



Western Australia

Rail Safety Act 2010

Compare between:

[06 Sep 2014, 00-i0-03] and [27 Apr 2015, 00-j0-03]

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Rail Safety Act 2010

An Act to make provision for rail safety and other matters that form part of a system of nationally consistent rail safety laws and as a consequence to —

- **repeal the *Rail Safety Act 1998*; and**
 - **amend certain other Acts,**
- and for other purposes.**

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Rail Safety Act 2010*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act other than sections 63, 64, 65 and 66 — on a day fixed by proclamation, and different days may be fixed for different provisions;
- (c) section 63 — on the day 12 months after the day on which section 3 comes into operation;
- (d) sections 64, 65 and 66 — on the day 36 months after the day on which section 3 comes into operation.

3. Terms used

In this Act, unless the contrary intention appears —

accreditation means accreditation under Part 4;

accredited person means a rail transport operator who is accredited under this Act but does not include a person whose accreditation under this Act —

- (a) has been surrendered or revoked or has otherwise ceased to have effect under this Act; or
- (b) is suspended under this Act;

Australian rail safety law means a rail safety law or a corresponding rail safety law;

Australian Rail Safety Regulator means the Rail Safety Regulator or a corresponding Rail Safety Regulator;

authorised officer means a person appointed as an authorised officer under section 136;

CEO means the chief executive officer of the department of the Public Service principally assisting in the administration of this Act;

commercial benefits order means an order under section 202;

Commissioner of Police means the person holding or acting in the office of Commissioner of Police under the *Police Act 1892*;

compliance code means a compliance code approved by the Minister under Part 9 Division 3;

corresponding law means —

- (a) the law of another jurisdiction corresponding, or substantially corresponding, to this Act; or
- (b) a law of another jurisdiction that is declared under the regulations to be a corresponding law, whether or not the law corresponds, or substantially corresponds, to this Act;

corresponding rail safety law means a rail safety law as defined in a corresponding law;

corresponding Rail Safety Regulator means —

- (a) the Rail Safety Regulator within the meaning of a corresponding rail safety law (except in the case of a jurisdiction for which a person is prescribed under paragraph (b)); or
- (b) a person prescribed by the regulations as the corresponding Rail Safety Regulator for another jurisdiction for the purposes of this Act;

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

drug means —

- (a) a substance that is a drug for the purposes of this Act by virtue of a declaration under section 4; and
- (b) any other substance (other than alcohol) which, when consumed or used by a person, deprives that person

(temporarily or permanently) of any of his or her normal mental or physical faculties;

embargo notice means a notice under section 101;

employee means a person employed under a contract of employment or contract of training;

employer means a person who employs one or more other persons under contracts of employment or contracts of training;

exercise includes perform;

footpath has the meaning given in the *Road Traffic Code 2000* regulation 3(1);

guidelines means guidelines approved by the Minister under Part 9 Division 3;

improvement notice means a notice under section 111;

independent investigator means a person appointed as an independent investigator under section 127;

infringement notice means an infringement notice under the *Criminal Procedure Act 2004* Part 2;

interface agreement means an agreement in writing about managing risks to safety identified and assessed under Part 4 Division 4 that includes provisions for —

- (a) implementing and maintaining measures to manage those risks; and
- (b) the evaluation, testing and, where appropriate, revision, of those measures; and
- (c) the respective roles and responsibilities of each party to the agreement in relation to those measures; and
- (d) procedures by which each party to the agreement will monitor compliance with the obligations under the agreement; and
- (e) a process for keeping the agreement under review and its revision;

jurisdiction means a State or Territory;

level crossing has the meaning given in the *Road Traffic Code 2000* regulation 3(1);

notifiable occurrence means an accident or incident associated with railway operations —

- (a) that has, or could have, caused —
 - (i) significant property damage; or
 - (ii) serious injury; or
 - (iii) death;
- or
- (b) that is, or is of a class that is, prescribed by the regulations to be a notifiable occurrence or class of notifiable occurrence,

but does not include an accident or incident, or class of accident or incident, that is prescribed by the regulations not to be a notifiable occurrence;

personal information has the meaning given in the *Freedom of Information Act 1992* Glossary clause 1;

private siding means a siding that is managed, owned or controlled by a person, other than a person who manages the rail infrastructure with which the siding connects or to which it has access, but does not include —

- (a) a marshalling yard; or
- (b) a crossing loop; or
- (c) a passenger terminal; or
- (d) a freight terminal; or
- (e) a siding, or a siding of a class, prescribed by the regulations not to be a private siding;

prohibition notice means a notice under section 116;

public place means —

- (a) a place that —
 - (i) the public is entitled to use; or

- (ii) is open to members of the public; or
- (iii) is used by the public,
whether or not on payment of money; or
- (b) a place that the occupier allows members of the public to enter, whether or not on payment of money;

public road means a road as defined in the *Road Traffic (Administration) Act 1974* section ~~5(1)~~4;

rail infrastructure means the facilities that are necessary to enable a railway to operate safely and includes, but is not limited to —

- (a) railway tracks and associated track structures; or
- (b) service roads, signalling systems, communications systems, rolling stock control systems and data management systems; or
- (c) notices and signs; or
- (d) electrical power supply and electric traction systems; or
- (e) associated buildings, workshops, depots and yards; or
- (f) plant, machinery and equipment,

but does not include —

- (g) rolling stock; or
- (h) any facility, or facility of a class, that is prescribed by the regulations not to be rail infrastructure;

rail infrastructure manager, in relation to rail infrastructure of a railway, means the person who has effective management and control of the rail infrastructure, whether or not the person —

- (a) owns the rail infrastructure; or
- (b) has a statutory or contractual right to use the rail infrastructure or to control, or provide, access to it;

rail or road crossing means a railway crossing, a bridge carrying a road over a railway or a bridge carrying a railway over a road;

rail safety law means this Act or a provision of this Act;

rail safety matter means —

- (a) an occurrence involving rolling stock or rail infrastructure that resulted in, or that had the potential to result in, the death of, or injury to, any person, or in damage to any property or equipment including, for example —
 - (i) a derailment of rolling stock; or
 - (ii) a collision involving rolling stock; or
 - (iii) an accident or incident resulting from the construction, maintenance or operation of a railway; or
 - (iv) a failure of any part of rail infrastructure or any rolling stock or any part of any rolling stock; or
 - (v) a failure or breach of any practice or procedure involving rolling stock; or
 - (vi) a fire, explosion or other similar occurrence involving rolling stock; or
 - (vii) an accident or incident in which there is evidence of systematic safety deficiencies;

or

- (b) any other occurrence or any state of affairs involving, or in relation to, rolling stock or rail infrastructure that is specified by the regulations for the purposes of this definition;

rail safety officer means a person designated to be appointed as a rail safety officer under Part 3 Division 2;

Rail Safety Regulator means the person referred to in section 15(2);

rail safety work has the meaning given in section 7;

rail safety worker means an individual who has carried out, is carrying out or is about to carry out, rail safety work;

rail transport operator means —

- (a) a rail infrastructure manager; or
- (b) a rolling stock operator; or
- (c) a person who is both a rail infrastructure manager and a rolling stock operator;

railway means a monorail or proposed monorail or a guided system, or proposed guided system, designed for the movement of rolling stock having the capability of transporting passengers or freight, or both, on a railway track with a gauge of 600 mm or more, together with its rail infrastructure and rolling stock and includes the following —

- (a) a heavy railway;
- (b) a light railway;
- (c) an inclined railway;
- (d) a tramway;
- (e) a railway within a marshalling yard or a passenger or freight terminal;
- (f) a private siding;
- (g) a guided system, or guided system of a class, prescribed by the regulations to be a railway;

railway crossing means —

- (a) a level crossing; or
- (b) any area where a footpath or shared path crosses a railway at substantially the same level;

railway operations means —

- (a) the construction of a railway, railway tracks and associated track structures or rolling stock; or
- (b) the management, commissioning, maintenance, repair, modification, installation, operation or decommissioning of rail infrastructure; or
- (c) the commissioning, maintenance, repair, modification or decommissioning of rolling stock; or

- (d) the operation or movement, or causing the operation or movement by any means, of rolling stock on a railway (including for the purposes of construction or restoration of rail infrastructure); or
- (e) the movement, or causing the movement, of rolling stock for the purposes of operating a railway service;

railway premises means —

- (a) land (including any premises on land) on or in which is situated rail infrastructure; or
- (b) land (including any premises on land) on or in which is situated any over track or under track structure or part of an over track or under track structure; or
- (c) freight centres or depots used in connection with the carrying out of railway operations; or
- (d) workshops or maintenance depots used in connection with the carrying out of railway operations; or
- (e) premises including an office, building or housing used in connection with the carrying out of railway operations; or
- (f) rolling stock or other vehicles associated with railway operations;

railway tracks and associated track structures means —

- (a) railway tracks and associated track structures and works (such as cuttings, sidings, tunnels, bridges, stations, platforms, tram stops, excavations, land fill, track support earthworks and drainage works); or
- (b) over track structures and under track structures (including tunnels under tracks);

restricted information, in relation to an investigation under Part 6, means any one or more of the following —

- (a) a statement, whether oral or in writing, obtained from a person in the course of an investigation, including any record of the statement;

- (b) all information recorded in the course of an investigation;
- (c) information in a document or thing created by an independent investigator or an authorised officer during the course of an investigation;
- (d) all communications in the course of an investigation with a person involved in the operation of rolling stock that is or was the subject of the investigation;
- (e) medical or private information (including information obtained from an alcohol or drug test under section 154) regarding persons, including deceased persons, involved in an occurrence that is or has been the subject of an investigation;
- (f) in relation to rolling stock that is or was the subject of an investigation, information recorded for the purposes of monitoring or directing the progress of the rolling stock from one place to another or information recorded about the operation of the rolling stock;
- (g) records of the analysis of information or anything else obtained in the course of an investigation, including opinions expressed by a person in that analysis;
- (h) any information prescribed for the purpose of this paragraph collected for the purpose of an investigation, but does not include a train safety recording or a transcript of a train safety recording;

road infrastructure means —

- (a) the infrastructure which forms part of a road, footpath or shoulder, including —
 - (i) structures forming part of the road, footpath or shoulder; or
 - (ii) materials from which a road, footpath or shoulder is made;

- (b) the road-related infrastructure including infrastructure which is installed or constructed to —
 - (i) facilitate the operation or use of the road or footpath; or
 - (ii) support or protect the road or footpath;
- (c) all bridges (including any bridge over or under which a road passes), viaducts, tunnels, culverts, grids, approaches and other things appurtenant to the road or footpath or used in connection with the road or footpath;

road manager —

- (a) in relation to a public road, means a local government, regional local government or the Commissioner of Main Roads;
- (b) in relation to a road other than a public road, means the owner of, or person responsible for, the road;

road vehicle means a vehicle as defined in the *Road Traffic Act 1974* section 5(1);

rolling stock means a vehicle that operates on or uses a railway and includes a locomotive, carriage, rail car, rail motor, light rail vehicle, train, tram, light inspection vehicle, self propelled infrastructure maintenance vehicle, trolley, wagon or monorail vehicle, but does not include a vehicle designed to operate both on and off a railway when the vehicle is not operating on a railway;

rolling stock operator means a person who has effective management and control of the operation or movement of rolling stock on rail infrastructure for a particular railway but does not include a person by reason only that the person drives the rolling stock or controls the network or the network signals;

safety means the safety of people, including rail safety workers, passengers, other users of railways, users of rail or road crossings and the general public;

safety management plan means a document describing a safety management system;

safety management system means a rail transport operator's safety management system under section 59;

security management plan means a rail transport operator's security management plan under section 71;

shared path has the meaning given in the *Road Traffic Code 2000* regulation 3(1);

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

substance means a substance in any form (whether gaseous, liquid, solid or other) and includes material, preparation, extract and admixture;

supply includes —

- (a) in relation to goods, supply or resupply by way of sale, exchange, lease, hire or hire purchase, whether as principal or agent; or
- (b) in relation to services, provide, grant or confer, whether as principal or agent;

train means —

- (a) 2 or more units of rolling stock coupled together, at least one of which is a locomotive or other self propelled unit; or
- (b) a unit of rolling stock that is a locomotive or other self propelled unit;

train safety recording means a recording consisting of, or mainly of, sounds or images or data, or any combination of sounds, images or data, produced by a device installed in a train, a signal box, a train control complex or other railway premises for the purpose of recording operational activities carried out by persons operating a train.

[\[Section 3 amended by No. 8 of 2012 s. 167.\]](#)

4. Declaration of substance to be a drug

The Minister may, by order published in the *Gazette*, declare any substance to be a drug for the purposes of this Act.

5. Railways to which this Act does not apply

- (1) This Act does not apply to the following —
 - (a) a railway in a mine that is underground, or chiefly underground, and that is used in connection with the performance of mining operations;
 - (b) a slipway;
 - (c) a railway used only to guide a crane;
 - (d) an aerial cable operated system;
 - (e) a railway, or class of railway, prescribed to be a railway to which this Act does not apply.
- (2) 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.
- (3) In subsection (2) —
specified means specified in the notice.
- (4) The Minister may amend or repeal a notice at any time by subsequent notice published in the *Gazette*.
- (5) The *Interpretation Act 1984* sections 41 and 42 apply to and in relation to a notice under subsection (2) or (4) as if the notice were a regulation.
- (6) A person must not contravene a condition imposed under this section.
Penalty: a fine of \$20 000.

6. The concept of ensuring safety

- (1) A duty imposed on a person under this Act to ensure, so far as is reasonably practicable, safety requires the person —
- (a) to eliminate risks to safety so far as is reasonably practicable; and
 - (b) if it is not reasonably practicable to eliminate risks to safety, to reduce those risks so far as is reasonably practicable.
- (2) For the purposes of this Act, regard must be had to the following matters in determining what is, or was at a particular time, reasonably practicable in relation to ensuring safety —
- (a) the likelihood of the risk concerned eventuating;
 - (b) the degree of harm that would result if the risk eventuated;
 - (c) what the person concerned knows or ought reasonably to know, about the risk and any ways of eliminating or reducing the risk;
 - (d) the availability and suitability of ways to eliminate or reduce the risk;
 - (e) the cost of eliminating or reducing the risk.

7. Rail safety work

- (1) Subject to subsection (2), any of the following classes of work is rail safety work for the purposes of this Act —
- (a) driving or despatching rolling stock or any other activity which is capable of controlling or affecting the movement of rolling stock;
 - (b) signalling, signalling operations, receiving or relaying communications or any other activity which is capable of controlling or affecting the movement of rolling stock;
 - (c) coupling or uncoupling rolling stock;

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- (d) maintaining, repairing, modifying, monitoring, inspecting or testing —
 - (i) rolling stock, including checking that the rolling stock is working properly before being used; or
 - (ii) rail infrastructure;
 - (e) installation of components in relation to rolling stock;
 - (f) work on or about rail infrastructure relating to the design, construction, repair, modification, maintenance, monitoring, upgrading, inspection or testing of the rail infrastructure or associated works or equipment, including checking that the rail infrastructure is working properly before being used;
 - (g) installation or maintenance of —
 - (i) a telecommunications system relating to rail infrastructure or used in connection with rail infrastructure; or
 - (ii) the means of supplying electricity directly to rail infrastructure or to any rolling stock using rail infrastructure or to a telecommunications system;
 - (h) work involving certification as to the safety of rail infrastructure or rolling stock or any part or component of rail infrastructure or rolling stock;
 - (i) work involving the decommissioning of rail infrastructure or rolling stock or any part or component of rail infrastructure or rolling stock;
 - (j) work involving the development, management or monitoring of safe working systems for railways;
 - (k) work involving the management or monitoring of passenger safety on, in or at any railway;
 - (l) any other work that is prescribed to be rail safety work.
- (2) Work, or any class of work, prescribed not to be rail safety work is not rail safety work for the purposes of this Act.

8. Relationship to *Government Railways Act 1904*

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.

9. Crown bound

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

Part 2 — Relationship to *Occupational Safety and Health Act 1984*

10. Act adds to protection provided by *Occupational Safety and Health Act 1984*

If a provision of the *Occupational Safety and Health Act 1984* applies to railway operations, that provision continues to apply, and must be observed, in addition to this Act.

11. *Occupational Safety and Health Act 1984* prevails

If a provision of this Act is inconsistent with a provision of the *Occupational Safety and Health Act 1984*, the provision of that Act prevails to the extent of any inconsistency.

12. Compliance with this Act is no defence to prosecution under *Occupational Safety and Health Act 1984*

Compliance with this Act, or with any requirement imposed under this Act, is not in itself a defence in any proceedings for an offence against the *Occupational Safety and Health Act 1984*.

13. Relationship between duties under this Act and *Occupational Safety and Health Act 1984*

Evidence of a relevant contravention of this Act is admissible in any proceedings for an offence against the *Occupational Safety and Health Act 1984*.

14. No double jeopardy

If an act or omission constitutes an offence —

- (a) under this Act; and
- (b) under the *Occupational Safety and Health Act 1984*,

the offender is not liable to be punished twice in respect of the offence.

Part 3 — Administration

Division 1 — The Rail Safety Regulator

15. Rail Safety Regulator

- (1) A Director Rail Safety is to be appointed.
- (2) The Director Rail Safety or a person acting in the position of Director Rail Safety is the Rail Safety Regulator.
- (3) Despite any other written law, the Rail Safety Regulator is not subject to the direction or control of any person in relation to the manner in which the Regulator performs his or her functions under this Act.

16. Functions of the Rail Safety Regulator

- (1) In addition to any other functions conferred on the Rail Safety Regulator by this Act, the Rail Safety Regulator has the following functions —
 - (a) to administer, audit and review the accreditation regime under this Act;
 - (b) to work with rail transport operators, rail safety workers, others involved in railway operations and corresponding Rail Safety Regulators to improve rail safety in this jurisdiction and nationally;
 - (c) to provide information to corresponding Rail Safety Regulators, including information about causal factors of rail incidents, accreditation processes, investigation methods and risk assessment methodologies;
 - (d) to collect and publish information relating to rail safety;
 - (e) to provide, or facilitate the provision of, advice, education and training in relation to rail safety;
 - (f) to monitor, investigate and enforce compliance with this Act.

- (2) The functions of the Rail Safety Regulator under this Act are in addition to any function that the Rail Safety Regulator has under any other Act or law.

17. Information to be included in annual report

- (1) The Rail Safety Regulator, not later than 31 October in each year, is to make and submit to the Minister an annual report for the preceding year ending on 30 June.
- (2) The Rail Safety Regulator must in each annual report include —
- (a) information on the development of rail safety including an aggregation of statistics of a prescribed class reported to the Rail Safety Regulator under this Act in respect of that year; and
 - (b) information on any improvements and important changes in relation to the regulation of rail safety.
- (3) Subsection (1) is in addition to any other requirement under any other Act or law to make a report or publish information.
- (4) The Minister is to cause a copy of the Rail Safety Regulator's annual report submitted under subsection (1) to be laid before each House of Parliament within 21 sitting days of that House after receipt of the report by the Minister.
- (5) The Rail Safety Regulator is to ensure that after subsection (4) has been complied with copies of the report are available on request for inspection at the Regulator's principal place of business.

18. Delegation

- (1) The Rail Safety Regulator may delegate to a person any power or duty of the Rail Safety Regulator under another provision of this Act other than a function referred to in section 127(2).
- (2) The delegation must be in writing signed by the Rail Safety Regulator.

- (3) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (4) A person exercising or performing a power or duty that has been delegated to the person under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) Nothing in this section limits the ability of the Rail Safety Regulator to perform a function through an officer or agent.

19. Rail Safety Regulator may exercise functions of rail safety officers

- (1) The Rail Safety Regulator may exercise any function conferred on a rail safety officer under this Act.
- (2) In this Act, other than this Part, a reference to a rail safety officer includes a reference to the Rail Safety Regulator.

Division 2 — Rail safety officers

20. Designation of departmental officer as a rail safety officer

- (1) In this section —
department means the department of the Public Service principally assisting in the administration of this Act;
departmental officer means a public service officer employed in the department;
designation means a designation under subsection (2);
employed in the department includes seconded to perform functions or services for, or duties in the service of, the department;
public service officer has the meaning given in the *Public Sector Management Act 1994* section 3(1).
- (2) The chief executive officer may designate a departmental officer with appropriate qualifications or experience to be a rail safety officer.

- (3) There are to be as many rail safety officers as are necessary to perform the functions conferred on a rail safety officer by this Act or any other written law.
- (4) A person ceases to be a rail safety officer if the designation of the person is revoked or ceases to have effect.
- (5) The power to make a designation includes —
 - (a) the power to revoke a designation previously made; and
 - (b) the power to designate a person to perform functions of another person who has that designation when it is impractical for that other person to perform the functions; and
 - (c) the power to specify one or more of the following —
 - (i) functions under this Act that may not be exercised by the person designated;
 - (ii) the only functions under this Act that may be exercised by the person designated;
 - (iii) the circumstances or manner in which a function under this Act may be performed by the person designated.
- (6) A designation ceases to have effect if the person designated ceases to be a departmental officer.
- (7) The chief executive officer may delegate the power to make a designation to another person.
- (8) The following are to be in writing —
 - (a) a designation;
 - (b) a revocation of a designation;
 - (c) a delegation of the power to make a designation.

21. Use of other government staff and appointment of other government staff as rail safety officers

- (1) The CEO may by arrangement with the relevant employer make use, either full-time or part-time, of the services of any officer or employee —
 - (a) in the Public Service; or
 - (b) in a State agency or instrumentality; or
 - (c) otherwise in the service of the Crown in right of the State.
- (2) An arrangement under subsection (1) is to be made on the terms agreed to by the parties.
- (3) If an arrangement under subsection (1) is in effect in relation to an officer or employee, the Rail Safety Regulator, by instrument in writing, may appoint the officer or employee to be a rail safety officer for a term, and subject to the conditions, specified in the instrument.
- (4) The Rail Safety Regulator must not appoint a person under subsection (3) unless the Rail Safety Regulator is satisfied the person holds appropriate qualifications, or has appropriate experience, to perform the functions of a rail safety officer under this Act.
- (5) Without limiting the conditions to which the appointment of a rail safety officer may be subject, a condition may specify one or more of the following —
 - (a) functions under this Act that may not be exercised by the rail safety officer;
 - (b) the only functions under this Act that may be exercised by the rail safety officer;
 - (c) the circumstances or manner in which a function under this Act may be performed by the rail safety officer.

22. Appointment of rail safety officers

- (1) The Rail Safety Regulator, by instrument in writing, may appoint a person, or person of a prescribed class, other than a public service officer (as defined in section 20(1)) to be a rail safety officer for a term, and subject to the conditions, specified in the instrument.
- (2) The Rail Safety Regulator must not appoint a person under subsection (1) unless the Rail Safety Regulator is satisfied the person holds appropriate qualifications, or has appropriate experience, to perform the functions of a rail safety officer under this Act.
- (3) Without limiting the conditions to which the appointment of a rail safety officer may be subject, a condition may specify one or more of the following —
 - (a) functions under this Act that may not be exercised by the rail safety officer;
 - (b) the only functions under this Act that may be exercised by the rail safety officer;
 - (c) the circumstances or manner in which a function under this Act may be performed by the rail safety officer.

23. Reciprocal powers of rail safety officers

- (1) This section has effect in relation to another jurisdiction while there is in force a corresponding rail safety law that contains provisions corresponding to this section.
- (2) The Minister may enter into an agreement with a Minister of another jurisdiction for the purposes of this section, including an agreement to amend or revoke any such agreement.
- (3) To the extent envisaged by an agreement —
 - (a) rail safety officers of this jurisdiction may, in this jurisdiction or the other jurisdiction, exercise functions conferred on rail safety officers of the other jurisdiction

under the corresponding rail safety law of that other jurisdiction; and

- (b) rail safety officers of that other jurisdiction may, in this jurisdiction or that other jurisdiction, exercise functions conferred on rail safety officers under this Act.
- (4) Anything done or omitted to be done by a rail safety officer of this jurisdiction under subsection (3) is taken to have been done under this Act as well as under the corresponding rail safety law.
- (5) The regulations may make provision for or with respect to the exercise of functions under this section.
- (6) Nothing in this section affects the appointment under section 22 of persons as rail safety officers for the purposes of this Act.

24. Identification cards for rail safety officers

The Rail Safety Regulator must —

- (a) issue a rail safety officer with an identification card; or
- (b) designate a card issued to a rail safety officer by a corresponding Rail Safety Regulator or by a person, body or authority, whether or not of this jurisdiction, as an identification card for the purposes of this Act.

25. Rail safety officer must not exercise functions without identification card

A rail safety officer must not exercise a function conferred under this Act unless an identification card has been issued to, or designated for, the officer by the Rail Safety Regulator.

26. Display and production of identification card

- (1) In this section —
approved, in relation to a uniform or badge worn by a rail safety officer, means a uniform or badge approved by the Rail Safety Regulator.

- (2) This section applies to a rail safety officer who is exercising, or about to exercise, a function under this Act.
- (3) A rail safety officer must —
 - (a) display his or her identification card if the officer is not wearing an approved uniform or badge; or
 - (b) produce his or her identification card if requested to do so by a person in relation to whom the officer is exercising, or about to exercise, the function.
- (4) If it is not practical for a rail safety officer to produce his or her identification card on being requested to do so, the rail safety officer must produce his or her identification card as soon as practicable after the request is made.

27. Return of identification cards

A person who has ceased to be a rail safety officer must not, without reasonable excuse, refuse or fail to return to the Rail Safety Regulator, within such period as is specified by the Rail Safety Regulator in a request for return of the card, any identification card issued to the person by the Rail Safety Regulator.

Penalty: a fine of \$2 000.

Part 4 — Rail safety

Division 1 — General safety duties

28. Safety duties of rail transport operators

- (1) A rail transport operator must ensure, so far as is reasonably practicable, the safety of the operator's railway operations.
- (2) An offence under subsection (1) is a crime.
Penalty:
 - (a) for an individual —
 - (i) for a first offence, a fine of \$55 000;
 - (ii) for a second or subsequent offence, a fine of \$82 000;
 - (b) for a body corporate —
 - (i) for a first offence, a fine of \$550 000;
 - (ii) for a second or subsequent offence, a fine of \$820 000.
- (3) Without limiting subsection (1), a rail transport operator contravenes that subsection if the operator fails to do any of the following —
 - (a) develop and implement, so far as is reasonably practicable, safe systems for the carrying out of the operator's railway operations;
 - (b) ensure, so far as is reasonably practicable, that each rail safety worker who is to perform rail safety work in relation to the operator's railway operations —
 - (i) is of sufficient good health and fitness to carry out that work safely; and
 - (ii) is competent to undertake that work;
 - (c) ensure, so far as is reasonably practicable, that rail safety workers do not carry out rail safety work in relation to the operator's railway operations, and are not on duty —

- (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;
- (d) ensure, so far as is reasonably practicable, that rail safety workers who perform rail safety work in relation to the operator's railway operations comply with the operator's fatigue management programme in force under section 76;
- (e) provide, so far as is reasonably practicable, adequate facilities for the safety of persons at any railway premises under the control or management of the operator;
- (f) provide, so far as is reasonably practicable —
 - (i) such information and instruction to, and training and supervision of, rail safety workers as is necessary to enable those workers to perform rail safety work in relation to the operator's railway operations in a way that is safe; and
 - (ii) such information to rail transport operators and other persons on railway premises under the control or management of the operator as is necessary to enable those persons to ensure their safety.
- (4) Without limiting subsection (1), a rail infrastructure manager contravenes that subsection if the manager fails to do any of the following —
 - (a) ensure, so far as is reasonably practicable, that any design, construction, commissioning, use, installation, modification, maintenance, repair or decommissioning of the manager's rail infrastructure is done or carried out in a way that ensures, so far as is reasonably practicable, the safety of railway operations;

- (b) establish, so far as is reasonably practicable, such systems and procedures for the scheduling, control and monitoring of railway operations that ensure, so far as is reasonably practicable, the safety of the manager's railway operations.
- (5) Without limiting subsection (1), a rolling stock operator contravenes that subsection if the rolling stock operator fails to do any of the following —
- (a) provide or maintain rolling stock that, so far as is reasonably practicable, is safe;
 - (b) ensure, so far as is reasonably practicable, that any design, construction, commissioning, use, modification, maintenance, repair, cleaning or decommissioning of rolling stock is done or carried out in a way that, so far as is reasonably practicable, ensures safety;
 - (c) comply, so far as is reasonably practicable, with such rules and procedures for the scheduling, control and monitoring of rolling stock that have been established by a rail infrastructure manager in relation to the use of the manager's rail infrastructure by the rolling stock operator;
 - (d) so far as is reasonably practicable, establish and maintain equipment, procedures and systems to minimise risks to the safety of the operator's railway operations;
 - (e) make arrangements for ensuring, so far as is reasonably practicable, safety in connection with the use, operation and maintenance of the operator's rolling stock.

29. Duties of rail transport operators extend to contractors

- (1) The duties of a rail transport operator under section 28 extend to a person who, not being an employee employed to carry out railway operations, undertakes railway operations on or in relation to rail infrastructure or rolling stock of the operator, and any employee of the person, in relation to matters over which

the operator has control or would have control if not for any agreement purporting to limit or remove that control.

- (2) A person to whom the duties under section 28 extend by reason of subsection (1) must comply with those duties in respect of railway operations referred to in that subsection undertaken by the person.

Penalty:

- (a) for an individual —
- (i) for a first offence, a fine of \$55 000;
 - (ii) for a second or subsequent offence, a fine of \$82 000;
- (b) for a body corporate —
- (i) for a first offence, a fine of \$550 000;
 - (ii) for a second or subsequent offence, a fine of \$820 000.

30. Duties of designers, manufacturers, suppliers etc.

- (1) A person who —
- (a) designs, commissions, manufactures, supplies, installs or erects any thing; and
 - (b) knows, or ought reasonably to know, that the thing is to be used as or in connection with rail infrastructure or rolling stock,

must —

- (c) ensure, so far as is reasonably practicable, that the thing is safe if it is used for a purpose for which it was designed, commissioned, manufactured, supplied, installed or erected; and
- (d) carry out, or arrange the carrying out, of such testing and examination of the thing as may be necessary for compliance with this section; and

- (e) take such action as is necessary to ensure, so far as is reasonably practicable, that there will be available in connection with the use of the thing adequate information about —
 - (i) the use for which the thing was designed, commissioned, manufactured, supplied, installed or erected; and
 - (ii) the results of any testing or examination referred to in paragraph (d); and
 - (iii) any conditions necessary to ensure, so far as is reasonably practicable, the thing is safe if it is used for a purpose for which it was designed, commissioned, manufactured, supplied, installed or erected.
- (2) A person who decommissions any rail infrastructure or rolling stock must —
 - (a) ensure, so far as is reasonably practicable, that the decommissioning is carried out safely; and
 - (b) carry out, or arrange the carrying out of, such testing and examination as may be necessary for compliance with this section.
- (3) An offence under subsection (1) or (2) is a crime.
Penalty:
 - (a) for an individual —
 - (i) for a first offence, a fine of \$55 000;
 - (ii) for a second or subsequent offence, a fine of \$82 000;
 - (b) for a body corporate —
 - (i) for a first offence, a fine of \$550 000;
 - (ii) for a second or subsequent offence, a fine of \$820 000.

- (4) For the purposes of subsection (1), if the person who supplies the thing —
- (a) carries on the business of financing the acquisition of the thing by customers; and
 - (b) has, in the course of that business, acquired an interest in the thing solely for the purpose of financing its acquisition by a customer from a third person or its provision to a customer by a third person; and
 - (c) has not taken possession of the thing or has taken possession of it solely for the purpose of passing possession to that customer,

the reference in subsection (1) to the person who supplies that thing is instead taken to be a reference to the third person.

Division 2 — Accreditation

31. Purpose of accreditation

The purpose of accreditation of a rail transport operator in relation to railway operations is to attest that the rail transport operator has demonstrated to the Rail Safety Regulator the competence and capacity to manage risks to safety associated with those railway operations.

32. Accreditation required for railway operations

- (1) A person must not carry out, or cause or permit to be carried out, any railway operations unless the person —
- (a) is a rail transport operator who —
 - (i) is accredited under this Part in relation to those operations; or
 - (ii) is exempt under this Act from compliance with this section in relation to those operations;
- or
- (b) is carrying out those operations, or causing or permitting those operations to be carried out, for or on behalf of —

- (b) for any service or aspect, or part of a service or aspect, of railway operations designated in the notice of accreditation;
 - (c) for specified railway operations to permit any one or more of the following —
 - (i) site preparation;
 - (ii) construction of rail infrastructure;
 - (iii) restoration or repair work;
 - (iv) testing of railway track or other infrastructure;
 - (v) other activities relating to railway operations considered appropriate by the Rail Safety Regulator and designated in the notice of accreditation.
- (2) If the applicant so requests, accreditation may be granted for a specified period only.

34. Application for accreditation

- (1) A rail transport operator may apply to the Rail Safety Regulator for accreditation in respect of specified railway operations carried out, or proposed to be carried out, by, or on behalf of, that operator.
- (2) An application must be made in the manner and form approved by the Rail Safety Regulator and —
 - (a) must specify the scope and nature of the railway operations in respect of which accreditation is sought; and
 - (b) must include a safety management plan relating to those railway operations; and
 - (c) must specify whether or not the applicant is accredited, or has applied for accreditation, under a corresponding law; and
 - (d) must contain the prescribed information; and

36. Rail Safety Regulator may direct applicants to coordinate and cooperate in applications

- (1) If the Rail Safety Regulator —
- (a) receives applications from 2 or more rail transport operators for accreditation; and
 - (b) believes that coordinated preparation of the applications is necessary to ensure that the railway operations of the applicants are carried out safely,

the Rail Safety Regulator may give a direction in writing to the rail transport operators to coordinate their applications.

- (2) A direction under this section may require each rail transport operator that is the subject of the direction to provide to each other rail transport operator that is the subject of the direction information concerning any circumstances in relation to the carrying out of railway operations by the first mentioned rail transport operator that could constitute a risk to safety in relation to the carrying out of rail operations by another rail transport operator that is the subject of the direction.
- (3) A rail transport operator that is given a direction under subsection (1) must comply with the direction.
Penalty: a fine of \$28 000.
- (4) A rail transport operator that has coordinated the preparation of an application in accordance with this section must include in the application reference to information given by the rail transport operator to each other rail transport operator, and information given to the rail transport operator by each other rail transport operator, in accordance with a direction under this section.
Penalty: a fine of \$28 000.

37. Coordination between Rail Safety Regulators

- (1) This section applies if the Rail Safety Regulator receives an application for accreditation, or for variation of accreditation or

- (c) any conditions and restrictions imposed by the Rail Safety Regulator on the grant of accreditation; and
 - (d) any other prescribed information.
- (3) A notice —
 - (a) under subsection (1) refusing an application, or imposing a condition or restriction, must include —
 - (i) the reasons for the decision to refuse to grant the application or impose the condition or restriction; and
 - (ii) information about the right of review under Part 7;
 - and
 - (b) under subsection (4)(c) extending a period, must include information about the right of review under Part 7.
- (4) In this section, the relevant period, in relation to an application, is —
 - (a) 6 months after the application was received by the Rail Safety Regulator; or
 - (b) if the Rail Safety Regulator requested further information, 6 months, or such other period, as is agreed between the Rail Safety Regulator and the applicant, after the Rail Safety Regulator receives the last information so requested; or
 - (c) if the Rail Safety Regulator, by notice in writing given to the applicant before the expiry of the relevant 6 months, specifies another period, that period,whichever is the longer.

39. Prescribed conditions and restrictions

Accreditation granted to a person under this Part is subject to any conditions or restrictions prescribed for the purposes of this section and that are applicable to the grant of accreditation.

40. Penalty for breach of condition or restriction

An accredited person must not fail to comply with a condition or restriction of accreditation applying under this Part.

Penalty:

- (a) for a first offence, a fine of \$55 000;
- (b) for a second or subsequent offence, a fine of \$82 000.

[Section 40 amended by No. 17 of 2014 s. 34.]

41. Annual fees

- (1) Such annual fee as is prescribed must be paid by a rail transport operator at the time of accreditation and in each subsequent year on or before the anniversary of the person's accreditation for the particular railway operation.
- (2) The Rail Safety Regulator may accept payment of an annual accreditation fee due and payable by an accredited person in accordance with an agreement made with the person, whether for payment by instalments or otherwise.
- (3) If an accreditation is varied, such additional annual fee as is prescribed in respect of the variation is to be paid.
- (4) Different fees may be prescribed for different kinds of accreditation and for different classes of rail transport operators.
- (5) The regulations may prescribe various methods for the calculation of various fees.

42. Late payment fees

- (1) The regulations may impose additional fees for late payment of fees after the due date for payment.
- (2) A fee for late payment of fees may be, but is not required to be, calculated on a daily basis.

43. Rail Safety Accreditation Account

- (1) The account called the “Rail Safety Accreditation Account” is a continuation of the account established under the *Rail Safety Act 1998* section 23 and is as an agency special purpose account under the *Financial Management Act 2006* section 16.
- (2) The account is to be credited with —
 - (a) all fees and charges collected under this Act; and
 - (b) any amount appropriated by Parliament to, or otherwise lawfully received for, the account.
- (3) The account is to be charged with the costs of administering this Act.

44. Periodic returns

- (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 Rail Safety Regulator a return containing the information prescribed.
- (2) If an accredited person fails to comply with subsection (1), the Rail Safety Regulator 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 subsection (3).
- (3) An accredited person must comply with a notice given to the person under subsection (2) within 2 months after service of the notice.

Penalty:

- (a) for an individual —
 - (i) for a first offence, a fine of \$28 000;
 - (ii) for a second or subsequent offence, a fine of \$41 000;
- (b) for a body corporate —
 - (i) for a first offence, a fine of \$280 000;

- (ii) for a second or subsequent offence, a fine of \$410 000.

45. Surrender of accreditation

An accredited person may, in accordance with the regulations, surrender the person's accreditation.

46. Revocation or suspension of accreditation

- (1) This section applies in respect of an accredited person if —
 - (a) the Rail Safety Regulator considers that the accredited person —
 - (i) is no longer able to demonstrate to the satisfaction of the Rail Safety Regulator the matters referred to in section 35 or to satisfy the conditions, or to comply with the restrictions, of the accreditation; or
 - (ii) is not managing the rail infrastructure, or is not operating rolling stock in relation to any rail infrastructure, to which the accreditation relates and has not done so for at least the preceding 12 months;
 - or
 - (b) the accredited person contravenes this Act.
- (2) The Rail Safety Regulator —
 - (a) may suspend the accreditation, or part of the accreditation, of the accredited person for a period determined by the Rail Safety Regulator; or
 - (b) may revoke the accreditation of the accredited person wholly or in part, or in respect of particular railway operations specified in the notice, with immediate effect or with effect from a specified future date; or
 - (c) may impose conditions or restrictions on the accreditation; or

- (d) may vary conditions or restrictions to which the accreditation is subject.
- (3) If the Rail Safety Regulator revokes the accreditation, the Rail Safety Regulator may declare that the accredited person is disqualified from applying for accreditation, or for accreditation in relation to specified railway operations, during a specified period.
- (4) The Rail Safety Regulator may withdraw a suspension of the accreditation of a person by written notice given to the person.
- (5) Before making a decision under subsection (2), the Rail Safety Regulator —
 - (a) must notify the person in writing —
 - (i) that the Rail Safety Regulator is considering making a decision under subsection (2) of the kind, and for the reasons, specified in the notice; and
 - (ii) that the person may, within 28 days or such longer period as is specified in the notice, make written representations to the Rail Safety Regulator showing cause why the decision should not be made;and
 - (b) must consider any representations made under paragraph (a)(ii) and not withdrawn.
- (6) If the Rail Safety Regulator suspends or revokes the accreditation of the accredited person wholly or in part, or in respect of specified railway operations, the Rail Safety Regulator must include in the notice of suspension or revocation the reasons for the suspension or revocation and information about the right of review under Part 7.
- (7) If the Rail Safety Regulator suspends or revokes the accreditation of a person who is accredited in another jurisdiction, the Rail Safety Regulator must give notice of the

suspension or revocation to the relevant corresponding Rail Safety Regulator.

47. Immediate suspension of accreditation

- (1) If the Rail Safety Regulator considers that there is, or would be, an immediate and serious risk to safety unless an accreditation is suspended immediately, the Rail Safety Regulator may, without complying with section 46(5) or (6), by written notice given to the accredited person, immediately suspend the accreditation of the person —
 - (a) wholly or in part, or in respect of particular railway operations specified in the notice; and
 - (b) for a specified period, not exceeding 6 weeks.
- (2) The Rail Safety Regulator may, by notice in writing given to a person whose accreditation is suspended wholly or in part or in respect of specified railway operations —
 - (a) reduce the period of suspension specified in a notice under subsection (1); or
 - (b) extend the period of suspension specified in a notice under subsection (1) but not so that the suspension continues for more than 6 weeks after the date of the notice under that subsection.
- (3) The Rail Safety Regulator may withdraw a suspension of the accreditation of a person by written notice given to the person.
- (4) Before making a decision under subsection (2)(b) to extend a period of suspension, the Rail Safety Regulator —
 - (a) must notify the person in writing —
 - (i) that the Rail Safety Regulator is considering extending the period of suspension for the reasons specified in the notification; and
 - (ii) that the person may, within 7 days or such longer period as is specified in the notification, make written representations to the Rail Safety

Regulator showing cause why the suspension should not be extended;

and

- (b) must consider any representations made under paragraph (a)(ii) and not withdrawn.
- (5) If the Rail Safety Regulator extends the suspension of the person, the Rail Safety Regulator must include in the notice extending the suspension the reasons for the extension and information about the right of review under Part 7.

48. Keeping and making available documents for public inspection

A rail transport operator must ensure that —

- (a) if the operator is an accredited person or has an exemption under this Part, the current notice of accreditation or an exemption under this Part; and
- (b) if the operator is a rail infrastructure manager of a private siding registered with the Rail Safety Regulator, the notice of registration; and
- (c) any other document prescribed for the purposes of this section,

are available for inspection —

- (d) if the operator is a body corporate, at the operator's registered office during ordinary business hours; or
- (e) if the operator is not a body corporate, at the operator's principal place of business or, if the Rail Safety Regulator approves another place and time, at that place and time.

Penalty: a fine of \$2 000.

- (2) A notice under subsection (1) varying an accreditation must specify —
- (a) the prescribed details of the applicant; and
 - (b) the variation to the accreditation so far as it applies to the scope and nature of the railway operations, or the manner in which they are to be carried out; and
 - (c) any conditions and restrictions imposed by the Rail Safety Regulator on the accreditation as varied; and
 - (d) any other prescribed information.
- (3) A notice —
- (a) under subsection (1) refusing an application, or imposing a condition or restriction, must include —
 - (i) the reasons for the decision to refuse to grant the application for variation or imposing the condition or restriction; and
 - (ii) information about the right of review under Part 7;
 - (b) under subsection (4)(c) extending a period, must include information about the right of review under Part 7.
- (4) In this section, the relevant period, in relation to an application, is —
- (a) 6 months after the application was received by the Rail Safety Regulator; or
 - (b) if the Rail Safety Regulator requested further information, 6 months, or such other period, as is agreed between the Rail Safety Regulator and the applicant, after the Rail Safety Regulator receives the last information so requested; or
 - (c) if the Rail Safety Regulator, by notice in writing given to the applicant before the expiry of the relevant 6 months, specifies another period, that period,
- whichever is the longer.

provisions of this Part so far as they are applicable, grant or refuse to grant the variation.

- (4) A notice under subsection (3) refusing to grant a variation of a condition or restriction must include the reasons for the decision to refuse to grant the variation and information about the right of review under Part 7.

55. Rail Safety Regulator may make changes to conditions or restrictions

- (1) The Rail Safety Regulator may, subject to this section, at any time and in the discretion of the Rail Safety Regulator, vary or revoke a condition or restriction imposed by the Rail Safety Regulator to which the accreditation of an accredited person is subject or impose a new condition or restriction.
- (2) Before taking action under this section, the Rail Safety Regulator must —
- (a) give the accredited person written notice of the action that the Rail Safety Regulator proposes to take; and
 - (b) allow the accredited person to make written representations about the intended action within 14 days or any other period that the Rail Safety Regulator and the accredited rail operator agree upon; and
 - (c) consider any representations made under paragraph (b) and not withdrawn.
- (3) Subsection (2) does not apply if the Rail Safety Regulator considers it necessary to take immediate action in the interests of safety.
- (4) The Rail Safety Regulator must —
- (a) give, in writing, to the accredited person —
 - (i) details of any action taken under subsection (1); and
 - (ii) a statement of reasons for any action taken under subsection (1);

and

- (b) notify, in writing, the accredited person that the person has a right of review of the decision under Part 7.

56. Accreditation cannot be transferred or assigned

- (1) An accreditation —
 - (a) is personal to the person who holds it; and
 - (b) is not capable of being transferred or assigned to any other person or otherwise dealt with by the person who holds it; and
 - (c) does not vest by operation of law in any other person.
- (2) A purported transfer or assignment of an accreditation or any other purported dealing with an accreditation by the person who holds it is of no effect.
- (3) This section has effect despite anything in any Act or rule of law to the contrary.

57. Sale or transfer of railway operations by accredited person

- (1) If an accredited person proposes to sell or otherwise transfer any railway operations for which the person is accredited, the Rail Safety Regulator may, on an application for accreditation under this Part being made by the proposed transferee, waive compliance by the proposed transferee with any one or more of the requirements of this Division.
- (2) The Rail Safety Regulator is not to waive compliance with any such requirements unless the proposed transferee demonstrates, to the satisfaction of the Rail Safety Regulator, that the proposed transferee has the competence and capacity to comply with the relevant requirements of this Division that apply to applicants for accreditation of the appropriate kind.
- (3) A waiver of compliance with requirements may be given subject to such conditions and restrictions, if any, as appear to the Rail Safety Regulator to be necessary.

Division 3 — Private sidings

58. Exemption from accreditation

- (1) A rail infrastructure manager of a private siding —
 - (a) is not required to be accredited under this Part in respect of railway operations carried out in the private siding; and
 - (b) except to the extent that the regulations or a condition referred to in subsection (2) otherwise provides, is not required to comply with Division 4, 5 or 6 in relation to the private siding.
- (2) Despite subsection (1), if the rail infrastructure manager wishes the private siding to be, or to continue to be, connected with, or to have access to, a railway or siding of an accredited person, the rail infrastructure manager must —
 - (a) register the private siding with the Rail Safety Regulator and pay the prescribed annual fee, if any; and
 - (b) comply with conditions imposed by the Rail Safety Regulator from time to time or prescribed by the regulations with respect to the safe construction, maintenance and operation of the private siding; and
 - (c) comply with the provisions of section 63 in relation to the management of the interface with the railway of the accredited person; and
 - (d) notify the accredited person in writing of any railway operations affecting or relating to the safety of the railway or siding of the accredited person.

Penalty:

- (a) for an individual —
 - (i) for a first offence, a fine of \$28 000;
 - (ii) for a second or subsequent offence, a fine of \$41 000;
- (b) for a body corporate —

- (i) for a first offence, a fine of \$280 000;
 - (ii) for a second or subsequent offence, a fine of \$410 000.
- (3) Conditions and regulations referred to in subsection (2) may establish requirements that are the same as, or similar to, any provisions of Division 4, 5 or 6.
- (4) The Rail Safety Regulator must issue a notice of registration to a rail infrastructure manager who registers a private siding with the Rail Safety Regulator.
- (5) If the regulations so prescribe, the Rail Safety Regulator must make prescribed particulars of a registration under subsection (2) available for public inspection at the Rail Safety Regulator's office or a prescribed place, during ordinary business hours.

Division 4 — Safety management

59. Safety management system

- (1) A rail transport operator must have a safety management system for railway operations, other than railway operations in respect of which the operator is not required to be accredited, carried out on or in relation to the rail transport operator's rail infrastructure or rolling stock that —
 - (a) is in a form approved by the Rail Safety Regulator; and
 - (b) complies with the relevant prescribed requirements and the prescribed risk management principles, methods and procedures; and
 - (c) identifies and assesses any risks to safety that have arisen or may arise from the carrying out of railway operations on or in relation to the rail transport operator's rail infrastructure or rolling stock; and
 - (d) specifies the controls, including audits, expertise, resources and staff, that are to be used by the rail transport operator to manage risks to safety and to

monitor safety in relation to those railway operations;
and

- (e) includes procedures for monitoring, reviewing and revising the adequacy of those controls; and
- (f) includes —
 - (i) measures to manage risks to safety identified under section 63, 64 or 65; and
 - (ii) a security management plan in accordance with section 71; and
 - (iii) an emergency management plan in accordance with section 72; and
 - (iv) a health and fitness management programme in accordance with section 73; and
 - (v) an alcohol and drug management programme in accordance with section 74; and
 - (vi) a fatigue management programme in accordance with section 76.

Penalty:

- (a) for an individual —
 - (i) for a first offence, a fine of \$55 000;
 - (ii) for a second or subsequent offence, a fine of \$82 000;
 - (b) for a body corporate —
 - (i) for a first offence, a fine of \$550 000;
 - (ii) for a second or subsequent offence, a fine of \$820 000.
- (2) A rail transport operator, before establishing a safety management system in relation to railway operations in respect of which the operator is required to be accredited or reviewing or varying any such safety management system, must consult, so far as is reasonably practicable, with —

- (a) persons likely to be affected by the safety management system or its review or variation, being persons who carry out those railway operations or work on or at the rail transport operator's railway premises or with the rail transport operator's rolling stock; and
 - (b) a safety and health representative as defined in the *Occupational Safety and Health Act 1984* section 3(1) representing any of the persons referred to in paragraph (a); and
 - (c) any union representing any of the persons referred to in paragraph (a); and
 - (d) any other rail transport operator with whom the first mentioned operator has an interface agreement under section 63 relating to risks to safety of railway operations carried out by or on behalf of either of them; and
 - (e) the public, as appropriate.
- (3) If the safety management system of a rail transport operator and the safety management system of another rail transport operator who has an agreement referred to in subsection (2)(d) with the first mentioned rail transport operator, when taken as one system, comply with this Act, both safety management systems are taken to comply with this Act.
- (4) A safety management system must be evidenced in writing and —
- (a) must identify each person responsible for preparing any part of the safety management system; and
 - (b) must identify the person, or class of persons, responsible for implementing the system.

60. Compliance with safety management system

- (1) A rail transport operator must implement the rail transport operator's safety management system.

Penalty:

- (a) for an individual —
 - (i) for a first offence, a fine of \$55 000;
 - (ii) for a second or subsequent offence, a fine of \$82 000;
 - (b) for a body corporate —
 - (i) for a first offence, a fine of \$550 000;
 - (ii) for a second or subsequent offence, a fine of \$820 000.
- (2) A rail transport operator must not, without reasonable excuse, fail to comply with the rail transport operator's safety management system for the rail transport operator's railway operations.
- Penalty:
- (a) for an individual —
 - (i) for a first offence, a fine of \$55 000;
 - (ii) for a second or subsequent offence, a fine of \$82 000;
 - (b) for a body corporate —
 - (i) for a first offence, a fine of \$550 000;
 - (ii) for a second or subsequent offence, a fine of \$820 000.
- (3) It is a reasonable excuse if the rail transport operator —
- (a) complies with the safety management system to the extent practicable while complying with a condition or restriction of accreditation; or
 - (b) demonstrates that compliance with the system in particular circumstances would have increased the likelihood of a notifiable occurrence happening.
- (4) Subsection (3) does not limit the excuses that may be reasonable excuses.

61. Review of safety management system

A rail transport operator must review the rail transport operator's safety management system in accordance with the regulations at such times or within such periods as are prescribed or, if no times or periods are prescribed, at least once each year or at such other time as is agreed between the rail transport operator and the Rail Safety Regulator.

Penalty:

- (a) for an individual —
 - (i) for a first offence, a fine of \$28 000;
 - (ii) for a second or subsequent offence, a fine of \$41 000;
- (b) for a body corporate —
 - (i) for a first offence, a fine of \$280 000;
 - (ii) for a second or subsequent offence, a fine of \$410 000.

62. Safety performance reports

- (1) In this section —

reporting period means a calendar year or such other period as is agreed from time to time by the Rail Safety Regulator and the rail transport operator.

- (2) A rail transport operator must give the Rail Safety Regulator a safety performance report in respect of each reporting period that —
- (a) is in a form approved by the Rail Safety Regulator; and
 - (b) complies with the requirements, if any, prescribed for the purposes of this section; and
 - (c) contains —
 - (i) a description and assessment of the safety performance of the rail transport operator's railway operations; and

- (ii) comments on any deficiencies in, and any irregularities in, the railway operations that may be relevant to the safety of the railway; and
 - (iii) a description of any safety initiatives in relation to the railway operations undertaken during the reporting period or proposed to be undertaken in the next reporting period; and
 - (iv) any other information or performance indicators prescribed for the purpose of this section.
- (3) A rail transport operator must submit a report in accordance with this section within 6 months after the end of each reporting period.

Penalty:

- (a) for an individual —
 - (i) for a first offence, a fine of \$28 000;
 - (ii) for a second or subsequent offence, a fine of \$41 000;
- (b) for a body corporate —
 - (i) for a first offence, a fine of \$280 000;
 - (ii) for a second or subsequent offence, a fine of \$410 000.

63. Interface coordination — rail transport operators

- (1) A rail transport operator —
 - (a) must identify and assess, so far as is reasonably practicable, risks to safety that may arise from railway operations carried out by or on behalf of the operator because of, or partly because of, railway operations carried out by or on behalf of any other rail transport operator; and
 - (b) must determine measures to manage, so far as is reasonably practicable, those risks; and

- (c) must, for the purpose of managing those risks, seek to enter into an interface agreement with the other rail transport operator or rail transport operators.
- (2) Except to the extent that the regulations otherwise provide, subsection (1)(c) does not apply if none of the rail transport operators is a rail infrastructure manager.

64. Interface coordination — rail infrastructure manager — public roads

A rail infrastructure manager —

- (a) must identify and assess, so far as is reasonably practicable, risks to safety that may arise from railway operations carried out on or in relation to the manager's rail infrastructure and that may so arise because of, or partly because of —
 - (i) the existence of road infrastructure of a prescribed public road; and
 - (ii) the existence or use of any rail or road crossing that is part of the road infrastructure of any public road;
- and
- (b) must determine measures to manage, so far as is reasonably practicable, those risks; and
- (c) must, for the purpose of managing those risks, seek to enter into an interface agreement with the road manager in relation to that road.

65. Interface coordination — rail infrastructure manager — roads other than public roads

A rail infrastructure manager —

- (a) must identify and assess, so far as is reasonably practicable, risks to safety that may arise from railway operations carried out on or in relation to the manager's rail infrastructure and that may so arise because of, or

partly because of, the existence or use of any rail or road crossing that is part of the road infrastructure of any road, other than a public road; and

- (b) must consider whether it is necessary to manage those risks in conjunction with the road manager in relation to that road and —
 - (i) if the rail infrastructure manager is of the opinion that it is necessary that those risks be managed in conjunction with the road manager, must give written notice of that opinion to the road manager and must determine measures to manage, so far as is reasonably practicable, those risks; or
 - (ii) if the rail infrastructure manager is of the opinion that the management of those risks does not need to be carried out in conjunction with the road manager, must keep a written record of that opinion;

and

- (c) unless paragraph (b)(ii) applies, must, for the purpose of managing those risks, seek to enter into an interface agreement with the road manager in relation to that road.

66. Interface coordination — road manager — public roads and other roads

- (1) The road manager in relation to a public road —
 - (a) must identify and assess, so far as is reasonably practicable, risks to safety that may arise from the existence or use of any rail or road crossing that is part of the road infrastructure of that public road because of, or partly because of, railway operations carried out on or in relation to any rail infrastructure; and
 - (b) must determine measures to manage, so far as is reasonably practicable, those risks; and

- (c) must, for the purpose of managing those risks, seek to enter into an interface agreement with the rail infrastructure manager of the rail infrastructure.
- (2) If, under section 65(b), a rail infrastructure manager gives a written notice to a road manager in relation to a road that is not a public road of an opinion that certain risks need to be managed in conjunction with the road manager, the road manager —
 - (a) must identify and assess, so far as is reasonably practicable, risks to safety that may arise from the existence or use of any rail or road crossing that is part of the road infrastructure of the road because of, or partly because of, railway operations; and
 - (b) must determine measures to manage, so far as is reasonably practicable, those risks; and
 - (c) must, for the purpose of managing those risks, seek to enter into an interface agreement with the rail infrastructure manager.
- (3) Nothing in this section authorises or requires a road manager to act inconsistently with, or without regard to, the functions, obligations or powers conferred on it under an Act other than this Act.

67. Identification and assessment of risks

A rail transport operator, rail infrastructure manager or road manager which is required under section 63, 64, 65 or 66 to identify and assess risks to safety that may arise from operations carried out by another person may do so —

- (a) by itself identifying and assessing those risks; or
- (b) by identifying and assessing those risks jointly with the other person; or
- (c) by adopting the identification and assessment of those risks carried out by the other person.

68. Scope of interface agreements

An interface agreement under this Division —

- (a) may be entered into by 2 or more rail transport operators or by one or more rail transport operators and one or more road managers; and
- (b) may include measures to manage any number of risks to safety that may arise because of, or partly because of, any railway operations; and
- (c) may include measures to manage any number of risks to safety that may arise from any railway operations because of, or partly because of, the existence or use of any road infrastructure; and
- (d) may make provision for or in relation to any matter by applying, adopting or incorporating any matter contained in any document; and
- (e) may consist of 2 or more documents.

69. Rail Safety Regulator may give directions

- (1) This section applies if the Rail Safety Regulator is satisfied that a rail transport operator, rail infrastructure manager or road manager referred to in section 63, 64, 65 or 66 —
 - (a) is unreasonably refusing or failing to enter into an interface agreement with another person as required under this Division; or
 - (b) is unreasonably delaying the negotiation of such an agreement.
- (2) The Rail Safety Regulator may issue a written notice to the rail transport operator, the rail infrastructure manager or the road manager, as the case requires, and the other person that —
 - (a) warns of the Rail Safety Regulator's powers under this section, including the power to issue a direction under subsection (4) at any time after a specified date; and
 - (b) includes a copy of this section; and

- (c) may contain suggested terms for inclusion in an interface agreement.
- (3) If the Rail Safety Regulator issues a notice under subsection (2) to a rail transport operator, rail infrastructure manager or road manager, the Rail Safety Regulator may, in writing, request the manager to provide such information as the Rail Safety Regulator reasonably requires for the purposes of making a direction under subsection (4).
- (4) If a notice is issued under subsection (2) and an interface agreement has not been entered into by or on the date specified in the notice, the Rail Safety Regulator —
 - (a) may determine the arrangements that are to apply in relation to the management of risks to safety referred to in section 63, 64, 65 or 66, as the case requires; and
 - (b) may direct either or both persons to whom the notice is issued to give effect to those arrangements; and
 - (c) must specify by when a direction must be complied with.
- (5) A direction under subsection (4) —
 - (a) must be in writing; and
 - (b) must set out any arrangements determined by the Rail Safety Regulator under that subsection.
- (6) A person to whom a direction under subsection (4) is given must comply with the direction.

Penalty:

- (a) for an individual —
 - (i) for a first offence, a fine of \$14 000;
 - (ii) for a second or subsequent offence, a fine of \$21 000;
- (b) for a body corporate —
 - (i) for a first offence, a fine of \$550 000;

- (ii) for a second or subsequent offence, a fine of \$820 000.

70. Register of interface agreements

- (1) A rail transport operator must maintain a register of —
 - (a) interface agreements to which it is a party; and
 - (b) arrangements determined by the Rail Safety Regulator under section 69,

that are applicable to its railway operations.

- (2) A road manager must maintain a register of —
 - (a) interface agreements to which it is a party; and
 - (b) arrangements determined by the Rail Safety Regulator under section 69,

that are applicable to any road in relation to which it is the road manager.

Penalty:

- (a) for an individual, a fine of \$2 000;
- (b) for a body corporate, a fine of \$20 000.

71. Security management plan

A rail transport operator —

- (a) must have a security management plan for railway operations carried out by or on behalf of the operator on or in relation to the operator's rail infrastructure or rolling stock that —
 - (i) incorporates measures to protect people from theft, assault, sabotage, terrorism and other criminal acts of other parties and from other harm; and
 - (ii) complies with this Act;
- and

- (b) must ensure that the security management plan is implemented; and
- (c) must ensure that the appropriate response measures of the security management plan are implemented without delay if an incident of a kind referred to in paragraph (a) occurs.

Penalty:

- (a) for an individual —
 - (i) for a first offence, a fine of \$55 000;
 - (ii) for a second or subsequent offence, a fine of \$82 000;
- (b) for a body corporate —
 - (i) for a first offence, a fine of \$550 000;
 - (ii) for a second or subsequent offence, a fine of \$820 000.

72. Emergency management plan

- (1) A rail transport operator must have an emergency management plan for railway operations carried out by or on behalf of the operator on or in relation to the operator's railway operations that complies with subsection (2).

Penalty:

- (a) for an individual —
 - (i) for a first offence, a fine of \$55 000;
 - (ii) for a second or subsequent offence, a fine of \$82 000;
 - (b) for a body corporate —
 - (i) for a first offence, a fine of \$550 000;
 - (ii) for a second or subsequent offence, a fine of \$820 000.
- (2) The emergency management plan must —
 - (a) address and include the matters that are prescribed; and

- (b) be prepared —
 - (i) in conjunction with emergency services and any other person who is prescribed; and
 - (ii) in accordance with the regulations;and
 - (c) be kept and maintained in accordance with the regulations; and
 - (d) be provided to the emergency services and any other person who is prescribed; and
 - (e) be tested in accordance with the regulations.
- (3) A rail transport operator must ensure that the appropriate response measures of the emergency management plan are implemented if an emergency occurs.

Penalty:

- (a) for an individual —
 - (i) for a first offence, a fine of \$55 000;
 - (ii) for a second or subsequent offence, a fine of \$82 000;
- (b) for a body corporate —
 - (i) for a first offence, a fine of \$550 000;
 - (ii) for a second or subsequent offence, a fine of \$820 000.

73. Health and fitness management programme

A rail transport operator must have and implement a health and fitness programme for rail safety workers who carry out rail safety work on or in relation to the rail transport operator's rail infrastructure or rolling stock that complies with the prescribed requirements relating to health and fitness programmes.

Penalty:

- (a) for an individual —
 - (i) for a first offence, a fine of \$55 000;

- (ii) for a second or subsequent offence, a fine of \$82 000;
- (b) for a body corporate —
 - (i) for a first offence, a fine of \$550 000;
 - (ii) for a second or subsequent offence, a fine of \$820 000.

74. Alcohol and drug management programme

A rail transport operator must prepare and implement an alcohol and drug management programme for rail safety workers who carry out railway operations in relation to the rail transport operator's rail infrastructure or rolling stock that complies with this Act.

Penalty:

- (a) for an individual —
 - (i) for a first offence, a fine of \$55 000;
 - (ii) for a second or subsequent offence, a fine of \$82 000;
- (b) for a body corporate —
 - (i) for a first offence, a fine of \$550 000;
 - (ii) for a second or subsequent offence, a fine of \$820 000.

75. Testing for presence of alcohol or drugs

The Rail Safety Regulator may arrange with a rail transport operator or a person undertaking railway operations on or in relation to the rail transport operator's rail infrastructure or rolling stock for the testing for the presence of alcohol or any other drug, in accordance with the regulations, of any person on duty for the purpose of carrying out rail safety work.

76. Fatigue management programme

A rail transport operator must prepare and implement a programme, in accordance with the prescribed requirements, for the management of fatigue of rail safety workers who carry out railway operations in relation to the rail transport operator's rail infrastructure or rolling stock.

Penalty:

- (a) for an individual —
 - (i) for a first offence, a fine of \$55 000;
 - (ii) for a second or subsequent offence, a fine of \$82 000;
- (b) for a body corporate —
 - (i) for a first offence, a fine of \$550 000;
 - (ii) for a second or subsequent offence, a fine of \$820 000.

77. Assessment of competence

- (1) A rail transport operator must ensure that each rail safety worker who is to carry out rail safety work in relation to the rail transport operator's rail infrastructure or rolling stock has the competence to carry out that work.

Penalty:

- (a) for an individual —
 - (i) for a first offence, a fine of \$28 000;
 - (ii) for a second or subsequent offence, a fine of \$41 000;
 - (b) for a body corporate —
 - (i) for a first offence, a fine of \$280 000;
 - (ii) for a second or subsequent offence, a fine of \$410 000.
- (2) For the purposes of subsection (1), the competence of a rail safety worker to carry out rail safety work must be assessed —

- (a) by reference to any qualification or any units of competence recognised under the regulations applicable to the rail safety work to be carried out; and
 - (b) by reference to the knowledge and skills of the rail safety worker that would enable the worker to carry out the rail safety work safely.
- (3) A certificate purporting to have been issued to a rail safety worker certifying that the worker has any qualification or units of competence recognised under subsection (2)(a) is evidence that the worker has those qualifications or units of competence.
- (4) Nothing in this section prevents a rail transport operator from requiring a rail safety worker to undertake further training before carrying out rail safety work.
- (5) A rail transport operator must maintain records in accordance with the regulations of the competence of rail safety workers who carry out rail safety work on or in relation to the rail transport operator's rail infrastructure or rolling stock.

Penalty:

- (a) for an individual —
 - (i) for a first offence, a fine of \$14 000;
 - (ii) for a second or subsequent offence, a fine of \$21 000;
- (b) for a body corporate —
 - (i) for a first offence, a fine of \$140 000;
 - (ii) for a second or subsequent offence, a fine of \$210 000.

78. Identification for rail safety workers

- (1) A rail transport operator must ensure that each rail safety worker who is to carry out rail safety work in relation to the rail transport operator's railway operations has a form of identification that is sufficient to enable the type of competence

and training of the rail safety worker for that rail safety work to be checked by a rail safety officer.

Penalty:

- (a) for an individual, a fine of \$2 000;
 - (b) for a body corporate, a fine of \$20 000.
- (2) A rail safety worker who is carrying out rail safety work must, when requested by a rail safety officer to do so, produce the identification provided in accordance with subsection (1) to the rail safety officer.

If it is not practicable for a rail safety worker to produce the identification on being requested to do so, the rail safety worker may produce it within a period considered reasonable by the requesting rail safety officer.

Penalty: a fine of \$2 000.

79. Duties of rail safety workers

- (1) A rail safety worker, when carrying out rail safety work must —
- (a) take reasonable care for his or her own safety; and
 - (b) take reasonable care for the safety of persons who may be affected by the rail safety worker's acts or omissions; and
 - (c) cooperate with the rail transport operator with respect to any action taken by the rail transport operator to comply with a requirement imposed under this Act.
- (2) A rail safety worker, when carrying out rail safety work, must not intentionally or recklessly interfere with or misuse anything provided to the worker by the rail transport operator —
- (a) in the interests of safety; or
 - (b) under this Act.
- (3) A rail safety worker, when carrying out rail safety work, must not wilfully or recklessly place the safety of another person on or in the immediate vicinity of rail infrastructure at risk.

- (4) An offence under subsection (1), (2) or (3) is a crime.

Penalty:

- (a) for a first offence, a fine of \$100 000;
 - (b) for a second or subsequent offence, a fine of \$125 000.
- (5) For the purposes of subsection (1)(a) or (b), in determining whether a rail safety worker failed to take reasonable care, regard must be had to what the rail safety worker knew about the relevant circumstances.

80. Contractors to comply with safety management system

A person, not being an employee employed to carry out railway operations, who undertakes railway operations on or in relation to rail infrastructure or rolling stock of a rail transport operator must comply with the safety management system of the rail transport operator to the extent that it applies to those railway operations.

Penalty:

- (a) for an individual —
 - (i) for a first offence, a fine of \$100 000;
 - (ii) for a second or subsequent offence, a fine of \$125 000;
- (b) for a body corporate —
 - (i) for a first offence, a fine of \$200 000;
 - (ii) for a second or subsequent offence, a fine of \$250 000.

Division 5 — Information about rail safety

81. Rail transport operators to provide information

- (1) The Rail Safety Regulator may, by notice in writing given to a rail transport operator, require the operator to provide to the Rail Safety Regulator on or before a specified date and in a manner

and form approved by the Rail Safety Regulator, any or all of the following —

- (a) information concerning measures taken by the rail transport operator to promote rail safety;
 - (b) information concerning matters, including matters relating to the financial capacity or insurance arrangements of the rail transport operator, relating to rail safety or the accreditation of the rail transport operator that the Rail Safety Regulator reasonably requires;
 - (c) information prescribed for the purposes of this subsection.
- (2) The rail transport operator must comply with a notice given to the operator under subsection (1).

Penalty:

- (a) for an individual —
 - (i) for a first offence, a fine of \$28 000;
 - (ii) for a second or subsequent offence, a fine of \$41 000;
 - (b) for a body corporate —
 - (i) for a first offence, a fine of \$280 000;
 - (ii) for a second or subsequent offence, a fine of \$410 000.
- (3) A rail transport operator must provide to the Rail Safety Regulator, in a manner and form approved by the Rail Safety Regulator and at the prescribed times and in respect of the prescribed periods, information prescribed for the purposes of this subsection relating to rail safety or accreditation.

Penalty:

- (a) for an individual —
 - (i) for a first offence, a fine of \$28 000;

- (ii) for a second or subsequent offence, a fine of \$41 000;
- (b) for a body corporate —
 - (i) for a first offence, a fine of \$280 000;
 - (ii) for a second or subsequent offence, a fine of \$410 000.

Division 6 — Investigating and reporting by rail transport operators

82. Notification of certain occurrences

- (1) A rail transport operator must report to the Rail Safety Regulator or another authority specified by the Rail Safety Regulator within the time, and in the manner, prescribed, all notifiable occurrences that happen on, or in relation to, the rail transport operator's railway premises or railway operations.
Penalty:
 - (a) for a first offence, a fine of \$55 000;
 - (b) for a second or subsequent offence, a fine of \$82 000.
- (2) Two or more rail transport operators may make a joint report with respect to a notifiable occurrence affecting them.
- (3) In addition to the matters specified in subsection (1), the Rail Safety Regulator may, by notice in writing, require a rail transport operator to report to the Rail Safety Regulator or another authority specified by the Rail Safety Regulator, any other occurrence or type of occurrence which endangers or could endanger the safe operation of any railway operations.
- (4) The Rail Safety Regulator may require information in a report under this section to be verified by statutory declaration.
- (5) A rail transport operator to whom a requirement under subsection (3) applies must comply with the requirement.
Penalty:

- (a) for an individual —
 - (i) for a first offence, a fine of \$28 000;
 - (ii) for a second or subsequent offence, a fine of \$41 000;
- (b) for a body corporate —
 - (i) for a first offence, a fine of \$280 000;
 - (ii) for a second or subsequent offence, a fine of \$410 000.

83. Investigation of notifiable occurrences

- (1) The Rail Safety Regulator may, by written notice to a rail transport operator, require the rail transport operator to investigate notifiable occurrences, or any other occurrences, that have endangered or that may endanger the safe operation of the railway operations carried out by the rail transport operator.
- (2) The level of investigation must be determined by the severity and potential consequences of the notifiable occurrence as well as by other similar occurrences and its focus should be to determine the cause and contributing factors, rather than to apportion blame.
- (3) The rail transport operator must ensure that the investigation is conducted in a manner approved by the Rail Safety Regulator and within the period specified by the Rail Safety Regulator.

Penalty:

- (a) for a first offence, a fine of \$28 000;
 - (b) for a second or subsequent offence, a fine of \$41 000.
- (4) A rail transport operator who has carried out an investigation under this section must report to the Rail Safety Regulator on the investigation within the period specified by the Rail Safety Regulator.

Penalty:

- (a) for a first offence, a fine of \$28 000;

- (b) for a second or subsequent offence, a fine of \$41 000.

Division 7 — Audit by Rail Safety Regulator

84. Audit of railway operations of rail transport operators

- (1) In this section —
- rail transport operator*** includes a person, not being an employee employed to carry out railway operations, who undertakes railway operations on or in relation to rail infrastructure or rolling stock of a rail transport operator.
- (2) The Rail Safety Regulator —
- (a) may audit the railway operations of a rail transport operator; and
 - (b) may prepare and implement a programme (an ***audit programme***) for each year for inspecting the railway operations of rail transport operators; and
 - (c) may, for the purposes of an audit, inspect the railway operations of a rail transport operator whether or not under an audit programme.
- (3) Without limiting subsection (2)(b), an audit programme may focus on one or more of the following —
- (a) particular rail transport operators;
 - (b) particular criteria relating to rail transport operators;
 - (c) particular aspects of rail safety;
 - (d) particular aspects of railway operations.
- (4) The Rail Safety Regulator must give not less than 24 hours notice in writing to a rail transport operator before inspecting the operator's railway operations under this section.
- (5) The regulations may establish procedures for the conduct of audits under this section, including procedures to ensure the confidentiality of records.

Part 5 — Enforcement

Division 1 — Entry to places by rail safety officers

85. Power to enter places

(1) In this section —

compliance and investigative purposes includes purposes —

- (a) related to ascertaining whether a rail safety law has been or is being complied with, including whether an offence has been committed against a rail safety law; or
- (b) related to ascertaining whether the terms of, or a condition or restriction of, an accreditation has been or is being complied with.

(2) A rail safety officer may, for compliance and investigative purposes or in an emergency, enter a place if —

- (a) the place is a public place and the entry is made when the place is open to the public; or
- (b) the occupier of the place consents to the entry; or
- (c) the entry to the place is authorised by a warrant under section 94; or
- (d) the place is railway premises and the entry is made when the place is —
 - (i) open for carrying on activities by reason of which the place is railway premises; or
 - (ii) otherwise open for entry; or
 - (iii) not open as mentioned in subparagraph (i) or (ii) but the entry is urgently required to investigate the circumstances of a notifiable occurrence at any time during which railway operations are being carried out or are usually carried out.

(3) A rail safety officer who enters railway premises under subsection (2)(d) must not unnecessarily impede any activities being conducted at the premises.

86. Limitation on entry powers: places used for residential purposes

Despite anything to the contrary in this Part, the powers of a rail safety officer under this Part in relation to entering a place are not exercisable in respect of any place that is used only for residential purposes except —

- (a) with the consent of the occupier of the place; or
- (b) under the authority conferred by a warrant under section 94.

87. Notice of entry

Before a rail safety officer enters railway premises, not being a public place, under section 85, the rail safety officer must give the occupier of the railway premises reasonable notice of the intention to enter unless —

- (a) the giving of the notice would be reasonably likely to defeat the purpose for which it is intended to enter the premises; or
- (b) entry to the premises is made with the consent of the occupier of the premises; or
- (c) entry is required in circumstances where the rail safety officer reasonably believes there is an immediate risk to safety because of the carrying out of railway operations at the premises; or
- (d) entry is authorised by a warrant under section 94.

Division 2 — General enforcement powers

88. General powers after entering a place

- (1) A rail safety officer who enters a place under this Part, may do any of the following —
 - (a) search and inspect any part of the place and any rail infrastructure, rolling stock or road vehicle or any other thing at the place;

- (b) enter or open, using reasonable force, rail infrastructure, rolling stock, a road vehicle or other thing at the place to examine the structure, rolling stock, road vehicle or other thing;
 - (c) take measurements, make surveys and take levels and, for those purposes, dig trenches, break up the soil and set up any posts, stakes or markers;
 - (d) test any part of rail infrastructure or rolling stock for the purpose of identifying quality or faults;
 - (e) inspect, film, photograph, videotape or otherwise record an image of —
 - (i) rail infrastructure or rolling stock, or a road vehicle or other thing, at the place;
 - (ii) a document at the place or in rolling stock or a road vehicle at the place;
 - (f) take, or authorise another person to take, for analysis a thing, or a sample of or from the thing, at the place;
 - (g) seize anything that the rail safety officer suspects on reasonable grounds is connected with an offence against this Act or to secure any such thing against interference;
 - (h) mark, tag or otherwise identify rolling stock, a road vehicle or other thing at the place;
 - (i) take a copy of the whole or any part of a document at the place or in rolling stock or a road vehicle at the place;
 - (j) take all necessary steps to allow a power under paragraphs (a) to (i) to be exercised.
- (2) A film, photograph, videotape or image taken under subsection (1)(e) of rail infrastructure, or of any part of rail infrastructure, is not inadmissible as evidence by reason only of the fact that it includes the likeness of one or more persons if the capturing of that likeness does not appear to have been the main reason for the taking of the film, photograph, videotape or image.

- (3) If a place is entered under subsection (1) and the occupier is present at the place, the occupier is entitled to observe the inspection.

89. Use of assistants and equipment

- (1) A rail safety officer may exercise powers under this Part with the aid of such assistants and equipment as the officer considers reasonably necessary in the circumstances.
- (2) Powers that may be exercised by a rail safety officer under this Part may be exercised by an assistant authorised and supervised by the officer, but only if the officer considers that it is reasonably necessary in the circumstances that the powers be exercised by an assistant.

90. Use of electronic equipment

- (1) Without limiting section 88, if —
- (a) a thing found in or on rolling stock or a road vehicle, or at a place, is, or includes, a disk, tape or other device for the storage of information; and
 - (b) the equipment in or on the rolling stock or road vehicle, or at the place, may be used with the disk, tape or other device,

the rail safety officer may operate the equipment to access the information.

- (2) A rail safety officer must not operate or seize equipment for the purpose mentioned in this section unless the officer believes on reasonable grounds that the operation or seizure of the equipment can be carried out without damage to the equipment.

91. Use of equipment to examine or process things

- (1) Without limiting section 89, a rail safety officer exercising a power under this Part may bring to, onto, or into, rolling stock, a road vehicle or a place any equipment reasonably necessary for the examination or processing of things found at, on or in the

rolling stock, road vehicle or place in order to determine whether they are things that may be seized.

- (2) The rail safety officer may operate equipment already in or on the rolling stock or road vehicle, or at the place, to carry out the examination or processing of a thing found in or on the rolling stock or road vehicle, or at the place in order to determine whether it is a thing that may be seized, if the officer believes on reasonable grounds that —
 - (a) the equipment is suitable for the examination or the processing; and
 - (b) the examination or processing can be carried out without damage to the equipment.

92. Securing a site

- (1) For the purpose of protecting evidence that might be relevant for compliance or investigative purposes, a rail safety officer may secure the perimeter of any site at a place by whatever means the rail safety officer considers appropriate.
- (2) A person must not, without the permission of a rail safety officer, enter or remain at a site the perimeter of which is secured under this section.
Penalty: a fine of \$28 000.
- (3) Subsection (2) does not apply if the person enters the site or remains at the site —
 - (a) to ensure the safety of persons; or
 - (b) to remove deceased persons or animals from the site; or
 - (c) to move a road vehicle, or the wreckage of a road vehicle, to a safe place; or
 - (d) to protect the environment from significant damage or pollution.
- (4) A rail safety officer must not unreasonably withhold a permission referred to in subsection (2).

Division 3 — Search warrants

93. Search warrant

- (1) A rail safety officer may apply to a justice for the issue of a search warrant in relation to particular railway premises or residential premises if the rail safety officer believes on reasonable grounds that there is, or may be within the next 72 hours, in, or on, railway premises or residential premises a thing or things of a kind that may be evidence of the commission of an offence against a rail safety law.
- (2) An application for a search warrant must —
 - (a) be in writing; and
 - (b) set out the grounds for seeking the warrant; and
 - (c) the offence suspected; and
 - (d) the railway premises or residential premises to be searched; and
 - (e) a description of the thing for which the search is to be made.
- (3) A justice to whom an application is made under this section is to refuse it if —
 - (a) the application does not comply with the requirements of this Act; or
 - (b) when required to do so by the justice, the rail safety officer does not give to the justice more information about the application.
- (4) The information in an application or given to a justice under this section must be verified before the justice on oath or affirmation or by affidavit, and the justice may for that purpose administer an oath or affirmation or take an affidavit.

94. Issue of search warrant

- (1) If a justice is satisfied that there are reasonable grounds for suspecting that there is, or may be within the next 72 hours, in,

or on, the railway premises or residential premises evidence of the commission of an offence against a rail safety law, the justice may issue a search warrant authorising a rail safety officer named in the warrant and any assistants the rail safety officer considers necessary —

- (a) to enter the railway premises or residential premises named or described in the warrant; and
 - (b) to search for and seize any thing named or described in the warrant.
- (2) In addition to any other requirement, a search warrant issued under this section must state —
- (a) the offence suspected; and
 - (b) the railway premises or residential premises to be searched; and
 - (c) a description of the thing for which the search is to be made; and
 - (d) any conditions to which the warrant is subject; and
 - (e) whether entry is authorised to be made at any time or during stated hours; and
 - (f) a day, not later than 7 days after the issue of the warrant, on which the warrant ceases to have effect.
- (3) A justice who issues a warrant is to cause a record to be made of particulars of the grounds that the justice has relied on to justify the issue of the warrant.

95. Execution of warrant

- (1) If asked to do so by an occupier, or a person in charge, of premises, the person executing a warrant at those premises is to produce it for inspection.
- (2) A warrant ceases to have effect —
 - (a) on the day stated in the warrant as the day on which it ceases to have effect; or

- (b) if it is withdrawn by the justice who issued it; or
- (c) when it is executed,

whichever occurs first.

96. Seizure of things not mentioned in the warrant

A search warrant authorises the rail safety officer executing the warrant, in addition to the seizure of any thing of the kind described in the warrant, to seize any thing which is not of the kind described in the warrant if —

- (a) the rail safety officer believes, on reasonable grounds, that the thing —
 - (i) is of a kind which could have been included in a warrant issued under this Division; or
 - (ii) will afford evidence about the commission of an offence against a rail safety law;

and

- (b) in the case of seizure, the rail safety officer believes, on reasonable grounds, that it is necessary to seize that thing in order to prevent its concealment, loss or destruction or its use in the commission of an offence against a rail safety law.

Division 4 — Powers to support seizure

97. Directions relating to seizure

- (1) In this section —
in control, in relation to a thing, means having, or reasonably appearing to a rail safety officer as having, authority to exercise control over the thing.
- (2) To enable a thing to be seized under this Part, a rail safety officer may direct the person in control of it —
 - (a) to take it to a specified place within a specified time; and

- (b) if necessary, to remain in control of it at the specified place for a period specified in the direction.
- (3) A direction under subsection (2) —
 - (a) must be given by signed notice in writing given to the person; or
 - (b) if for any reason it is not practicable to give a signed notice in writing to the person, may be given orally and confirmed by signed notice in writing given to the person as soon as is practicable.
- (4) A further direction may be made under this section about the thing if it is necessary and reasonable to make the further direction.
- (5) A person given a direction under subsection (2) or (4) must comply with that direction unless the person has a reasonable excuse.
Penalty: a fine of \$28 000.
- (6) Without limiting what may otherwise be a reasonable excuse under subsection (5), it is a reasonable excuse for a person in control of a thing not to comply with a direction under subsection (2) or (4) if, in all the circumstances, the direction was unreasonable.

98. Rail safety officer may direct a thing's return

- (1) If a rail safety officer has directed a person to take a thing to a specified place within a specified time under section 97(2), a rail safety officer may direct the person to return the thing to the place from which it was taken.
- (2) A person given a direction under subsection (1) must comply with that direction unless the person has a reasonable excuse.
Penalty:
 - (a) for an individual, a fine of \$28 000;
 - (b) for a body corporate, a fine of \$280 000.

99. Receipt for seized things

- (1) After a rail safety officer seizes a thing under this Part, the officer must give a receipt for it to the person from whom the thing was seized or the owner of the thing.
- (2) Despite subsection (1), if for any reason it is not practicable to comply with that subsection, the officer must leave the receipt at the place of seizure in a conspicuous position and in a reasonably secure way.
- (3) The receipt must describe generally the thing seized and its condition.
- (4) This section does not apply if it would be impracticable or unreasonable to expect the officer to account for the thing, given its condition, nature and value.

100. Access to seized thing

- (1) Until a seized thing is forfeited or returned, a rail safety officer must allow its owner to inspect it and, if it is a document, to copy it.
- (2) Subsection (1) does not apply if it is impracticable or it would be unreasonable to allow the inspection or copying.

101. Embargo notices

- (1) This section applies if —
 - (a) a rail safety officer is authorised to seize any record, device or other thing under this Part; and
 - (b) the record, device or other thing cannot, or cannot readily, be physically seized and removed.
- (2) A rail safety officer may issue an embargo notice under this section.
- (3) An embargo notice is a notice forbidding the use, movement, sale, leasing, transfer, deletion of information from or other dealing with the record, device or other thing, or any part of it,

without the written consent of a rail safety officer or the Rail Safety Regulator.

- (4) The embargo notice must —
- (a) contain the particulars required by the regulations; and
 - (b) list the activities that it forbids; and
 - (c) set out a copy of subsection (9).
- (5) On issuing an embargo notice, a rail safety officer must —
- (a) cause a copy of the notice to be served on the owner of the record, device or other thing; or
 - (b) if that person cannot be located after all reasonable steps have been taken to do so, affix a copy of the notice to the record, device or other thing in a prominent position.
- (6) A person must not knowingly do anything that is forbidden by an embargo notice.
Penalty: a fine of \$28 000.
- (7) A person must not instruct or request another person to do anything that the first mentioned person knows is forbidden by an embargo notice.
Penalty: a fine of \$28 000.
- (8) It is a defence to a prosecution for an offence against subsection (6) to establish that the person charged —
- (a) moved the record, device or other thing, or part of it, for the purpose of protecting or preserving it; and
 - (b) notified the rail safety officer who issued the embargo notice of the move, and of the new location of the record, device or other thing or part of it, within 48 hours after the move.
- (9) A person on whom an embargo notice has been served must take reasonable steps to prevent another person from doing anything forbidden by the embargo notice.
Penalty: a fine of \$28 000.

- (10) Despite anything to the contrary in any other Act or at law, a sale, lease, transfer or other dealing with a record, device or other thing, or part of it, in contravention of this section is void.

Division 5 — Forfeiture

102. Return of seized things

- (1) As soon as possible after a rail safety officer seizes any thing, including a document, under this Part, the rail safety officer must return the thing to the owner unless —
- (a) the rail safety officer considers it necessary to retain the thing because it may afford evidence in proceedings, that have been or may be commenced, for an offence against this Act; or
 - (b) the thing is forfeited to the Crown under section 103; or
 - (c) the rail safety officer is otherwise authorised by law or an order of a court to retain, destroy or dispose of the thing.
- (2) The thing may be returned either unconditionally or on such terms and conditions as the rail safety officer considers appropriate to eliminate or reduce any risks to safety.
- (3) If the rail safety officer imposes terms or conditions on the return of a thing, the owner must comply with each of those terms and conditions.

Penalty: a fine of \$28 000.

103. Forfeiture

- (1) In this section —
owner, in relation to a sample or a thing taken for analysis, includes the person in charge of the thing or place from which the sample or thing was taken.
- (2) A sample or thing taken for analysis or a thing seized under this Part is forfeited to the Crown if the rail safety officer who took,

or arranged the taking of, the sample or thing or who seized the thing —

- (a) after making reasonable efforts, cannot return it to its owner; or
 - (b) after making reasonable inquiries, cannot find its owner; or
 - (c) considers it necessary to retain the sample or thing to prevent the commission of an offence against this Act.
- (3) For purposes of subsection (2), the officer is not required to —
- (a) make efforts if it would be unreasonable to make efforts to return the sample or thing to its owner; or
 - (b) make inquiries if it would be unreasonable to make inquiries to find the owner.
- (4) In deciding whether —
- (a) it is reasonable to make efforts or inquiries; and
 - (b) if efforts or inquiries are made, what efforts or inquiries, including the period over which they are made, are reasonable,

regard must be had to the sample's or thing's condition, nature and value.

104. Dealing with forfeited sample or thing

- (1) On forfeiture of a sample or thing to the Crown, the sample or thing becomes the Crown's property and may be dealt with by the Rail Safety Regulator in any way the Rail Safety Regulator considers is appropriate.
- (2) Without limiting subsection (1), the Rail Safety Regulator may destroy or dispose of the sample or thing.
- (3) If a thing is forfeited to the Crown under section 103(2)(c), the rail safety officer must notify the owner in writing accordingly, setting out how the owner may seek review under Part 7 of the

decision to forfeit the thing, unless the rail safety officer cannot find the owner despite making reasonable enquiries.

105. Forfeiture on conviction

- (1) If a court finds a person guilty of an offence against this Act, the court may order forfeiture to the Crown of any thing used or otherwise involved in the commission of the offence.
- (2) A thing ordered by a court to be forfeited under this section becomes the property of the Crown and may be sold or otherwise dealt with in accordance with the directions of the Rail Safety Regulator.
- (3) Until the Rail Safety Regulator gives a direction, the thing must be kept in such custody as the Regulator directs.

Division 6 — Directions

106. Rail safety officers may direct certain persons to give assistance

- (1) In this section —
reasonable assistance includes the following —
 - (a) assistance to enable the rail safety officer to find and gain access to material and information stored electronically;
 - (b) unloading rolling stock;
 - (c) running the engine of a locomotive;
 - (d) driving a train;
 - (e) giving the rail safety officer assistance to enter any rail infrastructure or any part of rail infrastructure or open rolling stock or any part of rolling stock.
- (2) A rail safety officer may direct a rail transport operator or a rail safety worker to give the rail safety officer reasonable assistance to enable the officer to exercise a power under this Part.

- (3) When giving a direction to a person under subsection (2), the rail safety officer must warn the person that it is an offence to fail to comply with the direction unless the person has a reasonable excuse.
- (4) A person given a direction under subsection (2) must comply with the direction unless the person has a reasonable excuse.
Penalty: a fine of \$28 000.

107. Power to direct name and address be given

- (1) A rail safety officer may direct a person to state the person's name and residential or business address if the officer —
 - (a) finds the person committing an offence against a rail safety law; or
 - (b) finds the person in circumstances that lead, or has information that leads, the officer reasonably to suspect the person has committed an offence against a rail safety law; or
 - (c) finds the person at railway premises and —
 - (i) reasonably believes the person is carrying out railway operations for a rail transport operator; and
 - (ii) reasonably considers that it is necessary for the purposes of this Act to know the person's name and residential or business address.
- (2) When giving a direction under subsection (1), the officer must warn the person it is an offence to fail to state the person's name or address unless the person has a reasonable excuse.
- (3) The officer may also direct the person to give evidence of the correctness of the stated name or required address if the officer reasonably suspects the stated name or address is false.

108. Failure to give name or address

A person given a direction under section 107(1) or (3) must comply with the direction, unless the person has a reasonable excuse.

Penalty: a fine of \$2 000.

109. Power to direct production of documents

- (1) A rail safety officer may direct a person to make available for inspection by the officer, or produce to the officer for inspection, at a specified time and place —
 - (a) a document that is required to be kept by the person under a rail safety law; or
 - (b) a document that is prepared by the person under a rail safety law for the management of rail infrastructure or the operation of rolling stock that the officer reasonably believes is necessary for the officer to consider to understand or verify a document that is required to be kept under a rail safety law; or
 - (c) a document held by, or under the control of, the person relating to the carrying out of railway operations.
- (2) When giving a direction under subsection (1), the rail safety officer must warn the person it is an offence to fail to comply with the direction, unless the person has a reasonable excuse.
- (3) The rail safety officer may keep the document to copy it but must return the document to the person after copying it.

110. Failure to produce document

A person given a direction to make available, or produce, for inspection a document under section 109 must comply with the direction, unless the person has a reasonable excuse.

Penalty:

- (a) for an individual, a fine of \$28 000;
- (b) for a body corporate, a fine of \$280 000.

Division 7 — Improvement notices

111. Improvement notices

- (1) A rail safety officer may serve an improvement notice on a person if the officer believes on reasonable grounds that the person —
 - (a) is contravening a provision of a rail safety law; or
 - (b) has contravened a provision of a rail safety law and it is likely that the contravention will continue or be repeated; or
 - (c) is carrying out or has carried out railway operations that threaten safety.
- (2) The rail safety officer may serve on a person an improvement notice requiring the person, within the period specified in the notice —
 - (a) to undertake remedial rail safety work or do any other thing to remedy the contravention or likely contravention, or the matters or activities occasioning the contravention or likely contravention; or
 - (b) to carry out railway operations so that safety is not threatened or likely to be threatened.
- (3) The period within which a person is required by the improvement notice to comply with the notice must be at least 7 days after service of the notice.
- (4) An improvement notice must —
 - (a) state the reasons for the service of the notice; and
 - (b) in the case of an improvement notice served in respect of a contravention or likely contravention of a rail safety law, specify the provision of the rail safety law in respect of which that belief is held; and
 - (c) in the case of an improvement notice served on a person who is carrying out or has carried out railway operations

- that threaten safety, specify the operations in respect of which that belief is held; and
- (d) include information about the right to a review under Part 7 of the decision to serve the notice; and
 - (e) set out the penalty for contravening the notice; and
 - (f) include a statement of the effect of section 114 (proceedings for offences not affected by improvement notices); and
 - (g) state that it is served under this section.
- (5) An improvement notice served on a person on a ground stated in subsection (1)(a) or (b) —
- (a) may specify a method by which the alleged contravention or likely contravention, or the matters or activities occasioning the alleged contravention or likely contravention are to be remedied; and
 - (b) may offer the person on whom the notice has been served a choice of ways by which an alleged contravention or likely contravention, or the matters or activities occasioning the alleged contravention or likely contravention may be remedied; and
 - (c) may specify that a person provide the Rail Safety Regulator with a programme of rail safety work that the person proposes to carry out to remedy the alleged contravention or likely contravention, or the matters or activities occasioning the alleged contravention or likely contravention.
- (6) An improvement notice served on a person on the ground stated in subsection (1)(c) —
- (a) may specify a method by which railway operations may be carried out so that safety is not threatened or likely to be threatened; and

- (b) may offer the person on whom the notice has been served a choice of ways by which railway operations may be carried out so that safety is not threatened or likely to be threatened; and
 - (c) may specify that the person provide the Rail Safety Regulator with a programme of railway operations that the person proposes to carry out to remedy the threat or likely threat to the safety.
- (7) A programme referred to in subsection (5)(c) or (6)(c) may include a timetable for the completion of the programme of rail safety work.

112. Contravention of improvement notice

- (1) A person on whom an improvement notice has been served must comply with the notice unless the person has a reasonable excuse.

Penalty:

- (a) for an individual —
 - (i) for a first offence, a fine of \$28 000;
 - (ii) for a second or subsequent offence, a fine of \$41 000;
 - (b) for a body corporate —
 - (i) for a first offence, a fine of \$280 000;
 - (ii) for a second or subsequent offence, a fine of \$410 000.
- (2) In proceedings against a person for an offence of engaging in conduct that results in a contravention of a requirement of an improvement notice served on a ground stated in section 111(1)(a) or (b), it is a defence if the person charged establishes that —
- (a) the alleged contravention or likely contravention; or

- (b) the matters or activities occasioning the alleged contravention or likely contravention,

were remedied within the period specified in the notice, though by a method different from that specified in the improvement notice.

- (3) In proceedings for an offence against a person of engaging in conduct that results in a contravention of a requirement of an improvement notice on the ground stated in section 111(1)(c), it is a defence if the person charged establishes that the threat to safety was removed within the period specified in the notice, though by a method different from that specified in the improvement notice.

113. Withdrawal or amendment of improvement notices

- (1) An improvement notice served by a rail safety officer —
 - (a) may be withdrawn by notice served by a rail safety officer on the person affected by the notice; or
 - (b) may be amended by a rail safety officer by notice served on the person affected by the notice.
- (2) An amendment of an improvement notice is effected by service on the person affected of a notice stating the terms of the amendment.
- (3) An amendment of an improvement notice served on a person is ineffective if it purports to deal with a contravention of a different provision of a rail safety law from that dealt with in the improvement notice as first served.
- (4) A notice of an amendment of an improvement notice must —
 - (a) state the reasons for the amendment; and
 - (b) include information about obtaining a review under Part 7 of the decision to amend the notice; and
 - (c) state that it is served under this section.

114. Proceedings for offences not affected by improvement notices

The service, amendment or withdrawal of an improvement notice does not affect any proceedings for an offence against a rail safety law in connection with any matter in respect of which the improvement notice was served.

115. Rail Safety Regulator to arrange for rail safety work required by improvement notice to be carried out

- (1) If a person fails to comply with an improvement notice served on the person that requires the person to carry out rail safety work to remedy —
- (a) the alleged contravention or likely contravention; or
 - (b) the matters or activities occasioning the alleged contravention or likely contravention,

the Rail Safety Regulator may arrange for that rail safety work to be carried out.

- (2) The Rail Safety Regulator may recover from the person served with an improvement notice referred to in subsection (1) the reasonable costs and expenses incurred by the Rail Safety Regulator for rail safety work carried out.

Division 8 — Prohibition notices

116. Prohibition notice

- (1) This section applies if an activity —
- (a) is occurring in relation to railway operations or railway premises that involves or will involve an immediate risk to safety; or
 - (b) may occur in relation to railway operations or railway premises that, if it occurs, will involve an immediate risk to safety; or

- (c) may occur at, on, or in the immediate vicinity of, rail infrastructure or rolling stock that, if it occurs, will involve an immediate risk to safety.
- (2) If a rail safety officer believes on reasonable grounds that an activity referred to in subsection (1) is occurring or may occur, the rail safety officer may serve on a person who has or appears to have control over the activity a prohibition notice prohibiting the carrying on of the activity, or the carrying on of the activity in a specified way, until the rail safety officer has certified in writing that the matters that give or will give rise to the risk have been remedied.
- (3) A prohibition notice has effect upon being served or, if the notice specifies a later date, on that later date.
- (4) A prohibition notice must —
 - (a) state the basis for the rail safety officer's belief on which the service of the notice is based; and
 - (b) specify the activity which the rail safety officer believes involves or will involve the risk and the matters which give or will give rise to the risk; and
 - (c) if the rail safety officer believes that the activity involves a contravention or likely contravention of a provision of a rail safety law, specify that provision and state the basis for that belief; and
 - (d) include information about the right to a review under Part 7 of the decision to serve the notice; and
 - (e) set out the penalty for contravening the notice; and
 - (f) include a statement of the effect of section 120; and
 - (g) state that it is served under this section.
- (5) A prohibition notice may include directions on the measures to be taken to minimise or eliminate the risk, activities or matters to which the notice relates, or the contravention or likely contravention mentioned in subsection (4)(c).

- (6) A direction in a prohibition notice may —
- (a) require that measures be taken in accordance with a compliance code; or
 - (b) offer the person on whom the notice has been served a choice of ways to remedy the risk, activities or matters to which the notice relates, or the contravention or likely contravention mentioned in subsection (4)(c).
- (7) A prohibition notice that prohibits the carrying on of an activity in a specified way may do so by specifying one or more of the following —
- (a) a place, or part of a place, at which the activity is not to be carried out;
 - (b) any thing that is not to be used in connection with the activity;
 - (c) any procedure that is not to be followed in connection with the activity.

117. Contravention of prohibition notice

A person on whom a prohibition notice is served must comply with the notice unless the person has a reasonable excuse.

Penalty:

- (a) for an employee of a rail transport operator —
 - (i) for a first offence, a fine of \$11 000;
 - (ii) for a second or subsequent offence, a fine of \$16 000;
- (b) for any other individual —
 - (i) for a first offence, a fine of \$55 000;
 - (ii) for a second or subsequent offence, a fine of \$82 000;

- (c) for a body corporate —
 - (i) for a first offence, a fine of \$550 000;
 - (ii) for a second or subsequent offence, a fine of \$820 000.

118. Oral direction before prohibition notice served

- (1) If a rail safety officer —
 - (a) believes on reasonable grounds that an activity referred to in section 116(1) is occurring or may occur; and
 - (b) that it is not possible or reasonable to serve a prohibition notice under that section immediately,

the officer may direct a person who has or appears to have control over the activity to do or not to do a stated act by telling the person —

- (c) to do or not to do the stated act; and
 - (d) the reason for the officer giving the direction.
- (2) A person to whom a direction is given under subsection (1) must comply with it, unless the person has a reasonable excuse.
Penalty:
 - (a) for an individual, a fine of \$28 000;
 - (b) for a body corporate, a fine of \$280 000.
- (3) It is a reasonable excuse if the rail safety officer did not tell the person that the person commits an offence if the person does not comply with the direction.
- (4) If a rail safety officer gives a direction under subsection (1) in respect of an activity but does not, within 5 days of giving the direction, serve a prohibition notice in respect of the activity, the direction ceases to have effect.

119. Withdrawal or amendment of prohibition notice

- (1) A prohibition notice served by a rail safety officer —
 - (a) may be withdrawn by notice served by a rail safety officer on the person affected by the notice; or
 - (b) may be amended by notice served by a rail safety officer on the person affected by the notice.
- (2) An amendment of a prohibition notice is effected by service, on the person affected, of a notice stating the terms of the amendment.
- (3) An amendment of a prohibition notice is ineffective if it purports to deal with a contravention of a different provision of a rail safety law from that dealt with in the prohibition notice as first served.
- (4) A notice of an amendment of a prohibition notice must —
 - (a) state the reasons for the amendment; and
 - (b) include information about obtaining a review under Part 7 of the decision to amend the notice; and
 - (c) state that it is served under this section.

120. Proceedings for offences not affected by prohibition notices

The service, amendment or withdrawal of a prohibition notice does not affect any proceedings for an offence against a rail safety law in connection with any matter in respect of which the prohibition notice was served.

Division 9 — Miscellaneous

121. Directions may be given under more than one provision

- (1) A rail safety officer may, on the same occasion, give directions under one or more provisions of this Part.

- (2) Without limiting subsection (1), a rail safety officer may, in the course of exercising powers under a provision of this Part, give either or both of the following —
- (a) further directions under the provision;
 - (b) directions under one or more other provisions of this Part.

122. Temporary closing of railway crossings, bridges etc.

- (1) In this section —
- authorised person*** means —
- (a) a person who holds a specific authority from the Rail Safety Regulator for the purposes of this section; or
 - (b) a senior manager within the staff of the rail infrastructure manager who holds a specific authority issued by the rail infrastructure manager in accordance with relevant guidelines issued by the Rail Safety Regulator;
- railway crossing*** means a level crossing, bridge or another structure used to cross over or under a railway.
- (2) An authorised person may close temporarily or regulate a railway crossing, bridge or other structure for crossing or passing over or under a railway if satisfied it is necessary because of an immediate threat to safety.
- (3) If an authorised person decides to close temporarily or regulate a railway crossing, bridge or other structure the authorised person must, as soon as practicable after its closure or regulation, notify the person or authority responsible for the railway crossing, bridge or other structure of its closure or regulation.

123. Restoring rail infrastructure and rolling stock etc. to original condition after action taken

If —

- (a) a rail safety officer, or a person assisting the officer, takes any action in the exercise or purported exercise of any power under this Part in relation to rail infrastructure or rolling stock, railway premises or a road vehicle; and
- (b) damage was caused by the unreasonable exercise of the power or by the use of force that was not authorised under this Part,

the Rail Safety Regulator must take reasonable steps to return the rail infrastructure or rolling stock, railway premises or road vehicle to the condition it or they were in immediately before the action was taken.

124. Use of force

A power conferred by this Part to enter any railway premises, or to do anything in or on any railway premises, may not be exercised unless the rail safety officer or a person assisting an officer proposing to exercise the power, uses no more force than is reasonably necessary to effect the entry or to do the thing for which the entry is effected.

125. Power to use force against persons to be exercised only by police officers

A provision in this Part that authorises a rail safety officer, or a person assisting an officer, to use reasonable force does not authorise a rail safety officer, or a person, who is not a police officer to use force against another person.

126. Protection from incrimination

- (1) An individual is not excused from complying with a direction under Division 4 or 6 —
 - (a) to give his or her name and residential or business address; or
 - (b) to produce a document; or
 - (c) to give or provide information,on the ground that compliance with the direction may result in information being provided that might incriminate the person or may make the person liable to a penalty.
- (2) Any information obtained or document produced as a direct result of the compliance with the direction is not admissible in evidence against the person in criminal proceedings, other than proceedings in respect of false information, or proceedings that may make the person liable to a penalty —
 - (a) if the person claims before giving the information or producing the document that it might incriminate the person or make the person liable to a penalty; or
 - (b) if the person's entitlement to make a claim of the kind referred to in paragraph (a) was not drawn to the person's attention before the information was given or the document was produced.
- (3) Except as provided in subsection (2), any information given, or document produced, by an individual as a direct result of the compliance with the direction may be used in evidence in any criminal or civil proceedings against the person.

Part 6 — Investigations

Division 1 — Independent investigators

127. Appointment of independent investigator

- (1) The CEO may, on the CEO's own initiative, and must, at the direction of the Minister, appoint an independent investigator to investigate and report on a rail safety matter in accordance with this Part if the matter causes or results in —
 - (a) a person's death; or
 - (b) serious personal injury; or
 - (c) major property damage.
- (2) The CEO or the Rail Safety Regulator may, on the CEO's or the Rail Safety Regulator's own initiative, appoint an independent investigator to investigate and report on any other rail safety matter in accordance with this Part.
- (3) An independent investigator appointed by the CEO or the Rail Safety Regulator is to be appointed on such terms and conditions as are agreed between the CEO or the Rail Safety Regulator and the independent investigator.
- (4) The Minister, the CEO and the Rail Safety Regulator must not give a direction to an independent investigator relating to the performance of the independent investigator's functions in relation to an investigation into a rail safety matter including a direction —
 - (a) on how to conduct the investigation; or
 - (b) as to which persons the independent investigator may request or direct to assist the independent investigator in the investigation; or
 - (c) as to the outcome of the investigation; or
 - (d) to stop the investigation.

- (5) In exercising powers under this Part, the independent investigator must have regard to the desirability of minimising any resulting disruption to railway operations.
- (6) The reasonable costs of conducting the investigation may be recovered jointly or severally from any one or more rail transport operators responsible for the railway operations concerned.
- (7) The CEO may, in a court of competent jurisdiction, recover the costs that are recoverable under subsection (6) as a debt due to the Crown.

128. Conduct of investigation

- (1) In conducting an investigation under this Part, an independent investigator —
 - (a) is to attempt to determine the circumstances surrounding the rail safety matter to prevent the occurrence of a rail safety matter and is not to apportion blame for the rail safety matter or determine the liability of any person in respect of any rail safety matter; and
 - (b) must consult with the CEO, the Rail Safety Regulator and any person to whom a report under section 133 may be relevant; and
 - (c) must follow such procedures as are approved in writing by the CEO with respect to investigations; and
 - (d) must act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues; and
 - (e) is not bound by the rules of evidence, but may inform himself or herself on any matter as the independent investigator considers appropriate.

- (2) Except as provided by this Part, an investigation under this Part is to be conducted in a manner determined by the independent investigator.

129. Advise as to immediate action that is required

If, in the course of an investigation, an independent investigator reasonably believes that immediate action is required to prevent an occurrence involving the rolling stock or rail infrastructure of a rail transport operator that could result in, or that has the potential to result in —

- (a) the death of, or injury to, any person; or
(b) damage to any property or equipment,

the independent investigator may, in writing, advise the CEO, the Rail Safety Regulator and the rail transport operator that that action is required.

130. Release of information in the interests of rail safety

- (1) Subject to Division 6, an independent investigator may disclose to any person information acquired by the independent investigator in carrying out his or her functions under this Part if the independent investigator considers that the disclosure is necessary or desirable for the purposes of rail safety.
- (2) Despite subsection (1), the independent investigator may only disclose information that is, or that contains, personal information in the circumstances allowed by the regulations.

131. Investigation may continue despite other proceedings

An investigation under this Part 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.

132. Draft report or excerpt

- (1) Before giving a report under section 133(1), the independent investigator may provide a draft report or an excerpt from a draft report, on a confidential basis, to any person whom the independent investigator considers appropriate, for any one or more of the following purposes —
 - (a) allowing the person to make submissions to the independent investigator about the draft report or excerpt;
 - (b) taking steps to remedy safety deficiencies that are identified in the draft report or excerpt;
 - (c) giving the person advance notice of the likely form of the final report.
- (2) A person who receives a draft report or an excerpt under subsection (1) or (3) must not —
 - (a) make a copy of the whole or any part of the draft report or excerpt; or
 - (b) disclose any of the contents of the draft report or excerpt to any other person or to a court.

Penalty: a fine of \$55 000.
- (3) Subsection (2) does not apply to any copying or disclosure that is necessary for the purpose of —
 - (a) preparing submissions on the draft report or excerpt; or
 - (b) taking steps to remedy safety deficiencies that are identified in the draft report or excerpt.
- (4) A person who receives a draft report or excerpt under subsection (1) or (3) cannot be required to disclose it to a court.
- (5) A person who receives a draft report or excerpt under subsection (1) or (3) is not entitled to take any disciplinary action against an employee of the person on the basis of information in the draft report or excerpt.

- (6) A draft report or excerpt provided under subsection (1) must not include the name of an individual unless he or she has consented in writing to that inclusion.
- (7) The *Coroners Act 1996* sections 33(1)(b) and (c) and 46(1)(a) do not apply to a draft report or excerpt.

133. Report

- (1) On its completion, an independent investigator must give his or her report to the Minister, the CEO and the Rail Safety Regulator.
- (2) The report is to be in a prescribed format, if any, and contain —
 - (a) details of any advice given under section 129; and
 - (b) such recommendations, if any, that the independent investigator considers appropriate; and
 - (c) any other relevant matters.
- (3) The independent investigator's report must be published by electronic or other means by —
 - (a) the CEO, if the CEO appointed the independent investigator; or
 - (b) the Rail Safety Regulator, if the Rail Safety Regulator appointed the independent investigator,within 28 days of receiving the report.
- (4) A published report must not include the name of an individual unless he or she has consented in writing to that inclusion.

134. Reports not admissible in evidence

- (1) A report under section 133 is not admissible in evidence in any civil or criminal proceedings.
- (2) Subsection (1) does not apply to a coronial inquest.
- (3) A draft report under section 132 is not admissible in evidence in any civil or criminal proceedings.

135. Response to report: installation of safety or protective devices

- (1) The Rail Safety Regulator may, if of the opinion as a result of a report under section 133 that action is necessary for the purpose of the safe construction or operation of a railway, direct a rail transport operator, 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) A rail transport operator must comply with the requirements of the notice.

Penalty:

- (a) for an individual —
 - (i) for a first offence, a fine of \$28 000;
 - (ii) for a second or subsequent offence, a fine of \$41 000;
- (b) for a body corporate —
 - (i) for a first offence, a fine of \$280 000;
 - (ii) for a second or subsequent offence, a fine of \$410 000.

136. Appointment of authorised officers

An independent investigator may, in writing, appoint a suitable person to be an authorised officer for the purposes of this Part.

137. Delegation by independent investigator

- (1) An independent investigator may delegate to an authorised officer any power or duty of the independent investigator under another provision of this Part other than a function referred to in section 136.
- (2) The delegation must be in writing signed by the independent investigator.

- (3) An authorised person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (4) An authorised person exercising or performing a power or duty that has been delegated to the person under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) An authorised officer remains subject to the direction and control of the independent investigator.

138. Certificate of appointment for independent investigators and authorised officers

- (1) The person who appoints an independent investigator must issue a certificate of appointment to the investigator.
- (2) An independent investigator must issue an authorised officer appointed by the independent investigator with a certificate of appointment.

139. Independent investigators and authorised officers must not exercise functions without a certificate of appointment

An independent investigator or authorised officer must not exercise a function under this Act unless a certificate of appointment has been issued to the independent investigator or authorised officer.

140. Production of a certificate of appointment

- (1) This section applies to an independent investigator or authorised officer who is exercising, or about to exercise, a function under this Part.
- (2) An independent investigator or authorised officer must produce his or her certificate of appointment or a copy or reproduction of it if requested to do so by a person in relation to whom the officer is exercising, or is about to exercise, the function.

- (3) If it is not practical for an independent investigator or authorised officer to produce his or her certificate of appointment or a copy or reproduction of it on being requested to do so, the independent investigator or authorised officer must produce it as soon as practicable after the request is made.

141. Return of certificate of appointment

A person who has ceased to be an independent investigator or authorised officer must not, without reasonable excuse, refuse or fail to return to the person who appointed him or her (the *appointer*), within such period as is specified by the appointer in a request for the return of the certificate of appointment, any certificate of appointment issued by the appointer.

Penalty: a fine of \$2 000.

Division 2 — Investigation powers

142. Securing a site

- (1) For the purpose of protecting evidence that might be relevant to an investigation of a rail safety matter, the Rail Safety Regulator or an independent investigator may secure the perimeter of any site at a place by whatever means the Rail Safety Regulator or the independent investigator considers appropriate.
- (2) A person must not, without the permission of the Rail Safety Regulator or an independent investigator, enter or remain at a site the perimeter of which is secured under this section.
Penalty: a fine of \$28 000.
- (3) Subsection (2) does not apply if the person enters the site or remains at the site —
- (a) to ensure the safety of persons; or
 - (b) to remove deceased persons or animals from the site; or
 - (c) to move a road vehicle, or the wreckage of a road vehicle, to a safe place; or

- (d) to protect the environment from significant damage or pollution.
- (4) The Rail Safety Regulator or an independent investigator must not unreasonably withhold a permission referred to in subsection (2).

143. Power to obtain information

- (1) An independent investigator may, for the purposes of an investigation under this Part —
 - (a) require a person to produce to the investigator any document or other thing concerning the investigation that is in the possession or under the control of the person; and
 - (b) require a person —
 - (i) to give the investigator such information as the investigator requires; and
 - (ii) to answer any question put to that person, in relation to the matter the subject of the investigation.
- (2) Subsection (1) does not apply to a person in his or her capacity as a coroner.
- (3) A requirement made under subsection (1)(a) —
 - (a) must be made by notice in writing given to the person required to produce the document or other thing; and
 - (b) must specify the time at or within which the document or other thing is to be produced; and
 - (c) may, by its terms, require that the document or other thing required be produced at a place and by means specified in the requirement; and

- (d) where the document required is not in a readable format, is to be treated as a requirement to produce —
 - (i) the document itself; and
 - (ii) the contents of the document in a readable format.
- (4) If under subsection (1)(a) an independent investigator requires a person to produce any document or other thing concerning the investigation that is in the possession or under the control of the person, the investigator is to inform that person that the person is required under this Act to produce the document or thing.
- (5) If under subsection (1)(b) an independent investigator requires a person to give information or answer a question, the investigator is to inform that person that the person is required under this Act to give the information or answer the question.
- (6) If a document or other thing is produced to an independent investigator, the independent investigator may —
 - (a) inspect it; and
 - (b) make copies of, photograph or take extracts from, or test, it.

144. Other powers

- (1) An independent investigator may, for the purpose of an investigation under this Part, at all reasonable times of the day or night, using reasonable force, enter railway premises or other premises.
- (2) An independent investigator may, for the purpose of an investigation under this Part, do any one or more of the following —
 - (a) having entered a premises under subsection (1), inspect the premises, or any railway, rail infrastructure or rolling stock or other thing at the premises;
 - (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 any posts, stakes or markers;
 - (d) take samples or authorise another person to take samples of any substance or thing from any place or rolling stock or other vehicle for analysis;
 - (e) mark, tag or otherwise identify rolling stock or other things at the place;
 - (f) take photographs, films, audio, video or other recordings;
 - (g) 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;
 - (h) issue a seizure order under section 161 in respect of anything that the independent investigator reasonably believes is relevant to the investigation;
 - (i) require a person to produce evidence of an accreditation or qualification required under this Act;
 - (j) give directions reasonably required in connection with the exercise of a power conferred by this subsection or otherwise in connection with conducting an investigation;
 - (k) exercise other powers as are prescribed for the purposes of this paragraph.
- (3) In the exercise of powers under this section, an independent investigator must do as little damage as possible but may test something even though that might result in damage, destruction or reduction in the value of the thing.

145. Limitation on entry powers: places used for residential purposes

Despite anything to the contrary in this Part, the powers of an independent investigator under this Part in relation to entering premises are not exercisable in respect of any premises that is used only for residential purposes except —

- (a) with the consent of the occupier of the premises; or
- (b) under the authority conferred by a warrant under section 158.

146. Occupier entitled to be present during inspection

- (1) If premises are being inspected under section 144 and the occupier of the premises is present at the premises, the occupier is entitled to observe the inspection.
- (2) The right to observe the inspection ceases if the occupier impedes the inspection.
- (3) This section does not prevent 2 or more areas of the premises being inspected at the same time.

147. Use of equipment

An independent investigator may exercise powers under this Part with the aid of such equipment as the independent investigator considers reasonably necessary in the circumstances.

148. Occupier to provide independent investigator with facilities and assistance

The occupier of premises being inspected under section 144 must provide the independent investigator with all reasonable facilities and assistance for the effective exercise of his or her powers.

Penalty: a fine of \$28 000.

149. Use of electronic equipment

- (1) Without limiting section 144, if —
- (a) a thing found in or on rolling stock or a road vehicle, or at a place, is, or includes, a disk, tape or other device for the storage of information; and
 - (b) the equipment in or on the rolling stock or road vehicle, or at the place, may be used with the disk, tape or other device,

the independent investigator may operate the equipment to access the information.

- (2) An independent investigator must not operate equipment for the purpose mentioned in this section unless the independent investigator believes on reasonable grounds that the operation of the equipment can be carried out without —
- (a) damage to the equipment; or
 - (b) destroying, erasing or corrupting any information stored or recorded by the equipment.

150. Use of equipment to examine or process things

- (1) Without limiting section 144, an independent investigator exercising a power under this Part may bring to, onto, or into, rolling stock, a road vehicle or premises any equipment reasonably necessary for the examination or processing of things found at, on or in the rolling stock, a road vehicle or premises in order to determine whether they are things that may be seized.
- (2) The independent investigator may operate equipment already in or on the rolling stock, a road vehicle or premises, to carry out the examination or processing of a thing found in or on the rolling stock, a road vehicle or premises, or at the premises in order to determine whether it is a thing that may be seized, if the independent investigator believes on reasonable grounds that —
- (a) the equipment is suitable for the examination or the processing; and

- (b) the examination or processing can be carried out without damage to the equipment.

151. Notices relating to exercise of powers

If an independent investigator enters railway premises, not being a public place, under section 144(1), the independent investigator must give the occupier of the railway premises written notice of the entry as soon as practicable after the entry is made.

152. Protection orders by Rail Safety Regulator or independent investigator

- (1) For the purpose of protecting evidence that might be relevant to an investigation, the Rail Safety Regulator, before an independent investigator begins conducting an investigation, and an independent investigator, after the investigator begins conducting an investigation, may direct that specified things, or things in a specified class of things, must not be removed or interfered with except with the permission of the person giving the direction.
- (2) The Rail Safety Regulator, before an independent investigator begins conducting an investigation, and the independent investigator, after the investigator begins conducting an investigation, may revoke or vary a direction under subsection (1).
- (3) A person must not contravene a direction under subsection (1).
Penalty: a fine of \$28 000.
- (4) Subsection (3) does not apply if the conduct concerned was necessary —
 - (a) to ensure the safety of persons, animals or property; or
 - (b) to remove deceased persons or animals from an accident site; or
 - (c) to move rolling stock, or the wreckage of rolling stock, to a safe place; or

- (d) to protect the environment from significant damage or pollution.
- (5) The Rail Safety Regulator or an independent investigator must not unreasonably withhold a permission under subsection (1).

153. Medical examination

- (1) In this section —
 - employee* includes an individual who works under a contract for services;
 - medical practitioner* has the meaning given in the *Medical Practitioners Act 2008* section 4.
- (2) If an independent investigator has reason to believe that —
 - (a) a person caused, or was directly involved in, a rail safety matter; and
 - (b) the result of a medical examination of the person may help in determining the circumstances and probable cause of the matter,

the independent investigator may by written notice direct the person to undergo a medical examination within a period specified by the independent investigator in the notice.

- (3) The person is to be examined by a medical practitioner agreed upon by the independent investigator and the person.
- (4) If the independent investigator and the person are unable to agree upon the person to conduct the examination, the CEO is to appoint a medical practitioner to perform the examination.
- (5) A medical practitioner who conducts an examination under this section is to give a report of the examination to the independent investigator.

- (6) The cost of the examination must be paid —
- (a) if the person is an employee of a rail transport operator, by the rail transport operator; or
 - (b) in other cases, by the CEO.
- (7) A person must comply with a direction under this section, unless the person has a reasonable excuse.
Penalty: a fine of \$28 000.
- (8) It is not a reasonable excuse for a person to fail to comply with the direction that complying with the direction might tend to incriminate the person or make the person liable to a penalty.
- (9) Anything obtained under the direction, and any evidence derived directly or indirectly from anything obtained under the direction is not admissible in evidence against a person in any civil or criminal proceeding.
- (10) When giving a direction to a person under this section, an independent investigator must —
- (a) warn the person it is an offence to fail to comply with the direction unless the person has a reasonable excuse; and
 - (b) advise the person that —
 - (i) it is not a reasonable excuse that complying with the direction might tend to incriminate the person or make the person liable to a penalty; and
 - (ii) anything obtained under the direction, and any evidence derived directly or indirectly from anything obtained under the direction, is not admissible in evidence against the person in any civil or criminal proceeding.

154. Analysis

(1) In this section —

authorised person means —

- (a) an authorised officer; or
- (b) an independent investigator; or
- (c) a police officer; or
- (d) a rail safety officer; or
- (e) the Rail Safety Regulator;

employee includes an individual who works under a contract for services.

(2) If an authorised person has reason to believe that —

- (a) a person caused, or was directly involved in, a rail safety matter; and
- (b) the results of a breath test or an analysis may help in determining the circumstances and probable cause of the matter,

the authorised person may direct the person to do one or more of the following —

- (c) submit to a breath test;
- (d) give a sample of the person's blood or urine for analysis.

(3) The purpose of a test or an analysis is to determine the presence or level of alcohol or any prescribed drug in any form in the breath, blood or urine of the person.

(4) A direction under subsection (2)(d) must —

- (a) specify the day on which and time and place at which the person is to attend; and
- (b) indicate what sample or samples are to be given.

- (5) If a direction is given under this section —
- (a) any breath test is to be conducted; and
 - (b) any sample is to be taken and dealt with,
- in accordance with regulations referred to in section 155.
- (6) The cost of conducting a breath test or obtaining a sample and carrying out the analysis must be paid —
- (a) if the person is an employee of a rail transport operator, by the rail transport operator; or
 - (b) in other cases, by the CEO.
- (7) A person must comply with a direction under this section, unless the person has a reasonable excuse.
Penalty: a fine of \$28 000.
- (8) It is not a reasonable excuse for a person to fail to comply with the direction that complying with the direction might tend to incriminate the person or make the person liable to a penalty.
- (9) The results of a breath test or an analysis under this section are not admissible in evidence against a person in any civil or criminal proceeding.
- (10) When making a direction to a person under this section, an authorised person must —
- (a) warn the person it is an offence to fail to comply with the direction unless the person has a reasonable excuse; and
 - (b) advise the person that —
 - (i) it is not a reasonable excuse that complying with the direction might tend to incriminate the person or make the person liable to a penalty; and
 - (ii) the results of a breath test or an analysis under this section are not admissible in evidence against the person in any civil or criminal proceeding.

155. Regulations relating to medical examinations and analysis

Regulations may be made under section 229(1) with respect to examinations and breath tests or analysis under sections 153 and 154 including the following —

- (a) procedures for medical examinations;
- (b) the manner of giving directions under section 154;
- (c) prescribing drugs for which a breath test or an analysis may be conducted pursuant to a direction under section 154 to submit to a breath test or to give a sample of the person's blood or urine for analysis;
- (d) regulating the manner of conducting breath tests and taking and dealing with samples of blood and urine and their analysis;
- (e) providing for the authorisation of persons as analysts for the purposes of section 154;
- (f) the analysis of test results;
- (g) the reporting of the results of breath tests or blood or urine analysis;
- (h) the collection, keeping and disposal of samples;
- (i) the approval of equipment or any apparatus for the purposes of testing or analysis;
- (j) the devices used in conducting breath tests and other tests, including the calibration, inspection and testing of those devices.

156. Independent investigator not to use force against persons

A provision in this Division that authorises an independent investigator to use reasonable force does not authorise the independent investigator to use force against another person.

Division 3 — Search warrants

157. Search warrant

- (1) An independent investigator may apply to a justice for the issue of a search warrant in relation to premises used only for residential purposes if the independent investigator believes on reasonable grounds that there is any thing on the premises that is relevant to his or her investigation.
- (2) An application for a search warrant must —
 - (a) be in writing; and
 - (b) set out the grounds for seeking the warrant; and
 - (c) state the premises to be searched; and
 - (d) state a description of the thing for which the search is to be made.
- (3) A justice to whom an application is made under this section is to refuse it if —
 - (a) the application does not comply with the requirements of this Act; or
 - (b) when required to do so by the justice, the independent investigator does not give to the justice more information about the application.
- (4) The information in an application or given to a justice under this section must be verified before the justice on oath or affirmation or by affidavit, and the justice may for that purpose administer an oath or affirmation or take an affidavit.

158. Issue of search warrant

- (1) If a justice is satisfied that there is any thing on the premises that might be relevant to the investigation, the justice may issue a search warrant authorising the independent investigator named in the warrant —
 - (a) to enter the premises named or described in the warrant; and

- (b) to search for and seize any thing named or described in the warrant.
- (2) In addition to any other requirement, a search warrant issued under this section must state —
 - (a) the premises to be searched; and
 - (b) a description of the thing for which the search is to be made; and
 - (c) any conditions to which the warrant is subject; and
 - (d) whether entry is authorised to be made at any time or during stated hours; and
 - (e) a day, not later than 7 days after the issue of the warrant, on which the warrant ceases to have effect.
- (3) A justice who issues a warrant is to cause a record to be made of particulars of the grounds that the justice has relied on to justify the issue of the warrant.

159. Execution of warrant

- (1) If asked to do so by an occupier, or a person in charge, of premises, the person executing a warrant at those premises is to produce it for inspection.
- (2) A warrant ceases to have effect —
 - (a) on the day stated in the warrant as the day on which it ceases to have effect; or
 - (b) if it is withdrawn by the justice who issued it; or
 - (c) when it is executed,

whichever occurs first.

160. Seizure of things not mentioned in the warrant

A search warrant authorises the independent investigator executing the warrant, in addition to the seizure of any thing of the kind described in the warrant, to seize any thing which is not of the kind described in the warrant if the independent

investigator believes, on reasonable grounds, that the thing is of a kind which could have been included in a warrant issued under this Division.

Division 4 — Seized things and samples taken

161. Provisions relating to seizure

- (1) A seizure order issued by an independent investigator under section 144(2)(h) —
 - (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 a 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 independent investigator.
Penalty: a fine of \$28 000.
- (3) If a thing has been seized, the thing must be held pending completion of the independent investigator's report under section 133 in relation to the investigation in respect of which the thing was seized unless the independent investigator, on application or of his or her own volition, authorises 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 independent investigator considers appropriate.
- (4) If —
 - (a) a report is given under section 133 in relation to the investigation in respect of which the thing was seized; or

- (b) a report is not given under that section within the prescribed period after the seizure of the thing or the issuing of the seizure order,

the person from whom the thing was seized, or a person with legal title to it, is entitled to recover the thing from the independent investigator (if necessary, by action in a court of competent jurisdiction) unless the thing has been transferred to a rail safety officer under section 169(1).

- (5) In subsection (4) —

prescribed period means 6 months, or such longer period not exceeding 12 months as the independent investigator allows.

162. Securing seized things

On seizing a thing under this Part, an independent investigator may —

- (a) move the thing from the place where it was seized (the ***place of seizure***); or
- (b) leave the thing at the place of seizure but take steps to restrict access to it; or
- (c) in relation to equipment that is seized, make the equipment inoperable.

163. Powers to support seizure

- (1) In this section —

in control, in relation to a thing, means having, or reasonably appearing to an independent investigator as having, authority to exercise control over the thing.

- (2) To enable a thing to be seized under this Part, an independent investigator may direct the person in control of it —

- (a) to take it to a specified place within a specified time; and
- (b) if necessary, to remain in control of it at the specified place for a period specified in the direction.

- (3) A further direction may be made under this section about the thing if it is necessary and reasonable to make the further direction.
- (4) A person given a direction under subsection (2) or (3) must not without reasonable excuse refuse or fail to comply with that direction.
Penalty: a fine of \$28 000.
- (5) Without limiting what may be a reasonable excuse under subsection (4), it is a reasonable excuse for a person in control of a thing not to comply with a direction under subsection (2) or (3) if in all the circumstances, the direction was unreasonable.
- (6) The cost of complying with subsection (2) or (3) must be borne by the person.

164. Independent investigator may direct a thing's return

- (1) If an independent investigator has directed a person to take a thing to a specified place within a specified time under section 163(2), the independent investigator may direct the person to return the thing to the place from which it was taken.
- (2) A person given a direction under subsection (1) must not without reasonable excuse refuse or fail to comply with that direction.
Penalty: a fine of \$11 000.
- (3) The cost of complying with a direction under subsection (1) must be borne by the person.
- (4) If a person who is not the owner of the thing fails to comply with a direction under subsection (1), the independent investigator may release the thing to its owner or any other person entitled to its possession.

165. Manner in which independent investigator may give directions under this Division

- (1) Unless otherwise provided, an independent investigator may give a direction under this Division orally or in writing.
- (2) If giving a direction orally, the independent investigator giving the direction —
 - (a) must state whether it is to be complied with immediately or within a specified period; and
 - (b) must warn the person to whom the direction is given that it is an offence under this Act to refuse or fail to comply with a direction.
- (3) If giving a direction in writing, the independent investigator must ensure that the direction —
 - (a) states the period within which it is to be complied with; and
 - (b) states that it is an offence under this Act to refuse or fail to comply with a direction; and
 - (c) sets out the penalty for the offence.
- (4) A written direction may be given to, or sent by post to, the person to whom it is directed.

166. Receipt for seized things or sample

- (1) If an independent investigator seizes a thing, or takes a sample of, or from, a thing at railway premises or residential premises under this Part, the independent investigator must give a receipt to the person in charge of the thing or the railway premises or residential premises from which it was taken.
- (2) A receipt must —
 - (a) identify the thing seized or sample taken; and
 - (b) state the name of the independent investigator who seized the thing or took the sample and the reason why the thing was seized or the sample was taken.

- (3) If for any reason it is not practicable for the independent investigator to comply with subsection (1), the independent investigator may —
- (a) leave the receipt at the railway premises or residential premises in a conspicuous position and in a reasonably secure way; or
 - (b) send the receipt, by post, to the occupier of the railway premises or residential premises from where the thing was seized or the sample was taken.

167. Copies of certain seized things to be given

- (1) If, under this Part, an independent investigator seizes —
- (a) a document; or
 - (b) a thing that can be readily copied; or
 - (c) a storage device containing information that can be readily copied,

the independent investigator must give a copy of the document, thing or information to the owner or custodian of the document, thing or device as soon as practicable after the seizure.

- (2) Subsection (1) does not apply if the independent investigator —
- (a) has reason to believe that the owner or custodian of the document, thing or device seized has a copy of the document, thing or information; or
 - (b) is unable to discover the identity of the owner or custodian of any document, thing or device seized.

168. Transfer of seized thing to independent investigator

If —

- (a) a thing has been seized by a rail safety officer under the authority of a warrant issued under section 94; and

- (b) an independent investigator requests the rail safety officer named in the warrant to transfer the thing to the investigator,

the rail safety officer must —

- (c) transfer the thing to the investigator and, for the purposes of this Act, the thing is to be taken to have been seized under this Part; and
- (d) advise the owner of the thing that it has been transferred to the investigator.

169. Transfer of seized thing to a rail safety officer

- (1) If —

- (a) a thing has been seized by an independent investigator under this Part; and
- (b) the thing could have been seized under the authority of a warrant issued under section 94; and
- (c) the rail safety officer named in the warrant requests the independent investigator to transfer the thing to the officer,

the independent investigator must —

- (d) transfer the thing to the rail safety officer when his or her investigation is complete or the investigator is satisfied that the transfer would not prejudice his or her investigation; and
- (e) advise the owner of the thing that it has been transferred to the rail safety officer.

- (2) If a thing is transferred to a rail safety officer under subsection (1), for the purposes of this Act, the thing is to be taken to have been seized under the authority of the warrant.

Division 5 — Provisions relating to investigations

170. Offences in relation to investigation

- (1) Where under section 143 a person is required to give any information, answer any question, or produce any document or thing and that person, without reasonable excuse (proof of which lies on the person) —
- (a) fails to give that information or answer that question; or
 - (b) gives any information or answer that is false in any particular; or
 - (c) omits anything without which the statement is, to the person's knowledge, misleading in a material particular; or
 - (d) fails to produce that document or thing at or within the time specified in the requirement,

the person commits an offence.

Penalty: a fine of \$28 000.

- (2) It is a defence in any proceeding for an offence under subsection (1)(a) or (d) for the accused to show —
- (a) that the investigator did not, when making the requirement, inform the accused that he or she was required under this Act to give the information or answer the question, or produce the document or thing, as the case may be; or
 - (b) that the time specified in a requirement to produce a document or thing did not afford the accused sufficient notice to enable him or her to comply with the requirement; or
 - (c) that, in any case, the investigator did not, before making the requirement, have reasonable grounds to believe that compliance with the requirement would materially assist in the investigation being carried out.

171. Offence to hinder persons appointed under this Part

A person must not —

- (a) wilfully hinder, obstruct or interfere with an independent investigator or an authorised officer in the exercise of a power conferred under this Part; or
- (b) use abusive, threatening or insulting language to an independent investigator or an authorised officer; or
- (c) without reasonable excuse, refuse or fail to comply with a requirement or direction of an independent investigator or an authorised officer under this Part; or
- (d) falsely represent, by words or conduct, that he or she is an independent investigator or an authorised officer.

Penalty: a fine of \$28 000.

172. Incriminating information, questions or documents

An individual is not excused from complying with a requirement under section 143 on the ground that the answer to a question or the production of a document or other thing might incriminate the individual or render the individual liable to a penalty, but neither —

- (a) an answer given by the individual that was given to comply with the requirement; nor
- (b) the fact that a document or other thing produced by the individual to comply with the requirement was produced,

is admissible in evidence in any civil or criminal proceedings against the individual other than proceedings for an offence against section 170(1)(b).

173. Legal professional privilege

Nothing in this Part prevents a person from refusing to answer a question, provide information or produce a document or other thing because the answer or information would relate to, or the

document or thing contains, information in respect of which the person claims legal professional privilege.

174. Certification of independent investigator's or authorised officer's involvement in investigation

In all courts, a certificate purporting to be issued by the person who appointed an independent investigator or authorised officer stating that a person is or was an independent investigator or an authorised officer in relation to an investigation under this Part is evidence of that matter.

175. Independent investigator and authorised officer not compellable as witnesses

- (1) A person who is or has been an independent investigator or authorised officer is not obliged to comply with a summons or similar direction of a court to attend and answer questions relating to a rail safety matter or to produce any document or other thing related to an investigation.
- (2) An independent investigator or authorised officer is not compellable to give an expert opinion in any civil or criminal proceedings in relation to a matter related to rail safety.
- (3) This section does not apply to a coronial inquest.

Division 6 — Protection of restricted information

176. Limitations on disclosure etc. of restricted information

- (1) A person who is or has been an independent investigator or authorised officer must not —
 - (a) make a record of restricted information; or
 - (b) disclose restricted information to a person or a court.

Penalty: a fine of \$55 000.

- (2) A person who has, or had, access to restricted information under section 177 must not —
- (a) make a record of the information; or
 - (b) disclose the information to any person or to a court.

Penalty: a fine of \$55 000.

- (3) Subsections (1) and (2) do not apply to —
- (a) anything done by a person in performing functions under this Act or in connection with this Act; or
 - (b) disclosure to a court in criminal proceedings for an offence against this Act; or
 - (c) disclosure to a coroner for the purposes of a coronial inquest.
- (4) If a person is prohibited by this section from disclosing restricted information, then —
- (a) the person cannot be required by a court to disclose the information; and
 - (b) any information disclosed by the person in contravention of this section is not admissible in any civil or criminal proceedings, other than proceedings against the person under this section.

177. Disclosure of restricted information in the interests of rail safety

- (1) Subject to subsection (2), the independent investigator may direct that restricted information be disclosed to any person if the independent investigator considers that the disclosure is necessary or desirable —
- (a) for the purposes of rail safety; or
 - (b) for the purpose of an investigation under another Act or an Act of the Commonwealth, another State or a Territory.

- (2) The independent investigator may only disclose restricted information that is, or that contains, personal information in the circumstances prescribed by the regulations.

Part 7 — Review of decisions

178. Terms used

In this Part —

eligible person in relation to the reviewable decision has the meaning given in section 180(b);

reviewable decisions has the meaning given in section 180(a).

179. Application of *Parliamentary Commissioner Act 1971* to Rail Safety Regulator and rail safety officers

The *Parliamentary Commissioner Act 1971* applies to the Rail Safety Regulator as if —

- (a) the Rail Safety Regulator were an authority within the meaning of that Act; and
- (b) rail safety officers exercising functions under this Act were employees of the Rail Safety Regulator.

180. Reviewable decisions

The Table sets out —

- (a) decisions made under this Act that are reviewable under this Part (*reviewable decisions*); and
- (b) who is eligible to apply for review of a reviewable decision (the *eligible person in relation to the reviewable decision*).

Table

Item	Provision under which reviewable decision is made	Eligible person in relation to the reviewable decision
1.	s. 37(4)	A rail transport operator who has applied for accreditation.

Item	Provision under which reviewable decision is made	Eligible person in relation to the reviewable decision
2.	s. 38(1)	A rail transport operator whose application for accreditation is refused or is subject to conditions or restrictions.
3.	s. 38(4)	A rail transport operator who has applied for accreditation.
4.	s. 46	A rail transport operator whose accreditation is revoked or suspended.
5.	s. 47(1)	A rail transport operator whose accreditation is suspended.
6.	s. 47(2)(b)	A rail transport operator whose accreditation is suspended.
7.	s. 51(1)	A rail transport operator whose application for variation of accreditation is refused.
8.	s. 51(1)	A rail transport operator whose accreditation is varied subject to a condition or restriction.
9.	s. 51(4)	A rail transport operator who has applied for variation of accreditation.

Item	Provision under which reviewable decision is made	Eligible person in relation to the reviewable decision
10.	s. 53(1)	A rail transport operator given a direction to amend a safety management system.
11.	s. 54(3)	A rail transport operator whose application for variation of a condition or restriction is refused.
12.	s. 55	A rail transport operator whose conditions or restrictions of accreditation are changed.
13.	s. 103(2)(c)	A person who is the owner as defined in section 103(1) of the sample or thing.
14.	s. 111(1)	A person on whom an improvement notice is served.
15.	s. 113(1)(b)	A person on whom a notice of amendment of an improvement notice is served.
16.	s. 116(2)	A person on whom a prohibition notice is served.
17.	s. 119(1)(b)	A person on whom a notice of amendment of a prohibition notice is served.

Item	Provision under which reviewable decision is made	Eligible person in relation to the reviewable decision
18.	s. 135(1)	A rail transport operator who has been given a written notice under the provision.

181. Review by the Rail Safety Regulator

- (1) An eligible person —
 - (a) in relation to a reviewable decision made by the Rail Safety Regulator may, within 28 days after the decision was made, apply to the Rail Safety Regulator for a review of the decision; or
 - (b) in relation to a reviewable decision, other than a decision made by the Rail Safety Regulator, may apply to the Rail Safety Regulator for review of the decision within —
 - (i) 28 days after the day on which the decision first came to the eligible person's notice; or
 - (ii) such longer period as the Rail Safety Regulator allows.
- (2) The application must be in the form approved in writing by the Rail Safety Regulator.
- (3) If an application is made to the Rail Safety Regulator in accordance with this section, the Rail Safety Regulator must make a decision —
 - (a) to affirm or vary the reviewable decision; or
 - (b) to set aside the reviewable decision and substitute another decision that the Rail Safety Regulator considers appropriate.

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- (4) The Rail Safety Regulator must give a written notice to the applicant setting out —
- (a) the Rail Safety Regulator’s decision under subsection (3) and the reasons for the decision; and
 - (b) the findings on material questions of fact that led to the decision, referring to the evidence or other material on which those findings were based,
- and must do so within 14 days after the application is made or, if the reviewable decision was made under section 111, 116 or 119, within 7 days after the application is made.
- (5) If the Rail Safety Regulator has not notified an applicant of a decision in accordance with subsection (4), the Rail Safety Regulator is taken to have made a decision to affirm the reviewable decision.
- (6) An application under this section does not affect the operation of the reviewable decision or prevent the taking of any action to implement it unless the Rail Safety Regulator, on the Rail Safety Regulator’s own initiative or on the application of the applicant for review, stays the operation of the decision, not being a prohibition notice, pending the determination of the review.
- (7) The Rail Safety Regulator must make a decision on an application for a stay within 24 hours after the making of the application.
- (8) If the Rail Safety Regulator has not made a decision in accordance with subsection (7), the Rail Safety Regulator is taken to have made a decision to grant a stay.
- (9) The Rail Safety Regulator may attach any conditions to a stay of the operation of a reviewable decision that the Rail Safety Regulator considers appropriate.

182. Review by the State Administrative Tribunal

- (1) A person may apply to the State Administrative Tribunal for a review of —
- (a) a reviewable decision made by the Rail Safety Regulator; or
 - (b) a decision made, or taken to have been made, by the Rail Safety Regulator under section 181 in respect of a reviewable decision, including a decision concerning a stay of the operation of the reviewable decision,
- if the person is an eligible person in relation to the reviewable decision.
- (2) The application must be made —
- (a) if the decision is to forfeit a thing, including a document, seized under Part 5, within 28 days after the day on which the decision first came to the applicant's notice; or
 - (b) in the case of any other decision, within 14 days after the day on which the decision first came to the applicant's notice; or
 - (c) if the Rail Safety Regulator is required by the *State Administrative Tribunal Act 2004* section 21 to give the applicant a statement of reasons, within 14 days after the day on which the applicant is given the statement,
- whichever period ends last.

Part 8 — General liability and evidentiary provisions

Division 1 — General

183. Period within which proceedings for offences may be commenced

- (1) This section applies to an offence against a rail safety law, other than —
 - (a) an offence prescribed for the purposes of this section; and
 - (b) an offence in respect of which proceedings may only be commenced within a period of less than 2 years after its alleged commission.
- (2) Despite anything to the contrary in any other Act, proceedings for an offence against a rail safety law to which this section applies may be commenced within —
 - (a) the period of 2 years after the commission of the alleged offence; or
 - (b) a further period of one year commencing on the day on which the Rail Safety Regulator, a rail safety officer or a police officer first obtained evidence of the commission of the alleged offence considered reasonably sufficient by the Rail Safety Regulator or officer to warrant commencing proceedings.
- (3) For the purposes of subsection (2), a certificate purporting to have been issued by the Rail Safety Regulator, a rail safety officer or a police officer as to the date when the Rail Safety Regulator or officer first obtained evidence considered reasonably sufficient by the Rail Safety Regulator or officer to warrant commencing proceedings is admissible in any proceedings and is evidence of the matters stated.

184. Authority to take proceedings

- (1) Legal proceedings for an offence against, or to recover any charge, fee or money due under this Act may be taken only by the Rail Safety Regulator or by a person authorised by the Rail Safety Regulator for the purpose, either generally or in any particular case.
- (2) In any proceedings referred to in this section, the production of an authority purporting to be signed by the Rail Safety Regulator is to be evidence of the authority without proof of the signature of the Rail Safety Regulator.
- (3) The Rail Safety Regulator may, for the purposes of subsection (1), authorise any person who is a member of a specified class of persons to take the actions referred to in that subsection.

185. Vicarious responsibility

- (1) In this section —
director of a body corporate includes a constituent member of a body corporate incorporated for a public purpose by a law of any jurisdiction;
state of mind of a person includes —
 - (a) the knowledge, intention, opinion, belief or purpose of the person; and
 - (b) the person's reasons for the intention, opinion, belief or purpose.
- (2) If, in any proceedings for an offence against a rail safety law, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show —
 - (a) that the conduct was engaged in by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; and
 - (b) that the director, employee or agent had the relevant state of mind.

- (3) For the purposes of a prosecution for an offence against a rail safety law, conduct engaged in on behalf of a body corporate by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority is taken to have been engaged in also by the body corporate unless the body corporate establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.
- (4) If, in proceedings for an offence against a rail safety law, it is necessary to establish the state of mind of a person other than the body corporate (the *employer*) in relation to particular conduct, it is sufficient to show —
 - (a) that the conduct was engaged in by an employee or agent of the employer within the scope of his or her actual or apparent authority; and
 - (b) that the employee or agent had the relevant state of mind.
- (5) For the purposes of a prosecution for an offence against a rail safety law, conduct engaged in on behalf of a person other than a body corporate (the *employer*) by an employee or agent of the employer within the scope of his or her actual or apparent authority is taken to have been engaged in also by the employer, unless the employer establishes that the employer took reasonable precautions and exercised due diligence to avoid the conduct.

186. Records and evidence from records

- (1) The Rail Safety Regulator must keep records of the grant, refusal, variation, suspension, surrender and revocation of accreditations, and of any conditions or restrictions of accreditations, and of improvement notices and prohibition notices, under this Act.
- (2) A certificate purporting to be signed by the Rail Safety Regulator and certifying that —
 - (a) on a date specified in the certificate; or

- (b) during any period so specified,
the particulars set out in the certificate as to any matter required to be recorded under this section did or did not appear on or from the records is, for the purposes of any legal proceedings, evidence of what it certifies.
- (3) A certificate is admissible in any proceedings —
 - (a) without proof of the signature of the Rail Safety Regulator; and
 - (b) without production of any record or document on which the certificate is founded.

187. Certificate evidence

A statement in a certificate purporting to be issued by the Rail Safety Regulator, a corresponding Rail Safety Regulator, a rail safety officer or a police officer as to any matter that appears in, or can be calculated from, records kept or accessed by the Rail Safety Regulator is admissible in any proceedings and is evidence of the matter.

188. Proof of appointments and signatures unnecessary

- (1) In this section —
office holder means —
 - (a) the Rail Safety Regulator; or
 - (b) a corresponding Rail Safety Regulator; or
 - (c) the Commissioner of Police; or
 - (d) the head of the police force or police service of any other jurisdiction; or
 - (e) a rail safety officer; or
 - (f) a rail safety officer of another jurisdiction; or
 - (g) a police officer; or
 - (h) a police officer of another jurisdiction.

- (2) For the purposes of this Act, it is not necessary to prove the appointment of an office holder.
- (3) For the purposes of this Act, a signature purporting to be the signature of an office holder is evidence of the signature it purports to be.

189. Offences relating to bodies corporate, partnerships, associations and employees

- (1) In this section —
 - officer*, in relation to a body corporate, has the meaning given in the *Corporations Act 2001* (Commonwealth) but does not include an employee of the body corporate unless he or she was concerned in the management of the body corporate;
 - volunteer* means a person who is acting on a voluntary basis (irrespective of whether the person receives out of pocket expenses).
- (2) 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.
- (3) If a person who is a partner in a partnership commits an offence against a rail safety law in the course of the activities of the partnership and it is proved that —
 - (a) the offence was committed with the consent or connivance of another partner in the partnership or a person concerned in the management of the partnership;or

- (b) another partner in the partnership 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 partner's functions and to all the circumstances; or
- (c) a person concerned in the management of the partnership 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 person's functions and to all the circumstances,

the other partner or the person concerned in the management of the partnership, as the case may be, commits the same offence.

- (4) If a person who is concerned in the management of an unincorporated association commits an offence against a rail safety law in the course of the activities of the unincorporated association and it is proved that —
 - (a) the offence was committed with the consent or connivance of another person concerned in the management of the unincorporated association; or
 - (b) another person concerned in the management of the unincorporated association 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 person's functions and to all the circumstances,

the other person concerned in the management of the unincorporated association commits the same offence.

- (5) Subsections (2), (3) and (4) do not affect the liability of the person who actually committed the offence.
- (6) If an employee commits an offence against a rail safety law, the employer is taken to have committed the offence and is punishable accordingly.
- (7) A person may be proceeded against and found guilty of an offence arising under this section whether or not the body

corporate or other person who actually committed the offence has been proceeded against or been found guilty of the offence.

- (8) It is a defence to a charge for an offence arising under subsection (6) if the defendant establishes that —
- (a) the defendant had no knowledge of the actual offence; or
 - (b) the defendant took reasonable precautions and exercised due diligence to prevent the commission of the actual offence.
- (9) A person who is —
- (a) an officer of a body corporate (including a body corporate representing the Crown); or
 - (b) a partner or a person concerned in the management of a partnership; or
 - (c) a member of or other person concerned in the management of an unincorporated association,

and who is a volunteer is not liable to be prosecuted under this section for anything done or not done by him or her as a volunteer.

Division 2 — Discrimination against employees

190. Dismissal or other victimisation of employee

- (1) In this section —
- employee** includes an individual who works under a contract for services;
- public agency** includes an Australian Rail Safety Regulator, a rail safety officer, a police officer and a police officer of another jurisdiction.
- (2) This section applies to —
- (a) an employer who dismisses an employee, injures an employee in the employment of the employer or alters

- the position of an employee to the employee's detriment;
and
- (b) an employer who threatens to do any of those things to an employee; and
 - (c) an employer or prospective employer who refuses or fails to offer employment to a prospective employee, or treats a prospective employee less favourably than another prospective employee would be treated in offering terms of employment.
- (3) The employer or prospective employer commits a crime if the employer or prospective employer engaged in that conduct because the employee or prospective employee, as the case may be —
- (a) has assisted or has given any information to a public agency in respect of a breach or alleged breach of an Australian rail safety law; or
 - (b) has made a complaint about a breach or alleged breach of an Australian rail safety law to the employer, a fellow employee, a union or a public agency; or
 - (c) assists or has assisted, or gives or has given any information to, a public agency in respect of a breach or alleged breach of an Australian rail safety law; or
 - (d) has made a complaint about a breach or alleged breach of an Australian rail safety law to a former employer, a former fellow employee, a union or a public agency.
- Penalty:
- (a) for an individual, a fine of \$5 000;
 - (b) for a body corporate, a fine of \$50 000.
- (4) An employer or prospective employer may be guilty of an offence against subsection (3) only if the reason mentioned in subsection (3)(a), (b), (c) or (d) is the dominant reason why the employer or prospective employer engaged in the conduct.

191. Defendant bears onus of proof

In proceedings for an offence against section 190, if all the facts constituting the offence other than the reason for the defendant's conduct are proved, the defendant bears the onus of proving that the reason alleged in the charge was not the dominant reason why the defendant engaged in the conduct.

192. Order for damages or reinstatement

- (1) In this section —
employee includes an individual who works under a contract for services.
- (2) If an employer or prospective employer is convicted or found guilty of an offence against section 190, the court may, in addition to imposing a penalty, make either or both of the following orders —
 - (a) an order that the offender pay, within a specified period, such damages to the employee or prospective employee against whom the offender discriminated as the court considers appropriate to compensate him or her;
 - (b) an order that —
 - (i) the employee be reinstated or re-employed in his or her former position or, if that position is not available, in a similar position; or
 - (ii) the prospective employee be employed in the position for which he or she had applied or a similar position.

Division 3 — False or misleading information

193. False or misleading information provided to Rail Safety Regulator or officials

- (1) In this section —
official means a rail safety officer or a person assisting a rail safety officer.

- (2) A person commits an offence if —
- (a) the person makes a statement to the Rail Safety Regulator or to an official who is exercising a power under a rail safety law; and
 - (b) the person knows that the statement is false or misleading in a material particular.
- (3) A person commits an offence if —
- (a) the person makes a statement to the Rail Safety Regulator or to an official who is exercising a power under a rail safety law; and
 - (b) the statement is false or misleading in a material particular; and
 - (c) the person is reckless as to whether the statement is false or misleading in a material particular.
- (4) A person commits an offence if —
- (a) the person gives a document to the Rail Safety Regulator or to an official who is exercising a power under a rail safety law; and
 - (b) the document contains a statement that is false or misleading in a material particular; and
 - (c) the person is reckless as to whether the document contains a statement that is false or misleading in a material particular.
- (5) Subsection (4) does not apply if, at the time the person gave the document to the Rail Safety Regulator or to an official, the person informed the Rail Safety Regulator or official that the document contained a statement that was false or misleading in a material particular and specified in what respect it was false or misleading.

- (6) The penalty for an offence under this section committed in relation to the Rail Safety Regulator or official exercising a power under a rail safety law is —
- (a) if there is one offence under the provision of the rail safety law under which the power is exercised, the penalty for that offence; or
 - (b) if there is more than one offence under that provision, the penalties for those offences if the penalties are the same, or the lower or lowest of the penalties if they are different; or
 - (c) if there is no offence under that provision, the following penalty —

Penalty:

- (a) for a first offence, a fine of \$28 000;
- (b) for a second or subsequent offence, a fine of \$41 000.

Division 4 — Other offences

194. Obstructing or hindering rail safety officers

- (1) A person must not —
- (a) intentionally hinder or obstruct the Rail Safety Regulator, a rail safety officer or a person assisting the Rail Safety Regulator or a rail safety officer in the exercise of his or her functions under this Act, or induce or attempt to induce any other person to do so; or
 - (b) intentionally conceal from the Rail Safety Regulator, a rail safety officer or a person assisting the Rail Safety Regulator or a rail safety officer, the location or existence of, or fail to comply with a request to produce, a record, document or any other thing.

Penalty: a fine of \$28 000.

- (2) A person must not assault, directly or indirectly intimidate or threaten, or attempt to intimidate or threaten, the Rail Safety

Regulator, a rail safety officer or a person assisting the Rail Safety Regulator or a rail safety officer.

Penalty: a fine of \$28 000.

195. Offence to impersonate rail safety officer

A person who is not a rail safety officer must not, in any way, hold himself or herself out to be a rail safety officer.

Penalty: a fine of \$28 000.

196. Not to interfere with rail infrastructure etc.

(1) In this section —

authorised person means the rail transport operator, a rail safety officer or a police officer.

(2) A person must not, without either the permission of an authorised person or reasonable excuse —

- (a) move or attempt to move; or
- (b) interfere or attempt to interfere with; or
- (c) disable or attempt to disable; or
- (d) operate or attempt to operate,

any equipment, rail infrastructure or rolling stock owned or operated by a rail transport operator.

Penalty: a fine of \$28 000.

197. Applying brake or emergency device

A person must not, without reasonable excuse —

- (a) apply any brake or make use of any emergency device fitted to a train or tram; or
- (b) make use of any emergency device on railway premises.

Penalty: a fine of \$28 000.

198. Stopping a train or tram

A person must not, without reasonable excuse, cause or attempt to cause a train or tram in motion to be stopped.

Penalty: a fine of \$28 000.

Division 5 — Enforceable voluntary undertakings

199. Rail Safety Regulator may accept undertakings

- (1) The Rail Safety Regulator may accept, by written notice, a written undertaking given by a person in connection with a matter relating to a contravention or alleged contravention by the person of this Act.
- (2) The person may withdraw or vary the undertaking at any time but only with the Rail Safety Regulator's written consent.
- (3) Neither the Rail Safety Regulator nor a rail safety officer may bring proceedings for an offence against this Act constituted by the contravention or alleged contravention to which the undertaking relates.

200. Enforcement of undertakings

- (1) If the Rail Safety Regulator considers that a person has contravened an undertaking accepted by the Rail Safety Regulator, the Rail Safety Regulator may apply to the Magistrates Court for enforcement of the undertaking.
- (2) If the Magistrates Court is satisfied that the person has contravened the undertaking, it may make —
 - (a) an order that the person must comply with the undertaking or take specified action to comply with the undertaking; or
 - (b) any other order that it considers appropriate.

Division 6 — Court based sanctions

201. Daily penalty for continuing offences

- (1) If an offence is committed by a person by reason of a contravention of a provision of this Act, but not the regulations, 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 conviction.

202. Commercial benefits order

- (1) A court that finds a person guilty of an offence against a rail safety law may, on the application of the prosecutor or the Rail Safety Regulator, make an order under this section.
- (2) The court may make a commercial benefits order requiring the person to pay, as a fine, an amount not exceeding 3 times the amount estimated by the court to be the gross commercial benefit that —
 - (a) was received or receivable, by the person or by an associate of the person, from the commission of the offence; and
 - (b) in the case of a journey that was interrupted or not commenced because of action taken by a rail safety officer in connection with the commission of the offence, would have been received or receivable, by the person or by an associate of the person, from the commission of the offence had the journey been completed.

- (3) In estimating the gross commercial benefit that was or would have been received or receivable from the commission of the offence, the court may take into account —
- (a) benefits of any kind, whether monetary or otherwise; and
 - (b) monetary savings or a reduction in any operating or capital expenditure of any kind achieved because of the commission of the offence; and
 - (c) any other matters that it considers relevant, including, for example —
 - (i) the value per tonne or per kilometre of the carriage of the goods involved in the offence as freight; and
 - (ii) the distance over which any such goods were or were to be carried.
- (4) In estimating the gross commercial benefit that was or would have been received or receivable from the commission of the offence, the court is required to disregard any costs, expenses or liabilities incurred by the person or by an associate of the person.
- (5) Nothing in this section prevents the court from ordering payment of an amount that is —
- (a) less than 3 times the estimated gross commercial benefit; or
 - (b) less than the estimated gross commercial benefit.
- (6) For the purposes of this section, a person is an associate of another if —
- (a) one is a spouse, de facto partner, parent, brother, sister or child of the other; or
 - (b) they are members of the same household; or
 - (c) they are partners; or

- (d) they are both trustees or beneficiaries of the same trust, or one is a trustee and the other is a beneficiary of the same trust; or
 - (e) one is a body corporate and the other is a director or member of the governing body of the body corporate; or
 - (f) one is a body corporate, other than a public company whose shares are listed on a stock exchange, and the other is a shareholder in the body corporate; or
 - (g) one is a related body corporate, as defined in the *Corporations Act 2001* (Commonwealth) section 9, of the other; or
 - (h) a chain of relationships can be traced between them under any one or more of the above paragraphs.
- (7) For the purposes of subsection (6), a beneficiary of a trust includes an object of a trust.

203. Exclusion orders

- (1) A court that finds a person guilty of an offence against a rail safety law may, on the application of the prosecutor or the Rail Safety Regulator, if the court considers the person to be a systematic or persistent offender against the Australian rail safety laws, make an order under this section.
- (2) For the purpose of restricting opportunities for the person to commit or be involved in the commission of further offences against Australian rail safety laws, the court may, if it considers it appropriate to do so, make an exclusion order prohibiting the person, for a specified period, from —
 - (a) managing rail infrastructure, or operating rolling stock, or managing or operating a particular type of rail infrastructure or rolling stock; or
 - (b) being a director, secretary or officer concerned in the management of a body corporate involved in managing rail infrastructure that is in this jurisdiction or operating rolling stock in this jurisdiction; or

- (c) being involved in managing rail infrastructure that is in this jurisdiction or operating rolling stock in this jurisdiction except by driving a train or rolling stock.
- (3) A court may only make an order under this section if it is satisfied that the person should not continue the things the subject of the proposed order, having regard to —
 - (a) the offences against the Australian rail safety laws of which the person has previously been found guilty; and
 - (b) the offences against the Australian rail safety laws of which the person has been proceeded against by way of unwithdrawn infringement notices; and
 - (c) any other offences or other matters that the court considers to be relevant to the conduct of the person in connection with railway operations.
- (4) A court that has power to make an exclusion order may revoke or amend an exclusion order on the application of —
 - (a) the Rail Safety Regulator; or
 - (b) the person in respect of whom the order was made, but in that case only if the court is satisfied that there has been a change of circumstances warranting revocation or amendment.

204. Contravention of exclusion order

A person who is subject to an exclusion order must not engage in conduct that results in a contravention of the order.

Penalty:

- (a) for an individual, a fine of \$82 000;
- (b) for a body corporate, a fine of \$820 000.

Division 7 — Undertakings

205. Court may allow offender to make election

(1) If —

- (a) a person (the *offender*) is found guilty, whether after a plea of guilty or otherwise, of an offence against a rail safety law; and
- (b) the court has fined the offender; and
- (c) the court considers the person to be a systematic or persistent offender against the Australian rail safety laws; and
- (d) the court is satisfied that an undertaking by the offender is capable of improving the offender's ability or willingness to comply with the rail safety laws, having regard to —
 - (i) the offences against Australian rail safety laws of which the offender has been previously found guilty; and
 - (ii) the offences against Australian rail safety laws for which the offender has been proceeded against by way of unwithdrawn infringement notices; and
 - (iii) any other offences or other matters that the court considers to be relevant to the conduct of the offender in connection with railway operations,

the court may, subject to subsection (2), make an order allowing the offender to elect either —

- (e) to pay the fine; or
- (f) as an alternative, to enter into an undertaking with the Rail Safety Regulator under section 209 not later than a day specified by the court.

- (2) A court is not to make an order under this section unless the court is satisfied that —
- (a) the offender wishes an order to be made and the Rail Safety Regulator does not oppose that being done; and
 - (b) the offender and the Rail Safety Regulator are likely to reach agreement on the provisions of the proposed undertaking within the time that the court proposes to specify under subsection (1)(f).
- (3) After the court has fined the offender, the court may adjourn the proceedings to allow —
- (a) the offender time to consider whether the offender wishes an order to be made; and
 - (b) the Rail Safety Regulator time to consider whether to oppose that being done,
- as mentioned in subsection (2)(a).
- (4) Nothing in this Division limits the powers of a court under the *Sentencing Act 1995*.

206. Making of election

- (1) An election is made, pursuant to an order under section 205(1), by the offender —
- (a) lodging an election in writing with the court in which the order was made; and
 - (b) serving a copy of the election on the Rail Safety Regulator,
- not later than 28 days after the day on which the order was made.
- (2) If —
- (a) an order is made under section 205(1); but

- (b) the offender fails to make an election in accordance with subsection (1),

the offender is taken, at the expiry of the period mentioned in subsection (1), to have elected to pay the fine.

207. Failure to enter into undertaking

An election under section 206 to enter into an undertaking lapses if the undertaking is for any reason not entered into before the time allowed under section 205(1)(f).

208. Time for payment of fine

- (1) The liability of the offender to pay a fine in connection with which an order is made under section 205(1) is suspended by the making of the order.
- (2) If the offender elects to pay the fine, for the purposes of the *Fines, Penalties and Infringement Notices Enforcement Act 1994*, the fine is taken to have been imposed on the day on which the election is made.
- (3) If the offender is taken by section 206(2) to have elected to pay the fine, for the purposes of the Act referred to in subsection (2) the fine is taken to have been imposed at the time mentioned in section 206(2).
- (4) If —
- (a) the offender elects to enter into an undertaking; but
 - (b) the election lapses under section 207,

for the purposes of the Act referred to in subsection (2) the fine is taken to have been imposed on the day specified under section 205(1)(f).

[Section 208 amended by No. 48 of 2012 s. 68.]

209. Nature and terms of undertaking

- (1) An undertaking for the purposes of this Division is a document by which the offender gives undertakings to the Rail Safety Regulator that the offender will —
 - (a) take the action specified in the undertaking; and
 - (b) bear the costs and expenses of doing so; and
 - (c) complete all of the required action not later than a day specified in the document.
- (2) The action required to be taken by the offender is to come within the provisions described in section 210(2) or (3).
- (3) The provisions of the undertaking are to be such as are agreed between the Rail Safety Regulator and the offender.
- (4) The Rail Safety Regulator is to furnish a copy of an undertaking, and of any amendment made under section 213, to the court concerned.

210. What may be included in undertaking

- (1) In this section —

specified means specified in the undertaking.
- (2) An undertaking is to provide for the offender to do one or more of the following —
 - (a) to do specified things that the Rail Safety Regulator considers will improve the person's compliance with rail safety laws or specified aspects of rail safety laws, including, for example, the following —
 - (i) appointing or removing staff to or from particular activities or positions;
 - (ii) training and supervising staff;
 - (iii) obtaining expert advice as to maintaining appropriate compliance;

- (iv) installing monitoring, compliance, managerial or operational equipment;
 - (v) implementing monitoring, compliance, managerial or operational practices, systems or procedures;
 - (b) to conduct specified monitoring, compliance, managerial or operational practices, systems or procedures subject to the direction of the Rail Safety Regulator or a person nominated by the Rail Safety Regulator;
 - (c) to furnish compliance reports to the Rail Safety Regulator as specified;
 - (d) to appoint a person to have responsibilities —
 - (i) to assist the person in improving compliance with rail safety laws or specified aspects of rail safety laws; and
 - (ii) to monitor the person's performance in complying with rail safety laws or specified aspects of rail safety laws and in complying with the requirements of the undertaking; and
 - (iii) to furnish compliance reports to the Rail Safety Regulator as specified.
- (3) The Rail Safety Regulator may require that an undertaking contain any incidental or supplementary provision that the Rail Safety Regulator considers necessary or expedient to achieve its purpose, including provision for —
- (a) the reporting of matters; and
 - (b) the reporting of compliance under section 214,
- to the Rail Safety Regulator.
- (4) An undertaking cannot provide for the offender to take any action —
- (a) that the offender has a duty to take in order to comply with any provision of this Act; or

- (b) for the taking of which an improvement notice or a prohibition notice could be issued.

211. Effect of undertaking

The liability of the offender to pay a fine in connection with which the undertaking is given —

- (a) is suspended by the giving of the undertaking; and
- (b) is cancelled by the full discharge of the offender's obligations under the undertaking.

212. Failure to comply with undertaking

- (1) An offender commits an offence if the offender fails to discharge fully the obligations under an undertaking before the day specified in the undertaking in accordance with section 209(1)(c).

Penalty:

- (a) if the offence was committed by the offender as an employee —
 - (i) for a first offence, a fine of \$6 000;
 - (ii) for a subsequent offence, a fine of \$8 000;
- (b) if paragraph (a) does not apply —
 - (i) in the case of an individual —
 - (I) for a first offence, a fine of \$28 000;
 - (II) for a subsequent offence, a fine of \$41 000;
 - (ii) in the case of a body corporate —
 - (I) for a first offence, a fine of \$280 000;
 - (II) for a subsequent offence, a fine of \$410 000.

- (2) A court that convicts an offender of an offence against subsection (1) must order that a fine to which the undertaking relates be paid in addition to any penalty imposed for the offence against subsection (1).
- (3) For the purposes of the *Fines, Penalties and Infringement Notices Enforcement Act 1994*, a fine to which an order under subsection (2) applies is taken to be imposed on the day on which that order is made.

[Section 212 amended by No. 48 of 2012 s. 69.]

213. Amendment of undertaking

An undertaking may be amended by an instrument in writing signed by the offender and the Rail Safety Regulator.

214. Compliance report

- (1) A compliance report required by the Rail Safety Regulator under section 210(3)(b) may require that the offender report on —
 - (a) the performance of the offender in complying with —
 - (i) the rail safety laws or aspects of rail safety laws specified in the undertaking; and
 - (ii) the requirements of the undertaking;and
 - (b) without limiting the above —
 - (i) things done by the offender to ensure that any failure by the offender to comply with the rail safety laws or the specified aspects of the rail safety laws does not continue; and
 - (ii) the results of those things having been done.
- (2) A requirement of the Rail Safety Regulator may specify matters that are to be dealt with in compliance reports and the form and manner in which, and frequency with which, compliance reports are to be prepared and furnished.

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- (3) The Rail Safety Regulator may require that compliance reports or aspects of compliance reports be made public, and may specify the form and manner in which, and frequency with which, they are to be made public.

Part 9 — General

Division 1 — Confidentiality

215. Confidentiality

- (1) This section applies to a person engaged or previously engaged in the administration of this Act and without limiting the foregoing to the following —
 - (a) a rail safety officer or a person assisting a rail safety officer;
 - (b) an independent investigator or authorised officer;
 - (c) a person authorised by the Rail Safety Regulator or rail safety officer under a provision of this Act to do the act or thing provided for in that provision;
 - (d) a person who is or was a delegate of the Rail Safety Regulator;
 - (e) a person who is or was employed by, or engaged to provide services to or on behalf of, the Rail Safety Regulator;
 - (f) a person who is or was employed by, or engaged to provide services to, a person or body engaged to provide services to the Rail Safety Regulator.

- (2) Subject to Part 6 Division 6, a person to whom this section applies must not disclose or communicate information obtained (whether by that person or otherwise) in the administration of this Act except —
 - (a) as required or authorised under this or any other Act; or
 - (b) with the consent of the person from whom the information was obtained or to whom the information relates; or
 - (c) in connection with the administration of rail safety laws or corresponding rail safety laws; or

- (d) for law enforcement purposes, an investigation under section 83 or public safety; or
- (e) for the purpose of enforcing the provisions of the *Occupational Safety and Health Act 1984*; or
- (f) to a court or in connection with any legal proceedings; or
- (g) in accordance with the regulations.

Penalty: a fine of \$55 000.

- (3) Nothing in this section prevents information being used to enable an Australian Rail Safety Regulator to accumulate aggregate data and to enable the Australian Rail Safety Regulator to authorise use of the aggregate data for the purposes of research or education.

Division 2 — Civil liability

216. Civil liability not affected by Part 4 Division 1 or 4

- (1) Nothing in Part 4 Division 1 or 4 is to be construed —
 - (a) as conferring a right of action in any civil proceedings in respect of any contravention, whether by act or omission, of any provisions of that Division; or
 - (b) as conferring a defence to an action in any civil proceedings or as otherwise affecting a right of action in any civil proceedings.
- (2) Subsection (1) does not affect the extent, if any, to which a breach of duty imposed by the regulations is actionable.

217. Immunity from tortious liability

- (1) In this section —
official means —
 - (a) the Rail Safety Regulator; or
 - (b) a rail safety officer; or

- (c) an independent investigator; or
 - (d) an authorised officer.
- (2) In this section, a reference to the doing of anything includes a reference to an omission to do anything.
- (3) An action in tort does not lie against an official for anything that the official has done, in good faith, in the performance or purported performance of a function under this Act.
- (4) The protection given by subsection (3) applies even though the thing done as described in that subsection may have been capable of being done whether or not this Act had been enacted.
- (5) The State is also relieved of any liability that it might otherwise have had for another person having done anything as described in subsection (3).

218. Immunity for reporting unfit rail safety worker

- (1) In this section —
person to whom this section applies means —
- (a) a medical practitioner as defined in the *Medical Practitioners Act 2008* section 4; or
 - (b) an optometrist as defined in the *Optometrists Act 2005* section 3; or
 - (c) a physiotherapist as defined in the *Physiotherapists Act 2005* section 3.
- (2) No action may be taken against a person to whom this section applies who, in good faith, reports to —
- (a) an independent investigator; or
 - (b) the Rail Safety Regulator; or
 - (c) a rail transport operator; or

- (d) any other person to whom this section applies who is employed or engaged by the Rail Safety Regulator or a rail transport operator,

any information which discloses that a person is unfit to carry out rail safety work or certain types of rail safety work or that it may be dangerous to allow that person to carry out rail safety work or certain types of rail safety work.

- (3) No action may be taken against a person to whom this section applies who, in good faith, reports —
 - (a) the results of a test or examination carried out under this Act; or
 - (b) an opinion formed by that person as a result of conducting such a test or examination,

to a person referred to in subsection (2)(b), (c) or (d).

219. Immunity for administering a test or taking a sample

No action may be taken against a person who, in good faith, administers a test or takes a sample of blood or urine or other body tissues or fluids carried out under this Act.

Division 3 — Compliance codes and guidelines

220. Approval of compliance codes and guidelines

- (1) For the purpose of providing practical guidance to persons who have duties or obligations under this Act, the Minister may make an order —
 - (a) approving a compliance code; or
 - (b) approving guidelines.
- (2) The Minister may make an order approving the variation of a compliance code or guidelines or revoking the approval of a compliance code or guidelines.

- (3) An order approving a compliance code or guidelines, or a variation or revocation order, takes effect when notice of it is published in the *Gazette* or on such later date as is specified in the order.
- (4) As soon as practicable after making an order approving a compliance code or guidelines, or a variation or revocation order, the Minister must ensure that notice of the making of the order is published in the *Gazette*.
- (5) The Minister must ensure that a copy of —
 - (a) each compliance code that is currently approved; and
 - (b) guidelines that are currently approved,is or are available for inspection by members of the public without charge at the office of the Rail Safety Regulator during normal business hours.
- (6) The *Interpretation Act 1984* section 44 applies to a compliance code or guidelines as if the code or guidelines were subsidiary legislation.

221. Effect of compliance code or guidelines

A failure to comply with a compliance code or guidelines does not give rise to any civil or criminal liability.

222. Effect of complying with a compliance code

If —

- (a) a compliance code makes provision for or with respect to a duty or obligation imposed by this Act; and
- (b) a person complies with the compliance code to the extent that it makes that provision,

the person is, for the purposes of this Act, taken to have complied with this Act in relation to that duty or obligation.

223. Disallowance of compliance codes

The *Interpretation Act 1984* sections 41 and 42 apply to an order approving a compliance code, or a variation order, as if the order were a regulation having legislative effect.

Division 4 — Miscellaneous

224. Recovery of certain costs

The Rail Safety Regulator may recover as a debt from a rail transport operator the reasonable costs of the entry and inspection of railway infrastructure, rolling stock or railway premises in respect of which the person is accredited, other than the costs of an inspection of an accredited person under section 84.

225. Recovery of amounts due

Every fee, charge or other amount of money payable under this Act may be recovered by the Rail Safety Regulator as a debt due to the Crown in a court of competent jurisdiction.

226. Compliance with conditions of accreditation

If —

- (a) a condition or restriction to which the accreditation of a person is subject makes provision for or with respect to a duty or obligation imposed by this Act; and
- (b) the accredited person complies with the condition or restriction to the extent that it makes that provision,

the accredited person is, for the purposes of this Act, taken to have complied with this Act in relation to that duty or obligation.

227. Prescribed persons

A person prescribed by the regulations for the purposes of this section must give notice in the prescribed form and within a prescribed period to a rail transport operator of the commencement, or discontinuation, or completion of prescribed operations or activities that may adversely affect the safety of any rail infrastructure or rolling stock of a rail transport operator.

Penalty:

- (a) for an individual —
 - (i) for a first offence, a fine of \$28 000;
 - (ii) for a second or subsequent offence, a fine of \$41 000;
- (b) for a body corporate —
 - (i) for a first offence, a fine of \$280 000;
 - (ii) for a second or subsequent offence, a fine of \$410 000.

228. Contracting out prohibited

A term of any contract or agreement that purports to exclude, limit or modify the operation of this Act or of any provision of this Act is void to the extent that it would otherwise have effect.

229. Regulations

- (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 the following —
 - (a) trespassing on railway tracks, tramway tracks or railway premises;
 - (b) fees for the purposes of this Act;

- (c) forms for the purposes of this Act.
- (3) Regulations made under this Act —
- (a) may apply, adopt or incorporate any matter contained in any document whether —
 - (i) wholly or partially or as amended by the regulations; or
 - (ii) as in force at a particular time or as in force from time to time;
 - and
 - (b) may provide that an application may be made to the State Administrative Tribunal for the review of a decision made under the regulations.
- (4) Regulations made under this Act may impose a penalty for a contravention of the regulations not exceeding —
- (a) in the case of an offence committed by a person as an employee —
 - (i) for a first offence, a fine of \$6 000; and
 - (ii) for a subsequent offence, a fine of \$8 000;
 - (b) in the case of an offence committed by an individual where paragraph (a) does not apply —
 - (i) for a first offence, a fine of \$28 000; and
 - (ii) for a subsequent offence, a fine of \$41 000;
 - (c) in the case of an offence committed by a body corporate —
 - (i) for a first offence, a fine of \$280 000; and
 - (ii) for a subsequent offence, a fine of \$410 000,
- and if the offence is a continuing one a further penalty not exceeding —
- (d) \$200, in the case of an offence committed by a person as an employee;

- (e) \$1 000, in the case of an offence committed by an individual where paragraph (d) does not apply;
- (f) \$2 000, in the case of an offence committed by a body corporate,

for each day or part of a day during which the offence continues after notice of the offence has been given by a rail safety officer to the offender.

- (5) The regulations may exempt, or provide for the exemption of, either absolutely or subject to conditions, any person, railway, part of a railway or operation from all or any of the provisions of this Act.

230. Repeals

- (1) The *Rail Safety Act 1998* is repealed.
- (2) The *Rail Safety Regulations 1999* are repealed.

Part 10 — Transitional

231. Terms used

In this Part —

commencement day means the day on which section 3 comes into operation;

development period means a period of 12 months beginning on the commencement day;

the repealed Act means the *Rail Safety Act 1998*.

232. Interpretation Act 1984 not affected

The provisions of this Part do not prejudice or affect the application of the *Interpretation Act 1984* to and in relation to the repeals effected by section 230.

233. Authorised officer

- (1) A person who was an authorised officer under the repealed Act immediately before the commencement day is to be taken to be a rail safety officer appointed under section 22(1) for a period of 2 years beginning on that day on the same conditions and limitations, if any, as applied to his or her appointment as an authorised officer.
- (2) An identity card held by an authorised officer referred to in subsection (1) immediately before the commencement day is to be taken, for a period of 6 months after that day, to be an identification card issued to that person under section 24(a).

234. Accreditation

A person accredited under section 8(1) or (2) of the repealed Act immediately before the commencement day is to be taken to have been granted accreditation under section 38 appropriate to the person's circumstances (unless there is no requirement to hold such an accreditation under this Act), and subject to the

same conditions as applied to that person's accreditation under the repealed Act.

235. Interim accreditation

A person accredited under section 11(a), (b) or (c) of the repealed Act immediately before the commencement day is, on and after that day, to be taken to be accredited under section 33(1)(c) for a period of 12 months beginning on the commencement day —

- (a) for the purpose for which accreditation was granted under the repealed Act; and
- (b) on the same conditions imposed under section 14 of the repealed Act (if any) as, applied to that person's accreditation immediately before the commencement day.

236. Temporary accreditation

A person with temporary accreditation under section 12(2) of the repealed Act immediately before the commencement day is to be taken to be accredited under section 32 —

- (a) for the period for which temporary accreditation was granted or for the period of 12 months beginning on the commencement day, whichever is the longer; and
- (b) on the same conditions imposed under section 14 of the repealed Act (if any) as, applied to that person's temporary accreditation immediately before the commencement day.

237. Annual fees

If a person is taken to be accredited under this Act, for the purposes of section 41(1), the person is to be taken to have been accredited on the day on which the person was accredited under the repealed Act.

238. Private siding

- (1) A private siding registered under section 15(2)(a) of the repealed Act immediately before the commencement day is, on and after that day, to be taken to be registered under section 58(2)(a).
- (2) During the development period, section 58(2)(c) does not apply to a rail infrastructure manager's private siding that is referred to in subsection (1).

239. Suspension of accreditation

If immediately before the commencement day a person's accreditation was suspended under section 18 or 19 of the repealed Act, section 18 or 19, as the case may be, of the repealed Act applies to the person as if it had not been repealed.

240. Safety management plan

- (1) A safety management plan referred to in section 10 of the repealed Act that exists immediately before the commencement day, is to be taken to be —
 - (a) a safety management system under section 59 during the development period; and
 - (b) a security management plan under section 71 during the development period,

to the extent that the safety management plan deals with matters that must be incorporated in a safety management system or a security management plan.

- (2) During the development period the Rail Safety Regulator may give a rail transport operator who has a safety management plan referred to in subsection (1) a written instruction relating to the development of a safety management system under section 59 or a security management plan under section 71.

- (3) A rail transport operator must comply with a written instruction given under subsection (2) within any time specified in the instruction.

Penalty:

- (a) for an individual —
 - (i) for a first offence, a fine of \$28 000;
 - (ii) for a second or subsequent offence, a fine of \$41 000;
 - (b) for a body corporate —
 - (i) for a first offence, a fine of \$280 000;
 - (ii) for a second or subsequent offence, a fine of \$410 000.
- (4) Subsections (1), (2) and (3) cease to apply to a rail transport operator once the operator has a safety management system under section 59.

241. Emergency Management Plan

- (1) Section 72 does not apply to a rail transport operator during the development period.
- (2) During the development period the Rail Safety Regulator may give a rail transport operator a written instruction relating to the development of an emergency management plan under section 72.
- (3) A rail transport operator must comply with a written instruction given under subsection (2) within any time specified in the instruction.

Penalty:

- (a) for an individual —
 - (i) for a first offence, a fine of \$28 000;
 - (ii) for a second or subsequent offence, a fine of \$41 000;

- (b) for a body corporate —
 - (i) for a first offence, a fine of \$280 000;
 - (ii) for a second or subsequent offence, a fine of \$410 000.
- (4) Subsections (1), (2) and (3) cease to apply to a rail transport operator once the operator has an emergency management plan under section 72.

242. Health and fitness management programme

- (1) Section 73 does not apply to a rail transport operator during the development period.
- (2) During the development period the Rail Safety Regulator may give a rail transport operator a written instruction relating to the development of a health and fitness management programme under section 73.
- (3) A rail transport operator must comply with a written instruction given under subsection (2) within any time specified in the instruction.

Penalty:

- (a) for an individual —
 - (i) for a first offence, a fine of \$28 000;
 - (ii) for a second or subsequent offence, a fine of \$41 000;
- (b) for a body corporate —
 - (i) for a first offence, a fine of \$280 000;
 - (ii) for a second or subsequent offence, a fine of \$410 000.
- (4) Subsections (1), (2) and (3) cease to apply to a rail transport operator once the operator has a health and fitness management programme under section 73.

243. Alcohol and drug management programme

- (1) Section 74 does not apply to a rail transport operator during the development period.
- (2) During the development period the Rail Safety Regulator may give a rail transport operator a written instruction relating to the development of an alcohol and drug management programme under section 74.
- (3) A rail transport operator must comply with a written instruction given under subsection (2) within any time specified in the instruction.

Penalty:

- (a) for an individual —
 - (i) for a first offence, a fine of \$28 000;
 - (ii) for a second or subsequent offence, a fine of \$41 000;
- (b) for a body corporate —
 - (i) for a first offence, a fine of \$280 000;
 - (ii) for a second or subsequent offence, a fine of \$410 000.
- (4) Subsections (1), (2) and (3) cease to apply to a rail transport operator once the operator has an alcohol and drug management programme under section 74.

244. Fatigue management programme

- (1) Section 76 does not apply to a rail transport operator during the development period.
- (2) During the development period the Rail Safety Regulator may give a rail transport operator a written instruction relating to the development of a fatigue management programme under section 76.

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- (3) A rail transport operator must comply with a written instruction given under subsection (2) within any time specified in the instruction.

Penalty:

- (a) for an individual —
- (i) for a first offence, a fine of \$28 000;
 - (ii) for a second or subsequent offence, a fine of \$41 000;
- (b) for a body corporate —
- (i) for a first offence, a fine of \$280 000;
 - (ii) for a second or subsequent offence, a fine of \$410 000.
- (4) Subsections (1), (2) and (3) cease to apply to a rail transport operator once the operator has a fatigue management programme under section 76.

245. Assessment of competence

Section 77 does not apply to a rail transport operator during the period of 24 months beginning on the commencement day.

246. Identification for rail safety workers

Section 78 does not apply during the period of 24 months beginning on the commencement day or any other prescribed period beginning on that day.

247. Installation of safety or protective devices

If the Director General has given a direction under section 28 of the repealed Act and the person to whom the direction was given has not complied with the direction before the commencement day, that person must comply with the direction on or after the commencement day and that section applies to and in respect of that person and the direction as if the section had not been repealed.

248. Closing railway crossings, bridges etc.

If immediately before the commencement day, a railway crossing, bridge or other structure is temporarily closed or is regulated under section 29(1) of the repealed Act, on the commencement day section 122 applies to the temporary closure or regulation as if the railway crossing, bridge or other structure were closed temporarily or regulated under section 122.

249. Direction to stop, alter or not to start the works

If the Director General has given a direction to a person under section 30 of the repealed Act and the direction is in effect immediately before the commencement day —

- (a) the direction and that section apply to and in respect of that person as if the section had not been repealed; and
- (b) a reference in that section to an authorised officer is to be taken to be a reference to a rail safety officer.

250. Direction to undertake remedial safety work

If the Director General has directed an accredited person to undertake remedial safety work under section 33 of the repealed Act and the direction is in effect immediately before the commencement day, the direction and that section apply to and in respect of the accredited person as if the section had not been repealed.

251. Safety reports

If —

- (a) an accredited person is required under section 36(1) of the repealed Act to submit an annual safety report to the Director General within the period of 28 days before the commencement day; and

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- (b) the report is not submitted before the commencement day,

the accredited person must submit the report as if section 36 of the repealed Act had not been repealed and the reference to the Director General in section 36(1) of the repealed Act were a reference to the Rail Safety Regulator.

252. Supply of information

If under section 37(1) of the repealed Act an accredited person has been required by the Director General to provide the Director General with information and that information has not been provided before the commencement day, sections 37 and 51(2) of the repealed Act apply to the accredited person as if they had not been repealed.

253. Notifiable occurrences and other incidents

If under section 38 of the repealed Act an accredited person is under an obligation or requirement to report to the Director General and the accredited person has not made that report before the commencement day, that report is to be made on or after the commencement day as if the obligation or requirement were an obligation or requirement under section 82.

254. Report from owner or operator

If a notice has been given to an accredited person under section 39(1) of the repealed Act and the accredited person has not provided a written report under section 39(3) of the repealed Act before the commencement day —

- (a) the notice is to be taken to be a notice under section 83(1); and
- (b) a reference in section 83 to a rail transport operator is to be taken to be a reference to the accredited person; and
- (c) a reference in section 83 to a notifiable occurrence is to be taken to be a reference to the railway accident or

incident or other matter referred to in the notice given
under section 39(1) of the repealed Act.

255. Request for certain details

If a notice has been given to an accredited person under section 40(1) of the repealed Act and the accredited person has not provided a written report under that provision before the commencement day, sections 40 and 51(2) of the repealed Act apply to the accredited person as if they had not been repealed.

256. Inquiries

If immediately before the commencement day an investigator was conducting an inquiry under Part 5 of the repealed Act but a report had not been furnished under section 43 of the repealed Act before that day, the investigator is to continue to conduct the inquiry as if he or she had been appointed under Part 6.

257. Evidentiary provision

In any proceedings under the repealed Act on or after the commencement day, section 57 of the repealed Act applies as if it had not been repealed.

258. Powers in relation to transitional provision

- (1) If there is no sufficient provision in this Part for dealing with a transitional matter the Governor may make regulations prescribing all matters that are required, necessary or convenient to be prescribed in relation to that matter.
- (2) Regulations made under subsection (1) may provide that specific provisions of this Act —
 - (a) do not apply; or
 - (b) apply with specific modifications,to or in relation to any matter.

- (3) Regulations made under subsection (1) must be made within 12 months after the commencement day.
- (4) If regulations made under subsection (1) provide that a specified state of affairs is to be taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the commencement day, the regulations have effect according to their terms.
- (5) In subsection (4) —
specified means specified or described in the regulations.
- (6) If regulations contain a provision referred to in subsection (4), the provision does not operate so as —
 - (a) to affect in a manner prejudicial to any person (other than the State), the right of that person existing before the day of publication of those regulations; or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day of publication of those regulations.

Part 11 — Consequential amendments

Division 1 — *Government Railways Act 1904* amended

259. Act amended

This Division amends the *Government Railways Act 1904*.

260. Section 2A amended

In section 2A delete “*Rail Safety Act 1998*” and insert:

Rail Safety Act 2010

261. Section 13 amended

In section 13(1a) delete paragraph (d) and insert:

(d) the *Rail Safety Act 2010*.

262. Section 61 amended

In section 61(5) delete “*Rail Safety Act 1998*.” and insert:

Rail Safety Act 2010.

Division 2 — *Mines Safety and Inspection Act 1994* amended

263. Act amended

This Division amends the *Mines Safety and Inspection Act 1994*.

264. Section 7 amended

In section 7(2) delete “*Rail Safety Act 1998*” and insert:

Rail Safety Act 2010

Division 3 — *Public Transport Authority Act 2003* amended

265. Act amended

This Division amends the *Public Transport Authority Act 2003*.

266. Section 3 amended

In section 3 in the definition of ***train*** delete “*Rail Safety Act 1998* section 3(1);” and insert:

Rail Safety Act 2010 section 3;

267. Section 4 amended

In section 4(1)(a) delete “*Rail Safety Act 1998*” and insert:

Rail Safety Act 2010

Division 4 — *Rail Freight System Act 2000* amended

268. Act amended

This Division amends the *Rail Freight System Act 2000*.

269. Section 9 amended

In section 9(1)(a) delete “*Rail Safety Act 1998*” and insert:

Rail Safety Act 2010

Division 5 — *Railways (Access) Act 1998* amended

270. Act amended

This Division amends the *Railways (Access) Act 1998*.

271. Section 8 amended

In section 8 delete “*Rail Safety Act 1998*.” and insert:

Rail Safety Act 2010.

Note: The heading to amended section-8 is to read:

Code is subject to *Rail Safety Act 2010*

Notes

¹ This is a compilation of the *Rail Safety Act 2010* and includes the amendments made by the other written laws referred to in the following table^{1a}.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Rail Safety Act 2010</i>	18 of 2010	28 Jun 2010	s. 1 and 2: 28 Jun 2010 (see s. 2(a)); Act other than s. 1, 2 and 63-66: 1 Feb 2011 (see s. 2(b) and <i>Gazette</i> 28 Jan 2011 p. 241); s. 63: 1 Feb 2012 (see s. 2(c)); s. 64-66: 1 Feb 2014 (see s. 2(d))
<u><i>Road Traffic Legislation Amendment Act 2012 Pt. 4 Div. 44</i></u>	<u>8 of 2012</u>	<u>21 May 2012</u>	<u>27 Apr 2015 (see s. 2(d) and <i>Gazette</i> 17 Apr 2015 p. 1371)</u>
<i>Fines, Penalties and Infringement Notices Enforcement Amendment Act 2012 Pt. 4 Div. 6</i>	48 of 2012	29 Nov 2012	21 Aug 2013 (see s. 2(b) and <i>Gazette</i> 20 Aug 2013 p. 3815)
<i>Statutes (Repeals and Minor Amendments) Act 2014 s. 34</i>	17 of 2014	2 Jul 2014	6 Sep 2014 (see s. 2(b) and <i>Gazette</i> 5 Sep 2014 p. 3213)

^{1a} ~~On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.~~

~~Provisions that have not come into operation~~

Short title	Number and year	Assent	Commencement
<i>Road Traffic Legislation Amendment Act 2012 Pt. 4 Div. 44</i>²	8 of 2012	21 May 2012	Operative on commencement of the <i>Road Traffic (Administration) Act 2008</i> (see s. 2(d))

²—~~On the date as at which this compilation was prepared, the *Road Traffic Legislation Amendment Act 2012* Pt. 4 Div. 44 had not come into operation. It reads as follows:~~

~~**Division 44—*Rail Safety Act 2010* amended**~~

~~**166.—Act amended**~~

~~—This Division amends the *Rail Safety Act 2010*.~~

~~**167.—Section 3 amended**~~

~~—In section 3 in the definition of *public road* delete “*Road Traffic Act 1974* section 5(1);” and insert:~~

~~—*Road Traffic (Administration) Act 2008* section 4;~~