

WESTERN AUSTRALIA

---

**RAIL SAFETY ACT 1998**

(No. 32 of 1998)

---

ARRANGEMENT

---

Page

**PART 1 — PRELIMINARY**

1.	Short title	2
2.	Commencement	2
3.	Interpretation	2
4.	Application of Act	6
5.	Relationship to <i>Government Railways Act 1904</i>	7
6.	Act binds the Crown	7

**PART 2 — ACCREDITATION OF OWNERS AND OPERATORS**

***Division 1 — General provisions***

7.	Requirement for accreditation	8
8.	Granting accreditation	8
9.	Safety standards — compliance specification	10

## *Rail Safety Act 1998*

10.	Safety management plans	11
11.	Interim accreditation	11
12.	Duration of accreditation	12
13.	Style and particulars of accreditation	12
14.	Conditions	13
15.	Private sidings	13

### ***Division 2 — Refusal, variation, suspension or cancellation of accreditation***

16.	Refusal of application for accreditation	14
17.	Variation of accreditation	14
18.	Suspension or cancellation of accreditation	16
19.	Immediate suspension	17

### ***Division 3 — Dispute resolution***

20.	Dispute resolution	18
-----	--------------------	----

### ***Division 4 — Related matters***

21.	Matters relating to applications	20
22.	Annual fees	20
23.	Fees to be paid to Transport Co-ordination Fund	21
24.	Periodic returns	21
25.	Surrender of accreditation	22

## **PART 3 — SAFETY STANDARDS AND MEASURES**

26.	Compliance with rail safety standards	23
27.	Requirement to maintain safety systems, devices or appliances	23
28.	Installation of safety or protective devices	24
29.	Closing railway crossings, bridges etc.	24
30.	Power to require works to stop	25
31.	Railway employees	27

*Rail Safety Act 1998*

**PART 4 — COMPLIANCE INSPECTIONS AND REPORTING**

32.	Safety compliance inspections	28
33.	Directions to undertake remedial safety work	29
34.	Directions to provide programme of remedial safety work	29
35.	Declarations as to variation of accreditation	30
36.	Safety reports	30
37.	Supply of information	31
38.	Reports — notifiable occurrences and other incidents	31
39.	Director General may require report from owner or operator	32
40.	Request for certain details	33

**PART 5 — INQUIRIES AND INSPECTIONS**

***Division 1 — Inquiries***

41.	Appointment of investigator	34
42.	Procedures and powers of an investigator	34
43.	Report	37
44.	Inquiry may continue despite other proceedings	37

***Division 2 — Inspections, etc.***

45.	Appointment of authorized officers	38
46.	Inspection powers	39
47.	Entry under warrant	41
48.	Provisions relating to seizure	42

***Division 3 — Provisions relating to inquiries and inspections***

49.	Offence to hinder persons appointed under this Part	44
50.	Self-incrimination	45

*Rail Safety Act 1998*

**PART 6 — MISCELLANEOUS**

***Division 1 — General offences and proceedings***

51.	False information	47
52.	Tampering with railway equipment	47
53.	Offender to state name and address	48
54.	Daily penalty for continuing offences	49
55.	Provision relating to offence by body corporate	49
56.	Proceedings	50
57.	Evidentiary provision	51

***Division 2 — Other matters***

58.	Recovery of cost of entry and inspection	51
59.	Protection from liability for wrongdoing	52
60.	Vicarious liability of accredited person for acts or omissions of employees or agents	52
61.	Regulations	52
62.	Adoption of code etc. in regulations	53
63.	Review of Act	54
64.	Consequential amendments and transitional provisions	54

**SCHEDULE 1 — SUBJECT MATTER FOR REGULATIONS 55**

**SCHEDULE 2 — TRANSITIONAL PROVISIONS**

1.	Persons who owned or operated a railway before commencement	58
2.	Transitional regulations	58

**SCHEDULE 3 — CONSEQUENTIAL AMENDMENTS TO OTHER ACTS**

1.	<i>Government Railways Act 1904</i>	59
2.	<i>Mines Safety and Inspection Act 1994</i>	60
3.	<i>Transport Co-ordination Act 1966</i>	60

# **RAIL SAFETY ACT 1998**

---

**No. 32 of 1998**

---

**AN ACT to promote the safe construction, maintenance and operation of railways as part of a national approach to rail safety regulation and as a consequence to amend —**

- **the *Government Railways Act 1904*;**
- **the *Mines Safety and Inspection Act 1994*; and**
- **the *Transport Co-ordination Act 1966*,**

**and for other purposes.**

*[Assented to 6 July 1998.]*

The Parliament of Western Australia enacts as follows:

**PART 1 — PRELIMINARY**

**Short title**

1. This Act may be cited as the *Rail Safety Act 1998*.

**Commencement**

2. This Act comes into operation on such day as is fixed by proclamation.

**Interpretation**

3. (1) In this Act, unless the contrary intention appears —

“**accreditation**” means accreditation under Part 2;

“**approved**” means approved in writing by the Director General;

“**Australian Rail Safety Standard**” means such principles and standards prepared, approved and published by the Standards Association of Australia in relation to railway safety management as are prescribed for the purposes of this definition;

“**authorized officer**” means a person appointed as an authorized officer under section 45;

“**Director General**” means the Director General of Transport referred to in section 8 of the *Transport Co-ordination Act 1966*;

“**document**” includes any record of information accessible only through the use of a computer or other device;

“**investigator**” means a person appointed as an investigator under section 41;

**“Minister”** means the Minister administering the *Transport Co-ordination Act 1966*;

**“notifiable occurrence”** means an occurrence prescribed as a notifiable occurrence;

**“operation of a railway”** means the operation of rolling stock on a railway;

**“operation of rolling stock”** includes provision, maintenance or movement of rolling stock;

**“operator”**, in relation to a railway, means a person who is responsible, whether by reason of ownership, control or management, for the operation of rolling stock on the railway, or for the purposes of the railway;

**“owner”**, in relation to a railway, means the person who is responsible, whether by reason of ownership, control or management, for —

- (a) the construction and maintenance, or the construction or maintenance, of rail infrastructure; or
- (b) the operation of train control, signalling or communication systems;

**“private siding”** means a siding owned and maintained by a person who does not own, control or manage the running line with which the siding connects or to which it has access, but does not include a marshalling yard or a passenger or freight terminal, or a siding of a kind prescribed as excluded from this definition;

**“rail infrastructure”** or **“infrastructure”** means the facilities necessary to enable a railway to operate safely and includes railway track, associated track structures, over or under track structures, supports

**s. 3**

(including supports for equipment or items associated with the use of a railway), tunnels, bridges, stations, platforms, train control systems, signalling systems, communication systems, electric traction infrastructure, buildings, workshops and associated plant, machinery and equipment;

**“railway”** means a guided system designed for the movement of rolling stock which has the capability of transporting passengers, freight or both on a railway track, together with its infrastructure and associated sidings, and includes a heavy railway, light railway, monorail, inclined railway or tramway, a railway within a marshalling yard or a passenger or freight terminal, and a railway of a kind prescribed for the purposes of this definition;

**“railway employee”** means a person who performs railway safety work for an owner or operator and includes an employee or contractor and a person who performs railway safety work on a voluntary or unpaid basis;

**“railway safety work”** means any of the following classes of work —

- (a) work that involves or relates to the driving or operation of a train or trains;
- (b) work that involves or relates to the control of the movement of a train or trains;
- (c) work that involves or relates to the design, construction, repair, maintenance, upgrading, inspection, testing or removal of rail infrastructure or rolling stock; or
- (d) other work of a kind prescribed for the purposes of this definition;



**“rolling stock”** means a vehicle, whether or not self propelled, that operates on or uses a railway track (for example — a locomotive, carriage, rail car, rail motor, light rail vehicle, train, tram, light inspection vehicle, road/rail vehicle, trolley and wagon) but does not include a vehicle designed to operate both on and off a railway track when the vehicle is not operating on a railway track;

**“running line”** means railway tracks, other than sidings, used for the through movement of trains;

**“safety management plan”** means a plan referred to in section 10;

**“safeworking system”**, in relation to a railway, means the systems and procedures for operating trains safely and for protecting railway employees, passengers, freight, rolling stock and motor vehicles on or in the proximity of railway tracks;

**“siding”** means a portion of a railway track, connected by points to a running line or another siding, on which rolling stock can be placed clear of the running line and left unattended;

**“State”** includes a Territory;

**“track”** means the combination of rails, rail connectors, sleepers, ballast, points and crossings, or substitute devices, if used;

**“train”** means one or more units of rolling stock coupled together, at least one of which is a locomotive or other self-propelled unit.

- (2) An example used in or under this Act —
- (a) is not exhaustive; and
  - (b) does not limit meaning, but may extend it.

## s. 4

**Application of Act**

4. (1) This Act applies to and in relation to —

- (a) a railway within, or partly within, the State with a track gauge equal to or greater than 600 mm; and
- (b) any other system designed to transport passengers or freight or both and prescribed to be a railway for the purposes of this Act,

and to the operation of any such railway.

(2) This Act does not apply to or in relation to —

- (a) a railway in a mine which is underground or predominantly underground and used in connection with the performance of mining operations;
- (b) a slipway;
- (c) a crane-type runway; or
- (d) a railway or system of a class prescribed as a railway or system to which this Act does not apply.

(3) The Minister may, by notice published in the *Gazette* and on such conditions, if any, as are specified, exempt from this Act, or specified provisions of this Act —

- (a) specified persons or persons of a specified class; or
- (b) specified railways or railways of a specified class.

(4) In subsection (3) —

**“specified”** means specified in the notice.

(5) The Minister may amend or repeal a notice at any time by subsequent notice published in the *Gazette*.

(6) Sections 41 and 42 of the *Interpretation Act 1984* apply to and in relation to a notice under subsection (3) or (5) as if the notice were a regulation.

(7) A person must not contravene a condition imposed under this section.

Penalty: \$20 000.

### **Relationship to *Government Railways Act 1904***

5. If there is a conflict or inconsistency between a provision of this Act, or subsidiary legislation made under this Act, and the *Government Railways Act 1904*, or subsidiary legislation made under that Act, the provision of this Act or subsidiary legislation made under this Act prevails to the extent of the conflict or inconsistency.

### **Act binds the Crown**

6. (1) This Act binds the Crown in right of the State, and in so far as the legislative power of the State permits, in all its other capacities.

(2) This section does not make the Crown itself, as distinct from any agent or instrumentality of the Crown, liable to be prosecuted for an offence under this Act.

**PART 2 — ACCREDITATION OF OWNERS  
AND OPERATORS**

***Division 1 — General provisions***

**Requirement for accreditation**

7. (1) A person must not be the owner of a railway unless the person holds an appropriate owner accreditation for a railway under this Act.

Penalty: \$50 000.

(2) A person must not be the operator of a railway unless the person holds an appropriate operator accreditation for the railway under this Act.

Penalty: \$50 000.

(3) A person may hold both owner accreditation and operator accreditation.

**Granting accreditation**

8. (1) Subject to sections 9 and 10, the Director General must, on application under this Act, accredit an applicant as the accredited owner of a railway if satisfied —

- (a) that the applicant has the competency and capacity to meet the requirements of the Australian Rail Safety Standard, and any other safety standard prescribed, or approved, as relevant to the operation of this Act, and generally to ensure the safe construction and maintenance, or construction or maintenance, of rail infrastructure or, if relevant, the proper operation of train control, signalling and communication systems;

- (b) that the applicant has an appropriate safety management plan;
- (c) that appropriate standards will be met in relation to the availability and adequacy of rail infrastructure and that appropriate safeworking and operating systems will apply under the accreditation;
- (d) that the applicant has the financial capacity or public risk insurance arrangements to meet reasonable potential accident liabilities for the railway;
- (e) that the applicant has a right, or is in a position to obtain a right —
  - (i) of access to land where the railway is, or is to be, constructed or located; and
  - (ii) to use relevant rail infrastructure;and
- (f) as to any other matter prescribed.

(2) Subject to sections 9 and 10, the Director General must, on application under this Act, accredit an applicant as the accredited operator of a railway if satisfied —

- (a) that the applicant has the competency and capacity to meet the requirements of the Australian Rail Safety Standard, and any other safety standard prescribed, or approved, as relevant to the operation of this Act, and generally to ensure the safe operation of rolling stock on the railway;
- (b) that the applicant has an appropriate safety management plan;

**s. 9**

- (c) that appropriate standards will be met in relation to the suitability of rolling stock and that appropriate safety systems will apply under the accreditation;
- (d) that the applicant has the financial capacity or public risk insurance arrangements to meet reasonable potential accident liabilities for the railway;
- (e) unless the applicant is the owner of the railway, that the applicant possesses, or is in a position to possess, appropriate rights to operate a railway on the railway specified in the application; and
- (f) as to any other matter prescribed.

(3) If an applicant holds an accreditation in another State or by the Commonwealth for a similar railway consistent with the requirements of the Australian Rail Safety Standard and with the form of accreditation to which the application relates, the applicant will be taken to have the competency and capacity to meet the requirements of the Australian Rail Safety Standard for the purposes of this section.

**Safety standards — compliance specification**

**9.** (1) An applicant for owner accreditation in relation to a railway must submit to the Director General appropriate safety standards with which the applicant agrees to comply, to the satisfaction of the Director General, relevant to the safe construction and maintenance, or construction or maintenance, of rail infrastructure or, if relevant, the proper operation of train control, signalling and communication systems, associated with the railway.

(2) An applicant for operator accreditation in relation to a railway must submit to the Director General appropriate safety standards with which the applicant agrees to comply, to the satisfaction of the Director General, relevant to the safe operation of rolling stock.

### **Safety management plans**

**10.** (1) An applicant for accreditation must submit to the Director General a comprehensive safety management plan that —

- (a) in the case of —
  - (i) an owner — identifies significant potential risks that may arise from the construction and maintenance, or construction or maintenance, of rail infrastructure or, if relevant, the operation of train control, signalling and communication systems associated with the relevant railway; or
  - (ii) an operator — identifies significant potential risks that may arise from the operation of rolling stock on the relevant railway;
- (b) specifies the systems, audits, expertise and resources that are to be employed by the applicant to address those risks; and
- (c) specifies who is to be responsible for the implementation and management of the plan.

(2) An accredited person must revise the person's safety management plan on an annual basis to the satisfaction of the Director General at least 28 days before each anniversary of the accreditation.

Penalty: \$20 000.

### **Interim accreditation**

**11.** The Director General may grant interim accreditation to an applicant to permit activities such as —

- (a) site preparation;

- (b) restoration or repair work;
- (c) testing of railway track or other infrastructure,

or for other purposes considered appropriate by the Director General.

#### **Duration of accreditation**

**12.** (1) Subject to subsection (2), an accreditation remains in force unless or until it is suspended, cancelled or surrendered.

(2) The Director General may, if of the opinion that it is appropriate to do so, grant a person temporary accreditation for a period not exceeding 12 months.

#### **Style and particulars of accreditation**

**13.** (1) Particulars of accreditation are to be given in writing by the Director General to the accredited person.

(2) An accreditation may be general or limited and, for example, may apply —

- (a) to the whole of a railway;
- (b) only to a part or parts of a railway designated in the accreditation, or having a designated scope or characteristic;
- (c) to all public or private passenger or freight services or both; or
- (d) to an operation or service designated in the accreditation, or having a designated scope or characteristic.



**Conditions**

- 14.** (1) An accreditation is subject to any conditions —
- (a) imposed by the Director General, by written notice given to the accredited person;
  - (b) prescribed; or
  - (c) otherwise imposed under this Act.
- (2) An accredited person may apply for the variation of a condition to which the accreditation is subject, and the Director General may, as the Director General considers appropriate —
- (a) grant the variation; or
  - (b) refuse to grant the variation.
- (3) The Director General may, if of the opinion that it is appropriate to do so, by written notice given to an accredited person, vary a condition to which the accreditation is subject.
- (4) The conditions of an accreditation may be varied by the addition, substitution or deletion of one or more conditions.
- (5) An accredited person must not contravene a condition of the person's accreditation.

Penalty: \$20 000.

**Private sidings**

- 15.** (1) A person who owns a private siding is not required to hold an accreditation.
- (2) A person who owns a private siding which is connected with, or to have access to, a railway or siding owned by an accredited owner, must —
- (a) register the private siding with the Director General; and

**s. 16**

- (b) comply with any conditions imposed by the Director General by written notice given to the owner of the siding, or prescribed, with respect to the safe construction, maintenance and operation of the siding.

Penalty: \$20 000.

***Division 2 — Refusal, variation, suspension  
or cancellation of accreditation***

**Refusal of application for accreditation**

**16.** If the Director General refuses an application for accreditation, the Director General must notify the applicant in writing of —

- (a) the refusal;
- (b) the reasons for the refusal; and
- (c) the procedures for conciliation, mediation and appeal under this Act.

**Variation of accreditation**

**17.** (1) An accredited person may apply for the variation of the accreditation, and the Director General may, as the Director General considers appropriate —

- (a) grant the variation; or
- (b) refuse to grant the variation.

(2) The Director General may, if of the opinion that it is appropriate to do so, vary an accreditation on the Director General's own initiative.

(3) Before varying an accreditation under subsection (2), the Director General must give the accredited person written notice —

- (a) stating the proposed variation;
- (b) stating the reasons for the variation; and
- (c) inviting the person to show, within a specified time (of at least 28 days), why the variation should not be made.

(4) If, after considering representations made within the specified time, the Director General still considers that the accreditation should be varied, the Director General may vary the accreditation —

- (a) in the way proposed; or
- (b) in another way (having regard to the representations).

(5) The Director General must give the accredited person written notice of a decision under this section.

(6) If the Director General decides to vary the accreditation under subsection (4), the notice must also state —

- (a) the variation;
- (b) the reasons for the variation; and
- (c) the procedures for conciliation, mediation and appeal under this Act.

(7) Subsections (3) to (6) do not apply if the Director General proposes a variation for a formal or clerical reason that does not adversely affect the accredited person's interests.

**s. 18**

(8) A variation for a purpose referred to in subsection (7) is effected by giving the accredited person written notice of the variation.

**Suspension or cancellation of accreditation**

- 18.** (1) If an accredited person —
- (a) contravenes a requirement of this Act or the person's accreditation;
  - (b) fails to meet a standard that applies to or in respect of the accreditation;
  - (c) contravenes a direction under this Act;
  - (d) in the course of acting under the accreditation, acts negligently, or in an unsafe or unlawful manner;
  - (e) provides false or misleading information in connection with the operation of this Act; or
  - (f) contravenes a requirement, standard, qualification or condition prescribed for the purposes of this paragraph,

the Director General may suspend or cancel the accreditation.

(2) Before taking action under subsection (1), the Director General must give the accredited person written notice —

- (a) stating the proposed action;
- (b) stating the reason for the proposed action; and
- (c) inviting the person to show, within a specified time (of at least 28 days), why the proposed action should not be taken.

(3) If the Director General, after considering representations made within the specified time, still considers that action should be taken, the Director General may —

- (a) suspend the accreditation for a specified period, until the fulfilment of specified conditions, or until further written notice is given;
- (b) cancel the accreditation; or
- (c) take other action (for example, by attaching conditions to the accreditation) determined by the Director General to be appropriate in the circumstances.

(4) The Director General must give the accredited person written notice of a decision under this section.

(5) If the Director General takes action under subsection (3), the notice must also state —

- (a) the reasons for the action; and
- (b) the procedures for conciliation, mediation and appeal under this Act.

### **Immediate suspension**

**19.** (1) If the Director General considers that there would be an immediate and serious threat to the safety of the public or to property or both unless an accreditation is suspended immediately, the Director General may, without complying with section 18, suspend the accreditation, wholly or partially, immediately.

(2) Written notice of a suspension under this section is to be given to the accredited person and is to specify —

- (a) whether the accreditation is wholly or partially suspended, and if partially suspended, is to specify the extent of the suspension;

- (b) any conditions relating to the suspension; and
  - (c) the period of suspension.
- (3) A suspension under this section is not to exceed 6 weeks except with the written agreement of the Minister.
- (4) The Director General may —
- (a) withdraw a suspension under this section at any time; or
  - (b) with the written agreement of the Minister, extend a suspension under this section (pending resolution of the matter under section 18, as appropriately modified to meet the circumstances of the case).

***Division 3 — Dispute resolution***

**Dispute resolution**

- 20.** (1) A person —
- (a) whose application for accreditation has been refused, or who considers that his or her application for accreditation has not been decided within a reasonable period;
  - (b) who is an accredited person and is aggrieved by a decision of the Director General with respect to conditions imposed with respect to the accreditation, or a variation or proposed variation of such conditions; or

- (c) who is, or was, an accredited person and is aggrieved by a decision of the Director General under Division 2,

may —

- (d) apply for the matter to be dealt with by conciliation or mediation in accordance with the scheme prescribed; or
- (e) appeal to the District Court.

(2) An application or appeal under subsection (1) in respect of a decision is to be made within one month after notice of the relevant decision has been given.

(3) A person who is dissatisfied with the outcome of conciliation or mediation proceedings under subsection (1) may, subject to the regulations, within one month after the conclusion of the proceedings, appeal to the District Court.

(4) Subject to subsection (5), the operation of a decision continues pending the outcome or determination of conciliation or mediation proceedings, or the outcome of an appeal.

(5) The Director General or the District Court may make an interim order suspending the operation of a decision.

(6) The District Court may, on hearing an appeal, do one or more of the following, according to the nature of the case —

- (a) after having regard to this Act and the regulations, relevant standards under this Act, the policies of the Director General made known to the Court, and other matters considered relevant by the Court — affirm, vary or quash the decision appealed against or substitute, or make in addition, a decision that the Court considers appropriate;
- (b) remit the subject-matter of the appeal to the Director General for further consideration;

**s. 21**

- (c) refer a matter to the Director General for determination, or re-determination;
- (d) make any further or other order as is required.

(7) Fresh evidence, or evidence in addition to or in substitution for evidence on which the original decision was made, may be admitted in the hearing of an appeal.

***Division 4 — Related matters*****Matters relating to applications**

**21.** (1) An application under this Part is to be made to the Director General —

- (a) in writing; and
- (b) in the manner and form approved,

and is to be accompanied by the relevant prescribed application fee.

(2) The Director General may request from a person who makes an application under this Part such other information as the Director General requires to determine the application.

(3) The Director General may request that information furnished in respect of an application under this Part be verified by statutory declaration.

**Annual fees**

**22.** (1) Such annual fee as is prescribed must be paid by an accredited person or the owner of a private siding at the time of accreditation or registration and in each subsequent year on or



before the anniversary of the person's accreditation for the particular railway or the registration of the private siding.

(2) If an accreditation is varied, such additional annual fee as is prescribed in respect of the variation is to be paid.

(3) The Director General may accept payment of an annual fee in accordance with an agreement (for example, an agreement that provides for the payment of fees by instalments) made with the person who is liable to pay the fee.

(4) If a person fails to pay an annual fee in accordance with this section, or an agreement made under this section, the accreditation or registration is, by force of this section, suspended until the fee is paid, and the Director General is to advise the person in writing of that suspension as soon as practicable.

### **Fees to be paid to Transport Co-ordination Fund**

**23.** All fees collected under this Act are to be credited to the Transport Co-ordination Fund established under section 62 of the *Transport Co-ordination Act 1966*.

### **Periodic returns**

**24.** (1) An accredited person must, for each period prescribed, not later than the relevant day for the accreditation, as determined in accordance with the regulations, lodge with the Director General a return containing the information prescribed.

(2) If an accredited person fails to comply with subsection (1), the Director General may, by written notice given to the accredited person, require him or her to do so and in that notice is to advise the person of the effect of subsections (3) and (4).

(3) If an accredited person fails to comply with a notice under subsection (2) within 14 days after service of the notice, the accreditation is, by force of this section, suspended, unless otherwise determined in writing by the Director General.

(4) If an accredited person fails to comply with a notice under subsection (2) within 2 months after service of the notice, the accreditation is, by force of this section, cancelled, unless otherwise determined in writing by the Director General.

**Surrender of accreditation**

**25.** An accredited person may surrender the accreditation.

**PART 3 — SAFETY STANDARDS AND MEASURES**

**Compliance with rail safety standards**

**26.** (1) The owner and the operator of a railway must comply with —

- (a) the Australian Rail Safety Standard;
- (b) safety standards —
  - (i) prescribed; or
  - (ii) approved, as relevant to the operation of this Act, of which written notice has been given to him or her;

and

- (c) safety standards with which he or she has agreed to comply under this Act.

(2) The owner and the operator of a railway must comply with the provisions of his or her safety management plan.

Penalty: \$50 000.

**Requirement to maintain safety systems, devices or appliances**

**27.** (1) An accredited person must install and maintain, or maintain, systems, devices, equipment and appliances on or with respect to a railway or rolling stock in accordance with the requirements of this Act and the person's accreditation.

Penalty: \$20 000.

(2) In subsection (1) —

**“systems, devices, equipment and appliances”** include, but are not limited to, safeworking systems, braking systems, wheels, isolating switches and points.

### **Installation of safety or protective devices**

**28.** (1) The Director General may, if of the opinion that action is necessary for the purpose of the safe construction or operation of a railway, direct an accredited person, by written notice, to install on or with respect to the infrastructure of the railway, or on or with respect to rolling stock, within the time specified in the notice, safety or protective systems, devices, equipment or appliances specified in the notice.

(2) An accredited person must comply with the requirements of the notice.

Penalty: \$20 000.

### **Closing railway crossings, bridges etc.**

**29.** (1) An authorized person may temporarily close or regulate a railway crossing, bridge or other structure for crossing or passing over or under a railway if satisfied it is necessary to do so due to a threat to the safety of the railway or the public.

(2) If an authorized person decides to close or regulate a crossing, bridge or other structure the authorized person must, as soon as practicable after its closure or regulation, notify the authorities responsible for it of its closure or regulation, unless the Director General has previously agreed in writing with the authority that such notification is unnecessary.

(3) In this section —

**“authorized person”** means —

- (a) a person who holds a specific authority from the Director General for the purposes of this section; or
- (b) a senior manager within the staff of the accredited person who holds a specific authority issued by the accredited person in accordance with relevant guidelines issued by the Director General.

**Power to require works to stop**

**30.** (1) A person, other than an accredited person, must not, without the written approval of the Director General or the owner of the railway, carry out works near a railway if the works threaten, or are likely to threaten the safety of the railway or its operational integrity.

Penalty: \$20 000.

(2) If —

- (a) a person is carrying out, or proposes to carry out, works near a railway; and
- (b) the Director General reasonably considers that the works threaten, or are likely to threaten, the safety of the railway or its operational integrity,

the Director General may give the person a written direction to stop, alter or not to start the works.

(3) A person must comply with the direction, unless the person has a reasonable excuse.

Penalty: \$20 000.

(4) If works are carried out contrary to subsection (1) or a direction under subsection (2), the Director General may, by written notice, require the owner of the land where the works are situated to alter, demolish or take away the works within such reasonable time as is specified in the notice.

(5) A person must comply with the requirements of a notice, unless the person has a reasonable excuse.

Penalty: \$20 000.

(6) If the requirements of a notice are not complied with, the Director General may take any action required by the notice.

(7) Action under subsection (6) may be taken on the Director General's behalf by an authorized officer or by another person authorized by the Director General for that purpose.

(8) The Director General may recover the reasonable costs and expenses incurred by the Director General in taking action under subsection (6) as a debt due from the person who failed to comply with the requirements of the notice.

(9) For the purposes of this section, an authorized officer, or a person who holds a specific authority from the Director General, may enter land and inspect works, and carry out any work under subsection (6) —

- (a) after giving 3 days written notice to the owner or occupier of the land;
- (b) with the written agreement of the owner or occupier of the land; or
- (c) without notice or agreement, if the Director General reasonably believes that there is an immediate and significant threat to the safety of the railway or its operational integrity.

**Railway employees**

**31.** (1) It is a condition of accreditation that an accredited person must take all reasonable steps to ensure that a railway employee who performs railway safety work —

- (a) has the capacity and skills, and is adequately trained, to perform the work;
- (b) is of sufficient good health and fitness to perform the work; and
- (c) does not carry out railway safety work —
  - (i) while there is present in his or her blood, alcohol of, or greater than, the concentration prescribed; or
  - (ii) while affected by a drug in a way which could detrimentally affect the person's ability to perform that work.

(2) A railway employee must not carry out railway safety work —

- (a) while there is present in his or her blood, alcohol of, or greater than, the concentration prescribed; or
- (b) while affected by a drug in a way which could detrimentally affect the person's ability to perform that work.

Penalty: \$5 000.

**PART 4 — COMPLIANCE INSPECTIONS  
AND REPORTING**

**Safety compliance inspections**

**32.** (1) The Director General may, at least once in every 12 months, inspect, or cause to be inspected, any or all of the following —

- (a) the railway track, other infrastructure and rolling stock of an accredited person;
- (b) the construction, maintenance and operation of a railway by an accredited person; and
- (c) the performance of railway employees of an accredited person,

to ascertain the extent of compliance with the requirements of this Act and the relevant accreditation.

(2) The Director General may at any time, by written notice, direct an accredited person to cause to be inspected any railway track, other infrastructure or rolling stock.

(3) The accredited person is to comply with the direction.

Penalty: \$20 000.

(4) The Director General may, at any time, inspect, or cause to be inspected, documents held by, or under the control of, an accredited person relating to —

- (a) the construction, maintenance or operation of a railway;
- (b) the acquisition, operation, disposal, renovation or repair of rail infrastructure or rolling stock;



- (c) the preparation, implementation or operation of the safeworking systems of a railway; or
- (d) other matters the Director General considers relevant to the safe construction, maintenance or operation of a railway (or any aspect of a railway) by an accredited person or otherwise relevant to compliance with the requirements of this Act and the person's accreditation.

**Directions to undertake remedial safety work**

**33.** (1) The Director General may, as a result of a safety compliance inspection under section 32 or otherwise, direct an accredited person to undertake remedial safety work to secure compliance with the requirements of this Act and the person's accreditation.

(2) The direction is to be given to the accredited person by written notice setting out details of the work to be undertaken and the period within which it is to be completed.

(3) The accredited person is to comply with the direction.

Penalty: \$20 000.

(4) If an accredited person fails to comply with the direction, the Director General may arrange for the work to be undertaken and may recover as a debt from the person the reasonable costs and expenses associated with the undertaking of the work.

**Directions to provide programme of remedial safety work**

**34.** (1) The Director General may, as a result of a safety compliance inspection under section 32 or otherwise, direct an accredited person who has failed to comply with the requirements of this Act or the person's accreditation to provide the Director

**s. 35**

General with a programme (including a timetable) for remedial safety work that the person proposes to undertake to remedy that failure.

(2) The direction is to be given to the accredited person by written notice and is to specify the date by which the programme is to be provided.

(3) The accredited person is to comply with the direction.

Penalty: \$20 000.

**Declarations as to variation of accreditation**

**35.** An accredited person must, at least 28 days before each anniversary of the person's accreditation —

- (a) furnish the Director General with a declaration in the approved form stating that, so far as the person is aware, no circumstance exists that might require the person to apply for variation of the person's accreditation in the coming year; or
- (b) apply to the Director General for variation of the accreditation.

Penalty: \$ 20 000.

**Safety reports**

**36.** (1) An accredited person must submit an annual safety report dealing with the general conduct of the accredited person's operations under the accreditation and any significant developments relating to those operations to the Director General within 28 days before each anniversary of the person's accreditation.

Penalty: \$20 000.

(2) In addition, an accredited person must submit a safety report to the Director General at such other times as the Director General directs by written notice given to the person.

Penalty: \$20 000.

(3) A report under this section is to be in such manner and form as is approved.

### **Supply of information**

**37.** (1) An accredited person must provide the Director General with information concerning measures taken by the accredited person to promote rail safety or concerning other matters relating to rail safety as the Director General may reasonably require from time to time.

Penalty: \$20 000.

(2) A requirement under subsection (1) is to be by written notice given to the accredited person.

### **Reports — notifiable occurrences and other incidents**

**38.** (1) An accredited person must report to the Director General within the time prescribed all occurrences of a kind prescribed as notifiable occurrences that happen on, or in relation to, a railway owned or operated by the person, or in relation to rolling stock operated by the person.

Penalty: \$20 000.

(2) Accredited persons may make a joint report with respect to a notifiable occurrence.

(3) In addition to notifiable occurrences, the Director General may, by written notice given to an accredited person, require the person to report to the Director General any other

**s. 39**

incident which endangers or could endanger the safe construction, maintenance or operation of a railway.

Penalty: \$20 000.

(4) A report under this section is to be in such manner and form as is approved.

(5) The Director General may require information supplied in a report to be verified by statutory declaration or such a requirement may be prescribed.

**Director General may require report from owner or operator**

**39.** (1) The Director General may, by written notice given to an accredited person, require the person to inquire into and report to the Director General under this section on —

- (a) a railway accident; or
- (b) an incident or other matter that may affect, or may have affected, or is otherwise relevant to, the safe construction, maintenance or operation of a railway.

(2) If the Director General has received a report on an accident, incident or other matter, the Director General may, by written notice given to the accredited person, require the person to inquire into the matter by reviewing or commenting on the report.

(3) The accredited person must conduct the inquiry in the manner, and within the time, approved and after completing the inquiry, is to provide a written report on the matter to the Director General.

Penalty: \$20 000.

**Request for certain details**

**40.** (1) If the Director General becomes aware that an accident, incident or other matter on, involving or associated with a railway or rolling stock may have occurred, the Director General may, by written notice given to an accredited person, require the person to furnish a written report on the matter within such reasonable period as is specified by the Director General in the notice.

(2) The accredited person must comply with the requirement within the time specified in the notice.

Penalty: \$20 000.

**PART 5 — INQUIRIES AND INSPECTIONS**

***Division 1 — Inquiries***

**Appointment of investigator**

**41.** (1) If an accident or other incident on, involving or associated with a railway causes or results in a person's death, serious personal injury, or major property damage, the Director General may, on the Director General's own initiative or at the request of an accredited person, and must at the request of the Minister, appoint an independent investigator or investigators to inquire into and report on the accident or incident in accordance with this Division.

(2) The Director General may also appoint an independent investigator or investigators to inquire into and report under this Division on any other accident or incident.

(3) The Director General must, before making an appointment under subsection (1) or (2), consult with any relevant accredited person regarding the person to be appointed as the investigator.

(4) An investigator is to be appointed on such terms and conditions as are agreed between the Director General and the investigator.

**Procedures and powers of an investigator**

**42.** (1) In conducting an inquiry under this Division, an investigator —

- (a) is to attempt to determine the circumstances surrounding any accident or incident to prevent the occurrence of accidents or incidents and is not to apportion blame for the occurrence of accidents or incidents or determine the liability of any person in respect of any accident or incident;

- (b) must follow such procedures as are approved with respect to inquiries;
- (c) must act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues; and
- (d) is not bound by the rules of evidence, but may inform himself or herself on any matter as the investigator considers appropriate.

(2) An investigator may, for the purposes of an inquiry under this Division —

- (a) by summons signed by the investigator, require the attendance of any person, or require the production of any document, object or material;
- (b) require a person to answer relevant questions;
- (c) require a person to make an oath or affirmation to answer questions put by the investigator; and
- (d) exercise the powers of an authorized officer under Division 2.

(3) A person must not —

- (a) if the person has been served with a summons, fail without reasonable excuse to attend in obedience to the summons;
- (b) if the person has been served with a summons to produce a document, object or material, fail without reasonable excuse to comply with the summons;
- (c) fail, without reasonable excuse, to answer a relevant question when required to do so under this section;

**s. 42**

- (d) when required by an investigator to answer a relevant question, make a statement that —
  - (i) the person knows to be false and misleading in a material particular; or
  - (ii) omit anything without which the statement is, to the person's knowledge, misleading in a material particular;
- (e) refuse to be sworn or to affirm; or
- (f) without reasonable excuse, hinder or obstruct an investigator in the exercise of powers under this section, or fail to obey any other requirement of, or direction given by, an investigator.

Penalty: \$10 000.

- (4) If a document, object or material is produced to, or found by, an investigator, the investigator may —
  - (a) inspect it;
  - (b) make copies of, photograph or take extracts from, or test, it;
  - (c) take possession of it, and keep it while it is necessary for the inquiry.
- (5) Except as provided by this section, an inquiry under this Division is to be conducted in a manner determined by the investigator.
- (6) An investigator may appoint a person or persons to assist him or her in an inquiry under this Division.



## **Report**

**43.** (1) The Director General and the Minister must be furnished with a copy of an investigator's report on its completion.

(2) The report is to contain such recommendations, if any, that the investigator considers appropriate and any other relevant matters.

(3) The Director General is to ensure that, within 28 days of receiving a copy of an investigator's report, a copy of that report is available for public inspection, without charge, during normal office hours at a prescribed place.

(4) Before making a copy of the report available for public inspection the Director General is to remove from the report anything that the Director General reasonably believes may —

- (a) prejudice any proceedings before a court or tribunal constituted by law respecting the same, or a related, incident or accident;
- (b) be considered defamatory; or
- (c) be contrary to the public interest.

## **Inquiry may continue despite other proceedings**

**44.** An inquiry under this Division may start or continue, and a report may be prepared or given, despite proceedings before a court or tribunal constituted by law, unless a court or tribunal with the necessary jurisdiction orders otherwise.

***Division 2 — Inspections, etc.***

**Appointment of authorized officers**

45. (1) The Director General may, in writing, appoint suitable persons to be authorized officers for the purposes of this Act.

(2) An appointment under this section may be subject to such conditions, or limitations on the authorized person's powers, as are imposed in writing by the Director General.

(3) A person appointed under this section must be issued with an identity card —

- (a) containing a photograph of the person;
- (b) certifying that the person is an authorized officer under this Act; and
- (c) stating any limitations on the person's powers, imposed under subsection (2).

(4) An authorized officer must, at the request of a person in relation to whom the authorized officer intends to exercise a power under this Act, produce for the inspection of the person his or her identity card.

(5) A person who possesses an identity card and who is not, or ceases to be, an authorized officer must cause the card to be returned to the Director General as soon as is practicable.

Penalty: \$500.

**Inspection powers**

**46.** (1) An authorized officer may, as may reasonably be required in connection with the administration, operation or enforcement of this Act —

- (a) subject to subsection (2), enter a place associated with a railway or the operation of a railway and inspect the place, or any railway, rail infrastructure or rolling stock or other vehicle;
- (b) give directions with respect to the stopping or movement of rolling stock;
- (c) take measurements, make surveys and take levels and, for those purposes, dig trenches, break up soil and set up posts, stakes or markers;
- (d) take samples of any substance or thing from any place or rolling stock or other vehicle for analysis;
- (e) require a person to produce a document, object or material;
- (f) examine, copy or take extracts from a document, object or material so produced or require a person to provide a copy of any such document;
- (g) take photographs, films, audio, video or other recordings;
- (h) examine or test any rail infrastructure, rolling stock, plant, system, device, equipment, appliance, vehicle or other thing, or cause or require it to be examined or tested, or seize it or require its production for examination or testing;

**s. 46**

- (i) seize and retain, or issue a seizure order in respect of, anything that the authorized officer reasonably suspects has been used in, or may constitute evidence of, an offence under this Act;
- (j) require a person to answer questions;
- (k) require a person to produce evidence of an accreditation, authorization or qualification required by or under this Act;
- (l) give directions reasonably required in connection with the exercise of a power conferred by this subsection or otherwise in connection with the administration, operation or enforcement of this Act;
- (m) exercise other powers as are prescribed for the purposes of this paragraph.

(2) Before an authorized officer enters land under this section, the authorized officer must give the owner or occupier of the land reasonable written notice of the intention to enter the land unless —

- (a) the giving of the notice would defeat the purpose for which it is intended to enter the land;
- (b) entry to the land is made with the consent of the owner or occupier of the land;
- (c) the owner or occupier has been given written notice of the entry and has not objected to the entry;
- (d) entry is required in circumstances where the authorized officer reasonably believes that immediate action is required; or
- (e) the entry is authorized by a warrant issued under section 47.

(3) An authorized officer may with the authority of a warrant issued under section 47, or without warrant in circumstances in which the authorized officer reasonably believes that immediate action is required, enter a place the authorized officer is authorized to enter under this section using such force as is necessary.

(4) In the exercise of power under this section, an authorized officer may be assisted by such persons as he or she considers necessary in the circumstances.

(5) An authorized officer may require the occupier of a place, or a person apparently in charge of any rail infrastructure, rolling stock, plant, equipment, vehicle or other thing, to give to the authorized officer or a person assisting the authorized officer such assistance as is reasonably required by the authorized officer for the effective exercise of powers conferred by this Act.

(6) In the exercise of powers under this section, an authorized officer, and a person assisting an authorized officer, must do as little damage as possible.

### **Entry under warrant**

**47.** (1) In the circumstances described in subsection (2), a justice may issue a warrant authorizing an authorized person to enter a place associated with a railway or the operation of a railway and inspect the place, or any railway, rail infrastructure or rolling stock or other vehicle using such force as is necessary.

(2) A warrant may be granted under subsection (1) where a justice is satisfied that the entry and inspection is reasonably required by an authorized person in connection with the administration, operation or enforcement of this Act, but —

- (a) entry has been refused or is opposed or prevented;
- (b) entry cannot be obtained; or

**s. 48**

(c) notice of the required entry under section 46 (2) cannot be given without unreasonable difficulty, unreasonably delaying entry or defeating the purpose for which it is intended to enter the land.

(3) A warrant granted under subsection (1) —

(a) is to be in the form prescribed;

(b) is to specify the purpose for which the entry may be made; and

(c) continues to have effect until —

(i) the purpose for which it was granted has been satisfied;

(ii) the end of the period of one month after its issue; or

(iii) it is withdrawn by the justice who issued it,

whichever occurs first.

**Provisions relating to seizure**

**48.** (1) A seizure order issued by an authorized officer under this Division —

(a) is to be in the form of a written notice served on the owner or person in control of the thing to which the order relates; and

(b) may be varied or revoked by further such written notice.

(2) If a seizure order is issued, a person must not remove or interfere with the thing to which the order relates without the approval of the Director General before an order is made under subsection (3) (b) in respect of the thing or the seizure order is discharged under subsection (3) (c).

Penalty: \$10 000.

(3) If a thing has been seized or made subject to a seizure order the following provisions apply —

- (a) the thing must, if it has been seized, be held pending proceedings for an offence against this Act related to the thing seized, unless the Director General, on application, authorizes its release to the person from whom it was seized, or to a person who had legal title to it at the time of its seizure, subject to such conditions as the Director General considers appropriate (including conditions as to the giving of security for satisfaction of an order under paragraph (b) (ii));
- (b) if proceedings for an offence against this Act relating to the thing are instituted within the prescribed period after its seizure or the issuing of the seizure order and the defendant is convicted of the offence, the court may —
  - (i) order that it be forfeited to the Director General; or
  - (ii) if it has been released pursuant to paragraph (a) or is the subject of a seizure order, order that it be forfeited to the Director General or that the person to whom it was released, or the defendant, pay to the Director General an amount equal to its market value at the time of seizure, or the issuing of the seizure order, as the court considers appropriate;
- (c) if —
  - (i) proceedings are not instituted for an offence under this Act relating to the thing within the prescribed period after its seizure or the issuing of the seizure order; or

- (ii) proceedings have been so instituted and the case is heard and determined but no order for forfeiture is made under paragraph (b) then —
  - (I) in the case of a thing seized, the person from whom the thing was seized, or a person with legal title to it, is entitled to recover from the Director General (if necessary, by action in a court of competent jurisdiction) the thing, or if it has been damaged or destroyed, compensation of an amount equal to its market value at the time of seizure; or
  - (II) in the case of a thing subject to a seizure order, the order is discharged.

(4) In subsection (3) —

**“the prescribed period”** means 6 months or such longer period as a magistrate, on application by the Director General, allows.

***Division 3 — Provisions relating to inquiries and inspections***

**Offence to hinder persons appointed under this Part**

**49.** A person must not —

- (a) wilfully hinder, obstruct or interfere with an authorized officer, an investigator, or a person assisting such a person, in the exercise of a power conferred under this Act;
- (b) use abusive, threatening or insulting language to an authorized officer, an investigator, or a person assisting such a person;



- (c) without reasonable excuse, refuse or fail to comply with a requirement or direction of an authorized officer or investigator under this Act;
- (d) fail, without reasonable excuse, to answer a relevant question put under the authority of this Part or give an answer that the person knows is false or misleading in a material particular; or
- (e) falsely represent, by words or conduct, that he or she is an authorized officer or an investigator.

Penalty: \$10 000.

### **Self-incrimination**

**50.** (1) It is not a reasonable excuse for the purposes of section 42 (3) or 49 to fail to answer any relevant question or produce a document, object or material when required to do so under this Part on the ground that the answer, or the production of the document, object or material might incriminate the person or make the person liable to a penalty, but the answer given and evidence of the answering of the question or the production of the document, object, or material is not admissible in evidence against the person in any civil or criminal proceedings, other than proceedings arising out of the false or misleading nature of the answer or production.

(2) The protection afforded by subsection (1) applies only if —

- (a) the person objected before the answer was given or the document, object or material produced on the ground that the answer or production might tend to incriminate him or her; or
- (b) although the person did not object as described in paragraph (a), the person's attention was not drawn to

the right to object in sufficient time to enable the right to be exercised.

(3) Subsection (2) does not apply to an investigation commenced under section 42.

(4) Nothing in subsection (1) prevents a person from refusing to answer a question or produce a document, object or material because the answer, document, object or material would relate to, or contain, information in respect of which the person claims legal professional privilege.

**PART 6 — MISCELLANEOUS**

***Division 1 — General offences and proceedings***

**False information**

- 51.** (1) A person must not —
- (a) by a false statement or misrepresentation, obtain or attempt to obtain an accreditation;
  - (b) forge, or fraudulently alter or use, an accreditation; or
  - (c) fraudulently allow an accreditation to be used by another person.

Penalty: \$20 000.

- (2) A person must not, in furnishing information or a report under this Act, knowingly make a statement that is false or misleading in a material particular.

Penalty: \$20 000.

**Tampering with railway equipment**

- 52.** (1) A person must not tamper with or disable —
- (a) the safety equipment of a railway or rolling stock;
  - (b) the interlocking system of a railway; or
  - (c) any other safeworking system associated with a railway.

Penalty: \$40 000.

(2) In this section —

**“interlocking system”** means any lever or collection of levers, or electrical and mechanical devices, or electrical devices, that operate or control points and signals, or signals, at locations where trains can be directed from one track to another and that are interlocked to prevent conflicting movements of trains.

**Offender to state name and address**

**53.** (1) A person reasonably suspected by a police officer or an authorized officer to be committing or to have committed an offence against this Act may be required to state his or her full name and usual place of residence, and to produce evidence of his or her identity.

(2) A person must not —

- (a) contravene a requirement made by a police officer or an authorized officer under this section; or
- (b) in purported compliance with such a requirement, state a name that is not his or her name or an address that is not his or her usual place of residence.

Penalty: \$5 000.

(3) A person is not guilty of an offence under this section unless it is established that the police officer or authorized officer —

- (a) warned the person that a failure or refusal to comply with the requirement is an offence; and
- (b) produced an official identity card for inspection by the person.

**Daily penalty for continuing offences**

**54.** (1) Without limiting section 71 of the *Interpretation Act 1984*, where an offence is committed by a person by reason of a contravention of a provision of this Act under which the person is required or directed to do any act or thing, or to refrain from doing any act or thing, that offence is taken to continue so long as the act or thing so required or directed remains undone, or continues to be done, as the case may be.

(2) A person convicted of such an offence is liable, in addition to the penalty otherwise prescribed for the offence, to a daily penalty not exceeding one fifth of the maximum penalty prescribed for the offence for each day or part of a day during which the offence continues after written notice of the offence has been given to the offender by the Director General, whether before or after conviction.

**Provision relating to offence by body corporate**

**55.** (1) If a body corporate commits an offence against this Act and it is proved that —

- (a) the offence was committed with the consent or connivance of an officer of the body corporate; or
- (b) the officer failed to exercise such due diligence to prevent the commission of the offence as ought to have been exercised having regard to the nature of the officer's functions and to all the circumstances,

the officer commits the same offence.

(2) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the act and defaults of a member in connection with the member's functions of management as if the member were an officer of the body corporate.

(3) An officer or a member may be proceeded against and convicted of an offence against this Act under subsection (1) or (2) whether or not the body corporate has been proceeded against and convicted of the offence.

(4) If, in a proceeding for an offence against this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show that —

- (a) the conduct was engaged in by an officer, employee or agent of the body corporate within the scope of his or her actual or apparent authority; and
- (b) the officer, employee or agent had that state of mind.

(5) If an officer, employee or agent of a body corporate engages in conduct on behalf of the body corporate within the scope of his or her actual or apparent authority, the body corporate must be taken, for the purposes of a prosecution under this Act, also to have engaged in the conduct unless the body corporate establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.

(6) In this section —

“**officer**” has the same meaning as in the Corporations Law but does not include an employee of the body corporate unless he or she was concerned in the management of the body corporate.

### **Proceedings**

**56.** (1) Despite section 51 of the *Justices Act 1902*, a complaint of an offence against this Act may be made within 2 years from the time when the matter of complaint arose or, with the written authority of the Attorney General, at a later time within 3 years from the time when the matter of complaint arose.

(2) An apparently genuine document purporting to be signed by the Attorney General and to authorize the commencement of a complaint of an offence against this Act will be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the authorization.

### **Evidentiary provision**

**57.** In any proceedings, a certificate purporting to be executed by the Director General certifying as to a matter relating to —

- (a) an authority under this Act;
- (b) an accreditation, or lack of an accreditation;
- (c) a notice, requirement or direction of the Director General under this Act; or
- (d) the receipt or non-receipt by the Director General of a notification, record or information required to be given, furnished or provided under this Act,

constitutes proof, in the absence of proof to the contrary, of the matter so certified.

### ***Division 2 — Other matters***

#### **Recovery of cost of entry and inspection**

**58.** The Director General may recover as a debt from an accredited person the reasonable costs of the entry and inspection of a railway or rolling stock in respect of which the person is accredited, other than the costs of a routine safety compliance inspection under section 32.

**Protection from liability for wrongdoing**

**59.** (1) An action in tort does not lie against a person for anything that the person has, in good faith, done in the performance or purported performance of a function under this Act.

(2) If this section provides that an action does not lie against a person for doing anything, the Crown is also relieved of any liability it might otherwise have had for the doing of the thing by the person.

(3) The protection given by this section applies even if the thing done in the performance or purported performance of a function under this Act may have been capable of being done whether or not this Act had been enacted.

(4) In this section a reference to the doing of anything includes a reference to the omission to do anything.

**Vicarious liability of accredited person for acts or omissions of employees or agents**

**60.** For the purposes of this Act, an act or omission of an employee or person acting on behalf of an accredited person will be taken to be an act or omission of the accredited person unless the accredited person proves that the employee or person was not acting within the scope of his or her actual or apparent authority.

**Regulations**

**61.** (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.



(2) Without affecting the generality of subsection (1), regulations may be made with respect to any of the matters specified in Schedule 1.

(3) A regulation made under this Act may create an offence punishable by a penalty not exceeding \$5 000 and, if the offence is a continuing one, a further penalty not exceeding \$200 for each day or part of a day during which the offence continues after written notice of the offence has been given to the offender by the Director General, whether before or after conviction.

### **Adoption of code etc. in regulations**

**62.** (1) The regulations may adopt, either wholly or in part, with or without modification and either specifically or by reference, any code, standard or other document prepared or published by a prescribed body —

- (a) either as at the time the regulations are made, or at any time before then; or
- (b) as amended from time to time.

(2) Where the regulations adopt a code, standard or other document prepared or published by a prescribed body —

- (a) the Director General is to ensure that a copy of the code, standard or other document (as amended, if applicable) is available for public inspection, without charge, during normal office hours, at a prescribed place; and
- (b) in any legal proceedings under this Act, production of a copy of a code, standard or other document adopted under this section purporting to be certified by the Director General to be a true copy as at any date or during any period is, without proof of the signature of the Director General, sufficient evidence of the contents of the code, standard or other document as at that date or during that period.

**s. 63****Review of Act**

**63.** (1) The Minister is to carry out a review of the operation and effectiveness of this Act not later than 6 months after the expiration of 5 years after its commencement and in the course of that review the Minister is to consider and have regard to —

- (a) the effectiveness of this Act in promoting and encouraging rail safety and inquiring into rail accidents and incidents;
- (b) the administration of this Act; and
- (c) such other matters as appear to be relevant to the operation of this Act.

(2) The Minister is to —

- (a) prepare a report based on the review under subsection (1); and
- (b) cause it to be laid before each House of Parliament,

within 6 years after the commencement of this Act.

**Consequential amendments and transitional provisions**

**64.** (1) The transitional provisions set out in Schedule 2 have effect.

(2) The Acts specified in Schedule 3 are amended as set out in that Schedule.

**SCHEDULE 1 — SUBJECT MATTER FOR REGULATIONS**

[Section 61 (2)]

1. Accreditations under this Act, including —
  - (a) requirements, standards, qualifications or conditions that are to be satisfied;
  - (b) requirements as to any conditions or particulars applying; and
  - (c) other matters relating to their award, refusal, variation, suspension, cancellation or surrender.
2. A scheme for certificates of competency (and, if required, provisional certificates of competency) for persons employed or engaged in railway safety work, and for the duration, variation, suspension or cancellation of those certificates.
3. The prohibition of the carrying on of railway safety work or other prescribed activity except by or under the supervision of a person —
  - (a) who holds an appropriate certificate of competency; or
  - (b) who has prescribed qualifications, training or experience.
4. Safety standards or other requirements that must be complied with —
  - (a) in connection with the construction, maintenance or operation of a railway;
  - (b) in connection with the performance of any work or activity;
  - (c) in relation to any rail infrastructure, rolling stock, trains, system, devices, appliance or equipment; or
  - (d) in relation to sidings.
5. The safeguarding, siting, installing, testing, altering, maintaining or removal of any rail infrastructure, rolling stock, system, device, appliance or equipment.
6. The records and documents to be kept by any person, the manner of keeping those records and documents, and their inspection.
7. Notifiable occurrences.
8. The furnishing of returns and other information, verified as prescribed.

**Sch. 1**

9. The recording, investigation and reporting of accidents and incidents.

10. The health, fitness, training and functions of railway employees.

11. Requirements and procedures for testing, by accredited persons or other persons of a prescribed class, for compliance with section 31 (1) (c) and (2) in respect of railway employees who —

- (a) have been involved in a notifiable occurrence or an incident which is to be reported under this Act;
- (b) are about to carry out, or are carrying out, railway safety work,

including procedures for breath, urine and blood testing, the requirement for railway employees to submit to testing, and procedures and penalties if an employee does not so submit, the analysis of test results, the provision and keeping of samples, the approval of equipment or any apparatus for the purposes of testing or analysis, and evidence in any proceedings for an offence against the relevant regulations.

12. The conduct of passengers and other persons on railways, or on land or premises adjacent to, or associated with, a railway.

13. The safety of railways and their operational integrity.

14. Trespass on, or entry to, railways, or on land, premises, infrastructure or rolling stock associated with a railway.

15. The carriage of goods, freight or animals on railways.

16. The unauthorized use of railways or rolling stock.

17. The display of signs and notices.

18. The opening and closing of railway gates.

19. Vehicles, animals and pedestrians crossing railways.

20. Railway crossings.

21. The loading, unloading or transportation of freight.

22. The identification of rolling stock, rail infrastructure, devices, appliances, equipment or freight.

23. Causing damage to, or interfering with or removing, rolling stock, rail infrastructure, devices, appliances, equipment or freight.

24. Procedures associated with inspections, examinations or tests.

25. The form and service of notices and other documents, and the effect of failure to comply with a notice or document.
26. Empowering the Director General to require a person to attend before an appointed person and to provide documents or information or to answer questions.
27. Empowering the Director General to prohibit a person from acting (or from continuing to act) as a railway employee for a particular period, or until further order of the Director General.
28. Fixing fees and charges for the purposes of this Act or in respect of any matter arising under this Act, including any additional fee that is to be paid by way of penalty for late payment of a fee.
29. Generally, evidence in proceedings for an offence against the regulations.

**SCHEDULE 2 — TRANSITIONAL PROVISIONS**

[Section 64 (1)]

**Persons who owned or operated a railway before commencement**

1. (1) An owner or operator of a railway (other than a private siding) who, immediately before the commencement of this clause, owns or operates a railway to which this Act applies is, from that commencement, to be taken to hold an accreditation appropriate to the owner's or operator's circumstances until such time as is prescribed.

(2) If an owner or operator applies to the Director General for accreditation or interim accreditation under Part 2 during the period that the owner or operator holds an accreditation under subclause (1), and the application is not determined by the Director General during that period then the owner or operator is to continue to be taken to hold the accreditation until the application is determined.

(3) A private siding in existence immediately before the commencement of this clause is, from that commencement, to be taken to be registered under this Act until such time as is prescribed.

(4) If the owner of the private siding applies to the Director General for registration of the siding under Part 2 during the period that the private siding is registered under subclause (3), and the application is not determined by the Director General during that period then the private siding is to continue to be taken to be registered until the application is determined.

**Transitional regulations**

2. (1) If there is not sufficient provision in this Schedule for dealing with a matter that needs to be dealt with for the purpose of the transition to this Act, regulations may prescribe all matters that are required or necessary or convenient to be prescribed for dealing with the matter.

(2) Regulations made under this clause may have effect before the day on which they are published in the *Gazette*.

(3) To the extent that a regulation under this clause has effect before the day of its publication in the *Gazette*, it does not —

- (a) affect, in a manner prejudicial to any person (other than the State), the rights of that person existing before the day of its publication; or
- (b) impose liabilities on any person (other than the State) in respect of anything done or omitted to be done before the day of its publication.

**SCHEDULE 3 — CONSEQUENTIAL AMENDMENTS TO  
OTHER ACTS**

[Section 64 (2)]

***Government Railways Act 1904***

1. (1) After section 2 insert the following section —

“

**Relationship to *Rail Safety Act 1998***

**2A.** If there is a conflict or inconsistency between a provision of this Act, or subsidiary legislation made under this Act, and a provision of the *Rail Safety Act 1998* or subsidiary legislation made under that Act, the provision of that Act or subsidiary legislation prevails to the extent of the conflict or inconsistency.

”.

(2) Sections 6, 17, 19, 20, 41, 42, 66A (2) and (3), 66B, 68 (3), 70 and 85 (1) to (10) are repealed.

(3) Section 13 (1) is amended by inserting after “this Act” the following —

“ , the *Rail Safety Act 1998* ”.

(4) Section 61 (5) is amended by inserting after “enactment” the following —

“ other than the *Rail Safety Act 1998* ”.

(5) Section 62 (4) is amended by inserting after “subject to” the following —

“ the *Rail Safety Act 1998*, ”.

(6) Section 66A (1) is amended by inserting after “ , and” the following —

“ , subject to the *Rail Safety Act 1998*, ”.

(7) Section 66A (3) continues to apply in respect of any certificate given under section 66A (2) before the repeal of those provisions.

**Sch. 3**

***Mines Safety and Inspection Act 1994***

2. In section 7 insert before “If” the subsection designation “(1)” and insert after subsection (1) as so designated the following subsection —

“  
(2) This Act does not apply to or in relation to a railway to which the *Rail Safety Act 1998* applies or to the ownership or operation of such a railway.  
”

***Transport Co-ordination Act 1966***

3. (1) In section 8 (1) insert after “this Act” the following —

“  
or enabling the functions of the Director General under this or any other Act to be performed  
”

(2) In section 8 (2) insert after “this Act” the following —

“  
or assisting in enabling the functions of the Director General under this or any other Act to be performed  
”

(3) Section 8 (3) is repealed and the following subsections are substituted —

“  
(3) The Minister may engage persons, otherwise than under the *Public Sector Management Act 1994*, to provide such professional, technical or other assistance as the Minister considers necessary to enable the Minister to perform his functions under this Act, or to assist in enabling the functions of the Director General under this or any other Act to be performed.

(3a) Nothing in subsection (3) affects the operation of the *Workplace Agreements Act 1993*.

(3b) Subsection (3) does not affect the operation of section 100 of the *Public Sector Management Act 1994*.  
”

(4) In section 15A (1) delete “powers and functions under this Act” and substitute the following —

“  
functions under this Act or enabling the functions of the Director General under this or any other Act to be performed  
”



(5) In section 15A (6) delete “the purposes of carrying this Act into effect” and substitute the following —

“ a purpose referred to in subsection (1) ”.

(6) In section 15C (1) delete “and” after paragraph (c) and insert the following —

“ (ca) the *Rail Safety Act 1998*; and ”.

(7) After section 17 the following section is inserted —

“

**Delegation**

**18.** (1) The Director General may, and shall at the request of the Minister to the extent specified in the request, either generally or in relation to any particular matter, by instrument, delegate to any person any of the functions or powers of the Director General under this, or any other, Act, except this power of delegation.

(2) A delegation under this section is revocable at will by the Director General, except that, to the extent that the delegation was at the request of the Minister, it is revocable only at the Minister’s request.

(3) A function performed or a power exercised by a delegate is to be treated as performed or exercised by the Director General.

(4) A delegate performing a function or exercising a power is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.

(5) Subject to this section, section 59 of the *Interpretation Act 1984* applies to and in relation to any delegation under this section.

”.