act, to be as determined by the Committee.	30 31 32
(2)	The Clerk of the Legislative Assembly is to call the first meeting of the Joint Committee in each Parliament in such manner as the Clerk thinks fit.	33 34 35
(3)	At a meeting of the Joint Committee, 3 members constitute a quorum, but the Committee must meet as a joint committee at all times.	36 37 38

(4)	The Chairperson or, in the absence of the Chairperson, the Vice-Chairperson (or, in the absence of both the Chairperson and the Vice-Chairperson, a member of the Joint Committee elected to chair the meeting by the members present) is to preside at a meeting of the Joint Committee.	1 2 3 4 5
(5)	The Vice-Chairperson or other member presiding at a meeting of the Joint Committee has, in relation to the meeting, all the functions of the Chairperson.	6 7 8
(6)	The Chairperson, Vice-Chairperson or other member presiding at a meeting of the Joint Committee has a deliberative vote and, in the event of an equality of votes, also has a casting vote.	9 10 11
(7)	A question arising at a meeting of the Joint Committee is to be determined by a majority of the votes of the members present and voting.	12 13 14
(8)	The Joint Committee may sit and transact business despite any prorogation of the Houses of Parliament or any adjournment of either House of Parliament.	15 16 17
(9)	The Joint Committee may sit and transact business on a sitting day of a House of Parliament during the time of sitting.	18 19
42ZA	Reporting when Parliament not in session	20
(1)	If a House of Parliament is not sitting when the Joint Committee seeks to furnish a report to it, the Committee may present copies of the report to the Clerk of the House.	21 22 23
(2)	The report:	24
(a)	on presentation and for all purposes is taken to have been laid before the House, and	25 26
(b)	may be printed by authority of the Clerk, and	27
(c)	if printed by authority of the Clerk, is for all purposes taken to be a document published by or under the authority of the House, and	28 29 30
(d)	is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after receipt of the report by the Clerk.	31 32 33
42ZB	Evidence	34
(1)	The Joint Committee has power to send for persons, papers and records.	35 36
(2)	Subject to section 42ZC, the Joint Committee must take all evidence in public.	37 38

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- (3) If the Joint Committee as constituted at any time has taken evidence in relation to a matter but the Committee as so constituted has ceased to exist before reporting on the matter, the Committee as constituted at any subsequent time, whether during the same or another Parliament, may consider that evidence as if it had taken the evidence. 1
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- (4) The production of documents to the Joint Committee is to be in accordance with the practice of the Legislative Assembly with respect to the production of documents to select committees of the Legislative Assembly. 7
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- 42ZC Confidentiality** 11
- (1) If any evidence proposed to be given before, or the whole or a part of a document produced or proposed to be produced to, the Joint Committee relates to a secret or confidential matter, the Committee may, and at the request of the witness giving the evidence or the person producing the document, must: 12
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- (a) take the evidence in private, or 17
- (b) direct that the document, or the part of the document, be treated as confidential. 18
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- (2) If any evidence proposed to be given before, or the whole or a part of a document produced or proposed to be produced in evidence to, the Joint Committee relates to a decision, finding, recommendation or determination referred to in section 42V (2), the Committee may (if it considers it appropriate in the particular case): 20
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- (a) take the evidence in private, or 26
- (b) direct that the document, or the part of the document, be treated as confidential. 27
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- (3) Despite any other provision of this section except subsection (8), the Joint Committee must not, and a person (including a member of the Committee) must not, disclose any evidence or the contents of a document or that part of a document to which subsection (2) applies. 29
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- Maximum penalty: 20 penalty units or imprisonment for 3 months, or both. 34
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- (4) If a direction under subsection (1) applies to a document or part of a document produced to the Joint Committee: 36
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- (a) the contents of the document or part are, for the purposes of this section, to be regarded as evidence given by the person producing the document or part and taken by the Committee in private, and
- (b) the person producing the document or part is, for the purposes of this section, to be regarded as a witness.
- (5) If, at the request of a witness, evidence is taken by the Joint Committee in private:
- (a) the Committee must not, without the consent in writing of the witness, and
- (b) a person (including a member of the Committee) must not, without the consent in writing of the witness and the authority of the Committee under subsection (7), disclose or publish the whole or a part of that evidence.
- Maximum penalty: 20 penalty units or imprisonment for 3 months, or both.
- (6) If evidence is taken by the Joint Committee in private otherwise than at the request of a witness, a person (including a member of the Committee) must not, without the authority of the Committee under subsection (7), disclose or publish the whole or a part of that evidence.
- Maximum penalty: 20 penalty units or imprisonment for 3 months, or both.
- (7) The Joint Committee may, in its discretion, disclose or publish or, by writing under the hand of the Chairperson, authorise the disclosure or publication of evidence taken in private by the Committee, but this subsection does not operate so as to affect the necessity for the consent of a witness under subsection (5).
- (8) Nothing in this section prohibits:
- (a) the disclosure or publication of evidence that has already been lawfully published, or
- (b) the disclosure or publication by a person of a matter of which the person has become aware otherwise than by reason, directly or indirectly, of the giving of evidence before the Joint Committee.
- (9) This section has effect despite section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975*.
- (10) If evidence taken by the Joint Committee in private is disclosed or published in accordance with this section:

(a)	sections 5 and 6 of the <i>Parliamentary Papers (Supplementary Provisions) Act 1975</i> apply to and in relation to the disclosure or publication as if it were a publication of that evidence under the authority of section 4 of that Act, and	1 2 3 4 5
(b)	Division 5 of Part 3 of, and Schedule 2 to, the <i>Defamation Act 1974</i> apply to and in relation to that evidence as if it were taken by the Committee in public.	6 7 8
42ZD	Application of certain Acts	9
	For the purposes of the <i>Parliamentary Evidence Act 1901</i> and the <i>Parliamentary Papers (Supplementary Provisions) Act 1975</i> and for any other purposes:	10 11 12
(a)	the Joint Committee is to be regarded as a joint committee of the Legislative Council and Legislative Assembly, and	13 14
(b)	the proposal for the appointment of the Joint Committee is to be regarded as having originated in the Legislative Assembly.	15 16 17
42ZE	Validity of certain acts or proceedings	18
	Any act or proceeding of the Joint Committee is, even though at the time when the act or proceeding was done, taken or commenced there was:	19 20 21
(a)	a vacancy in the office of a member of the Committee, or	22
(b)	any defect in the appointment, or any disqualification, of a member of the Committee,	23 24
	as valid as if the vacancy, defect or disqualification did not exist and the Committee were fully and properly constituted.	25 26
42ZF	Provisions relating to reports	27
(1)	A copy of a report furnished to the Presiding Officer of a House of Parliament under this Division is to be laid before that House within 15 sitting days of that House after it is received by the Presiding Officer.	28 29 30 31
(2)	If a report includes a recommendation that the report be made public forthwith, a Presiding Officer of a House of Parliament may make it public whether or not that House is in session and whether or not the report has been laid before that House.	32 33 34 35
(3)	If such a report is made public by a Presiding Officer of a House of Parliament before it is laid before that House, it attracts the same privileges and immunities as if it had been laid before that House.	36 37 38 39

(4)	A Presiding Officer need not inquire whether all or any conditions precedent have been satisfied as regards a report purporting to have been made and furnished in accordance with this Act.	1 2 3 4
[19]	Section 43 Constitution of Transport Advisory Group	5
	Omit “Chairperson of the Independent Transport Safety and Reliability Advisory Board” from section 43 (2) (a).	6 7
	Insert instead “Chief Investigator”.	8
[20]	Section 44 Functions of Transport Advisory Group	9
	Omit “Independent Transport Safety and Reliability Advisory Board” wherever occurring in section 44 (1) and (3).	10 11
	Insert instead “ITSRR”.	12
[21]	Part 5A	13
	Insert after Part 5:	14
	Part 5A Waterfall rail inquiry recommendations	15
45A	Definitions	16
	In this Part:	17
	<i>Final Report</i> means the Final Report of the Special Commission of Inquiry into the Waterfall Rail Accident dated 17 January 2005.	18 19 20
	<i>ITSRR</i> means the Independent Transport Safety and Reliability Regulator.	21 22
45B	Implementation of recommendations	23
(1)	The Minister must ensure that all of the recommendations contained in Chapter 25 of the Final Report are implemented not later than one year after the commencement of this Part.	24 25 26
(2)	If a recommendation relates to RailCorp or any function of RailCorp, the Minister may direct RailCorp in this respect and any such direction is taken to be a direction relating to public safety for the purposes of section 16.	27 28 29 30
(3)	If a recommendation relates to the ITSRR or any function of the ITSRR, the ITSRR must use its best endeavours to ensure that the recommendation is implemented not later than one year after the commencement of this Part.	31 32 33 34

(4)	If the Minister does not implement the recommendations in accordance with subsection (1), the Minister must prepare a report outlining the recommendations that have not been implemented and the reasons for non-compliance and furnish a report to the Presiding Officer of each House of Parliament.	1 2 3 4 5
(5)	Section 42ZA applies to a report to each House of Parliament under this section in the same way as it applies to a report by the Joint Committee.	6 7 8
45C	Quarterly reports	9
(1)	The ITSRR must, not later than 1 week after 30 June, 30 September, 31 December and 31 March in each year, prepare a report of all work and activities in respect of the implementation of the recommendations contained in Chapter 25 of the Final Report for the preceding 3 months, including:	10 11 12 13 14
(a)	a statement as to whether or not each recommendation has been implemented, and	15 16
(b)	if a recommendation has been implemented, a statement as to the effectiveness of the implementation, and	17 18
(c)	if a recommendation has not been implemented, the means by which the safety objective of the recommendation is otherwise being, or going to be, achieved,	19 20 21
	and furnish the report to the Presiding Officer of each House of Parliament.	22 23
(2)	The requirements contained in subsection (1) continue to apply until all of the recommendations contained in Chapter 25 of the Final Report have been fully implemented.	24 25 26
[22]	Section 111 Disputes involving transport authorities	27
	Omit “relating to a matter referred to in section 42P (2)” from section 111 (5).	28
[23]	Section 112 Personal liability of certain persons	29
	Omit “Chairperson of the Independent Transport Safety and Reliability Advisory Board” from the definition of <i>member of a transport authority</i> in section 112 (2).	30 31 32
	Insert instead “Chief Investigator”.	33
[24]	Section 112 (2), definition of “transport authority”	34
	Omit paragraph (a2).	35

[25] Schedule 2A Constitution and procedure of Independent Transport Safety and Reliability Advisory Board	1 2
Omit the Schedule.	3
[26] Schedule 7 Savings, transitional and other provisions	4
Insert at the end of clause 2 (1):	5
<i>Transport Legislation Amendment (Implementation of Waterfall Rail Inquiry Recommendations) Act 2005</i>	6 7
[27] Schedule 7, Part 13	8
Insert after Part 12:	9
Part 13 Provisions consequent on enactment of Transport Legislation Amendment (Implementation of Waterfall Rail Inquiry Recommendations) Act 2005	10 11 12 13
148 Definitions	14
In this Part:	15
<i>former Board</i> means the Independent Transport Safety and Reliability Advisory Board constituted by this Act before the commencement of the amending Act.	16 17 18
<i>rail safety inquiry</i> means an inquiry under section 67 of the <i>Rail Safety Act 2002</i> .	19 20
<i>the amending Act</i> means the <i>Transport Legislation Amendment (Implementation of Waterfall Rail Inquiry Recommendations) Act 2005</i> .	21 22 23
<i>transport safety inquiry</i> means an inquiry under section 46B of the <i>Passenger Transport Act 1990</i> .	24 25
149 Members and Chairperson of former Board	26
(1) A person who, immediately before the commencement of the amending Act, held office as a member or Chairperson of the former Board ceases to hold office as such on that commencement.	27 28 29 30
(2) A person who ceases to hold office as a member or Chairperson of the former Board because of the operation of the amending Act is not entitled to be paid any remuneration or compensation because of ceasing to hold that office.	31 32 33 34

150	Inquiries	1
(1)	This Act, the <i>Rail Safety Act 2002</i> and the <i>Passenger Transport Act 1990</i> , as in force immediately before the commencement of the amending Act, continue to apply to and in respect of a rail safety inquiry or transport safety inquiry commenced by the former Board before that commencement.	2 3 4 5 6
(2)	The functions of the Chairperson of the former Board are to be exercised by the Chief Investigator for the purposes of any such inquiry.	7 8 9
151	Investigations	10
(1)	The <i>Marine Safety Act 1998</i> , as in force immediately before the commencement of the amending Act, continues to apply to and in respect of an investigation under that Act, where the Chairperson of the former Board was appointed as the investigator before that commencement.	11 12 13 14 15
(2)	The functions of the Chairperson of the former Board are to be exercised by the Chief Investigator for the purposes of any such investigation.	16 17 18
152	Inquiries and investigations relating to previous accident or incident	19 20
	This Act, the <i>Rail Safety Act 2002</i> , the <i>Passenger Transport Act 1990</i> and the <i>Marine Safety Act 1998</i> , as amended by the amending Act, apply in respect of an accident or incident that occurred before the commencement of the amending Act, if an inquiry or investigation into the accident or incident was not initiated before that commencement.	21 22 23 24 25 26

Schedule 2	Amendment of Rail Safety Act 2002	1
	No 96	2
	(Section 3)	3
[1] Section 4 Interpretation		4
Insert in alphabetical order in section 4 (1):		5
	<i>Chief Investigator</i> means the Chief Investigator of the Office of Transport Safety Investigations appointed under section 42S of the <i>Transport Administration Act 1988</i> .	6 7 8
[2] Section 4 (1)		9
Omit the definition of <i>Independent Transport Safety and Reliability Advisory Board</i> .		10 11
[3] Section 13A		12
Insert after section 13:		13
13A Communications protocols and procedures		14
(1) An applicant for accreditation must give to the ITSRR a document describing its communications systems, protocols and procedures.		15 16 17
(2) The communications protocols and procedures must comply with any requirements prescribed by the regulations or contained in guidelines issued by the ITSRR under this section.		18 19 20
(3) A guideline issued by the ITSRR under this section must be published in the Gazette.		21 22
[4] Section 18 Grant of accreditation		23
Insert after section 18 (3):		24
(3A) An accreditation must be for a specified period of not more than 3 years.		25 26
(3B) This Act applies to an application for a renewal of an accreditation in the same way that it applies to an application for accreditation.		27 28 29
[5] Section 18A Referral to Chief Investigator		30
Omit “Independent Transport Safety and Reliability Advisory Board” and “Board”.		31 32
Insert instead “Chief Investigator”.		33

[6] Section 25 Variation of accreditations	1
Insert at the end of the section:	2
(2) Subsection (1) does not permit the ITSRR to extend an accreditation period for a total period of more than 3 years.	3 4
[7] Section 31A Referral to Chief Investigator	5
Omit “Independent Transport Safety and Reliability Advisory Board” and “Board”.	6 7
Insert instead “Chief Investigator”.	8
[8] Sections 43A and 43B	9
Insert after section 43:	10
43A Safety management systems	11
(1) It is a condition of accreditation that an accredited person must:	12
(a) implement the safety management system described in the document prepared by that person and provided to the ITSRR under section 11 (1), and	13 14 15
(b) comply with any regulations that prescribe the requirements for safety management systems.	16 17
(2) To the extent of any inconsistency between the document specified in subsection (1) (a) and the regulations, the regulations prevail.	18 19 20
43B Communications protocols and procedures	21
(1) It is a condition of accreditation that an accredited person must:	22
(a) implement the communications protocols and procedures described in the document prepared by that person and provided to the ITSRR under section 13A (1), and	23 24 25
(b) comply with any regulations that prescribe the requirements for communications protocols and procedures.	26 27 28
(2) To the extent of any inconsistency between the document specified in subsection (1) (a) and the regulations, the regulations prevail.	29 30 31
[9] Section 65A Confidential reporting of safety information by railway employees	32 33
Omit section 65A (5).	34

[10] Section 67	1
Omit the section. Insert instead:	2
67 Inquiries by ITSRR or Chief Investigator	3
(1) The ITSRR or the Chief Investigator may inquire into any railway accident or incident that may affect the safe carrying out of railway operations.	4 5 6
(2) The ITSRR or the Chief Investigator must provide to the Minister a report on an inquiry conducted by the ITSRR or the Chief Investigator under subsection (1).	7 8 9
(3) The Chief Investigator must provide to the ITSRR a report on an inquiry conducted by the Chief Investigator under subsection (1).	10 11
(4) The Minister may request the ITSRR or the Chief Investigator to inquire into and report to the Minister on any railway accident or incident that may affect the safe carrying out of railway operations or the personal security of any railway employee or member of the public using a railway or in or on railway premises.	12 13 14 15 16 17
(5) The Minister may not require the ITSRR or the Chief Investigator to terminate a rail safety inquiry.	18 19
(6) The ITSRR or the Chief Investigator may recover the reasonable costs of conducting an inquiry under this section as a debt due to the Crown in a court of competent jurisdiction. The costs are recoverable jointly or severally from any one or more accredited persons in respect of the railway concerned.	20 21 22 23 24
(7) An inquiry may be carried out and a report provided under this section whether or not:	25 26
(a) an investigation is being, or has been, conducted under any other Act or law relating to the same matter, or	27 28
(b) the matter is or may be subject to any criminal or civil proceedings.	29 30
(8) Schedule 4 has effect with respect to rail safety inquiries.	31
[11] Section 69 Power to require persons to attend to answer questions or produce documents or other things	32 33
Omit “Chairperson of the Independent Transport Safety and Reliability Advisory Board” from section 69 (1).	34 35
Insert instead “the Chief Investigator”.	36

[12] Section 71 Disclosure of train safety records to Commonwealth or Commonwealth authority	1 2
Omit “Chairperson of the Independent Transport Safety and Reliability Advisory Board” from section 71 (1).	3 4
Insert instead “Chief Investigator”.	5
[13] Section 72 Disclosure of train safety records (other than train safety recordings) to a court or person	6 7
Omit “Chairperson of the Independent Transport Safety and Reliability Advisory Board” from section 72 (1).	8 9
Insert instead “Chief Investigator”.	10
[14] Section 77 Compliance with subpoenas and other directions	11
Omit “Chairperson of the Independent Transport Safety and Reliability Advisory Board” from section 77 (1).	12 13
Insert instead “Chief Investigator”.	14
[15] Section 78 Admissibility of other evidence and liability	15
Omit “Chairperson of the Independent Transport Safety and Reliability Advisory Board” wherever occurring in section 78 (2) and (3) (a).	16 17
Insert instead “Chief Investigator”.	18
[16] Section 93 Tampering with railway equipment	19
Insert “and emergency doors” after “communication systems” in section 93 (1) (a).	20 21
[17] Section 98 False or misleading information	22
Omit “the ITSRR or to any other person on behalf of the ITSRR” from section 98 (b).	23 24
Insert instead “the ITSRR, Chief Investigator or to any other person on behalf of the ITSRR or Chief Investigator”.	25 26
[18] Section 108 Functions of ITSRR	27
Omit paragraph (i). Insert instead:	28
(i) arranging for and conducting inquiries into railway accidents and incidents affecting the safe carrying out of railway operations and reporting on those inquiries,	29 30 31

[19] Section 108A	1
Omit the section. Insert instead:	2
108A Functions of Chief Investigator	3
The functions of the Chief Investigator under this Act are to arrange and conduct inquiries into railway accidents and incidents affecting the safe carrying out of railway operations and to report on those inquiries.	4 5 6 7
[20] Section 111 Authorised officers	8
Omit “Chairperson of the Independent Transport Safety and Reliability Advisory Board”.	9 10
Insert instead “Chief Investigator”.	11
[21] Section 113 Exclusion of personal liability	12
Omit “Chairperson or other member of the Independent Transport Safety and Reliability Advisory Board”.	13 14
Insert instead “Chief Investigator”.	15
[22] Section 113	16
Omit “Chairperson, the member” wherever occurring.	17
Insert instead “Chief Investigator”.	18
[23] Section 114 Exclusion of liability of the State	19
Omit “Chairperson or member of the Independent Transport Safety and Reliability Advisory Board”.	20 21
Insert instead “Chief Investigator”.	22
[24] Section 117 Regulations	23
Insert “required medical examinations,” after “including” in section 117 (2) (n).	24 25
[25] Schedule 4 Rail safety inquiries	26
Omit clause 1.	27
[26] Schedule 4, clause 2 (1) and (2)	28
Omit “Chairperson” wherever occurring. Insert instead “Chief Investigator”.	29
[27] Schedule 4, clause 2 (3)	30
Omit “Chairperson”. Insert instead “TTSRR”.	31

[28] Schedule 5 Savings and transitional provisions	1
Insert at the end of clause 1 (1):	2
<i>Transport Legislation Amendment (Implementation of Waterfall Rail Inquiry Recommendations) Act 2005</i> (but only to the extent that it amends this Act)	3 4 5
[29] Schedule 5, Part 4	6
Insert at the end of the Schedule:	7
Part 4 Provisions consequent on enactment of Transport Legislation Amendment (Implementation of Waterfall Rail Inquiry Recommendations) Act 2005	8 9 10 11
21 Definition	12
In this Part:	13
<i>the amending Act</i> means the <i>Transport Legislation Amendment (Implementation of Waterfall Rail Inquiry Recommendations) Act 2005</i> .	14 15 16
22 Existing accredited persons	17
A person who is an accredited person at the date of commencement of sections 43A and 43B, as inserted by the amending Act, must comply with those sections within 6 months of that commencement or within any longer period determined by the ITSRR.	18 19 20 21 22

Schedule 3	Amendment of Passenger Transport Act 1990 No 39	1
		2
	(Section 3)	3
[1] Section 3 Definitions		4
Insert in alphabetical order:		5
	<i>Chief Investigator</i> means the Chief Investigator of the Office of Transport Safety Investigations appointed under section 42S of the <i>Transport Administration Act 1988</i> .	6 7 8
[2] Section 3, definition of “Independent Transport Safety and Reliability Advisory Board”		9 10
Omit the definition.		11
[3] Section 46B Investigation of certain accidents and incidents		12
Omit “Chairperson of the Independent Transport Safety and Reliability Advisory Board” and “Chairperson” from section 46B (1)–(5) wherever occurring.		13 14 15
Insert instead “Chief Investigator”.		16
[4] Section 46B (2A)		17
Insert after section 46B (2):		18
(2A) The Chief Investigator must provide to the ITSRR a report on an inquiry conducted by the Chief Investigator under subsection (1).		19 20
[5] Section 46C Power to require persons to attend to answer questions or produce documents or other things		21 22
Omit “Chairperson of the Independent Transport Safety and Reliability Advisory Board” from section 46C (1).		23 24
Insert instead “Chief Investigator”.		25
[6] Section 46E Confidential reporting of safety information by transport safety employees		26 27
Omit the definition of <i>Chief Investigator</i> from section 46E (5).		28
[7] Section 46W Other authorised officers		29
Omit “Chairperson of the Independent Transport Safety and Reliability Advisory Board”.		30 31
Insert instead “Chief Investigator”.		32

[8] Section 57 False or misleading information	1
Omit paragraph (b). Insert instead:	2
(b) provide to the ITSRR or the Chief Investigator, or to any other person on behalf of the ITSRR or the Chief Investigator, for the purposes of a transport safety inquiry information (which may include or consist of a document) that the person knows is false or misleading in a material particular, or	3 4 5 6 7 8
[9] Section 66 Exclusion of liability of the State	9
Omit “Chairperson or other member of the Independent Transport Safety and Reliability Advisory Board”.	10 11
Insert instead “Chief Investigator”.	12
[10] Schedule 3 Savings and transitional provisions	13
Insert at the end of clause 2 (1):	14
<i>Transport Legislation Amendment (Implementation of Waterfall Rail Inquiry Recommendations) Act 2005</i> (but only to the extent that it amends this Act)	15 16 17
[11] Schedule 6 Transport safety inquiries	18
Omit clause 1.	19
[12] Schedule 6, clause 2 (1) and (2)	20
Omit “Chairperson” wherever occurring. Insert instead “Chief Investigator”.	21
[13] Schedule 6, clause 2 (3)	22
Omit “Chairperson”. Insert instead “ITSRR”.	23

Schedule 4	Amendment of Marine Safety Act 1998	1
	No 121	2
	(Section 3)	3
[1]	Section 94 Definitions	4
	Insert in alphabetical order in section 94 (1):	5
	<i>Chief Investigator</i> means the Chief Investigator of the Office of Transport Safety Investigations appointed under section 42S of the <i>Transport Administration Act 1988</i> .	6 7 8
[2]	Section 94 (1)	9
	Omit the definition of <i>Independent Transport Safety and Reliability Advisory Board</i> .	10 11
[3]	Section 105 Appointment of investigator	12
	Omit “Chairperson of the Independent Transport Safety and Reliability Advisory Board” from section 105 (1A).	13 14
	Insert instead “Chief Investigator”.	15
[4]	Section 111 Action by Minister following report of investigation	16
	Omit “Independent Transport Safety and Reliability Advisory Board” from section 111 (2) (h).	17 18
	Insert instead “Chief Investigator”.	19
[5]	Schedule 4 Savings, transitional and other provisions	20
	Insert at the end of clause 1 (1):	21
	<i>Transport Legislation Amendment (Implementation of Waterfall Rail Inquiry Recommendations) Act 2005</i> (but only to the extent that it amends this Act)	22 23 24

Schedule 5	Amendment of Rail Safety (Drug and Alcohol Testing) Regulation 2003	1
		2
	(Section 4)	3
Clause 9		4
Omit the clause. Insert instead:		5
9	Testing of railway employees in specified situations	6
(1)	An authorised officer or a police officer who has reasonable cause to believe that a railway employee (other than a train driver or guard) has been involved in an accident or irregular incident while carrying out railway safety work may require the employee:	7
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	(a) to undergo a breath test in accordance with the directions of the officer, or	12
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	(b) to provide a sample of the employee's urine for the purpose of testing for the presence of drugs,	14
		15
	or both.	16
(2)	An authorised officer or a police officer who has reasonable cause to believe that a railway employee has been involved in an accident or irregular incident while carrying out railway safety work as a train driver or guard must require the employee:	17
		18
		19
		20
	(a) to undergo a breath test in accordance with the directions of the officer, and	21
		22
	(b) to provide a sample of the employee's urine for the purpose of testing for the presence of drugs.	23
		24
(3)	Nothing in this clause limits clause 8.	25