

SOUTH AUSTRALIA

RAIL SAFETY ACT 1996

This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at 30 April 1998.

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

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RAIL SAFETY ACT 1996

being

Rail Safety Act 1996 No. 31 of 1996
[Assented to 2 May 1996]¹

as amended by

Rail Safety Regulations 1998 No. 41 of 1998 [*Gaz.* 30 April 1998, p. 2085]²

¹ Came into operation 30 April 1998: *Gaz.* 30 April 1998, p. 2022.

² Came into operation 30 April 1998: reg. 2.

NOTE:

- *Asterisks indicate repeal or deletion of text.*
- *For the legislative history of the Act see Appendix.*

An Act to promote the safe construction, maintenance and operation of railways as part of a national approach to rail safety regulation; and for other purposes.

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Rail Safety Act 1996*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Interpretation

3. In this Act—

"**Administrating Authority**" means a person or body appointed by the Minister as the Administrating Authority for the purposes of this Act;

"**Australian Rail Safety Standard**" means the principles and standards prepared, approved and published by the Standards Association of Australia in relation to railway safety management;

"**authorised officer**" means a person appointed as an authorised officer under section 45;

"**document**" means book, paper or record of information, whether in writing or accessible only through the use of a computer or other device;

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

"**notifiable occurrence**" means an occurrence specified in schedule 1 as amended from time to time by regulation;

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

"**operation of a railway**" means the operation of rolling stock on a railway;

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

"**owner**", in relation to a railway, means a person who is responsible (whether by reason of ownership, control or management) for—

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

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

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"rail infrastructure" or **"infrastructure"** means the facilities necessary to enable a railway to operate safely and includes (but is not limited to) railway track, associated track structures, over or under track structures, supports (including supports for equipment or items associated with the use of a railway), tunnels, bridges, stations, platforms, train control systems, signalling systems, communication systems, electric traction infrastructure, buildings, workshops and associated plant, machinery and equipment;

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

"railway employee" means an employee or contractor of an owner or operator who performs railway safety work and includes a person who performs railway safety work on a voluntary or unpaid basis;

"railway safety work" means any of the following classes of work:

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

"rolling stock" means a vehicle (whether or not self-propelled) that operates on or uses a railway track¹, but does not include a vehicle designed to operate both on and off a railway track when the vehicle is not operating on a railway track;

¹ Examples: A locomotive, carriage, rail car, rail motor, light rail vehicle, train, tram, light inspection vehicle, road/rail vehicle, trolley, wagon.

"running line" means railway tracks (other than sidings) used for the through movement of trains;

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

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

"State" includes a Territory;

"track" means the combination of rails, rail connectors, sleepers, ballast, points and crossings (or substitute devices if used);

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

Application of Act

4. (1) This Act applies to—

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

and to the operation of any such railway.

(2) This Act does not apply to—

- (a) a railway in a mine which is underground or predominantly underground and used in connection with the performance of mining operations; or
- (b) a slipway; or
- (c) a crane-type runway; or
- (d) a railway or system of a class excluded by the regulations from the operation of this Act.

(3) The Minister may, by notice in the *Gazette*, confer exemptions from this Act or specified provisions of this Act—

- (a) on specified persons or persons of a specified class; or
- (b) in relation to specified railways or railways of a specified class.

(4) An exemption under subsection (3) may be granted by the Minister on conditions specified by the Minister.

(5) The Minister may, at any time, by further notice in the *Gazette*—

- (a) vary or revoke an exemption; or
- (b) vary or revoke a condition of an exemption.

(6) A person who contravenes or fails to comply with a condition imposed under this section is guilty of an offence.

Maximum penalty: \$20 000.

Act binds Crown

5. (1) This Act binds the Crown in right of the State and also, so far as the legislative powers of the State extend, in all its other capacities.

(2) In particular, this Act, insofar as it applies to the safe construction, maintenance and operation of railways, applies to any such construction, maintenance and operation carried out by the Australian National Railways Commission, the National Rail Corporation Limited, TransAdelaide or other government agency or instrumentality, or otherwise carried on by the State, the Commonwealth or another State.

(3) No criminal liability attaches to the Crown itself (as distinct from its agents, instrumentalities, officers and employees) under this Act.

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**PART 2
ACCREDITATION OF OWNERS AND OPERATORS**

DIVISION 1—GENERAL PROVISIONS

Requirement for accreditation

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

Maximum penalty: \$50 000.

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

Maximum penalty: \$50 000.

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

Granting accreditation

7. (1) An application for accreditation must be made to the Administrating Authority in a manner and form determined by the Minister.

(2) The Administrating Authority must, on due application under this Act, accredit an applicant as the accredited owner of a railway if satisfied—

- (a) that the applicant has the competency and capacity to meet the requirements of the Australian Rail Safety Standard, and any other safety standard prescribed by the regulations or determined by the Administrating Authority to be relevant to the operation of this Act, and generally to ensure the safe construction and maintenance, or construction or maintenance, of rail infrastructure or, if relevant, the proper operation of train control, signalling and communication systems; and
- (b) that the applicant has an appropriate safety management plan; and
- (c) that appropriate standards will be met in relation to the availability and adequacy of rail infrastructure and that appropriate safeworking and operating systems will apply under the accreditation; and
- (d) that the applicant has the financial capacity or public risk insurance arrangements to meet reasonable potential accident liabilities for the railway; and
- (e) that the applicant has a right (or is in a position to obtain a right)—
 - (i) of access to land where the railway is (or is to be) constructed or located; and
 - (ii) to use relevant rail infrastructure; and
- (f) as to any other matter prescribed by regulation.

(3) The Administrating Authority must, on due application under this Act, accredit an applicant as the accredited operator of a railway if satisfied—

- (a) that the applicant has the competency and capacity to meet the requirements of the Australian Rail Safety Standard, and any other safety standard prescribed by the regulations or determined by the Administrating Authority to be relevant to the operation of this Act, and generally to ensure the safe operation of rolling stock on the railway; and

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

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

Safety standards—compliance specification

8. (1) An applicant for accreditation as an owner of a railway must submit to the Administrating Authority appropriate safety standards with which the applicant agrees to comply, to the satisfaction of the Administrating Authority, relevant to the safe construction and maintenance, or construction or maintenance, of rail infrastructure or, if relevant, the proper operation of train control, signalling and communication systems, associated with the railway.

(2) An applicant for accreditation as an operator of a railway must submit to the Administrating Authority appropriate safety standards with which the applicant agrees to comply, to the satisfaction of the Administrating Authority, relevant to the safe operation of rolling stock.

Safety management plans

9. (1) An applicant for accreditation must submit to the Administrating Authority a comprehensive safety management plan that—

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

(2) If a person is accredited under this Act, the person must revise the person's safety management plan on an annual basis to the satisfaction of the Administrating Authority at least 28 days before each anniversary of the accreditation.

Maximum penalty: \$20 000.

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Administrating Authority may require further information

10. (1) The Administrating Authority may require an applicant for accreditation to furnish the Administrating Authority with other information required by the Administrating Authority to determine the application.

(2) The Administrating Authority may require an applicant for accreditation to verify, by statutory declaration, information furnished for the purposes of the application.

Interim accreditation

11. The Administrating Authority may grant interim accreditation to an applicant to permit activities such as—

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

or for other purposes considered appropriate by the Administrating Authority.

Duration of accreditation

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

(2) The Administrating Authority may, if it thinks fit, grant a person temporary accreditation for a period not exceeding 12 months.

Style and particulars of accreditation

13. (1) Particulars of accreditation are to be given in writing by the Administrating Authority to the accredited person.

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

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

Conditions

14. (1) An accreditation will be subject to conditions—

- (a) imposed by the Administrating Authority; or
- (b) prescribed by the regulations or otherwise imposed by or under this Act.

(2) An accredited person may, on application to the Administrating Authority in writing, request the variation of a condition to which the accreditation is subject, and the Administrating Authority may, as the Administrating Authority thinks fit—

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

(3) The Administrating Authority may, if the Administrating Authority considers it appropriate to do so, by notice in writing to an accredited person, vary a condition to which the accreditation is subject.

(4) The conditions of an accreditation may be varied by the addition, substitution or deletion of one or more conditions.

(5) A person must not contravene or fail to comply with a condition of an accreditation.

Maximum penalty: \$20 000.

Private sidings

15. (1) A person who owns a private siding is not required to hold an accreditation under this Act.

(2) However, if a person wishes a private siding to be (or continue to be) connected with, or to have access to, a railway or siding owned by an accredited owner, the person must—

- (a) register the private siding with the Administrating Authority; and
- (b) comply with conditions imposed by the Administrating Authority (from time to time) or prescribed by the regulations with respect to the safe construction, maintenance and operation of the siding.

Maximum penalty: \$20 000.

DIVISION 2—REFUSAL, VARIATION, SUSPENSION OR CANCELLATION OF ACCREDITATION

Refusal of application for accreditation

16. If the Administrating Authority refuses an application for accreditation, the Administrating Authority must notify the applicant in writing of—

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

Variation of accreditation

17. (1) An accredited person may, on application to the Administrating Authority in a manner and form determined by the Minister, request the variation of the accreditation, and the Administrating Authority may, as the Administrating Authority thinks fit—

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

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(2) The Administrating Authority may vary an accreditation on its own initiative if the Administrating Authority considers it appropriate to do so.

(3) However, before varying an accreditation under subsection (2), the Administrating Authority must give the accredited person a notice in writing—

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

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

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

(5) The Administrating Authority must inform the accredited person of the decision by notice in writing.

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

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

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

(8) A variation for a purpose referred to in subsection (7) may be effected by notice in writing to the accredited person.

Suspension or cancellation of accreditation

18. (1) If an accredited person—

- (a) contravenes or fails to comply with a requirement of this Act or the regulations or a term, requirement or condition of the accreditation; or
- (b) fails to meet a standard that applies to or in respect of the accreditation; or
- (c) contravenes or fails to comply with a direction under this Act; or
- (d) in the course of acting under the accreditation, acts negligently, or in an unsafe or unlawful manner; or
- (e) provides false or misleading information in connection with the operation of this Act; or

- (f) contravenes, or fails to comply with or satisfy, a requirement, standard, qualification or condition prescribed by the regulations for the purposes of this provision,

the Administrating Authority may suspend or cancel the accreditation.

(2) However, before taking action under subsection (1), the Administrating Authority must give the accredited person a notice in writing—

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

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

- (a) suspend the accreditation for a specified period, until the fulfilment of specified conditions, or until further order; or
- (b) cancel the accreditation; or
- (c) take other action (for example, by attaching conditions to the accreditation) determined by the Administrating Authority to be appropriate in the circumstances.

(4) The Administrating Authority must inform the accredited person of the decision by notice in writing.

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

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

Immediate suspension

19. (1) If the Administrating Authority considers that there would be an immediate and serious threat to the safety of the public or to property or both unless an accreditation is suspended immediately, the Administrating Authority may, without complying with section 18, suspend the accreditation immediately for a period, and on terms, specified in a written notice of suspension given to the accredited person.

(2) A suspension under subsection (1) cannot exceed six weeks except with the concurrence of the Minister.

(3) The Administrating Authority may—

- (a) withdraw a suspension under this section at any time;
- (b) with the concurrence of the Minister, extend a suspension under this section (pending resolution of the matter under section 18, as appropriately modified to meet the circumstances of the case).

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DIVISION 3—DISPUTE RESOLUTION

Dispute resolution

20. (1) A person—

- (a) whose application for accreditation has been refused, or who considers that his or her application for accreditation has not been decided within a reasonable period; or
- (b) who is an accredited person and is aggrieved by a decision of the Administrating Authority with respect to conditions imposed with respect to the accreditation, or a variation or proposed variation of them; or
- (c) who is (or has been) an accredited person and is aggrieved by a decision of the Administrating Authority under Division 2,

may, within one month after the relevant decision—

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

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

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

(4) The Administrating Authority or the District Court may make an interim order suspending the operation of a decision.

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

- (a) after having regard to this Act and the regulations, relevant standards under this Act, the policies of the Administrating Authority made known to the Court, and other matters considered relevant by the Court—affirm, vary or quash the decision appealed against or substitute, or make in addition, a decision that the Court thinks appropriate;
- (b) remit the subject-matter of the appeal to the Administrating Authority for further consideration;
- (c) refer a matter to the Administrating Authority for determination, or redetermination;
- (d) make any further or other order that the case requires.

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

(7) In this section—

"District Court" means the Administrative and Disciplinary Division of the District Court of South Australia.

DIVISION 4—RELATED MATTERS

Application fee

21. An applicant for accreditation, variation of accreditation or registration of a private siding must pay a fee fixed by the Minister and published in the *Gazette*.

Annual fees

22. (1) An accredited person or the owner of a private siding registered under this Part must also pay an annual fee fixed by the Minister and published in the *Gazette*.

(2) An annual fee must be paid by an accredited person or the owner of a private siding at the time of accreditation or registration and thereafter on an annual basis on or before each anniversary of the person's accreditation for the particular railway or the registration of the private siding.

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

(4) The Minister may reduce or waive an annual fee payable under this section.

(5) If a person fails to pay an annual fee in accordance with this section, the accreditation or registration is, by force of this section, suspended until the fee is paid.

(6) However, the Administrating Authority may exempt a person from the operation of subsection (5) if the fee is paid in accordance with a determination of the Administrating Authority or an agreement under this section.

(7) The Minister may fix different fees for different kinds of accreditations, fix various methods for the calculation of various fees, fix differential fees on a basis determined by the Minister, and impose additional fees for late payment of fees under this section.

Periodical returns

23. (1) An accredited person must for each period prescribed by the regulations, not later than the relevant day for the accreditation determined in accordance with the regulations, lodge with the Administrating Authority a return containing the prescribed information.

(2) If an accredited person fails to comply with subsection (1), the Administrating Authority may, by notice in writing to the accredited person, require him or her to make good the default.

(3) If an accredited person fails to comply with a notice under subsection (2) within 14 days after service of the notice, the accreditation is, unless otherwise determined by the Administrating Authority, by force of this subsection, suspended until the accredited person complies with the notice.

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

Surrender of accreditation

24. An accredited person may surrender the accreditation.

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**PART 3
SAFETY STANDARDS AND MEASURES**

Compliance with Rail Safety Standards

25. (1) The owner or operator of a railway must comply with—

- (a) the Australian Rail Safety Standard (*see* section 7); and
- (b) safety standards prescribed by the regulations, or determined by the Adminstrating Authority to be relevant to the operation of this Act and notified to the owner or operator (*see* section 7); and
- (c) safety standards with which the owner or operator has agreed to comply under this Act (*see* section 8).

Maximum penalty: \$50 000.

(2) The owner or operator of a railway must comply with the provisions of his or her safety management plan (*see* section 9).

Maximum penalty: \$50 000.

Requirement to maintain safety systems, devices or appliances

26. (1) An accredited person who fails to install and maintain, or to maintain, systems, devices, equipment or appliances on or with respect to a railway or rolling stock in accordance with the requirements of this Act or the terms or requirements of the person's accreditation is guilty of an offence.

Maximum penalty: \$20 000.

(2) Without limiting this section, systems, devices, equipment and appliances include safeworking systems, braking systems, signalling systems, wheels, isolating switches and points.

Installation of safety or protective devices

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

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

Maximum penalty: \$20 000.

Closing railway crossings

28. (1) An authorised person may temporarily close or regulate a railway crossing if satisfied it is necessary because of a threat to—

- (a) the safety of the railway; or
- (b) the public using it or who may use it.

(2) If an authorised person decides to close or regulate a crossing, the authorised person must, as soon as practicable after its closure or regulation, notify the authority responsible for the crossing of its closure or regulation, unless the authority has agreed that notification is unnecessary.

(3) In this section—

"authorised person" means—

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

Power to require works to stop

29. (1) A person (other than an accredited person) must not, without the written approval of the Administrating Authority or the owner of the railway, carry out works near a railway if the works threaten, or are likely to threaten, the railway's safety or operational integrity.

Maximum penalty: \$20 000.

(2) If—

- (a) a person is carrying out, or proposes to carry out, works near a railway; and
- (b) the Administrating Authority reasonably believes the works threaten, or are likely to threaten, the railway's safety or operational integrity,

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

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

Maximum penalty: \$20 000.

(4) If works are carried out contrary to subsection (1) or a direction under subsection (2), the Administrating Authority may, by notice in writing, require the owner of the land where the works are situated to alter, demolish or take away the works within a reasonable time stated in the notice.

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

Maximum penalty: \$20 000.

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

(7) Action under subsection (6) may be taken on the Administrating Authority's behalf by an authorised officer or by another person authorised by the Administrating Authority for the purpose.

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

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

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- (a) after giving three days notice in writing to the land's owner or occupier; or
- (b) with the written agreement of the land's owner or occupier; or
- (c) without notice or agreement, if the Administrating Authority reasonably believes there is an immediate and significant threat to the railway's safety or operational integrity.

Railway employees

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

- (a) has the capacity and skills, and is adequately trained, to perform the work; and
- (b) is of sufficient good health and fitness to perform the work; and
- (c) does not carry out railway safety work—
 - (i) while there is present in his or her blood the prescribed concentration of alcohol; or
 - (ii) while under the influence of a drug.

(2) A railway employee who carries out railway safety work—

- (a) while there is present in his or her blood the prescribed concentration of alcohol; or
- (b) while under the influence of a drug,

is guilty of an offence.

Maximum penalty: \$2 500.

(3) The Administrating Authority may require an accredited person to carry out random testing (in accordance with procedures set out in the regulations) of persons who are about to carry out, or who are carrying out, railway safety work on a railway owned or operated by the accredited person to ensure compliance with subsections (1) and (2).

PART 4
COMPLIANCE INSPECTIONS AND REPORTING

Safety compliance inspections

31. (1) The Administrating Authority may, at intervals considered appropriate by the Administrating Authority (but no less frequently than once every 12 months), cause to be inspected—

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

to ensure that the accredited person is complying with the conditions and terms of the accreditation and the requirements of this Act.

(2) The Administrating Authority may at any time, by notice in writing, direct an accredited person to cause to be inspected any railway track, other infrastructure or rolling stock.

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

- (a) the construction, maintenance or operation of a railway by the accredited person; or
- (b) the acquisition, operation, disposal, renovation or repair of rail infrastructure or rolling stock; or
- (c) the preparation, implementation or operation of the safeworking systems of a railway; or
- (d) other matters the Administrating Authority considers relevant to the safe construction, maintenance or operation of a railway (or any aspect of a railway) by an accredited person or otherwise relevant to compliance with the requirements of this Act.

Directions to undertake remedial safety work

32. (1) The Administrating Authority may, as a result of a safety compliance inspection or otherwise, direct an accredited person to undertake remedial safety work to secure compliance with the conditions, terms or requirements of the person's accreditation or the requirements of this Act.

(2) The direction is to be given by a notice in writing that sets out details of the work to be undertaken and the period within which it is to be undertaken.

(3) If an accredited person fails to comply with the direction, the Administrating Authority may, subject to this section, arrange for the work to be undertaken and may recover as a debt from the person reasonable costs and expenses associated with the undertaking of the work.

Directions to provide program of remedial safety work

33. (1) The Administrating Authority may, as a result of a safety compliance inspection or otherwise, direct an accredited person who has failed to comply with the requirements of this Act or the conditions, terms or requirements of the person's accreditation to provide the Administrating Authority with a program (including a timetable) for remedial safety work that the person proposes to undertake to remedy that failure.

(2) The direction is to be given by notice in writing and is to state the date by which the program is to be provided.

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Declarations as to variation of accreditation

34. (1) An accredited person must, at least 28 days before each anniversary of the person's accreditation—

- (a) furnish the Administrating Authority with a declaration stating that, so far as the person is aware, no circumstance exists that might require the person to apply for variation of the person's accreditation in the coming year; or
- (b) if such a circumstance does exist, apply to the Administrating Authority for variation of the accreditation.

(2) A declaration under subsection (1) must be in a form determined by the Minister.

Safety reports

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

(2) In addition, an accredited person must submit a safety report to the Administrating Authority at such other times as the Administrating Authority specifies by notice in writing to the person.

(3) A report under this section must be in a form determined by the Minister.

Supply of information

36. An accredited person must provide the Administrating Authority with information concerning measures taken by the accredited person to promote rail safety or concerning other matters relating to rail safety as the Administrating Authority may reasonably require from time to time.

Notifiable occurrences

37. (1) An accredited owner or operator must report to the Administrating Authority within the time prescribed by the regulations an occurrence that happens on or in relation to a railway owned or operated by the person, or in relation to rolling stock operated by the person, and that is of a kind specified in schedule 1 (a "notifiable occurrence").

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

(3) In addition to the matters specified in schedule 1, the Administrating Authority may, by notice in writing, require an accredited person to report to the Administrating Authority any other incident which endangers or could endanger the safe construction, maintenance or operation of a railway.

(4) A report under this section must be made in the prescribed manner and form and the Administrating Authority may require information supplied in a report to be verified by statutory declaration.

(5) The Governor may, by regulation, amend schedule 1 from time to time.

Authority may require report from owner or operator

38. (1) The Administrating Authority may require an accredited person to inquire into and report to the Administrating Authority under this section on—

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

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

(3) An inquiry must be conducted in a manner approved or determined by the Administrating Authority and within the time specified by the Administrating Authority.

(4) After completing an inquiry, the accredited person must provide a written report on the matter to the Administrating Authority.

Request for certain details

39. (1) If the Administrating Authority becomes aware that an accident, incident or other matter on, involving or associated with a railway or rolling stock may have occurred, the Administrating Authority may require an accredited person to furnish a written report on the matter within a reasonable period specified by the Administrating Authority.

(2) The accredited person must comply with the requirement within the time specified by the Administrating Authority.

Offence

40. A person who contravenes or fails to comply with a requirement or direction imposed or given by or under this Part is guilty of an offence.

Maximum penalty: \$20 000.

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**PART 5
INQUIRIES AND INSPECTIONS**

DIVISION 1—INQUIRIES

Appointment of investigator

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

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

(3) The Administrating Authority must, before the Administrating Authority makes an appointment under subsection (1) or (2), consult with the Minister and any relevant accredited person about—

- (a) the person to be appointed as the investigator; and
- (b) the matter or matters to be inquired into by the investigator; and
- (c) reporting arrangements once the inquiry is completed.

(4) An investigator will be appointed on terms and conditions agreed between the Administrating Authority and the investigator.

Procedures and powers of an investigator

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

- (a) must act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues; and
- (b) is not bound by the rules of evidence, but may inform himself or herself on a matter as the investigator thinks fit.

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

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

(3) If a person—

- (a) who has been served with a summons fails without reasonable excuse to attend in obedience to the summons; or

- (b) who has been served with a summons to produce a document, object or material, fails without reasonable excuse to comply with the summons; or
- (c) refuses to answer a relevant question when required to do so under this section; or
- (d) refuses to be sworn or to affirm; or
- (e) without reasonable excuse, hinders or obstructs an investigator in the exercise of powers under this section, or fails to obey any other requirement or direction given by an investigator,

the person is guilty of an offence.

Maximum penalty: \$10 000.

(4) It is not an excuse for a person to refuse or fail to answer a question or to produce, or provide a copy of, a document or information as required under this section on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.

(5) However, if compliance by a person with a requirement to answer a question or to produce, or provide a copy of, a document or information might tend to incriminate the person or make the person liable to a penalty, then—

- (a) in the case of a person who is required to produce, or provide a copy of, a document or information—the fact of production, or provision of a copy of, the document or the information (as distinct from the contents of the document or the information); or
- (b) in any other case—the answer given in compliance with the requirement,

is not admissible in evidence against the person in proceedings for an offence or for the imposition of a penalty (other than proceedings in respect of the making of a false or misleading statement).

(6) A person is not obliged under this section to provide information that is privileged on the ground of legal professional privilege.

(7) If a document, object or material is produced or found by an investigator, the investigator may—

- (a) inspect it;
- (b) make copies of, photograph or take extracts from, or test, it;
- (c) take possession of it, and keep it while it is necessary for the inquiry.

(8) Except as provided by this section, an inquiry under this Division may be conducted in a manner determined by the investigator.

(9) An investigator may appoint a person or persons to assist him or her in an inquiry under this Division.

Report

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

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(2) The report may contain the recommendations the investigator considers appropriate and other relevant matters.

Inquiry may continue despite other proceedings

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

DIVISION 2—INSPECTIONS, ETC.

Appointment of authorised officers

45. (1) The Minister may appoint suitable persons to be authorised officers for the purposes of this Act.

(2) An appointment under this section may be subject to conditions or limitations specified by the Minister.

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

- (a) containing a photograph of the person; and
- (b) stating any limitations on the authorised officer's authority.

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

Inspection powers

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

- (a) enter a place associated with a railway or the operation of a railway and inspect the place, or any railway, rail infrastructure or rolling stock or other vehicle;
- (b) with the authority of a warrant issued by a magistrate or in circumstances in which the authorised officer reasonably believes that immediate action is required, use reasonable force to break into or open any part of, or anything in or on, any place or rolling stock or other vehicle;
- (c) give directions with respect to the stopping or movement of rolling stock;
- (d) take measurements, make surveys and take levels and, for those purposes, dig trenches, break up soil and set up posts, stakes or markers;
- (e) take samples of any substance or thing from any place or rolling stock or other vehicle for analysis;
- (f) require a person to produce a document or other information;
- (g) examine, copy or take extracts from a document or information so produced or require a person to provide a copy of any such document or information;
- (h) take photographs, films, audio, video or other recordings;

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

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

- (a) the giving of notice would defeat the purpose for which it is intended to enter the land; or
- (b) entry to the land is made with the consent of the owner or occupier of the land; or
- (c) entry is required in an emergency.

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

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

(5) If a person gives assistance to an authorised officer as required under subsection (4), the person must, if he or she so requires, be reimbursed by the Adminstrating Authority for reasonable costs and expenses incurred in giving the assistance.

(6) In the exercise of powers under this section, an authorised officer must do as little damage as possible.

Provisions relating to seizure

47. (1) A seizure order under this Division—

- (a) must be in the form of a written notice served on the owner or person in control of the thing to which the order relates; and
- (b) may be varied or revoked by further such written notice.

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(2) If a seizure order is issued under this Division, a person who removes or interferes with the thing to which the order relates without the approval of the Administrating Authority before an order is made under subsection (3)(b) in respect of the thing or the seizure order is discharged under subsection (3)(c) is guilty of an offence.

Maximum penalty: \$10 000.

(3) If a thing has been seized or made subject to a seizure order under this Division the following provisions apply:

(a) the thing must, if it has been seized, be held pending proceedings for an offence against this Act related to the thing seized, unless the Administrating Authority, on application, 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 Administrating Authority thinks fit (including conditions as to the giving of security for satisfaction of an order under paragraph (b)(ii));

(b) if proceedings for an offence against this Act relating to the thing are instituted within the prescribed period after its seizure or the issuing of the seizure order and the defendant is convicted or found guilty of the offence, the court may—

(i) order that it be forfeited to the Administrating Authority; or

(ii) if it has been released pursuant to paragraph (a) or is the subject of a seizure order—order that it be forfeited to the Administrating Authority or that the person to whom it was released or the defendant pay to the Administrating Authority an amount equal to its market value at the time of seizure or the issuing of the seizure order, as the court thinks fit;

(c) if—

(i) proceedings are not instituted for an offence against this Act relating to the thing within the prescribed period after its seizure or the issuing of the seizure order; or

(ii) proceedings have been so instituted and—

(A) the defendant is found not guilty of the offence; or

(B) the defendant is convicted or found guilty of the offence but no order for forfeiture is made under paragraph (b),

then—

(iii) in the case of a thing seized—the person from whom the thing was seized, or a person with legal title to it, is entitled to recover from the Administrating Authority (if necessary, by action in a court of competent jurisdiction) the thing itself, or if it has been damaged or destroyed, compensation of an amount equal to its market value at the time of seizure; or

(iv) in the case of a thing subject to a seizure order—the order is discharged.

(4) In subsection (3)—

"the prescribed period" means six months or a longer period as a magistrate may, on application by the Administrating Authority, allow.

Offence to hinder, etc., authorised officers

48. (1) A person who—

- (a) without reasonable excuse, hinders or obstructs an authorised officer, or a person assisting an authorised officer, in the exercise of powers conferred by this Act; or
- (b) uses abusive, threatening or insulting language to an authorised officer, or a person assisting an authorised officer; or
- (c) without reasonable excuse, refuses or fails to comply with a requirement or direction of an authorised officer under this Division; or
- (d) when required by an authorised officer under this Division to answer a question, refuses or fails without reasonable excuse to answer the question to the best of the person's knowledge, information and belief; or
- (e) falsely represents, by words or conduct, that he or she is an authorised officer,

is guilty of an offence.

Maximum penalty: \$10 000.

(2) A person who assaults an authorised officer, or a person assisting an authorised officer in the exercise of powers under this Act, is guilty of an offence.

Maximum penalty: \$10 000.

Self-incrimination, etc.

49. (1) It is not an excuse for a person to refuse or fail to answer a question or to produce, or provide a copy of, a document or information as required under this Division on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.

(2) However, if compliance by a person with a requirement to answer a question or to produce, or provide a copy of, a document or information might tend to incriminate the person or make the person liable to a penalty, then—

- (a) in the case of a person who is required to produce, or provide a copy of, a document or information—the fact of production, or provision of a copy of, the document or the information (as distinct from the contents of the document or the information); or
- (b) in any other case—the answer given in compliance with the requirement,

is not admissible in evidence against the person in proceedings for an offence or for the imposition of a penalty (other than proceedings in respect of the making of a false or misleading statement).

(3) A person is not obliged to provide information under this Division that is privileged on the ground of legal professional privilege.

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Offences by authorised officers, etc.

50. (1) An authorised officer, or a person assisting an authorised officer, who—

- (a) addresses offensive language to another person; or
- (b) without lawful authority, hinders or obstructs or uses or threatens to use force in relation to another person,

is guilty of an offence.

Maximum penalty: \$5 000.

**PART 6
MISCELLANEOUS**

DIVISION 1—ADMINISTRATION

Ministerial control

51. (1) Subject to subsection (2), the Administrating Authority is, in the administration of this Act, subject to control and direction by the Minister.

(2) No Ministerial direction can be given—

(a) in relation to the grant (or refusal) of an accreditation under this Act; or

(b) to suppress information or recommendations in a report of the Administrating Authority under this Act.

Delegations

52. (1) The Administrating Authority may delegate a function or power conferred on or vested in the Administrating Authority under this Act.

(2) A delegation—

(a) may be made—

(i) to a particular person or body; or

(ii) to the person for the time being occupying a particular office or position; and

(b) may be made subject to conditions and limitations specified in the instrument of delegation; and

(c) may provide for the further delegation of the function or power by the delegate; and

(d) is revocable at will and does not derogate from the power of the Administrating Authority to act in a matter.

Annual report

53. (1) The Administrating Authority must, on or before 31 October in each year, prepare and forward to the Minister a report on the administration and operation of this Act for the year ending on the preceding 30 June.

(2) The Minister must, within six days after receiving a report under this section, have copies of the report laid before both Houses of Parliament.

Recovery of cost of entry and inspection

54. The Administrating Authority may recover as a debt from an accredited person the reasonable costs of the entry and inspection of a railway or rolling stock in respect of which the person is accredited (other than the costs of a routine safety compliance inspection under Part 4).

Exclusion from liability

55. (1) No liability (including, for example, liability in negligence or for breach of statutory duty or defamation) attaches to the Minister, the Administrating Authority, an investigator, an authorised officer or any other person acting in the administration of this Act for an honest act or omission in the exercise or purported exercise of a function or power under this Act.

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(2) No act or omission referred to in subsection (1) gives rise to a civil liability against the State or an authority of the State.

DIVISION 2—GENERAL OFFENCES AND PROCEEDINGS

False information

56. (1) A person who—

- (a) by a false statement or misrepresentation, obtains or attempts to obtain an accreditation under this Act; or
- (b) forges or fraudulently alters or uses an accreditation under this Act; or
- (c) fraudulently allows an accreditation under this Act to be used by another person,

is guilty of an offence.

Maximum penalty: \$20 000.

(2) A person who, in furnishing information or a report under this Act, knowingly makes a statement that is false or misleading in a material particular is guilty of an offence.

Maximum penalty: \$20 000.

Tampering with railway equipment

57. (1) A person who tampers with or disables—

- (a) the safety equipment of a railway or rolling stock; or
- (b) the interlocking system of a railway; or
- (c) any other safeworking system associated with a railway,

is guilty of an offence.

Maximum penalty: \$10 000.

(2) In this section—

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

Offender to state name and address

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

(2) A person who—

- (a) fails or refuses to comply with a requirement made by a member of the police force or an authorised officer under this section; or

- (b) in purported compliance with such a requirement, states a name that is not his or her name or an address that is not his or her usual place of residence,

is guilty of an offence.

Maximum penalty: \$5 000.

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

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

Continuing offences

59. (1) If an offence against a provision of this Act is committed by a person by reason of a continuing act or omission—

- (a) the person is liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continues of not more than an amount equal to one-fifth of the maximum penalty prescribed for that offence; and
- (b) if the act or omission continues after the person is convicted of the offence, the person is guilty of a further offence against that provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continues after that conviction of not more than an amount equal to one-fifth of the maximum penalty prescribed for that offence.

(2) For the purposes of this section, an obligation to do something is to be regarded as continuing until the act is done notwithstanding that a period within which, or time before which, the act is required to be done has expired or passed.

General provision relating to offences

60. (1) If a body corporate is guilty of an offence against this Act, each director and manager of the body corporate is guilty of an offence and liable to the same penalty as may be imposed for the principal offence unless it is proved that the principal offence did not result from failure on his or her part to take reasonable and practicable measures to prevent the commission of the offence.

(2) A prosecution for an offence against this Act may be commenced at any time within two years after the date of the alleged commission of the offence or, with the authorisation of the Attorney-General, at a later time within three years after the date of the alleged commission of the offence.

(3) An apparently genuine document purporting to be signed by the Attorney-General and to authorise the commencement of proceedings for an offence against this Act will be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the authorisation.

DIVISION 3—OTHER MATTERS

Liability of person for acts or omissions of employees or agents

61. For the purposes of this Act, an act or omission of an employee or agent of an accredited person will be taken to be an act or omission of the accredited person unless the accredited person proves that the employee or agent was not acting in the course of employment or agency.

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Evidentiary provision

62. In proceedings, a certificate purporting to be executed by the Administrating Authority certifying as to a matter relating to—

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

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

Regulations

63. (1) The Governor may make regulations as contemplated by this Act, or as necessary or expedient for the purposes of this Act, including regulations that make provision for or in relation to any of the matters specified in schedule 2.

(2) The regulations may—

- (a) refer to or incorporate, wholly or partially and with or without modification, a code, standard or other document prepared or published by a prescribed body, either as in force at the time the regulations are made or as in force from time to time; and
- (b) be of general or limited application; and
- (c) make different provision according to the persons, things or circumstances to which they are expressed to apply; and
- (d) provide that a specified provision of this Act does not apply, or applies with prescribed variations, in a circumstance or situation (or circumstance or situation of a prescribed class) specified by the regulations, subject to any condition to which the regulations are expressed to be subject; and
- (e) provide that any matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister, the Administrating Authority or another prescribed authority; and
- (f) in relation to fees, prescribe differential fees or provide for fees to be determined according to prescribed factors.

(3) Where the regulations refer to or incorporate a code, standard or other document prepared or published by a prescribed body—

- (a) a copy of the code, standard or other document must be kept available for inspection by members of the public, without charge and during normal office hours, at an office or offices specified in the regulations; and
- (b) in legal proceedings, evidence of the contents of the code, standard or other document may be given by production of a document purporting to be certified by or on behalf of the Minister as a true copy of the code, standard or other document; and
- (c) the code, standard or other document has effect as if it were a regulation made under this Act.

SCHEDULE 1

Notifiable Occurrences

1. An accident or incident involving the death of a person. The requirement to notify applies in respect of the death of any person (including a passenger, other member of the public, railway employee or trespasser) and in respect of any cause of death (including accident, suicide or ill health).

2. An accident or incident involving serious personal injury to a person (including a passenger, other member of the public, railway employee or trespasser) that results in admission to hospital.

3. An occurrence in which a person—

(a) falls off a railway platform, bridge or structure; or

(b) falls between a train and platform; or

(c) falls from a train during the running, starting or stopping of a train; or

(d) is struck by a train or a unit of rolling stock; or

(e) is struck by an object thrown at or from a train; or

(f) is struck or affected by dangerous goods, or affected by gases or fumes, on a railway or rolling stock; or

(g) is struck by, or receives a shock from electricity on a railway or on railway premises.

4. A derailment of a train or rolling stock.

5. A collision, including—

(a) a collision between trains, other rolling stock, vehicles or obstructions or buffer stops on running lines (including a collision as a result of a vehicle loading irregularity or an unsecured door);

(b) a collision involving a train with either a road vehicle or a person at a level crossing, including a pedestrian crossing;

(c) any other collision that causes damage (*e.g.* a collision in a depot or shunting yard).

6. An unauthorised passing of a signal displaying a stop indication.

7. A significant unauthorised departure from safeworking procedures that could compromise safety.

8. A failure of items of signalling or other safeworking equipment in a way that endangers or could endanger the safe operation of a railway.

9. An incident at or in the immediate vicinity of a level crossing that compromises safe operation of railway traffic or the safety of the public.

10. A failure of a tunnel, bridge or elevated structure (or a part of a tunnel, bridge or elevated structure) that endangers or could endanger the safe operation of a railway.

11. Rolling stock runaway.

12. An incident that could result in explosion, fire or pollution caused by dangerous goods.

13. An incident involving rolling stock as follows:

(a) hot box (*i.e.*, overheated axle bearings which can cause catastrophic axle failure);

(b) dragging equipment;

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- (c) a wagon loading defect or out of gauge fouling;
- (d) a door defect or an accidental opening of doors;
- (e) train parting;
- (f) a pantograph defect likely to cause dewirement;
- (g) a wheel or axle failure;
- (h) a major braking system failure;
- (i) any other rolling stock failure that has the potential to cause a serious accident.

14. An incident where an animal large enough to damage a vehicle is—

- (a) struck by a train; or
- (b) on a track or in the vicinity of a track.

15. A fire affecting rail infrastructure or rolling stock that endangers or could endanger the safe operation of a railway.

16. An explosion affecting rail infrastructure or rolling stock.

17. A track defect that has the potential to cause derailment, including—

- (a) a track defect involving horizontal misalignment;
- (b) a track defect involving vertical misalignment;
- (c) a broken rail (including a rail joint).

18. The appearance or occurrence of—

- (a) a defect in a civil or electrical infrastructure item that has the potential to cause an accident unless urgent corrective action is taken;
- (b) a defect in electrical supply or overhead wiring sufficient to cause an electrical fault or dewirement;
- (c) any other defect with the potential to cause an accident unless urgent corrective action is taken.

19. A case where a railway employee is found to be carrying out railway safety work—

- (a) while there is present in his or her blood a concentration of alcohol of .02 grams or more of alcohol in 100 millilitres of blood; or
- (b) while under the influence of a drug.

SCHEDULE 2

Regulations

1. Accreditations under this Act, including—
 - (a) requirements, standards, qualifications or conditions that must be satisfied; and
 - (b) requirements as to the terms, conditions or particulars applying under or with respect to them; and
 - (c) other matters relating to their award, refusal, variation, suspension, cancellation or surrender.
2. A scheme for certificates of competency (or provisional certificates of competency) for persons employed or engaged in railway safety work, and for the duration, variation, suspension or cancellation of those certificates.
3. The prohibition of the carrying on of railway safety work or other prescribed activity except by or under the supervision of a person—
 - (a) who holds an appropriate certificate of competency; or
 - (b) who has prescribed qualifications, training or experience.
4. Safety standards or other requirements that must be complied with—
 - (a) in connection with the construction, maintenance or operation of a railway; or
 - (b) in connection with the performance of any work or activity; or
 - (c) in relation to any rail infrastructure, rolling stock, trains, system, devices, appliance or equipment; or
 - (d) in relation to sidings.
5. The safeguarding, siting, installing, testing, altering, testing, maintaining or removal of any rail infrastructure, rolling stock, system, device, appliance or equipment.
6. The records and documents to be kept by any person, the manner of keeping those records and documents, and their inspection.
7. The furnishing of returns and other information, verified as prescribed.
8. The recording, investigation and reporting of accidents and incidents.
9. The health, fitness and functions of railway employees.
10. Procedures and requirements for testing by persons of a prescribed class for the presence of alcohol in the blood of railway employees who are about to carry out, or who are carrying out, railway safety work, including procedures for breath, urine and blood testing, the requirement for railway employees to submit to testing, and procedures and penalties if an employee does not so submit, the analysis of test results, the provision and keeping of samples, the approval of equipment or any apparatus for the purposes of testing or analysis, and evidence in any proceedings for an offence against the relevant regulations.
11. The regulation of the conduct of passengers and other persons on railways, or on land or premises associated with a railway.
12. Trespass on, or entry to, railways, or on land, premises, infrastructure or rolling stock associated with a railway.
13. The regulation or prohibition of the carriage of goods, freight or animals on railways.
14. The unauthorised use of railways or rolling stock.

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15. The display of signs and notices.
16. The opening and closing of railway gates.
17. The regulation of vehicles, animals and pedestrians crossing railways.
18. The regulation of crossings.
19. The loading, unloading or transportation of freight.
20. The identification of rolling stock, rail infrastructure, devices, appliances, equipment or freight.
21. Causing damage to, or interfering with or removing, rolling stock, rail infrastructure, devices, appliances, equipment or freight.
22. Procedures associated with inspections, examinations or tests under this Act.
23. The form and service of notices and other documents under this Act.
24. Empowering the Administrating Authority to require a person to attend before an appointed person and to provide documents or information or to answer questions.
25. Empowering the Administrating Authority to prohibit a person from acting (or from continuing to act) as a railway employee for a specified period, or until further order of the Administrating Authority.
26. Fixing fees and charges for the purposes of this Act or in respect of any matter arising under this Act, including a fee that the Administrating Authority may recover from an accredited person as a debt if the accredited person fails to comply with a requirement of this Act within a specified time.
27. Generally, evidence in proceedings for an offence against the regulations.
28. The imposition of penalties, not exceeding \$5 000, for a contravention of, or failure to comply with, a regulation.

SCHEDULE 3

Transitional Provisions

1. (1) An owner or operator of a railway (other than a private siding) who, immediately before the commencement of this clause, owns or operates a railway to which this Act applies will be taken to hold an accreditation appropriate to the owner's or operator's circumstances at that commencement for the prescribed period after the commencement of this clause.

(2) If, during the prescribed period under subclause (1), an owner or operator holding an accreditation under that subclause applies to the Administrating Authority for accreditation or interim accreditation under Part 2, the owner's or operator's accreditation by virtue of that subclause will continue until such time as the application is determined by the Administrating Authority.

(3) A private siding in existence immediately before the commencement of this clause will be taken to be registered under this Act for the prescribed period after the commencement of this clause.

(4) If, during the prescribed period under subclause (3), the owner of the private siding applies to the Administrating Authority for registration of the siding under Part 2, the registration by virtue of that subclause will continue until such time as the application is determined by the Administrating Authority.

2. (1) The regulations may contain other provisions of the saving or transitional nature consequent on the enactment of this Act.

(2) A regulation made under this clause may, if the regulation so provides, take effect from the date of assent to this Act or any later date.

(3) To the extent to which a regulation takes effect earlier than the day on which it is made, the regulation does not operate so as to—

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

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APPENDIX

LEGISLATIVE HISTORY

Schedule 1
Clause 19:

inserted by 41, 1998, reg. 8(5)