



Road Transport Reform (Dangerous Goods) Repeal Bill 2009

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Contents

Purpose	2
Background	2
Inter-Governmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport and the National Transport Commission	4
Inconsistencies in regulation	5
Any consequences of failure to pass	6
Financial implications	6
Standing appropriations	6
Main provisions	7
Part 1—Repeal	7
Schedule 1 - Repeal etc.	7
Part 2—Transitional provisions	7
2 Transitional —pre-commencement offences	7
3 Transitional—recovery of costs of government action	7
4 Transitional—liability for pre-commencement acts and omissions	7
5 Transitional—laws of the Australian Capital Territory.	7
Concluding comments	8

Road Transport Reform (Dangerous Goods) Repeal Bill 2009

Date introduced: 22 June 2009

House: House of Representatives

Portfolio: Infrastructure, Transport, Regional Development and Local Government

Commencement: Sections 1 to 3 commence on the day of Royal Assent. Schedule 1 commences on a day to be fixed by proclamation, but if any provisions do not commence within six months of the day of Royal Assent, the provisions commence on the first day after the end of the six months.

Links: The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

To repeal the *Road Transport Reform (Dangerous Goods) Act 1995* so that the Australian Capital Territory (ACT) government can implement the updated Australian Dangerous Goods Code to govern the transport of dangerous goods by road and rail in the ACT.

Background

The states and territories are responsible for legislation governing the transport of dangerous goods by road and rail. Historically, inconsistencies in the legislation in the different jurisdictions were a major problem for the road freight industry. To deal with this problem, the states and territories agreed to adopt a national code for the transport, by road, of dangerous goods.

The mechanism for adopting the national code was for the Commonwealth government to implement 'template' legislation for the ACT, which the states and the Northern Territory then applied in their respective jurisdictions. The Road Transport Reform (Dangerous Goods) Act 1995 (the Act) is the legislation the Commonwealth government introduced under this mechanism. The following is an excerpt from the Bill Digest for the Road Transport Reform (Dangerous Goods) Bill 1994 which became the Act.

The purpose of the Road Transport Reform (Dangerous Goods) Bill 1994 is set out in clause 3 of the Bill and is to regulate the transportation of dangerous goods by road in the ACT and in the Jervis Bay Territory in order to 'promote public safety and protect property and the environment' ...

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In July 1991, a Special Premiers' Conference agreed to the establishment of a National Road Transport Commission. Subsequently, the *National Road Transport Commission Act 1991* was passed by the Commonwealth. The National Road Transport Commission is an independent statutory body which advises the Ministerial Council for Road Transport. Its charter is derived from Intergovernmental Agreements on Heavy Vehicles (1991) and Light Vehicles (1992).

Road transport plays an important role in the Australian economy. Historically, each Australian jurisdiction has had its own regulatory framework to deal with road transport. Variations in these regulatory frameworks are regarded as counterproductive - leading to increases in costs and reductions in productivity.

The Heads of Agreement state that there should be 'improvements in road safety and transport efficiency and reductions in the costs of administration of road transport' and that these goals will be achieved through the establishment of a co-operative legislative scheme.

In 1992, the Ministerial Council for Road Transport endorsed a proposal to divide the task of establishing uniform road transport regulation for Australia into modules. To date, the Commonwealth has enacted as model legislation for the rest of Australia, the:

- the Road Transport Charges (Australian Capital Territory) Act 1993; and
- the Road Transport Reform (Vehicle and Traffic) Act 1993.

Another priority of the National Road Transport Commission has been the transportation of dangerous goods. A draft Bill covering the transportation of dangerous goods was circulated for public comment, for industry comment, and presented to the Ministerial Council on Road Transport where it obtained majority support in September 1994.

The Road Transport Reform (Dangerous Goods) Bill will provide a vehicle for calling up the Australian Code for the Transport of Dangerous Goods and the Australian Explosives Code in a uniform manner. These codes provide common standards. At present, the extent and manner in which these codes are adopted throughout Australia varies. The Bill also puts in place a framework permitting the making, administration and enforcement of regulations relating to the transport of dangerous goods by road.¹

1. J Norberry, *Road Transport Reform (Dangerous Goods) Bill 1994*, Bills digest, no. 159, 1995, Parliamentary Library, Canberra, 1995, viewed 21 July 2009, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;adv=yes;db=:group=:holdingType=:id=:orderBy=alphaAss;page=2;query=Dataset%3Abillsdgs%20SearchCategory_Phrase%3A%22bills%20and%20legislation%22%20Decade%3A%221990s%22%20Year%3A%221994%22;querytype=:rec=20;resCount

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Inter-Governmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport and the National Transport Commission

In 2003, Commonwealth, state and territory ministers agreed to form the National Transport Commission (NTC) by building on the National Road Transport Commission. This decision was embodied in the Inter-Governmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport (the Agreement).² As stated in the preamble to the Agreement, the NTC's function is:

... to progress regulatory and operational reform for road, rail and intermodal transport in order to deliver and sustain uniform or nationally consistent outcomes.³

In replacing the National Road Transport Commission, the NTC thus assumed the National Road Transport Commission's responsibility for road transport but also had its remit extended to include rail and intermodal transport. The NTC is now the main body responsible for developing national transport policy. The Australian Transport Council—a ministerial forum for Commonwealth, state and territory consultations, which provides advice to governments on the coordination and integration of all transport and road policy issues at a national level—directs the activities of the NTC and the NTC reports to the Australian Transport Council.⁴

The Agreement tasks the NTC with responsibility for developing 'model' legislation—that is, legislation, regulations and other legislative instruments—for adoption by the states and territories with the purpose of ensuring consistent, nation-wide regulation. As noted, in the past, the mechanism for doing so was template legislation for the ACT. The Agreement replaced this process. Under the new process, each state and territory is responsible for adopting model legislation. Consequently, the Commonwealth has to repeal existing legislation for the ACT when the ACT government needs to introduce replacement legislation. As stated in clause 14.5 of the Agreement:

The Commonwealth, in agreement with the Australian Capital Territory (ACT) and other relevant Parties will, as soon as is practicable, repeal any Road Transport Legislation that has been enacted by the Commonwealth on behalf of the ACT.⁵

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2. Inter-Governmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport, 2003, viewed 7 July 2009, <http://www.ntc.gov.au/filemedia/general/NTCIGA.pdf>
 3. Inter-Governmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport, 2003, p. 1.
 4. Australian Transport Council, website, viewed 7 July 2009, <http://www.atcouncil.gov.au/>
 5. Inter-Governmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport, 2003, p. 11.

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The NTC has developed model legislation for the seventh edition of the Australian Code for the Transport of Dangerous Goods by Road and Rail (ADG7).⁶ The Road Transport Reform (Dangerous Goods) Repeal Bill 2009 (the Bill) repeals the existing legislation for the ACT so that the ACT government can implement ADG7.

Inconsistencies in regulation

Inconsistency in state and territory regulation of land transport is costly to business. The Productivity Commission, in its draft report titled *Annual Review of Regulatory Burdens on Business: Social and Economic Infrastructure Services*, contains examples. One is the cost to the railway industry of safety regulation duplication:

The Australasian Railway Association (ARA) (sub. 22, p. 7) notes that safety regulation is duplicated as there are safety regulators for each jurisdiction and overlaps between rail safety legislation and OHS legislation.

The ARA in a survey of its members (Synergies 2008) estimates that the direct cost of complying with this duplicated and overlapping rail safety regulation is \$23 million per year with an estimated cost of \$42 million for the whole industry.

The avoidable component, based on information provided by the respondents to the survey, is between 5 and 75 per cent of total compliance costs.⁷

Road transport has one of the longest histories of attempts to apply consistent regulation but progress has been slow and only partly successful:

The states and territories are largely responsible for the regulation of road transport. Inconsistency in road and vehicle regulation has been an ongoing issue for the road freight industry:

- as early as 1991, Australian Transport Ministers agreed to establish a National Road Transport Commission (NRTC) to develop uniform regulation for the operation of vehicles and consistent charging for vehicle registration
- in 1994, road reform was absorbed into the National Competition Policy
- in 2004 the NRTC was replaced by the National Transport Commission (NTC) which has a broader charter to reform transport regulation.

6. National Transport Commission, *Australian Dangerous Goods Code*, viewed 7 July 2009, <http://www.ntc.gov.au/ViewPage.aspx?DocumentId=01147>

7. Productivity Commission, *Annual Review of Regulatory Burdens on Business: Social and Economic Infrastructure Services. Draft Report*, 26 June 2009, Productivity Commission, pp. 203-204, viewed 7 July 2009, <http://www.pc.gov.au/projects/study/regulatoryburdens/social-economic-infrastructure/draft>

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The most recent attempt to produce a uniform national approach involved the development of 'model' laws whereby individual jurisdictions agreed to model their own legislation, standards and codes of practice on a model document. While this approach enables jurisdictions to adapt the model to suit their individual circumstances, this flexibility along with jurisdiction specific exemptions, has resulted in differences in the adoption, application, interpretation and enforcement of these model laws. As a result a road transport business operating across state borders still has to comply with multiple, often inconsistent regulations.

Various NTC reviews have found that efforts to achieve uniform or consistent legislative outcomes in this area have not been successful (Department of Infrastructure, Transport, Regional Development and Local Government 2008).⁸

Any consequences of failure to pass

Failure to pass the Bill would prevent the ACT government from legislating to implement for the seventh edition of the Australian Code for the Transport of Dangerous Goods by Road and Rail. The Minister for Infrastructure, Transport, Regional Development and Local Government, the Hon A Albanese, noted in the second reading speech to the Bill that:

The repeal will come into effect on a day to be fixed by proclamation to coincide with the passage of legislation by the ACT Government to ensure that a seamless transfer to the new dangerous goods transport provisions occurs.⁹

Financial implications

There are no direct financial implications for the Australian Government.

Standing appropriations

The Bill does not appropriate funds.

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8. Productivity Commission, Annual Review of Regulatory Burdens on Business: Social and Economic Infrastructure Services. Draft Report, p. 198.
 9. A Albanese, 'Second reading speech: Road Transport Reform (Dangerous Goods) Repeal Bill 2009' House of Representatives, *Debates*, 22 June 2009, p. 50, viewed 8 July 2009, http://parlinfo/parlInfo/genpdf/chamber/hansardr/2009-06-22/0081/hansard_frag.pdf;fileType=application%2Fpdf

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Main provisions

Part 1—Repeal

Schedule 1 - Repeal etc.

Item 1 repeals the *Road Transport Reform (Dangerous Goods) Act 1995*.

Part 2—Transitional provisions

2 Transitional —pre-commencement offences

Subitem 2(1) provides that, despite the repeal of the *Road Transport Reform (Dangerous Goods) Act 1995*, the Act continues to apply in relation to an offence committed before the commencement of the repeal (**subitem 2(1)(a)**) or for proceedings for an offence alleged to have been committed before the commencement of this item (**subitem 2(1)(b)**) or for any matter connected with or arising out of such proceedings **subitem 2(1)(c)**.

Subitem 2(2) provides that **subitem (1)** does not limit the operation of Section 8 of the *Acts Interpretation Act 1901*. Section 8 deals with the effects of repealing an Act or part of an Act.

3 Transitional—recovery of costs of government action

Item 3 provides that despite the repeal of the Act, Section 44 of the Act continues to apply in relation to an incident that occurred before the commencement of this item. Section 44 allows a Commonwealth authority to recoup the costs of dealing with an accident or similar involving dangerous goods.

4 Transitional—liability for pre-commencement acts and omissions

Item 4 provides that despite the repeal of the Act, sections 48 and 49 continue to apply in relation to an act or omission that occurred before the commencement of this item. These sections protect persons acting honestly and in good faith from civil liability in defined circumstances.

5 Transitional—laws of the Australian Capital Territory

Item 5 provides that, to avoid doubt, a law of the ACT may make provision in relation to transitional matters arising from the repeal of the Act.

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Concluding comments

Despite progress in areas such as the transport of dangerous goods, inconsistencies in state and territory legislation remain a major barrier to the development of a national transport sector. One option is to establish national authorities responsible for regulating particular areas of transport. This is the approach underlying the announcement by the Council of Australian Governments in July 2009 of three proposed national regulators governing heavy vehicles, maritime safety, and rail safety respectively:

COAG agreed to implement national regulation for maritime safety, rail safety and heavy vehicles; this will mean improved safety, reduced costs and regulatory burden for Australian transport companies as well as reduced costs of exports and trade.¹⁰

The proposal to establish a national rail safety regulator follows from the failure of the states to implement consistent rail safety regulation:

Following the inability of model legislation to deliver the required national rail safety regime, the A[ustralian] T[ransport] C[ouncil] in July 2008 directed the NTC to prepare a R[egulatory] I[m]pact S[tatement] for a single, national rail safety regulatory and investigation framework.

The draft RIS, in evaluating various options, concluded that the option of a single national safety regulator and investigation framework was the superior option and would enable the attraction and more efficient allocation of resources (NTC 2008).

The RIS was endorsed by the ATC in May 2009 and it recommended that COAG proceed to develop a single national rail safety framework (ATC 2009).¹¹

The industry, as represented by the Australasian Railway Association, and the Australian Rail Track Corporation have endorsed the concept of a single national regulator.¹²

However, the Productivity Commission has cautioned against seeing national regulation as the solution to problems of inconsistency:

... care should be taken to ensure that a national framework does not impose additional regulatory burdens. The effectiveness of these national regimes should be assessed once they have been implemented and had time to take effect.¹³

10. Council of Australian Governments, *Communiqué*, 2 July 2009, viewed 7 July 2009, http://www.coag.gov.au/coag_meeting_outcomes/2009-07-02/docs/20090702_communique.pdf

11. Productivity Commission, *Annual Review of Regulatory Burdens on Business: Social and Economic Infrastructure Services*. Draft Report, p. 204.

12. Productivity Commission, *Annual Review of Regulatory Burdens on Business: Social and Economic Infrastructure Services*. Draft Report, p. 204.

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13. Productivity Commission, Annual Review of Regulatory Burdens on Business: Social and Economic Infrastructure Services. Draft Report, p. 197.

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